

JUL 14 2017

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. NC-16-1018-FBJu
)
 6 MONICA HUJAZI,) Bk. No. 13-30477
)
 7 Debtor.)
)
 8 _____)
)
 9 MONICA HUJAZI,)
)
 10 Appellant,)
)
 11 v.) **MEMORANDUM***
)
 12 RECOVEREX CORPORATION;)
)
 13 MICHAEL E. GRODSKY; ANDREW)
)
 14 KIM; BIANKA McGUIGAN; ALLEN)
)
 15 HYMAN; HAROLD GREENBERG,)
)
 16 Appellees.)
)
 17 _____)

Argued and Submitted on June 22, 2017
at San Francisco, California

Filed - July 14, 2017

Appeal from the United States Bankruptcy Court
for the Northern District of California

Honorable Hannah L. Blumenstiel, Bankruptcy Judge, Presiding

Appearances: Bradley Kass of Kass & Kass Law Offices argued on
 behalf of appellant Monica Hujazi; Sidney A.
 Luscutoff of Luscutoff, Lendormy & Assoc. argued
 on behalf of appellee Recoverex Corporation; Geoff
 Wiggs argued on behalf of appellees Michael
 Grodsky, Bianka McGuigan, and Andrew Kim; appellee
 Allen Hyman, pro se, on brief; appellee Harold
 Greenberg, pro se, on brief.

* This disposition is not appropriate for publication.
 Although it may be cited for whatever persuasive value it may
 have, see Fed. R. App. P. 32.1, it has no precedential value, see
 9th Cir. BAP Rule 8024-1.

1 Before: FARIS, BRAND, and JURY, Bankruptcy Judges.

2 **INTRODUCTION**

3 In an involuntary chapter 7¹ bankruptcy case against debtor
4 Monica Hujazi, the bankruptcy court granted summary judgment in
5 favor of the petitioning creditors and entered an order for
6 relief. Ms. Hujazi appeals on numerous grounds. We AFFIRM.

7 **FACTUAL BACKGROUND**

8 **A. The involuntary petition**

9 On March 1, 2013, four creditors ("the Original Petitioning
10 Creditors") filed a chapter 7 involuntary petition against
11 Ms. Hujazi. The Original Petitioning Creditors are:

- 12 • Appellee Recoverex Corporation, which asserts that it is the
13 assignee of the claims of attorney Sidney Luscutoff against
14 Ms. Hujazi for legal fees. As of the petition date,
15 Ms. Hujazi allegedly owed Recoverex \$634,000.
- 16 • Appellee Allen Hyman, an attorney who represented
17 Ms. Hujazi. As of the petition date, Ms. Hujazi allegedly
18 owed him \$144,936.86.²
- 19 • Appellee Michael E. Grodsky, another attorney who provided
20 legal services to Ms. Hujazi. As of the petition date,
21

22 ¹ Unless specified otherwise, all chapter and section
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532,
24 all "Rule" references are to the Federal Rules of Bankruptcy
25 Procedure, and all "Civil Rule" references are to the Federal
Rules of Civil Procedure.

26 ² Mr. Hyman filed a request for judicial notice asking that
27 we take judicial notice of two exhibits that purport to show
28 Ms. Hujazi's criminal case history. These documents do not
appear to be directly related to this proceeding (nor are they
authenticated in any way), and we accordingly deny the request.

1 Ms. Hujazi allegedly owed him \$312,940.

- 2 • Appellee Harold Greenberg, yet another attorney with a claim
3 against Ms. Hujazi for legal fees as well as a judgment. As
4 of the petition date, Ms. Hujazi allegedly owed him
5 \$642,023.14.

6 The Original Petitioning Creditors alleged that they were
7 qualified under § 303(b) to file an involuntary petition against
8 Ms. Hujazi because their claims were not contingent and not the
9 subject of a bona fide dispute as to liability or amount.

10 The involuntary petition identified Ms. Hujazi as the
11 individual debtor. It also listed other trade names that she had
12 used in the prior eight years: "Zuercher Trust Family Trust, The
13 Zuercher Trust of 1999, Bay Cities Financial, Alexandria
14 Apartments, Brownstone Lofts, Peninsula Commons, Emerald Square
15 Apartments, SF Corners."

16 **B. The motion to dismiss**

17 Ms. Hujazi filed a motion to dismiss the involuntary
18 petition. She argued that the Original Petitioning Creditors
19 were not qualified under § 303(b) because the debts were "the
20 subject of a bona fide dispute as to liability or amount."

21 After Ms. Hujazi filed her motion to dismiss, but before the
22 court decided it, three groups of creditors joined in the
23 involuntary petition. These are:

- 24 • The Los Angeles Housing Department and the Los Angeles Fire
25 Department ("Los Angeles Creditors"), which held combined
26 claims for \$62,858.58 for penalties related to misdemeanor
27 convictions;
- 28 • Blanca Valdovinos and Mirian Gonzalez, representatives of a

1 putative class of tenants in a building owned or controlled
2 by Ms. Hujazi ("Class Action Creditors"); and

- 3 • Bitalino Sanchez Trieles, Gregorio Centeno Flores, Rodolfo
4 Rivera Cabrera, and Tomas Cux, who are some of Ms. Hujazi's
5 tenants ("Tenant Creditors").

6 The court treated the motion to dismiss as a motion for
7 summary judgment. Following a hearing, the bankruptcy court
8 granted the motion in part and denied it in part. It found that
9 Ms. Hujazi had failed to show a genuine dispute of material fact
10 with regard to the qualifications of the Original Petitioning
11 Creditors and the Los Angeles Creditors. However, it granted
12 summary judgment in favor of Ms. Hujazi as to the Class Action
13 Creditors and Tenant Creditors.

14 The bankruptcy court explicitly did not make any finding as
15 to whether Ms. Hujazi had twelve or more creditors holding claims
16 not the subject of a bona fide dispute as to liability or amount.
17 It ordered her to file an answer to the involuntary petition
18 within fourteen days; if she intended to assert a defense of too
19 few petitioning creditors, she must file and serve a list of
20 creditors in compliance with Rule 1003(b). The court stated that
21 the failure to assert the lack of qualifying creditors as a
22 defense or file her list of creditors would constitute a waiver
23 of that defense.

24 **C. Ms. Hujazi's answer and list of creditors**

25 On August 15, 2013, Ms. Hujazi filed an answer to the
26 involuntary petition. She did not assert the defense of too few
27 qualifying creditors.

28 Almost two months later, she filed a list of creditors

1 holding claims that were not the subject of a bona fide dispute.

2 Those creditors (and amounts owed) were:

- 3 • American Express (\$11,595);
- 4 • Town of Hillsborough (\$1,230);
- 5 • Pacific Gas & Electric (\$1,012);
- 6 • Recology Sunset Scavenger (\$862);
- 7 • AT&T (\$789); and
- 8 • Visa (\$23,390).

9 **D. Additional petitioning creditors**

10 After the bankruptcy court decided the motion to dismiss,
11 three more creditors joined in the involuntary petition:

- 12 • Craig Heidig, who held a claim for \$685 for construction-
13 related work done on real property in San Francisco;
- 14 • Appellee Bianka McGuigan, who held an unpaid judgment; and
- 15 • Appellee Andrew Kim, who also held an unpaid judgment.

16 The bankruptcy court scheduled a trial on the involuntary
17 petition and set a deadline for filing dispositive motions.

18 **E. The motion for summary judgment**

19 More than two years after the involuntary petition date, and
20 on the motions cutoff date, Recoverex filed a motion for summary
21 judgment seeking an order for relief against Ms. Hujazi ("Motion
22 for Summary Judgment"). It argued that, because Ms. Hujazi had
23 failed to plead insufficient qualifying creditors as a defense
24 and had only identified six creditors, she waived that defense.
25 There was a creditor with a qualifying claim because the court
26 had previously determined (in its decision on the motion to
27 dismiss) that the Los Angeles Creditors held a claim not the
28 subject of a bona fide dispute as to liability or amount.

1 Recoverex argued that, even if three qualifying creditors
2 were necessary, Mr. Hyman and Mr. Grodsky held claims against
3 Ms. Hujazi (related to unpaid legal bills) that were not the
4 subject of a bona fide dispute.

5 Finally, Recoverex argued that Ms. Hujazi was not generally
6 paying her debts as they became due. Recoverex showed that
7 Ms. Hujazi admitted that, as of the involuntary petition date,
8 she did not possess liquid assets exceeding \$350,000.

9 After the motions cutoff date, Mr. Hyman, Mr. Grodsky,
10 Ms. McGuigan, and Mr. Kim joined in the Motion for Summary
11 Judgment. Only Mr. Hyman offered substantive argument and
12 evidence; Mr. Grodsky, Ms. McGuigan, and Mr. Kim filed simple
13 joinders after Ms. Hujazi filed her opposition to the Motion for
14 Summary Judgment and only incorporated Recoverex's arguments.
15 (We will refer to Recoverex and the creditors that joined in the
16 motion as the "Moving Creditors.")

17 Ms. Hujazi opposed the Motion for Summary Judgment. She
18 argued that: (1) Recoverex was required to seek relief from stay
19 before filing the involuntary petition because the petition named
20 The Zuercher Trust of 1999 as an alias or assumed business name
21 of Ms. Hujazi, and that entity was already in bankruptcy ("the
22 Zuercher Trust case"); (2) Recoverex lacked standing to file the
23 Motion for Summary Judgment because there was no proof that it
24 was a creditor of Ms. Hujazi; (3) the Motion for Summary Judgment
25 was filed in bad faith because Recoverex was not a qualified
26 petitioning creditor; (4) the claims in the involuntary petition
27 cannot be enforced because they were duplicative of the claims in
28 the Zuercher Trust bankruptcy case; (5) the attorney creditors'

1 claims were barred by state law; and (6) a trial on the merits
2 was necessary to establish the number of qualifying creditors,
3 Ms. Hujazi's financial condition, and whether Ms. Hujazi was
4 paying her debts as they become due.

5 Ms. Hujazi objected that Mr. Hyman's substantive joinder was
6 untimely because it was filed after the motions cutoff date and
7 attempted to substantively argue the motion. The bankruptcy
8 court permitted Mr. Hyman to join in the Motion for Summary
9 Judgment, but struck his additional argument and evidence as
10 untimely.

11 Additionally, Ms. Hujazi objected to Recoverex's standing to
12 file the Motion for Summary Judgment. She contended that
13 Recoverex had failed to prove that the claims had been properly
14 assigned to it.

15 Following a hearing, the bankruptcy court granted the Motion
16 for Summary Judgment. In a detailed order granting the motion
17 ("Summary Judgment Order"), the bankruptcy court held that the
18 Moving Creditors had established the requisite number of
19 petitioning creditors and that Ms. Hujazi was generally not
20 paying her debts as they became due.³

21 The bankruptcy court held that Ms. Hujazi had waived the
22 defense of an insufficient number of qualified petitioning
23 creditors because she did not assert that defense in her answer.

24
25 ³ The bankruptcy court issued a separate order on
26 Ms. Hujazi's various evidentiary objections. In relevant part,
27 it overruled her special objection to Recoverex's standing based
28 on its alleged lack of evidence regarding proof of assignment of
its claims. The bankruptcy court also denied her request to
strike Recoverex's request for judicial notice. Ms. Hujazi did
not appeal any of these rulings.

1 Additionally, she only identified six creditors holding claims
2 that are not the subject of a bona fide dispute.

3 The bankruptcy court further held that, even if Ms. Hujazi
4 did not waive the defense of an insufficient number of
5 petitioning creditors, the Moving Creditors had established that
6 at least three qualifying creditors joined in the involuntary
7 petition. It stated that Ms. McGuigan and Mr. Kim held valid
8 judgments against Ms. Hujazi that had not been satisfied.
9 Moreover, Mr. Hyman and Mr. Grodsky held claims for unpaid
10 attorneys' fees that were not the subject of a bona fide dispute
11 as to liability or amount.

12 Next, the bankruptcy court found that Ms. Hujazi was
13 generally not paying her debts as they became due. Applying the
14 Ninth Circuit's "totality of the circumstances" test, it began by
15 considering whether Ms. Hujazi was paying her known creditors, of
16 which there were fifteen. The court found that she was not
17 paying ten of them, but that the Moving Creditors did not prove
18 that she had failed timely to pay the debts of five creditors.
19 After evaluating the status of each individual debt, the
20 bankruptcy court stated that:

21 Applying the totality of the circumstances
22 analysis prescribed by the Ninth Circuit, the Court
23 concludes that Movants have met their burden of
24 establishing that Ms. Hujazi has been generally not
25 paying her debts as they become due, and that
26 Ms. Hujazi has failed to raise a dispute of material
27 fact sufficient to warrant a trial on the merits.
28 Accordingly, Movants are entitled to summary judgment
on this issue. Ms. Hujazi is the subject of several
unpaid judgments, and has failed to pay several
professionals she has employed over the years. Though
not as severe, Movants have also established that
Ms. Hujazi has an inability to make recurring monthly
payments on a timely basis. While it is true that she
has paid some of her creditors, the question of whether

1 an alleged debtor has been generally paying debts as
2 they become due requires the Court to look at all of
3 Ms. Hujazi's debts and the circumstances in which
4 payments are made. Doing so, it becomes clear that
5 Ms. Hujazi has made it a common practice to pick and
6 choose which debts to pay and which not to pay, and to
7 bounce checks or make excuses when timely payment is
8 not possible. On this basis, the Court concludes that
9 entry of an order for relief under section 303 is
10 warranted.

11 Finally, the bankruptcy court rejected Ms. Hujazi's
12 ancillary arguments. It stated that the Moving Creditors did not
13 violate the automatic stay in the Zuercher Trust case because the
14 involuntary petition was directed against Ms. Hujazi, not the
15 Zuercher Trust. It rejected her argument that Recoverex lacked
16 standing to file the involuntary petition and the Motion for
17 Summary Judgment because Mr. Grodsky, Mr. Hyman, Ms. McGuigan,
18 and Mr. Kim each had standing and joined in the Motion for
19 Summary Judgment. It also disagreed with her argument that the
20 Moving Creditors failed to prove her "financial condition and
21 debt structure."

22 The bankruptcy court entered an order for relief ("Order for
23 Relief") on November 30, 2015.

24 **F. The motion for reconsideration**

25 Ms. Hujazi filed a motion to alter, vacate, or amend
26 judgment ("Motion for Reconsideration"). She argued that
27 Recoverex lacked standing to move for summary judgment because it
28 did not produce evidence that it held any claim against
29 Ms. Hujazi and that it was improper to allow the joinder of the
30 other Moving Creditors.

31 The bankruptcy court denied the Motion for Reconsideration
32 and concluded that: (1) Recoverex could move for summary judgment

1 because it was a party to the case and did not need to be an
2 eligible petitioning creditor; (2) Recoverex met its burden to
3 prove the lack of any genuine dispute as to whether Ms. Hujazi
4 was paying her debts as they became due; (3) joinder in the
5 Motion for Summary Judgment was appropriate; (4) the joinders did
6 not seek any relief different from the Motion for Summary
7 Judgment; and (5) Ms. Hujazi did not suffer any prejudice.

8 The bankruptcy court entered an order denying the Motion for
9 Reconsideration ("Reconsideration Order"). Ms. Hujazi timely
10 filed her notice of appeal from the Summary Judgment Order, Order
11 for Relief, and Reconsideration Order.

12 JURISDICTION

13 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
14 §§ 1334 and 157(b)(1). We have jurisdiction under 28 U.S.C.
15 § 158.

16 ISSUES

17 (1) Whether the bankruptcy court erred in granting the
18 Motion for Summary Judgment and entering the Order for Relief.

19 (2) Whether the bankruptcy court erred in denying the Motion
20 for Reconsideration.

21 STANDARDS OF REVIEW

22 "[W]e review de novo a bankruptcy court's decision to grant
23 summary judgment." See Marciano v. Fahs (In re Marciano),
24 459 B.R. 27, 35 (9th Cir. BAP 2011), aff'd, 708 F.3d 1123 (9th
25 Cir. 2013). "De novo review requires that we consider a matter
26 anew, as if no decision had been made previously." Francis v.
27 Wallace (In re Francis), 505 B.R. 914, 917 (9th Cir. BAP 2014).

28 We review for abuse of discretion the denial of a motion for

1 reconsideration. N. Alaska Env'tl. Ctr. v. Lujan, 961 F.2d 886,
2 889 (9th Cir. 1992). To determine whether the bankruptcy court
3 has abused its discretion, we conduct a two-step inquiry: (1) we
4 review de novo whether the bankruptcy court "identified the
5 correct legal rule to apply to the relief requested" and (2) if
6 it did, whether the bankruptcy court's application of the legal
7 standard was illogical, implausible, or "without support in
8 inferences that may be drawn from the facts in the record."
9 United States v. Hinkson, 585 F.3d 1247, 1262-63 & n.21 (9th Cir.
10 2009) (en banc). "If the bankruptcy court did not identify the
11 correct legal rule, or its application of the correct legal
12 standard to the facts was illogical, implausible, or without
13 support in inferences that may be drawn from the facts in the
14 record, then the bankruptcy court has abused its discretion."
15 USAA Fed. Sav. Bank v. Thacker (In re Taylor), 599 F.3d 880,
16 887-88 (9th Cir. 2010) (citing Hinkson, 585 F.3d at 1261-62).

17 DISCUSSION

18 **A. The bankruptcy court properly granted summary judgment.**

19 We agree with the bankruptcy court that summary judgment and
20 an order for relief were appropriate.

21 **1. Petitioning creditors must establish the requisite** 22 **number of petitioning creditors and that Ms. Hujazi was** 23 **generally not paying her debts as they came due.**

24 "Section 303 requires that creditors filing a petition for
25 involuntary bankruptcy against a debtor have claims that are not
26 subject to a bona fide dispute." Liberty Tool & Mfg. v. Vortex
27 Fishing Sys., Inc. (In re Vortex Fishing Sys., Inc.), 277 F.3d
28 1057, 1064 (9th Cir. 2002). It provides:

(b) An involuntary case against a person is commenced

1 by the filing with the bankruptcy court of a petition
2 under chapter 7 or 11 of this title--

3 (1) by three or more entities, each of which is
4 either a holder of a claim against such person
5 that is not contingent as to liability or the
6 subject of a bona fide dispute as to liability or
7 amount, or an indenture trustee representing such
8 a holder, if such noncontingent, undisputed claims
9 aggregate at least \$15,775 more than the value of
10 any lien on property of the debtor securing such
11 claims held by the holders of such claims;

12 (2) if there are fewer than 12 such holders, . . .
13 by one or more of such holders that hold in the
14 aggregate at least \$15,775 of such claims[.]

15 § 303(b) (1)-(2) .

16 In addition, § 303 articulates the requirements for an order
17 for relief:

18 (h) If the petition is not timely controverted, the
19 court shall order relief against the debtor in an
20 involuntary case under the chapter under which the
21 petition was filed. Otherwise, after trial, the court
22 shall order relief against the debtor in an involuntary
23 case under the chapter under which the petition was
24 filed, only if--

25 (1) the debtor is generally not paying such
26 debtor's debts as such debts become due unless
27 such debts are the subject of a bona fide dispute
28 as to liability or amount. . . .

§ 303(h) .

In order to prevail on summary judgment where twelve or more
creditors are present, the petitioning creditors "must establish
that (1) three or more creditors (2) hold claims against the
alleged debtor that are not contingent as to liability and
(3) are not the subject of a bona fide dispute as to liability or
amount (4) in the aggregate amount of at least [\$15,775], and
(5) that the alleged debtor is generally not paying such debtor's
debts as such debts become due." In re Marciano, 446 B.R. 407,

1 420 (Bankr. C.D. Cal. 2010), aff'd, 459 B.R. 27 (9th Cir. BAP
2 2011), aff'd, 708 F.3d 1123 (9th Cir. 2013) (citing § 303). If
3 an alleged debtor has less than twelve such creditors, only one
4 petitioning creditor is necessary. § 303(b)(2).

5 A claim is subject to a "bona fide dispute" if "there is an
6 objective basis for either a factual or a legal dispute as to the
7 validity of the debt." In re Vortex Fishing Sys., Inc., 277 F.3d
8 at 1064 (citation omitted). In other words, "if there is either
9 a genuine issue of material fact that bears upon the debtor's
10 liability,⁴ or a meritorious contention as to the application of
11 law to undisputed facts, then the petition must be dismissed."
12 Id. (citation omitted).

13 The petitioning creditors bear the burden of proving all
14 statutory requirements of § 303. The burden then shifts to the
15 alleged debtor to show that there is a dispute as to a material
16 fact. Id.

17 **2. The joinders in the Motion for Summary Judgment were**
18 **proper.**

19 Ms. Hujazi argues that the bankruptcy court erred in
20 granting the Motion for Summary Judgment because the joinders
21 were improper and Recoverex lacked standing to file the initial
22 motion. We disagree.

23 Ms. Hujazi argues that federal law does not recognize
24 joinders in substantive motions and, therefore, state law
25

26 ⁴ After the Ninth Circuit decided Vortex Fishing, Congress
27 amended § 303(b)(1) to provide that a qualifying creditor's claim
28 **or amount**" (Emphasis added.)

1 controls. Accordingly, she urges us to rely on California case
2 law that holds that a California state court may not grant
3 summary judgment in favor of a party that did not file its own
4 motion for summary judgment but rather joined in another party's
5 motion. Ms. Hujazi's argument is not persuasive.

6 The Federal Rules of Civil Procedure neither permit nor
7 forbid joinders in summary judgment motions. Ms. Hujazi contends
8 that, when the federal rules are silent, a federal court should
9 (or perhaps must) follow the procedural rules of state courts in
10 the forum state. She offers no authority for this proposition,
11 and we reject it.

12 Rule 9029(b) tells bankruptcy courts what they can do when
13 the rules are silent. Bankruptcy courts have broad authority to
14 "regulate practice in any manner consistent with [the applicable
15 procedural rules], Official Forms, and local rules of the
16 district." Rule 9029(b). Relying on this power, federal courts
17 routinely permit parties to join in motions. See, e.g., Thompson
18 v. Hartley, Case no. 1:10-cv-02260-MJS, 2014 U.S. Dist. LEXIS
19 158786 (E.D. Cal. Nov. 7, 2014).

20 While a federal judge might choose to follow state rules of
21 procedure when the federal rules are silent, we see no reason to
22 require a federal court to follow state court procedure. This
23 would be particularly inappropriate in this case. The California
24 state court cases cited by Ms. Hujazi rest on a California
25 statute, California Code of Civil Procedure 437c(b). See Vill.
26 Nurseries, L.P. v. Greenbaum, 101 Cal. App. 4th 26, 46-47 (2002).
27 Under basic principles of federalism, a state legislature cannot
28 dictate practice and procedure in a federal court.

1 Ms. Hujazi argues that consideration of the joinders denied
2 her due process. We disagree.

3 Generally speaking, a court must give sufficient notice of
4 an adverse action and the opportunity for interested parties to
5 be heard. See Tennant v. Rojas (In re Tennant), 318 B.R. 860,
6 870 (9th Cir. BAP 2004) ("the concept of procedural due process
7 requires a notice and an opportunity to be heard"). According to
8 the United States Supreme Court:

9 An elementary and fundamental requirement of due
10 process in any proceeding which is to be accorded
11 finality is notice reasonably calculated, under all the
12 circumstances, to apprise interested parties of the
13 pendency of the action and to afford them an
14 opportunity to present their objections. The notice
15 must be of such nature as reasonably to convey the
16 required information . . . and it must afford a
17 reasonable time for those interested to make their
18 appearance.

19 Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950)
20 (citations omitted).

21 Ms. Hujazi was not deprived of due process. She had notice
22 of the Motion for Summary Judgment and an opportunity to file a
23 written response and argue orally in court. All of the joinders
24 except for Mr. Hyman's were simple "me too" statements that did
25 not add any argument or evidence to Recoverex's initial motion;
26 the bankruptcy court properly excluded Mr. Hyman's supplemental
27 argument and evidence as untimely. Ms. Hujazi was not deprived
28 of notice or an opportunity to be heard.

29 Additionally, she did not suffer any prejudice. Even in
30 cases where a bankruptcy court errs by failing to provide
31 adequate notice and hearing, the debtor must show prejudice from
32 the procedural deficiencies. See Rosson v. Fitzgerald

1 (In re Rosson), 545 F.3d 764, 776-77 (9th Cir. 2008) (“Because
2 there is no reason to think that, given appropriate notice and a
3 hearing, Rosson would have said anything that could have made a
4 difference, Rosson was not prejudiced by any procedural
5 deficiency.”); see also City Equities Anaheim, Ltd. v. Lincoln
6 Plaza Dev. Co. (In re City Equities Anaheim, Ltd.), 22 F.3d 954,
7 959 (9th Cir. 1994) (rejecting due process claim for lack of
8 prejudice where debtor could not show that any different or
9 additional arguments would have been presented if bankruptcy
10 court had timely approved petition for new counsel).

11 Ms. Hujazi admits that she would have made the same
12 arguments if the joinders been filed earlier; she claims that her
13 emphasis might have been different, but she does not convince us
14 that this might have changed the outcome. Therefore, the
15 bankruptcy court’s consideration of the joinders did not
16 prejudice her.

17 **3. Recoverex could file for summary judgment.**

18 Even if the joinders were improper, Recoverex had standing
19 to file for summary judgment.

20 Ms. Hujazi argues that the court erred because Recoverex
21 “lacked standing since their moving papers did not present any
22 evidence of a claim which is needed to obtain a summary
23 judgment.” There are two ways to construe her argument.

24 First, she may be contending that a party seeking summary
25 judgment in an involuntary case must show that the moving party
26 is a qualified petitioning creditor. She offers no authority for
27 this proposition, and we reject it.

28 Civil Rule 56, made applicable in bankruptcy through Rule

1 7056, provides: "A party may move for summary judgment"
2 There is no dispute that Recoverex is a "party" to this case.⁵
3 Therefore, Recoverex was entitled to file a motion for summary
4 judgment.

5 In order to prevail on its motion, Recoverex had to prove
6 that there was a sufficient number of qualified petitioning
7 creditors. Ms. Hujazi would have us hold that Recoverex also had
8 to prove that Recoverex itself was one of those creditors.
9 Neither the statute nor the rules imposes such a requirement, and
10 we see no reason to adopt it.⁶

11 Second, she may be contending that the movant must show that
12 it is a creditor - i.e., that it holds a claim against the
13 debtor, even if that claim is subject to a bona fide dispute.
14 She argues that Recoverex failed to prove an actual assignment of
15 claims to it. This misstates the record.

16 In Recoverex's opposition to the motion to dismiss, it
17 stated that "[t]he receivables of the Luscutoff firm were
18

19 ⁵ Ms. Hujazi's counsel conceded that Recoverex is a party to
20 this case:

21 THE COURT: . . . There's no question that
22 Recoverex is a party to this proceeding, right?

23 MR. KASS: No. No. We don't question that. It's
24 the next part, the next sentence actually, that we're
relying on.

25 ⁶ We also reject Ms. Hujazi's argument that Recoverex acted
26 in bad faith by filing the Motion for Summary Judgment.
27 Ms. Hujazi claims that Recoverex was incorporated for the sole
28 purpose of filing the involuntary petition. She offers no
evidence for this assertion and gives no reason why it would be
improper even if true.

1 assigned to Recoverex for collection in the Spring of 2012
2” Mr. Luscutoff attested that “[i]n March of 2012 our
3 firm assigned its accounts receivable and fraud claims, as to
4 Monica Hujazi [individually and as the trustee of the Zuercher
5 Trust] to Recoverex Corporation.” When deciding the Motion for
6 Summary Judgment, the bankruptcy court took judicial notice of
7 Recoverex’s opposition, which incorporated Mr. Luscutoff’s
8 declaration.

9 In objecting to Recoverex’s standing, Ms. Hujazi stated that
10 “despite an extensive document request from [Ms. Hujazi], no such
11 assignment document, if any, has been seen.” But the absence of
12 an assignment document is not fatal to Recoverex’s standing,
13 because Mr. Luscutoff declared that the assignment had taken
14 place, Ms. Hujazi offered no evidence to the contrary, and
15 Ms. Hujazi did not argue that the law required a writing. Thus,
16 Recoverex was entitled to file a motion for summary judgment.⁷

17 **4. There were enough qualified petitioning creditors.**

18 Ms. Hujazi claims that there were not enough qualified
19 petitioning creditors to sustain the Order for Relief. She is
20 wrong.

21 In the first place, only one qualified petitioning creditor
22 was necessary. Ms. Hujazi waived the issue of an insufficient
23 number of petitioning creditors by not raising it in her answer,
24 and she stated that she had only six creditors whose claims were

25
26 ⁷ We reject Ms. Hujazi’s unsupported argument that a claim
27 for attorneys’ fees cannot be assigned. Even if it is true that
28 a client cannot assign his claims against an attorney for
malpractice, it does not follow that an attorney cannot assign
his claims against the client for unpaid fees.

1 not subject to a bona fide dispute. She is bound by this waiver
2 and judicial admission. See Mason v. Integrity Ins. Co.
3 (In re Mason), 709 F.2d 1313, 1318-19 (9th Cir. 1983) (“[the
4 alleged debtor] waived his right to present this defense [of too
5 few creditors] by failing to raise it in an answer to the
6 petition. The lack of the requisite number of petitioning
7 creditors did not deprive the bankruptcy court of jurisdiction to
8 enter a valid order for relief”). This means that only one
9 petitioning creditor was required.

10 The Los Angeles Creditors were qualified petitioning
11 creditors. The bankruptcy court so held in its ruling on the
12 motion to dismiss. In her response to the Motion for Summary
13 Judgment, this is all that Ms. Hujazi had to say about the Los
14 Angeles Creditors:

15 The actions of City of Los Angeles relating to the
16 landlord and tenant issues are in various litigations
17 currently ongoing in the court in Los Angeles which I
18 have been in part following. I believe that there have
19 been rulings that some of their actions are
20 unconstitutional.

21 This vague statement, which was not based on personal knowledge,
22 is not sufficient to create “an objective basis for either a
23 factual or a legal dispute as to the validity of the debt.”

24 In re Vortex Fishing Sys., Inc., 277 F.3d at 1064

25 Even if Ms. Hujazi were not bound by her admission that she
26 had only six creditors, there were at least two other petitioning
27 creditors whose claims were not the subject of a bona fide
28

1 dispute: Mr. Kim and Ms. McGuigan.⁸

2 The bankruptcy court held that Mr. Kim's judgment against
3 Ms. Hujazi was not the subject of a bona fide dispute.
4 Ms. Hujazi completely failed to offer any evidence contesting
5 Mr. Kim's debt. There is no dispute that he was a qualified
6 petitioner.

7 The bankruptcy court determined that Ms. McGuigan's claim
8 was based on a judgment and not the subject of a bona fide
9 dispute. In opposition to the Motion for Summary Judgment,
10 Ms. Hujazi only stated that the judgment "was by default and I
11 was not present. In fact, the work performed by Bianka McGuigan
12 was not primarily for Monica Hujazi individually but other
13 entities." But simply stating that a judgment was entered by
14 default does not create a bona fide dispute; and even if
15 Ms. McGuigan's work was not done "primarily" for Ms. Hujazi,
16 Ms. Hujazi could be liable for a debt based on work done for
17 other entities. The bankruptcy court correctly determined that
18 Ms. McGuigan held a qualifying debt.

19 Accordingly, even if Ms. Hujazi had twelve or more
20 creditors, there were at least three petitioning creditors with
21 claims not the subject of a bona fide dispute.

22 **5. The Zuercher Trust case is a red herring.**

23 Ms. Hujazi makes a number of arguments based on the Zuercher
24 Trust case. None of those arguments has any merit.

25
26 ⁸ The bankruptcy court held that Mr. Hyman and Mr. Grodsky
27 were also qualified petitioning creditors. We need not consider
28 those creditors because, even disregarding their claims, there
are three qualified petitioning creditors.

1 She argues that the filing of the involuntary petition
2 violated the automatic stay in the Zuercher Trust case. She
3 relies on the fact that the involuntary petition against
4 Ms. Hujazi identified the Zuercher Trust as a name under which
5 Ms. Hujazi did business. She is wrong on several scores.

6 First, the premise of the argument - that the involuntary
7 petition named the Zuercher Trust as a debtor - is false. The
8 Original Petitioning Creditors included The Zuercher Trust of
9 1999 on the involuntary petition in the area designated for "ALL
10 OTHER NAMES used by debtor in the last 8 years (Include married,
11 maiden, and trade names)." But only Ms. Hujazi is identified as
12 a debtor.

13 Second, the Original Petitioning Creditors could not have
14 added the Zuercher Trust as a debtor even if they wanted to. The
15 Bankruptcy Code does not permit joint involuntary petitions
16 against multiple debtors.⁹

17 Third, even if the Zuercher Trust were named as a debtor in
18 the involuntary petition, and even if that violated the automatic
19 stay in the Zuercher Trust case, that violation would not give
20 Ms. Hujazi any rights. The automatic stay protects only the
21 debtor, the debtor's property, and the property of the debtor's
22 bankruptcy estate. § 362(a). It does not protect the debtor's
23 owners, affiliates, or co-obligees. Chugach Timber Corp. v. N.
24 Stevedoring & Handling Corp. (In re Chugach Forest Prods., Inc.),
25 23 F.3d 241, 246 (9th Cir. 1994) (the automatic stay "protects
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27
28 ⁹ The Code does permit joint voluntary petitions, but only
when the joint debtors are spouses. § 302(a).

1 only the debtor, property of the debtor or property of the estate
2 . . . [and] does not stay actions against guarantors, sureties,
3 corporate affiliates, or other non-debtor parties liable on the
4 debts of the debtor"). Therefore, even if the Zuercher Trust had
5 been named in the involuntary petition, only the Zuercher Trust
6 or its trustee would have a right to complain.¹⁰

7 Ms. Hujazi also contends that the petitioning creditors'
8 claims are improper because they are almost identical to those in
9 the earlier-filed Zuercher Trust case. She argues that summary
10 judgment was not warranted because "being a duplicate was a **bona**
11 **fide dispute** on its face since there cannot be two recoveries on
12 the same alleged debt." This argument is nonsense. First,
13 Ms. Hujazi seems to deny the possibility that two legal entities
14 might be liable to one creditor on the same debt. Second, if her
15 argument were correct, a creditor with a claim against multiple
16 debtors could never file an involuntary bankruptcy petition
17 against any of them, because its claims would always be the
18 subject of a bona fide dispute. This would be an absurd result.
19 Third, there is no evidence that any of the petitioning creditors
20 have recovered, or are likely to recover, any monies in the
21 Zuercher Trust case. The hypothetical possibility of a double
22 recovery does not give rise to a bona fide dispute where there is
23 no certainty that the creditor will make even a single recovery.
24 Fourth, Ms. McGuigan's and Mr. Kim's claims were not duplicative
25 of those in the Zuercher Trust case and were independently

27 ¹⁰ We need not reach the question whether the bankruptcy
28 court correctly applied the "home court" rule.

1 sufficient to satisfy §§ 303(b) and (h).

2 **6. Ms. Hujazi was generally not paying her debts as they**
3 **came due.**

4 Having determined that there was a sufficient number of
5 qualified petitioning creditors, the bankruptcy court then found
6 that Ms. Hujazi was generally not paying her debts as they came
7 due. We discern no error.

8 The Ninth Circuit has “adopted a ‘totality of the
9 circumstances’ test for determining whether a debtor is generally
10 not paying its debts under 11 U.S.C. § 303(h).” In re Vortex
11 Fishing Sys., Inc., 277 F.3d at 1072 (quoting Hayes v. Rewald
12 (In re Bishop, Baldwin, Rewald, Dillingham & Wong, Inc.),
13 779 F.2d 471, 475 (9th Cir. 1985)). “A finding that a debtor is
14 generally not paying its debts ‘requires a more general showing
15 of the debtor’s financial condition and debt structure than
16 merely establishing the existence of a few unpaid debts.’” Id.
17 (quoting Semel v. Dill (In re Dill), 731 F.2d 629, 632 (9th Cir.
18 1984)).

19 The “totality of the circumstances test” is not a rigid,
20 mathematic analysis: “The authority of the court is triggered and
21 guided by the totality of the circumstances existing when the
22 petition is filed. Congress intended to provide a flexibility
23 which is not reducible to a simplistic formula.” In re Bishop,
24 Baldwin, Rewald, Dillingham & Wong, Inc., 779 F.2d at 475. “[I]t
25 is not possible to lay down guidelines that fit all cases
26 It is intended that the court consider both the number and amount
27 [of debts] in determining whether the inability or failure is
28 general.” 2 Collier on Bankruptcy ¶ 303.31 (16th ed.) (internal

1 citations omitted).

2 Ms. Hujazi argues that the bankruptcy court erred because
3 the Moving Creditors failed to establish her financial condition
4 and debt structure. She cites Vortex Fishing for the proposition
5 that the correct inquiry involves a "totality of the
6 circumstances" test that requires a "general showing of the
7 debtor's financial condition and debt structure."

8 The bankruptcy court explicitly stated that it was
9 considering the totality of the circumstances and that it looked
10 at the entirety of Ms. Hujazi's fiscal health, not just "a few
11 unpaid debts." The court applied the correct legal standard.

12 Ms. Hujazi argues that the Moving Creditors failed to prove
13 that she was not paying her debts as they became due. She
14 distorts the facts and fails to address the bankruptcy court's
15 factual findings.

16 She cites the court's order on the motion to dismiss and
17 claims that the bankruptcy court "has already made a finding that
18 disputed material facts existed as to the Petitioning Creditor
19 attorneys, and therefore the motion for summary judgment should
20 have been denied" This ignores the fact that the
21 bankruptcy court had a much fuller record before it over two
22 years later when it considered the Motion for Summary Judgment.
23 It is absurd to say that, after a court decides a motion to
24 dismiss, the court can never make a different decision on a
25 motion for summary judgment based on a more extensive record.

26 Ms. Hujazi argues that the bankruptcy court erred in its
27 factual findings as to Otto Miller, Bank of America,
28 Ms. McGuigan, and Wells Fargo Bank. The bankruptcy court

1 carefully and exhaustively considered the claims of the fifteen
2 alleged creditors. It determined that Ms. Hujazi was generally
3 not paying the debts owed to ten of the creditors and explained
4 its reasoning supporting each determination. The bankruptcy
5 court did not err.¹¹

6 **B. The bankruptcy court properly denied the Motion for**
7 **Reconsideration.**

8 Regarding a motion for reconsideration under Civil Rule 59,
9 the Ninth Circuit has stated:

10 Although Rule 59(e) permits a district court to
11 reconsider and amend a previous order, the rule offers
12 an "extraordinary remedy, to be used sparingly in the
13 interests of finality and conservation of judicial
14 resources." Indeed, "a motion for reconsideration
15 should not be granted, absent highly unusual
16 circumstances, unless the district court is presented
with newly discovered evidence, committed clear error,
or if there is an intervening change in the controlling
law." A Rule 59(e) motion may not be used to raise
arguments or present evidence for the first time when
they could reasonably have been raised earlier in the
litigation.

17 Kona Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th
18 Cir. 2000) (internal citations omitted).

19 In her Motion for Reconsideration, Ms. Hujazi essentially
20 restated the same arguments she made in response to the Motion
21 for Summary Judgment. Repetition did not make those arguments
22 any more correct or persuasive.

23 Accordingly, the bankruptcy court did not abuse its

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25 ¹¹ In his answering brief, Mr. Greenberg urges us to reverse
26 the bankruptcy court's finding that the Moving Creditors had not
27 met their burden to prove that the Lloyds of London debt was not
28 the subject of a bona fide dispute. None of the Appellees cross-
appealed on any alleged error, so this issue is not properly
before us on appeal, and we will not consider it. See Ball v.
Rodgers, 492 F.3d 1094, 1118 (9th Cir. 2007).

1 discretion in denying the Motion for Reconsideration.

2 **CONCLUSION**

3 The bankruptcy court did not err. Accordingly, we AFFIRM.

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