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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

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| In re: | } | Chapter 11 Proceeding |
| VERDUGO ENTERPRISES, LLC, | | No. 2:17-bk-04370-BKM |
| a.k.a.: Verdugo Gift Company, | | |
| Debtor. | | MOTION TO APPOINT CHAPTER 11 TRUSTEE |

The Petitioning Creditors, by and through undersigned counsel, respectfully request that this Court appoint a Chapter 11 Trustee on an expedited basis pursuant to 11 U.S.C. § 1104(a). The Petitioning Creditors believe that the current management of Verdugo Enterprises, LLC ("Verdugo" or the "Debtor") is engaging in dishonest acts, grossly mismanaging the debtor, engaging in a Ponzi Scheme and/or securities fraud, and flagrantly disregarding their fiduciary duties to its creditors.

This Motion is supported by the following Memorandum of Points and Authorities and the entire record in this Bankruptcy Case.

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3 **RESPECTFULLY SUBMITTED** this 29th day of September, 2017.
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CANTERBURY LAW GROUP, LLP

By: /s/Jonathan P. Ibsen

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

Three independent basis establish that cause exists to appoint a trustee in this case on an expedited basis. First, the Debtor is a melting ice cube. Absent quick action, it is likely that the assets of the Debtor will either be dissipated or moved beyond this judicial district by the Debtor's current management.

Second, the immediate appointment of a Trustee is warranted by virtue of the dishonest acts and gross mismanagement of the Debtor by its current management. The Petitioning Creditors are all members of primarily Hispanic Christian churches. They are victims of an apparent Ponzi scheme orchestrated against them, by the Debtor's current management. Each of the Creditors, at various times, were approached by the Debtor through Isaias Verdugo and/or other members of Verdugo's management, and were solicited to loan large sums of money to Debtor (each, a "Loan"). Each loan was memorialized in a document that promised high returns, and failed to warn the Plaintiffs of the risks associated with the Loans (each, a "Loan Document"). The Petitioning Creditors are aware of additional victims who were likewise defrauded by Debtor's Management, and to whom the Debtor is also in default and owing Loans in excess of \$6,000,000. The Petitioning Creditors are aware that, currently, the Phoenix Police Department, the Federal Bureau of Investigation, and the Arizona Corporations Commission are investigating Debtor's management.

Third, Debtor's management is believed to continue to be in the process of inducing other victims, to loan money to Verdugo through loans which promise to pay extremely high interest rates (22% compounded monthly), and which in fact, have paid practically nothing, and which fail to adequately disclose the inherent risks associated with such loans.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

1. Prior to commencing this Bankruptcy Case, thirty-five (35) victims of Verdugo's fraud regarding \$1,938,177 in Loans, filed a complaint and application for the appointment of a receiver without notice in State Court. True and correct copies

of the State Court Creditors' Loan Documents are collectively annexed hereto as Exhibit "A."

2. Based upon the apparent dissipation of assets throughout the United States, and the higher likelihood of reorganization, and ability to recover assets throughout the United State's through the Bankruptcy Rules, the Petitioning Creditors commenced this Bankruptcy Case. The Loans by Petitioning Creditors to Debtor aggregate \$550,978. True and correct copies of the Petitioning Creditors' Loan Documents are collectively annexed hereto as Exhibit "B."

3. On April 23, 2017, the Petitioning Creditors commenced this case by the filing of an involuntary petition (the "Petition") under Chapter 11 bankruptcy against the Debtor.

4. Subsequent to the commencement of this Bankruptcy Case, the Petitioning Creditors' Counsel has been contacted by other creditors who were owed monies by the Debtor, totaling in excess of \$6,000,000. True and correct copies of the these Loan Documents are collectively annexed hereto as Exhibit "C."

5. The Creditors are members of primarily Hispanic Christian churches. They are victims of an apparent Ponzi scheme orchestrated against them, by the Debtor's management.

6. Each of the Creditors, at various times, were approached by the Debtor through Isaias Verdugo and/or other members of Verdugo's management, and were solicited to loan large sums of money to Debtor.

7. Verdugo's management made material misrepresentations to the Creditors, through a deceptive sales pitch, representing, *inter alia*, that the loans were essentially risk-free, and would pay higher than market rate interest rates Most of the monies loaned to Debtor by Creditors constitute the life savings of those individuals. The Debtor is in default on the Loans to Petitioning Creditors in the amounts stated on the Loans. Petitioning Creditors have demanded payment, and demanded that the defaults be cured, but Debtor has failed to do so.

8. Debtor also solicited other victims in Hispanic Christian churches throughout the southwestern United States and Debtor are believed to have entered into over one thousand (1,000) other loans, believed to total tens of millions of dollars.

9. Based on representations made by the Debtor to certain of the Creditors, it is understood that management neither intended, nor have the liquid assets, to pay the Loans in full out of the current assets, but that they do have resources secreted throughout the United States in other jurisdictions.

10. The Creditors believe that management is in the process of misappropriating any remaining monies still held by them, and are still soliciting other victims.

11. On May 23, 2017, the Debtor filed its Motion to Dismiss the Petition.

12. On, the Petitioning Creditors filed an amended involuntary petition (the "Amended Petition"), and an opposition to the Motion to Dismiss.

13. On July 3, 2017, the Debtor filed its reply.

14. The hearing on the Motion to Dismiss was set for August 9, 2017. (the "Hearing"). At the Hearing, Debtor's then counsel withdrew the Debtor's opposition to the Petition, and the Court gave the Debtor until August 29, 2017 to respond to the Amended Petition.

15. Thereafter, Debtor's then counsel withdrew.

16. No response has been received to the Amended Petition, and no new counsel has appeared on behalf of the Debtor.

III. ARGUMENT

In order to protect all of the creditors, the Petitioning Creditors request this Court to authorize the appointment of a trustee under 11 U.S.C. § 1104(a) in this involuntary Chapter 11 case. A Chapter 11 Trustee skilled in forensic accounting and/or fraud investigation will have the ability to locate the assets dissipated by Debtor's management, and reorganize and/or file a plan for an orderly liquidation of the Debtor. This is not a case for conversion to Chapter 7, as the Debtor is still

operating, and the likelihood of asset recovery for the creditors is much higher with a Chapter 11 Trustee.

The only issues that are relevant here are whether "cause" exists to warrant appointment of a trustee and whether it is in the best interest of creditors to appoint a trustee. The plain language of 11 U.S.C. § 1104(a)(1) provides that a trustee may be appointed "at any time after the commencement" of a case. *See In re Professional Accountants Referral Services, Inc.*, 142 B.R. 424, 429-430 (Bankr. D. Colo. 1992). Also, the equitable powers granted to this Court under 11 U.S.C. § 105 support its ability to appoint a trustee in this case. *Id.* The factors for appointment of a trustee set forth in both 11 U.S.C. §§ 1104(a) and (b) are satisfied in this case.

First, 11 U.S.C. § 1104(a)(1) declares that a trustee shall be appointed "for cause," including fraud, dishonesty, incompetence, or gross mismanagement of the debtor by current management. Verdugo has been incompetently managed for years. It was operated as a *Ponzi* scheme to commit fraud on its creditors.

Moreover, it's management is currently under investigation by State and Federal Agencies. It appears that in addition to continuing to mismanage Verdugo, its current management is continuing to defraud the creditors of Verdugo and is actively soliciting more loans. The facts, therefore, dictate the appointment of a trustee, as fraud and dishonesty are cause for the appointment of a trustee. *See In re Lowenschuss*, 171 F.3d 673 (9th Cir. 1999).

Second, 11 U.S.C. § 1104(a)(2) states that a trustee shall be appointed when it is in the best interest of creditors, and therefore a court need not find any of the enumerated wrongs in Section 1104(a)(1) if the Court finds that the appointment would be in the best interests of creditors. *See In re Oklahoma Refining Co.*, 838 F.2d 1133 (10th Cir. 1988). Here, the facts that that Verdugo has been defrauding its creditors, and that its management is under state and federal investigations, demonstrate that a trustee should not only be appointed for cause under Section 1104(a)(1), but also the creditors' interests will only be served by the appointment of a trustee.

In addition, the facts of this case likely rise to the level that the Court can appoint a trustee *sua sponte*. See *In re Bibo*, 76 F.3d 256 (9th Cir. 1996). The Court, therefore, need not conduct a full evidentiary hearing on this Motion when the debtor in possession's past and present performance and trustworthiness are significantly in question. See *In re Ionosphere Clubs, Inc.*, 113 B.R. 164 (Bankr. S.D.N.Y. 1990).

A. THE APPOINTMENT OF A TRUSTEE IS NECESSARY TO SALVAGE WHAT IS LEFT OF PETITIONING CREDITORS' COLLECTIVELY POOLED FUNDS HELD BY DEBTOR, AND TO PREVENT DEBTOR FROM SOLICITING FUNDS FROM OTHER NEW VICTIMS

Absent the appointment of the Trustee, Petitioning Creditors and other victims will continue to suffer substantial injury. Simply put, without the appointment of the Trustee, the management will have likely be deplete or secrete the Debtor's assets, or move them beyond the jurisdiction of this Court, leaving the Petitioning Creditors and all other creditors with no remedy. Moreover, absent the appointment of the Trustee, Debtor will likely continue to solicit new loans from new victims.

Verdugo has defaulted under the various Loans to the Petitioning Creditors by, among other things, failing to make timely payments to Petitioning Creditors and the over 200 other creditor/victims of Verdugo's current management, who are owed collectively in excess of \$6,000,000.

A Chapter 11 Trustee is necessary to prevent management from continuing this fraud, and to protect the best interests of the creditors.

B. THE TRUSTEE MAY BE APPOINTED WITHOUT HEARING BECAUSE SUBSTANTIAL CAUSE EXISTS.

A court shall appoint a Trustee "for cause" when there is fraud, dishonesty, incompetence, or gross mismanagement of the debtor by current management. 11 U.S.C. § 1104(a)(1).

Here substantial cause exists for the immediate appointment of a Trustee, as illustrated by, *inter alia*, that the:

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- 3 ➤ Management will likely dissipate or move any remaining liquid
- 4 assets beyond the jurisdiction of this Court if they become aware of
- 5 this litigation;
- 6 ➤ Management will continue to prey upon other victims, and defraud
- 7 them of their monies;
- 8 ➤ Management may destroy or secrete corporate and financial records;
- 9 and
- 10 ➤ Management will render the Debtor insolvent and thereby vitiate
- 11 any potential remedy for the creditors.

12 **VIII. CONCLUSION**

13 Based on the foregoing, the Petitioning Creditors request that this Court enter

14 an Order: (i) appointing a Chapter 11 Trustee to operate and manage the Debtor and

15 to formulate an orderly plan to pay creditors; and (ii) granting any other and

16 additional relief as is just and proper.

17 **RESPECTFULLY SUBMITTED** this 29th day of September, 2017.

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1 **COPY** of the foregoing served by electronic
2 mail this 29th day of September, 2017, to:

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