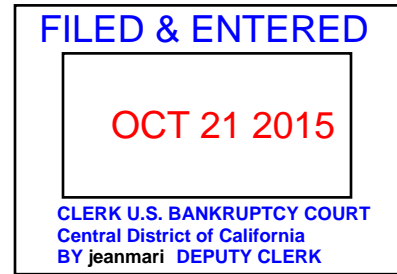


FOR PUBLICATION



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION**

In re

Elaine Anne Villaverde and
Karen Susan Hight,

Debtors.

Case No. 6:15-bk-16988-SY

Chapter 13

**MEMORANDUM DECISION ON
CHAPTER 13 TRUSTEE'S ORAL
OBJECTION TO CONFIRMATION
AND MOTION TO DISMISS**

Before the court is the chapter 13¹ trustee's (the "Trustee") oral objection to confirmation of a chapter 13 plan and motion to dismiss the bankruptcy case filed by the debtors Elaine Villaverde and Karen Hight (the "Debtors"), a same-sex couple registered as domestic partners in California, on the grounds that the Debtors are not considered "spouses" eligible to file a joint petition under the Bankruptcy Code. For the reasons set forth below, the court agrees with the Trustee's eligibility argument and concludes that domestic partners cannot be considered "spouses" for bankruptcy purposes following the recent legalization of same-sex marriage in California and throughout the country.

¹ Unless otherwise indicated, all chapter, section, and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037.

1 1. FACTUAL BACKGROUND.

2 The Debtors are two women in a same-sex relationship. In June 2004, they
3 registered their domestic partnership with the California Secretary of State's
4 Domestic Partners Registry. At that time, the state of California regrettably did not
5 allow or recognize same-sex marriage. If it had been legal then, the Debtors
6 acknowledged that they would have gotten married. They remain domestic partners
7 today despite the re-legalization of same-sex marriage in California in 2013.²

8 On July 13, 2015, the Debtors filed a joint chapter 13 petition. At their
9 confirmation hearing, the Trustee orally objected to the Debtors' plan and requested
10 dismissal of their case, arguing that the Debtors were ineligible to file a joint petition
11 due to their status as registered domestic partners. The court allowed the parties to
12 file supplemental briefs on the issue and took the matter under submission on
13 October 20, 2015.

14 2. JURISDICTION.

15 This memorandum decision contains the court's findings of fact and
16 conclusions of law required by Federal Rule of Civil Procedure 52(a), made applicable
17 to this contested matter by Bankruptcy Rules 7052 and 9014(c). The court has
18 jurisdiction under 28 U.S.C. § 1334 and 11 U.S.C. §§ 302 and 1307, and this is a core
19 proceeding under 28 U.S.C. § 157(b)(2)(A).

21 ² Same-sex marriage first became legal in California on June 16, 2008, following the
22 California Supreme Court's decision in In re Marriage Cases, 43 Cal. 4th 757 (2008), which
found the state's statutory ban on same-sex marriage to be unconstitutional.

23 However, legalization was short-lived and same-sex marriage was once again banned
24 on November 5, 2008, after the passage of the Proposition 8 ballot initiative. Proposition 8
superseded the California Supreme Court's decision by adding a provision to the California
25 Constitution defining marriage only as being between a man and a woman.

26 Subsequently, Proposition 8's ban on same-sex marriage was also found to be
unconstitutional by a district court in Perry v. Schwarzenegger, 704 F. Supp. 2d 921
(N.D. Cal. 2010). That case eventually reached the U.S. Supreme Court in Hollingsworth v.
27 Perry, 133 S. Ct. 2652 (2013), where the Court held that proponents of the ban had no
standing to appeal the district court's ruling. In effect, the Court's decision left the lower
28 court's ruling intact, allowing same-sex marriage to resume in California on June 28, 2013.

1 3. DISCUSSION.

2 3.1. **Introduction.**

3 On request of a party in interest, the court may dismiss a chapter 13 case or
4 convert it to a chapter 7 case upon a finding of cause. See 11 U.S.C. § 1307(c). Such
5 “cause” may include a debtor’s failure to meet eligibility requirements. See Smith v.
6 Rojas (In re Smith), 435 B.R. 637, 649 (B.A.P. 9th Cir. 2010) (affirming dismissal of
7 chapter 13 case due to debtors exceeding the § 109(e) debt limits).

8 The eligibility issue in this case arises under § 302 of the Bankruptcy Code,
9 which states that “[a] joint case . . . is commenced by the filing with the bankruptcy
10 court of a single petition . . . by an individual that may be a debtor . . . and such
11 individual’s spouse.” 11 U.S.C. § 302(a) (emphasis added). The dispute here is
12 whether “an individual . . . and such individual’s spouse” include an individual debtor
13 and his or her domestic partner whose domestic partnership is registered in
14 California. In other words, are domestic partners considered “spouses” for purposes of
15 § 302?

16 3.2. **Defining the Term “Spouse.”**

17 In addition to § 302, the term “spouse” appears in several other provisions of
18 the Bankruptcy Code. See, e.g., id. § 101(14A) (defining “domestic support obligation”
19 as alimony, maintenance, or support debt owed to a “spouse” or “former spouse”); id.
20 § 523(a)(15) (excepting from discharge a property settlement debt owed to a “spouse”
21 or “former spouse”), id. § 541(a)(2) (defining estate property to include “[a]ll interests
22 of the debtor and the debtor’s spouse in community property”). However, there is no
23 definition for the term found in the Code itself.

24 3.2.1. DOMA’s Definition of “Spouse.”

25 From 1996 until 2013, the Defense of Marriage Act (“DOMA”) provided the
26 controlling definitions of “marriage” and “spouse” for all federal law purposes. See
27 Pub. L. No. 104-199, § 3(a), 110 Stat. 2419, 2419 (1996) (codified at 1 U.S.C. § 7). The
28 term “marriage” meant “only a legal union between one man and one woman as

1 husband and wife,” while the term “spouse” “refer[red] only to a person of the
2 opposite sex who is a husband or a wife.” Id.

3 Applying DOMA’s restrictive definition of “spouse” in the bankruptcy context,
4 at least one court has dismissed a joint petition filed by a married same-sex couple
5 because they were not spouses. See In re Kandu, 315 B.R. 123, 148 (Bankr.
6 W.D. Wash. 2004). Yet, other bankruptcy courts have declined to dismiss joint
7 petitions filed by married same-sex couples, see, e.g., In re Somers, 448 B.R. 677,
8 682–84 (Bankr. S.D.N.Y. 2011), with one bankruptcy court even ruling that DOMA
9 was unconstitutional. See In re Balas, 449 B.R. 567, 578–80 (Bankr. C.D. Cal. 2011).

10 In 2013, the issue of DOMA’s constitutionality reached the Supreme Court in
11 the case of United States v. Windsor, 133 S. Ct. 2675 (2013). There, the Supreme
12 Court held that DOMA was unconstitutional for depriving the equal liberty of
13 persons protected by the Fifth Amendment and struck down DOMA’s definitions for
14 “marriage” and “spouse.” See id. at 2695–96. Following Windsor, there no longer
15 remains a federal statute specifically defining “spouse.”

16 3.2.2. Ordinary Meaning of “Spouse.”

17 Without a controlling statutory definition, the court must look for the ordinary
18 meaning of “spouse” by turning to dictionaries and similar sources. See Kenneth
19 H. Klee & Whitman L. Holt, Bankruptcy and the Supreme Court: 1801–2014, at 20
20 (2015) (citing Clark v. Rameker, 134 S. Ct. 2242, 2246 (2014); Hall v. United States,
21 132 S. Ct. 1882, 1887 (2012); Ransom v. FIA Card Servs., N.A., 562 U.S. 61, 69
22 (2011); Hamilton v. Lanning, 560 U.S. 505, 513–14 (2010)).

23 One dictionary defines the term to mean “[o]ne’s husband or wife by lawful
24 marriage; a married person.” Black’s Law Dictionary 1621 (10th ed. 2014). Another
25 describes “spouse” as “[a] marriage partner; a husband or wife.” American Heritage
26 Dictionary of the English Language 1694 (5th ed. 2011). And another dictionary
27 similarly defines it as a “married person: husband, wife.” Merriam-Webster’s
28 Collegiate Dictionary 1138 (10th ed. 1994).

1 The common thread among these dictionary definitions is that a “spouse” must
2 be an individual who is married to another or who is considered to be another’s
3 husband or wife (regardless of either individual’s sex or gender). Thus, for purposes
4 of 11 U.S.C. § 302, it appears that a “spouse” must be a married individual.³

5 Having clarified the meaning of “spouse,” the issue now becomes whether a
6 domestic partner registered in California is considered to be a husband, a wife, or
7 otherwise a married individual. To resolve this issue, the court must turn to
8 California law to understand the status of domestic partners.

9 **3.3. Determining Whether a Domestic Partner Is a “Spouse.”**

10 **3.3.1. Background of Domestic Partnerships under California Law.**

11 In California, domestic partnerships are governed by Division 2.5 of the
12 California Family Code, sections 297–299.6, with the most significant legislation
13 being the California Domestic Partner Rights and Responsibilities Act of 2003,
14 2003 Cal. Legis. Serv. ch. 421 (A.B. 205) (West). Under California law, “domestic
15 partners” are defined as “two adults who have chosen to share one another’s lives in
16 an intimate and committed relationship of mutual caring.” Cal. Fam. Code § 297(a).
17 Same-sex couples, as well as some opposite-sex couples, may register as domestic
18 partners if they meet certain statutory requirements. See id. § 297(b)(1)–(5).

19 Once a couple properly registers their domestic partnership with the
20 California Secretary of State, California law treats them as if they were spouses,
21 providing that

22 [r]egistered domestic partners shall have the same rights, protections,
23 and benefits, and shall be subject to the same responsibilities,
24 obligations, and duties under law, whether they derive from statutes,
25 administrative regulations, court rules, government policies, common
26 law, or any other provisions or sources of law, as are granted to and
imposed upon spouses.

27 ³ This plain meaning definition is even consistent with DOMA once the offending
28 statutory language is stricken. See 1 U.S.C. § 7 (defining “spouse” as “a person ~~of the~~
~~opposite sex~~ who is a husband or a wife” (striketrough added) (emphasis added)).

1 Id. § 297.5(a); see also id. § 297.5(b)–(k). Despite the law treating those in a domestic
2 partnership similarly to those in a marriage, there are still differences (albeit
3 relatively minor ones) between the two types of unions, such as the prerequisites and
4 method for forming a domestic partnership. See Knight v. Superior Court, 128 Cal.
5 App. 4th 14, 30–31 (2005) (outlining differences between marriages and domestic
6 partnerships). Nevertheless, the purpose of California’s domestic partnership
7 legislation has been “to create substantial legal equality between domestic partners
8 and spouses.” Koebke v. Bernardo Heights Country Club, 36 Cal. 4th 824, 845 (2005).

9 3.3.2. California Law’s Treatment vs. Classification of Domestic Partners.

10 The Debtors argue that since California law grants domestic partners the
11 same rights as spouses, domestic partners should be deemed “spouses” who have the
12 right to file a joint petition under 11 U.S.C. § 302.⁴ Although California law does
13 treat domestic partners similarly to spouses, the law nevertheless fails to classify
14 domestic partners as spouses or married partners.

15 California law does not view domestic partnership and marriage as one and
16 the same. As one court noted, with the enactment of domestic partnership legislation,
17 “the [California] Legislature has not created a ‘marriage’ by another name or granted
18 domestic partners a status equivalent to married spouses.” Knight, 128 Cal. App. 4th
19 at 30. Although the legislation was intended to create “substantial legal equality
20 between domestic partners and spouses,” Koebke, 36 Cal. 4th at 845 (emphasis
21 added), substantial legal equality is nevertheless not complete legal equality.

22 While California Family Code section 297.5 offers the same rights to domestic
23 partners as spouses, the language of other provisions of the California Family Code
24 nevertheless reinforces the point that domestic partners and spouses, or domestic
25 partnerships and marriages, are distinguishable concepts. For instance, one

26 ⁴ Although the Debtors wish the court to rule that they, as domestic partners, are
27 permitted to file a joint petition, they oddly state later in their supplemental brief that the
28 court’s ruling “need not open the door to every domestic partnership” or provide for “a
blanket authorization for any [registered domestic partnership] to file” a joint petition.

1 provision states that “[a] legal union of two persons of the same sex, other than a
2 marriage, that was validly formed in another jurisdiction, and that is substantially
3 equivalent to a domestic partnership . . . , shall be recognized as a valid domestic
4 partnership in this state.” Cal. Fam. Code § 299.2 (emphasis added). And another
5 provision states, “A reference to ‘husband’ and ‘wife,’ ‘spouses,’ or ‘married persons,’
6 or a comparable term, includes persons who are lawfully married to each other”
7 Id. § 11. Noticeably absent from the list of similar terms in this provision is the term
8 “domestic partner.”

9 As discussed by the district court in Perry v. Schwarzenegger, it is clear that
10 “California [law] has created two separate and parallel institutions,” with marriage
11 being considered the “culturally superior status compared to a domestic partnership.”
12 704 F. Supp. 2d 921, 994 (N.D. Cal. 2010) (finding that California’s creation of
13 domestic partnerships failed to satisfy same-sex couples’ fundamental right to marry
14 under Due Process Clause). Domestic partnerships “do not provide the same social
15 meaning as marriage,” and they “were created specifically so that California could
16 offer same-sex couples rights and benefits while explicitly withholding marriage from
17 same-sex couples.” Id. Simply stated, “[a] domestic partnership is not a marriage,” Id.
18 Therefore, a domestic partner is not a “spouse.”

19 Following the Supreme Court’s ruling in Hollingsworth v. Perry, 133 S. Ct.
20 2652 (2013), and the re-legalization of same-sex marriage in California in 2013,⁵ the
21 status of domestic partners has not changed. Even though the California Legislature
22 passed same-sex-marriage-related legislation after the outcome of Hollingsworth, see
23 Act of July 7, 2014, 2014 Cal. Legis. Serv. ch. 82 (S.B. 1306) (West), the Legislature,
24 for whatever reason, decided not to elevate the status of domestic partners. It
25 appears that a domestic partnership, unfortunately, remains an “inferior institution”
26 in California. Perry, 704 F. Supp. 2d at 994.

27
28 ⁵ See supra note 2.

1 As much as the California Legislature attempted to grant domestic partners
2 the same rights as spouses, its intent was not to grant domestic partners the same
3 status as spouses. Cf. In re Marriage Cases, 43 Cal. 4th 757, 804 (2008) (dicta)
4 (noting that proponents of the 2003 domestic partnership legislation may “not [have]
5 “view[ed] the enactment as the final or ultimate legislative step with regard to the
6 official status available to same-sex couples”), superseded on other grounds by
7 constitutional amendment, Cal. Const. art. I, § 7.5, invalidated by Perry, 704
8 F. Supp. 2d 921. As a result, when looking at how California law classifies domestic
9 partnerships, the only conclusion that the court can reach is that a domestic partner
10 is not considered to be a “spouse.”

11 3.3.3. The Availability of Same-Sex Marriage to the Debtors.

12 In determining whether a domestic partner qualifies as a “spouse,” the court
13 also finds it necessary to consider the recent development made in the institution of
14 marriage and the progression of rights available to same-sex couples. As the Debtors
15 have argued, “[t]his case should not be analyzed outside of its historical context.”
16 Taking into account this context, however, still does not change the outcome for the
17 Debtors.

18 Here, considering the relevant historical context specifically means looking at
19 the product of two recent Supreme Court decisions. As previously mentioned, in
20 2013, following the Court’s ruling in Hollingsworth, 133 S. Ct. 2652, same-sex
21 couples in California can, once again, get married. And earlier this year, following
22 the ruling in Obergefell v. Hodges, 135 S. Ct. 2584 (2015), same-sex couples
23 effectively have the right to get married in any state throughout the United States.
24 Now that same-sex marriage, like opposite-sex marriage, is available nationwide,
25 there no longer remains a legal obstacle blocking two otherwise eligible individuals
26 (regardless of either’s sex or gender) from getting married and becoming each other’s
27 spouses. It follows that a same-sex couple also has the same, equal right as an

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1 opposite-sex couple to file a joint petition under 11 U.S.C. § 302 as long as the couple
2 is married.

3 Because both same- and opposite-sex couples can get married and, as a result,
4 file a joint petition, denying same-sex domestic partners the ability to jointly file is no
5 different than denying an unmarried, cohabitating opposite-sex couple the same.
6 Like married couples, two unmarried, cohabitating debtors may be jointly liable for
7 their debts and may jointly hold their property, but such debtors are still not
8 “spouses” eligible to file a joint petition. See In re Malone, 50 B.R. 2, 3 (Bankr.
9 E.D. Mich. 1985); In re Coles, 14 B.R. 5, 5 (Bankr. E.D. Pa. 1981); see also In re
10 Lucero, 408 B.R. 348, 350 (Bankr. C.D. Cal. 2009). Since the unmarried, cohabitating
11 opposite-sex couple has the opportunity to get married but chooses not to, it is not
12 inappropriate to deny that couple the ability to file jointly. It was their choice not to
13 become spouses. Now that marriage has become available to same-sex couples, it is
14 similarly appropriate to deny an unmarried same-sex couple the ability to file jointly
15 (whether or not they are in a domestic partnership).

16 The Debtors argue that denying domestic partners the ability to jointly file
17 constitutes discrimination by “requir[ing] those who were required to wear a badge of
18 inferiority . . . to now be told that they are still second class citizens.” But it is
19 disingenuous to characterize the Debtors today as being “required to wear a badge of
20 inferiority” by way of their domestic partnership.

21 The Debtors had no option other than domestic partnership in 2004, but, as of
22 June 28, 2013, they have gained the additional option of getting married. Yet, more
23 than two years after same-sex marriage became legal again in California, the
24 Debtors, for reasons unknown, have chosen to stay in a domestic partnership. The
25 Debtors have essentially elected to continue wearing California’s badge of inferiority
26 when they can easily rip that badge off by getting married. The Debtors’ argument
27 that denying same-sex domestic partners the right to jointly file amounts to treating
28 them as second-class citizens would have carried greater weight prior to the

1 legalization of same-sex marriage, but it no longer carries any weight in today's
2 landscape where marriage has become widely available to same-sex couples. In fact,
3 allowing same-sex domestic partners to file a joint petition when opposite-sex
4 domestic partners are not allowed to do so would create an inequality and
5 discrimination based on the debtors' sexual orientation. The way to stop
6 discrimination on the basis of sexual orientation is to stop discriminating on the basis
7 of sexual orientation. Cf. Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1,
8 551 U.S. 701, 748 (2007).

9 For these reasons, domestic partners cannot be considered "spouses" under the
10 Bankruptcy Code. As a result, the Debtors, who are domestic partners under
11 California law, are not eligible to file a joint petition under 11 U.S.C. § 302(a).

12 **3.4. Dismissing the Joint Debtor.**

13 Although the Debtors are not entitled to file jointly, their case does not need to
14 be dismissed entirely. At both the initial confirmation hearing and the continued
15 hearing, the court discussed with the Debtors' counsel and the Trustee the options
16 available in the event the court rules that the Debtors cannot proceed as joint debtors
17 in this case. The options are: dismissing the case in its entirety; severing the joint
18 petition and treating the Debtors as having file two separate cases; or dismissing the
19 joint debtor, Karen Hight. At the conclusion of the continued hearing, both the
20 Debtors' counsel and the Trustee recommended that only the joint debtor be
21 dismissed from the case and that the case be allowed to proceed as to the debtor,
22 Elaine Villaverde. The court accepts the recommendations of the Debtors and the
23 Trustee and will dismiss only the joint debtor, Karen Hight, from the case. The
24 debtor, Elaine Villaverde, may proceed with the case on her own and seek to confirm
25 her chapter 13 plan.

26 **4. CONCLUSION.**

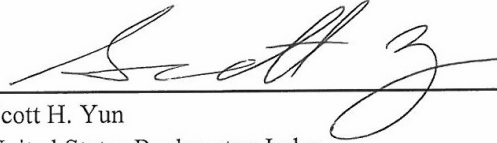
27 The court holds that a same-sex couple in a registered domestic partnership
28 under California law are not "spouses" for purposes of § 302(a) of the Bankruptcy

1 Code. Because the Debtors, as domestic partners, are not eligible to file a joint
2 petition, Karen Hight will be dismissed from the case. Elaine Villaverde shall
3 proceed with the case as the sole debtor.

4 The court will enter an order consistent with this memorandum decision.

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25 Date: October 21, 2015

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27 Scott H. Yun
28 United States Bankruptcy Judge