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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

In re: )  
)  
) Case No. 06-24834-B-11  
Lonnie Schmidt )  
) Docket Control No. DNL-1  
)  
Debtor. ) Date: January 9, 2007  
)  
) Time: 9:30 a.m.

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On or after the calendar set forth above, the court issued the following ruling. The official record of the ruling is appended to the minutes of the hearing.

Because the ruling constitutes a "reasoned explanation" of the court's decision under the E-Government Act of 2002 (the "Act"), a copy of the ruling is hereby posted on the court's Internet site, [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov), in a text-searchable format, as required by the Act. However, this posting does not constitute the official record, which is always the ruling appended to the minutes of the hearing.

**DISPOSITION AFTER ORAL ARGUMENT**

Oral argument will not aid the court in rendering a decision on this matter. LBR 9014-1(h); Morrow v. Topping, 437 F.2d 1155, 1156 (9<sup>th</sup> Cir. 1971); Schwarzer, Tashima & Wagstaffe, CAL. PRAC. GUIDE: FED. CIV. PRO. BEFORE TRIAL, § 12:128 (The Rutter Group 2006). Therefore, this matter is resolved without oral argument. The following constitutes the court's findings of fact and conclusions of law, pursuant to Federal Rule of Bankruptcy Procedure 7052.

Neither the respondent within the time for opposition nor

1 the movant within the time for reply has filed a separate  
2 statement identifying each disputed material factual issue  
3 relating to the motion. Accordingly, both movant and respondent  
4 have consented to the resolution of the motion and all disputed  
5 material factual issues pursuant to FRCivP 43(e). LBR 9014-  
6 1(f)(1)(ii) and (iii).

7 The motion for change of venue is granted. Bankruptcy Case  
8 06-24834-B-11 and all related adversary proceedings are  
9 transferred to the United States District Court for the Northern  
10 District of Texas, Dallas Division. Any reference to the  
11 Bankruptcy Court in that District will be governed by the  
12 procedures of the Northern District of Texas.

13 Movant asks that this Bankruptcy case and all related  
14 adversary proceedings be transferred to the Dallas Division of  
15 the Northern District of Texas pursuant 28 U.S.C. § 1412 and  
16 Bankruptcy Rule 1014. Together they permit a change of venue "in  
17 the interest of justice or for the convenience of the parties."  
18 (West 2006). "The analysis of any combination of "interest of  
19 justice" and "convenience of parties" under § 1412 is inherently  
20 factual and necessarily entails the exercise of discretion based  
21 on the totality of the circumstances, which may include  
22 considerations regarding witnesses and the presentation of  
23 evidence." Donald v. Curry (In re Donald), 328 B.R. 192, 204 (9<sup>th</sup>  
24 Cir. 2005).

25 The following is a non-exclusive list of factors the court  
26 considers: "(1) proximity of creditors to Court; (2) proximity  
27 of debtor to Court; (3) proximity of witnesses necessary to  
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1 administration of estate; (4) location of assets; (5) economic  
2 and efficient administration of case; [and] (6) need for further  
3 administration if liquidation ensues." Id. The court finds on  
4 balance that the factors favor a transfer of venue to the  
5 Northern District of Texas.

6 (1) proximity of creditors to Court. The court finds that  
7 this factor is neutral. The debtor-in-possession schedules no  
8 secured or priority creditors. He schedules three general  
9 unsecured creditors: movant (scheduled twice as having disputed  
10 claims of \$727,405 and \$73,000); the Securities and Exchange  
11 Commission (scheduled as disputed in the amount of \$732,405); and  
12 the Cunningham Group (scheduled as unliquidated in the amount of  
13 \$7 million). The Cunningham Group was served with this motion  
14 and did not oppose. With the exception of movant, all other  
15 creditors are non-individuals who must appear through counsel.  
16 Rowland v. California Men's Colony, 506 U.S. 194 (1993); United  
17 States v. High Country Broadcasting Co., Inc., 3 F.3d 1244 (9<sup>th</sup>  
18 Cir. 1993); Local Bankruptcy Rule 1001-1(c), incorporating Local  
19 District Rule 83-183(a). Whether they retain counsel in  
20 California or Texas is of little or no difference.

21 (2) proximity of debtor to Court. This factor strongly  
22 favors transfer of venue. Debtor is presently incarcerated at a  
23 federal detention center in Seagoville, Texas. That location is  
24 approximately 20 miles from Dallas. Debtor's participation in  
25 the bankruptcy case would be facilitated were the case heard in  
26 Texas. Were it to remain in the Eastern District of California,  
27 the U.S. Marshall would need to transport debtor to and from this  
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1 court for hearings and other related legal proceedings.

2 (3) proximity of witnesses necessary to administration of  
3 estate. This factor favors transfer of venue. The witnesses to  
4 the receivership proceedings other than the debtor are located in  
5 Texas. The movant is located in Arizona. The debtor alleges  
6 that all "relevant" witnesses are locate in California but fails  
7 to state who any of those might be.

8 (4) location of assets. This factor is neutral. Debtor  
9 schedules real property in "Szligman Arizona." He schedules  
10 \$31,000 in personal property in Schedule B but either lists the  
11 location as unknown or fails to state a location at all. Debtor  
12 has exempted all of his property. The court expresses no opinion  
13 as to the propriety of debtor's exemptions. Debtor's assertion  
14 in his opposition that all of his assets are located in  
15 California is therefore not credible. While it is likely that  
16 some of debtor's assets are located in this State, given his  
17 residence here prior to his incarceration, the amount and  
18 character of those assets cannot be determined on the evidence  
19 before the court.

20 (5) economic and efficient administration of case. This  
21 factor favors transfer of venue. As noted above, debtor is  
22 presently incarcerated in Texas. Were this case to remain in  
23 this District, debtor would have to be transported by the U.S.  
24 Marshall to and from Sacramento for the debtor to meaningfully  
25 participate in these proceedings. The transportation expenses  
26 were this proceeding transferred to Dallas Texas, a distance of  
27 approximately 20 miles, would be substantially less than the cost  
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1 of transporting debtor over 1,700 miles to Sacramento California.

2 (6) need for further administration if liquidation ensues.

3 This factor is neutral. "This factor will be given little weight  
4 because anticipating the failure of this Chapter 11 case is not a  
5 logical basis in weighing venue." In re B.L. of Miami, Inc., 294  
6 B.R. 325, 333 (Bankr. D. Nev. 2003) citing Commonwealth of Puerto  
7 Rico v. Commonwealth Oil Refining Co., Inc. (In re Commonwealth  
8 Oil Refining Company, Inc.), 596 F.2d 1239, 1247 (5th Cir. 1979),  
9 *cert. den.*, 444 U.S. 1045, 100 S.Ct. 732, 62 L.Ed.2d 731 (1980).

10 In addition to the above factors, another factor strongly  
11 favors a transfer of venue. This bankruptcy case appears to be  
12 motivated primarily by the debtor's desire to thwart the orders  
13 of the United States District Court for the Northern District of  
14 Texas, particularly the contempt order pursuant to which the  
15 debtor is incarcerated. Allowing the debtor to use this court to  
16 collaterally attack those orders in this case does not promote  
17 the interests of justice. The debtor's legitimate rights under  
18 the Bankruptcy Code can and will be fully protected in the  
19 Northern District of Texas.

20 Based on the foregoing, the court finds that both the  
21 interests of justice and the convenience of the parties favor a  
22 transfer of venue to the United States District Court for the  
23 Northern District of Texas, Dallas Division.

24 The debtor's opposition is unpersuasive. The majority of  
25 his opposition attacks judgments and orders from the District  
26 Court for the Northern District of Texas. The court will not  
27 entertain such collateral attacks. If debtor believes the orders  
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1 to contain error, his recourse is to seek relief from the orders  
2 under Federal Rule of Civil Procedure 60(b); to appeal therefrom  
3 to the Court of Appeals for the Fifth Circuit or to seek a writ  
4 of habeas corpus. Unless and until he succeeds in one of those  
5 proceedings, the District Court orders are valid.

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7 The court finds that movant has standing to seek a change of  
8 venue. The statute merely requires that movant be a "party in  
9 interest." That term is broader than the descriptor "creditor"  
10 debtor repeatedly uses. Movant is clearly a party in interest as  
11 debtor has directed at least two motions and one adversary  
12 proceeding against him in the short duration of this case. The  
13 court further finds that the allegations made in the opposition  
14 are not credible. Debtor's statement that all of his assets are  
15 located in California is belied by the Schedules he filed under  
16 penalty of perjury. The opposition is replete with inadmissible  
17 hearsay and improperly describes the contents of documents  
18 without providing the documents themselves.

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