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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re:)
9) Case No. 06-25151-B-11
10 Daniel Schmidt)
11) Docket Control No. DNL-1
12 Debtor.) Date: January 9, 2007
)
) Time: 9:30 a.m.

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

15 Because the ruling constitutes a "reasoned explanation" of
16 the court's decision under the E-Government Act of 2002 (the
17 "Act"), a copy of the ruling is hereby posted on the court's
Internet site, www.caeb.uscourts.gov, in a text-searchable
18 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.

19 **DISPOSITION AFTER ORAL ARGUMENT**

20 Oral argument will not aid the court in rendering a decision
21 on this matter. LBR 9014-1(h); Morrow v. Topping, 437 F.2d 1155,
22 1156 (9th Cir. 1971); Schwarzer, Tashima & Wagstaffe, CAL. PRAC.
23 GUIDE: FED. CIV. PRO. BEFORE TRIAL, § 12:128 (The Rutter Group 2006).
24 Therefore, this matter is resolved without oral argument. The
25 following constitutes the court's findings of fact and
26 conclusions of law, pursuant to Federal Rule of Bankruptcy
27 Procedure 7052.

28 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 06-25151-B-11 and all related adversary proceedings are
9 transferred to the District Court for the Northern District of
10 Texas, Dallas Division. Any reference to the Bankruptcy Court in
11 that District will be governed by procedures set forth in the
12 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 (9th
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 priority creditors. He schedules five secured creditors and five
9 general unsecured creditors. Six of those ten creditors are non-
10 individuals who must appear through counsel. Rowland v.
11 California Men's Colony, 506 U.S. 194 (1993); United States v.
12 High Country Broadcasting Co., Inc., 3 F.3d 1244 (9th Cir. 1993);
13 Local Bankruptcy Rule 1001-1(c), incorporating Local District
14 Rule 83-183(a). Whether they retain counsel in California or
15 Texas is of little or no difference. The remaining four
16 creditors are movant and three individuals who allegedly hold
17 claims secured by debtor's residence. No creditor has opposed
18 this motion.

19 (2) proximity of debtor to Court. This factor is also
20 neutral. The location of debtor is presently undisclosed. His
21 opposition states he is a resident of California but does not
22 disclose his current location. He is being sought by the United
23 States Marshall on a contempt warrant from the United States
24 District Court for the Northern District of Texas. While this
25 factor may at present favor this District, that may change the
26 instant debtor is apprehended by the Marshall and transported to
27 Texas. With the underlying facts in flux, this factor must be
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1 viewed as neutral.

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 located in California but fails
7 to state who any of those might be.

8 (4) location of assets. This factor is neutral. Debtor's
9 schedules are not a model of clarity. They list real property
10 assets but do not state their location. For purposes of this
11 motion, the court assumes debtor's real property is located at
12 the address listed on his petition in Shingle Springs California.
13 He schedules \$41,500 in personal property in Schedule B but
14 either lists the location as unknown or fails to state a location
15 at all. Much of the information on Schedule B is illegible as
16 the type is too small to read. Debtor has exempted the bulk of
17 his property. The court expresses no opinion as to the propriety
18 of debtor's exemptions. Debtor's assertion in his opposition
19 that all of his assets are located in California is therefore not
20 credible. While it is likely that some of debtor's assets are
21 located in this State, given his residence here, the amount and
22 character of those assets cannot be determined on the evidence
23 before the court.

24 (5) economic and efficient administration of case. This
25 factor favors transfer of venue. As noted above, debtor is being
26 sought by the U.S. Marshall on a contempt warrant issued November
27 28, 2006. Therefore, the level of his personal participation in
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1 this District is unclear. Given the presence of the U.S.
2 Marshall in this building, it is unlikely that debtor, who
3 vehemently disputes the validity of the receivership, would
4 surrender himself. Were debtor apprehended and were this case to
5 remain in this District, debtor would have to be transported by
6 the U.S. Marshall to and from Sacramento for the debtor to
7 meaningfully participate in these proceedings. The
8 transportation expenses were this proceeding transferred to
9 Dallas Texas, a distance of approximately 20 miles, would be
10 substantially less than the cost of transporting debtor over
11 1,700 miles to Sacramento California.

12 (6) need for further administration if liquidation ensues.
13 This factor is neutral. "This factor will be given little weight
14 because anticipating the failure of this Chapter 11 case is not a
15 logical basis in weighing venue." In re B.L. of Miami, Inc., 294
16 B.R. 325, 333 (Bankr. D. Nev. 2003) citing Commonwealth of Puerto
17 Rico v. Commonwealth Oil Refining Co., Inc. (In re Commonwealth
18 Oil Refining Company, Inc.), 596 F.2d 1239, 1247 (5th Cir. 1979),
19 *cert. den.*, 444 U.S. 1045, 100 S.Ct. 732, 62 L.Ed.2d 731 (1980).

20 In addition to the above factors, another factor strongly
21 favors a transfer of venue. This bankruptcy case appears to be
22 motivated primarily by the debtor's desire to thwart the orders
23 of the United States District Court for the Northern District of
24 Texas. Allowing the debtor to use this court to collaterally
25 attack those orders in this case does not promote the interests
26 of justice. The debtor's legitimate rights under the Bankruptcy
27 Code can and will be fully protected in the Northern District of
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1 Texas.

2 Based on the foregoing, the court finds that both the
3 interests of justice and the convenience of the parties favor a
4 transfer of venue to the United States District Court for the
5 Northern District of Texas, Dallas Division.

6 The debtor's opposition is unpersuasive. The majority of
7 his opposition attacks judgments and orders from the District
8 Court in the Northern District of Texas. The court will not
9 entertain such collateral attacks. If debtor believes the orders
10 to contain error, his recourse is to seek relief from the orders
11 under Federal Rule of Civil Procedure 60(b); to appeal therefrom
12 to the Court of Appeals for the Fifth Circuit or to seek a writ
13 of habeas corpus. Unless and until he succeeds in one of those
14 proceedings, the District Court Orders are valid.

15 The court finds that movant has standing to seek a change of
16 venue. The statute merely requires that movant be a "party in
17 interest." That term is broader than the descriptor "creditor"
18 debtor repeatedly uses. Movant is clearly a party in interest as
19 debtor has directed at least one motion and one adversary
20 proceeding against him in the short duration of this case. The
21 court further finds that the allegations made in the opposition
22 are not credible. Debtor's statement that all of his assets are
23 located in California is unclear given the Schedules he filed
24 under penalty of perjury. The opposition is replete with
25 inadmissible hearsay and improperly describes the contents of
26 documents without providing the documents themselves.