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UNITED STATES  
BANKRUPTCY COURT

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SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

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In re	§	
	§	Bankr. Case No. 20-32654-DRJ
STAGE STORES, INC., et al.,	§	Chapter 11
	§	Jointly Administered
<i>Debtor(s).</i> <sup>1</sup>	§	
AMY STUMPF, et al.,	§	
	§	
<i>Plaintiff(s),</i>	§	
	§	
v.	§	Adv. Proc. No. 20-03303
	§	Jury
STAGE STORES, INC., et al.,	§	
	§	
<i>Defendant(s).</i>	§	

PLAINTIFF AMY STUMPF'S  
MOTION TO WITHDRAW THE REFERENCE

In accordance with Fed. R. Bankr. P. 5011, Plaintiff Amy Stumpf (referred to as "Stumpf") requests that the Court withdraw the reference to the bankruptcy court for the reasons explained below.

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<sup>1</sup> The debtor(s) in this Chapter 11 case, along with the last four digits of each debtor's federal tax identification number are: Stage Stores, Inc. (6900) and Specialty Retailers, Inc. (1900). The debtors' headquarters is: 2425 West Loop South, Houston, Texas 77027-4205.



## I. Background

Stumpf, individually and on behalf of all others similarly situated, sued Defendants Stage Stores, Inc. and Specialty Retailers, Inc. (collectively referred to as “Stage Stores”) claiming that they violated the Worker Adjustment Retraining and Notification Act, 29 U.S.C. §§ 2101-2109 (“WARN Act”) by failing to provide advance written notice of a plant closing or mass layoff. (*See generally*, Pl.’s First Am. Compl. (Doc. 14).) The case was referred to the bankruptcy court consistent with 28 U.S.C. § 157(a). For the reasons explained below, Stumpf requests that the reference be withdrawn and that this case be assigned to a United States District Judge for the Southern District of Texas.

## II. Argument & Authorities

### A. Standard of Review

The district courts have jurisdiction of all cases arising under, arising in or related to cases under the United States Bankruptcy Code but may refer them “to the bankruptcy judges for the district.” 28 U.S.C. §§ 157(a), 1334(a)-(b). Consistent with 28 U.S.C. § 157(a), all eligible cases and proceedings filed in the United States District Court for the Southern District of Texas, including this case, are automatically referred to the bankruptcy courts in accordance with General Order 2012-6. However, under 28 U.S.C. § 157(d),

[t]he district court may withdraw, in whole or in part, any case or proceeding referred [to the bankruptcy court], on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of any party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both [the United States Bankruptcy Code] and other laws of the United States regulating organizations or activities affecting interstate commerce.

28 U.S.C. § 157(d).

Section 157 provides for both “mandatory” and “permissive” withdrawals of the reference. *Id.* A district court must withdraw the reference when (1) the proceeding involves substantial and material consideration of both bankruptcy law and non-bankruptcy federal law; (2) the non-bankruptcy federal law has more than a de minimis effect on interstate commerce and (3) the motion to withdraw the reference was timely filed. *See, Lifemark Hosps. of La., Inc. v. Liljeberg Enters., Inc.*, 161 B.R. 21, 24 (E.D. La. 1993); *see also, Levine v. M&A Custom Home Builder & Developer, LLC*, 400 B.R. 200, 203 (S.D. Tex. 2008). A “district court may withdraw, in whole or in part, any case or proceeding referred [to the bankruptcy court], on its own motion or on timely motion of any party, for cause shown.” 28 U.S.C. § 157(d). When determining whether cause exists in the context of a permissive withdrawal of the reference, the “district court should consider the goals of promoting uniformity in bankruptcy administration, reducing forum shopping and confusion, fostering the economical use of the debtors’

and creditors' resources, and expediting the bankruptcy process." *Holland Am. Ins. Co. v. Roy*, 777 F.2d 992, 999 (5th Cir. 1985). Other factors include whether the underlying lawsuit is core or non-core and whether a jury has been demanded. *Id.*

## **B. Withdrawal of the Reference Is Mandatory**

In this case, withdrawal of the reference is mandatory because (1) the proceeding involves substantial and material consideration of both bankruptcy law and non-bankruptcy federal law—the WARN Act; (2) the WARN Act has more than a de minimis effect on interstate commerce and (3) the motion to withdraw the reference was timely filed. *See, Lifemark Hosps. of La., Inc.*, 161 B.R. at 24; *see also, Levine*, 400 B.R. at 203. As one court concluded in a similar situation,

withdrawal of the reference of the proceeding is mandatory pursuant to 28 U.S.C. § 157(d) because resolution of this adversary proceeding will require consideration of allegations of liability under the WARN Act . . . . The federal statutes that overwhelmingly predominate the issues in this proceeding are non-title 11 laws that regulate activities affecting interstate commerce. The WARN Act ... [is] not merely incidental to the resolution of the Complaint, but rather are essential to the resolution. The Court cannot resolve this proceeding without significant consideration of [that] statute[.]. ... Thus, the District Court, not the Bankruptcy Court, is the proper forum for resolution of this dispute. The Court therefore recommends that the reference be withdrawn immediately under the mandatory withdrawal clause of 28 U.S.C. § 157(d).

*Gross v. Hale-Halsell Co.*, No. 04-1191-R, 2005 Bankr. LEXIS 3608, at \*13-\*14 (Bankr. N.D. Okla. Jan. 27, 2005).

Withdrawal of the reference is also mandatory because Stumpf has demanded a trial by jury (*see*, Jury Demand (Doc. 9) p. 1), and she does not consent to a jury trial before the bankruptcy court. *See, In re Clay*, 35 F.3d 190, 196-97 (5th Cir. 1994) (bankruptcy court may not conduct jury trial without consent of the parties).

### III. Conclusion

For the reasons explained above and in accordance with Fed. R. Bankr. P. 5011, Stumpf requests that the Court withdraw the reference to the bankruptcy court.

Respectfully Submitted,

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CERTIFICATE OF CONFERENCE

I certify that I have conferred or made a reasonable attempt to confer with all other parties or their attorney(s) of record, who are listed below, about the merits of this motion with the following results:

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*Attorney(s) for Defendant Stage Stores, Inc. & Specialty Retailers, Inc.*

- ☒ opposes the motion
- ☐ does not oppose the motion
- ☐ agrees with the motion
- ☐ would not say whether the motion is opposed
- ☐ did not return my messages regarding the motion

December 14, 2020

Date

  
Melissa Moore

CERTIFICATE OF SERVICE

As required by Fed. R. Bankr. P. 7005 and Fed. R. Civ. P. 5(a)(1), I certify that I served a copy of this document on all parties or their attorney(s) of record—who are listed below—in accordance with Fed. R. Civ. P. 5(b) as follows:

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