IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
STAGE STORES, INC., *et al.*,[1]	)	Case No. 20-32564 (DRJ)
Debtors.	)	(Jointly Administered)
AMY STUMPF, Individually and On Behalf of All Others Similarly Situated, CHRISTINE BAXTER, RACHEL MCCORMACK MARGARET PUALK, KRISTIN MCCANDLESS, HANNAH SORENSEN, ELIZABETH MARTINEZ, CYNTHIA SHEPHERD, BROOKE LINDEMAN, ANN SUBRT, ANGELICA GALVEZ, ALICIA COOPER, ALANA MCNEAL And DENISE AGUILAR,	)	Adv. Proc. No. 20-03303
Plaintiffs,	)	**Re: Docket No. 22**
v.	)	
STAGE STORES, INC. and SPECIALTY RETAILERS, INC.	)	
Defendants.	)	

PLAN ADMINISTRATOR'S OBJECTION TO PLAINTIFF AMY STUMPF'S MOTION TO WITHDRAW THE REFERENCE

Steven Balasiano, in his capacity as Plan Administrator (the "Plan Administrator") of Stage Stores, Inc. ("SSI") and Specialty Retailers, Inc. ("SRI" and together with SSI, the "Debtors"), states as follows in support of this objection (this "Objection") to Plaintiff Amy Stumpf's Motion

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Stage Stores, Inc. (6900) and Specialty Retailers, Inc. (1900).

to Withdraw the Reference [Docket No. 22] (the "Motion"):

PRELIMINARY STATEMENT[2]

1. Plaintiff's Motion seeking to withdraw the reference is a blatant attempt to forum shop and should be denied. The Motion contains two barebones paragraphs alleging that withdrawal of the reference to the District Court is mandatory because (i) the proceeding allegedly involves substantial and material consideration of both bankruptcy law and non-bankruptcy federal law, and (ii) Plaintiff has demanded a jury trial. These cursory arguments are not supported by applicable case law and the facts, and there is no basis for withdrawal of this Adversary Proceeding to the District Court.

2. Plaintiff fails to demonstrate that resolution of the WARN Act claims alleged in the Complaint would require the type of "material and substantial interpretation" of federal law, as opposed to the mere application of it, that would mandate withdrawal to the District Court. Plaintiff alleges that the Debtors violated the WARN Act by failing to provide the required advance notice of a plant closing or mass layoff to Plaintiff and other affected employees. This is the prototypical WARN Act claim, the resolution of which requires nothing more than a straightforward application of the law to the facts. Such claims are routinely litigated in bankruptcy court, as should be the case here.

3. Plaintiff's argument that mandatory withdrawal is required on Seventh Amendment grounds also fails. First, Plaintiff has not demonstrated that she is entitled to a jury trial at all. Multiple courts, including the Sixth Circuit Court of Appeals, have determined that WARN plaintiffs seek equitable relief and therefore do not have a right to trial by jury. Second, even

[2] Capitalized terms not otherwise defined in this Preliminary Statement shall have the meanings ascribed to such terms elsewhere in this Objection.

assuming Plaintiff is entitled to a jury trial, withdrawal would nonetheless be premature because it is not clear at this point in the proceedings whether a jury trial would be necessary. Courts have generally held that the appropriateness of removal to a district court for trial by jury, on asserted Seventh Amendment grounds, will become a question ripe for determination *if and when* the case is trial-ready. If this Court ultimately finds that Plaintiff is entitled to a jury trial, it could recommend that the District Court withdraw the reference solely for trial and reserve for this Court the power to oversee all pretrial matters.

4. Finally, Plaintiff does not appear to seek to withdraw the reference on permissive grounds.[3] However, for the avoidance of doubt, permissive withdrawal is also not warranted as factors of judicial economy, uniformity of bankruptcy administration, and economical use of estate resources clearly weigh in favor of allowing the Adversary Proceeding to continue in this Court. Transferring this matter to the District Court at this stage would only prolong the litigation timeline and frustrate the Plan Administrator's ongoing efforts to make the distributions required by the Plan and wind-down the Debtors' estates.

5. For these reasons and as set forth in further detail herein, the Motion should be denied.

BACKGROUND

6. On July 16, 2020, Plaintiff Amy Stumpf, individually and on behalf of all others similarly situated ("Plaintiff"), commenced the above-captioned adversary proceeding (the "Adversary Proceeding") by filing a complaint (as subsequently amended on September 1, 2020 [Adv. Docket No. 14], the "Complaint") against the Debtors [Adv. Docket No. 1].

[3] Although Plaintiff acknowledges that withdrawal be either mandatory or permissive in the Motion, Plaintiff's only legal argument is that withdrawal is mandatory.

7. Through the Complaint, Plaintiff asserts claims against the Debtors alleging that they violated the Worker Adjustment Retraining and Notification Act, 29 U.S.C. §§ 2101-2109 (the "WARN Act") by failing to provide advance written notice of a plant closing or mass layoff to affected employees.

8. Pursuant to the Bar Date Order [Docket No. 478], this Court established July 24, 2020 as the General Claims Bar Date and November 30, 2020 as the Administrative Claims Bar Date (together, the "Bar Dates").

9. On June 26, 2020, the Debtors served notice of the Bar Dates on all current and former employees of the Debtors, including Plaintiff. See Docket No. 560.

10. As of the date of the filing of this Objection, Plaintiff has not (i) sought leave to file a class proof of claim in the main bankruptcy case, or (ii) filed a motion seeking to certify the putative class.

11. On August 14, 2020, the Court entered an order at Docket No. 705 (the "Confirmation Order") confirming the *Joint Second Amended Chapter 11 Plan of Stage Stores, Inc. and Specialty Retailers, Inc.* [Docket No. 694] (the "Plan").

12. The effective date of the Plan occurred on October 30, 2020 [Docket No. 898] (the "Effective Date"). On the Effective Date, Steven Balasiano, in his capacity as Plan Administrator, became the sole representative of the Debtors' estates for the purpose of, *inter alia*, making or facilitating distributions contemplated under the Plan. *See* Plan Art.IV.D.

13. On December 14, 2020, Plaintiff filed the Motion requesting that the Court withdraw the reference pursuant to 28 U.S.C. § 157(d).

OBJECTION

A. Withdrawal of the Reference is Not Mandatory

14. Pursuant to 28 U.S.C. § 157(a) and General Order No. 2005-6, bankruptcy cases in the Southern District of Texas are referred from the District Court to the Bankruptcy Court. While the reference may be withdrawn by the District Court for cause pursuant to 28 U.S.C. § 157(d), courts in the Fifth Circuit have held that such mandatory withdrawal should be interpreted "restrictively." *Levine v. M & A Custom Home Builder & Developer, LLC*, 400 B.R. 200, 203 (S.D. Tex. 2008). The party seeking withdrawal of the reference bears the burden of establishing grounds for mandatory withdrawal of the reference. *See, e.g., Matter of Vicars Ins. Agency, Inc.*, 96 F.3d 949, 954 (7th Cir. 1996); *In re Rodriguez*, No. 02-10605 & Adv. No. 08-01004, 2009 WL 10714861, at *10 (Bankr. S.D. Tex. Mar. 6, 2009). Plaintiff fails to meet this burden.

15. In the Motion, Plaintiff cites to a single non-binding decision from 2005 issued in the United States Bankruptcy Court for the Northern District of Oklahoma for the proposition that mandatory withdrawal is required when resolution of the adversary proceeding "will require consideration of allegations of liability under the WARN Act[.]" *See Gross v. Hale-Halsell Co. (In re Hale-Halsell Co.)*, No. 04-11677 & Adv. No. 04-1191, 2005 Bankr. LEXIS 3608, *13 (Bankr. N.D. Okla. Jan 27, 2005).[4]

16. Courts in this Circuit, however, have made clear that mandatory withdrawal is reserved for cases involving "substantial and material question of both Title 11 and non-Bankruptcy Code federal law." *In re Nat'l Gypsum Co.*, 145 B.R. 539, 541 (N.D. Tex. 1992). The

[4] Notwithstanding the lone cherrypicked citation in the Motion, the complaint at issue in *Gross* included claims alleging that certain of the Debtors' officers violated not only the WARN Act, but also the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (the "FLSA"), the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq* ("ERISA"), and pendent state claims. *See Gross v. Hale-Halsell Co. (In re Hale-Halsell Co.)*, 2005 Bankr. LEXIS 3608, *7.

routine application of non-bankruptcy federal law does not constitute a "substantial and material" question that requires mandatory withdrawal and courts regularly make a distinction between "interpretation" of the non-Bankruptcy Code federal law and "mere application" of such law. *Rodriguez v. Countrywide Home Loans, Inc.*, 421 B.R. 341, 348 (Bankr. S.D. Tex. 2009) (citing *In re Vicars Ins. Agency,* 96 F.3d at 954 ("[M]andatory withdrawal is required only when those issues require the interpretation, as opposed to mere application, of the non-title 11 statute, or when the court must undertake analysis of significant open and unresolved issues regarding the non-title 11 law."). Courts in this Circuit have also noted that withdrawal of the reference cannot be based on "speculation about issues that may or may not arise[,]" which would create "an escape hatch through which most bankruptcy matters [would] be removed to the district court". *In re Nat'l Gypsum Co.*, 134 B.R. 188, 192.

17. Here, Plaintiff does not argue that the alleged WARN Act claims in the Complaint are somehow novel claims that would require substantial interpretation, rather than mere application, of the requirements of the WARN Act to the facts. There is no novel issue of law raised in the Complaint: Plaintiff simply alleges that the Debtors failed to provide the requisite notice to terminated employees, as required by the statute. Further, the WARN Act is not a new law that bankruptcy courts have no experience applying, and numerous bankruptcy courts have presided over WARN litigation. *See, e.g., In re FF Acquisition Corp.,* 438 B.R. 886 (Bankr. N.D. Miss. 2010) (bankruptcy court applying WARN Act exceptions and dismissing adversary complaint); Murray *Energy Holdings Co., et al.,* No. 19-56885, 616 B.R. 84, 87 (Bankr. S.D. Ohio 2020) (WARN Act claims resolved via stipulation and addressed in plan of reorganization); *In re Gymboree Grp., Inc.*, No. 19-30258 (Bankr. E.D. Va. 2019) (WARN Act claims resolved via stipulated order in bankruptcy court); *In re Gen. Wireless Operations Inc.,* No. 17-10506, 2017

WL 5404534, at *1 (Bankr. D. Del. Apr. 6, 2017*)* (WARN Act claims resolved via plan and related adversary proceeding withdrawn by putative class after plan confirmation). Simply put, the vanilla WARN claims raised in the Complaint do not warrant the "substantial and material" interpretation of federal law that requires mandatory withdrawal of the litigation to the District Court.

18. Plaintiff also incorrectly argues that her demand for a jury trial entitles her to mandatory withdrawal of the reference, citing a case that analyzes the right to a jury trial in the context of *permissive* withdrawal of the reference. Mot. at 5; *In re Clay*, 35 F.3d 190, 196-97 (5th Circ 1994). Notwithstanding the fact that the right to a jury trial is a factor in permissive withdrawal analysis rather than mandatory withdrawal analysis, Plaintiff's argument that withdrawal is mandatory because she has demanded a jury trial also fails for two reasons. First, it is unclear whether Plaintiff is even be entitled to a jury trial at all. Although this Circuit has not squarely addressed the issue of whether WARN claimants are entitled to a jury trial under the Seventh Amendment, courts in other Circuits, including the Sixth Circuit Court of Appeals, have held that they are not. *See Bledsoe v. Emery Worldwide Airlines, Inc.*, 635 F.3d 836, 843 (6th Cir. 2011) ("We are persuaded that the statutory remedies available to aggrieved employees [under the WARN Act] provide equitable restitutionary relief for which there is no constitutional right to a jury trial."); *Creech v. Virginia Fuel Corp.,* 61 F. Supp. 3d 592, 597 (W.D. Va. 2014) (no right to jury trial for WARN Act claimants); *Nelson v. Formed Fiber Techs., LLC,* No. 2:10-CV-473, 2012 WL 118490, at *1 (D. Me. Jan. 13, 2012) (same); *Calloway v. Caraco Pharm. Labs., Ltd.,* No. 11-15465, 2013 WL 12334237, at *2 (E.D. Mich. Sept. 5, 2013) (same).

19. Second, even assuming, *arguendo,* that Plaintiff has the right to a jury trial, withdrawal of the reference at this stage is not required. "A valid right to a Seventh Amendment jury trial in the district court does not mean the bankruptcy court must instantly give up jurisdiction

and that the action must be transferred to the district court. Instead . . . the bankruptcy court may retain jurisdiction over the action for pre-trial matters." *See In re Healthcentral.com*, 504 F.3d 775, 788 (9th Cir. 2007); *see, e.g., Levine v. M & A Custom Home Builder & Developer, LLC*, 400 B.R. 200, 203 (S.D. Tex. 2008) ("[W]ithdrawal should be deferred until [the bankruptcy] court has ruled on all dispositive motions, to further judicial economy and expedite the bankruptcy process."); *In re OCA*, No. 06-3811, 2006 U.S. Dist. LEXIS 67035, 2006 WL 4029578, at *5 (E.D. La. Sept. 19, 2006) ("[A] number of courts have held that even if a party does have a right to a jury trial, a motion to withdraw is premature until such time [as] it is determined that a jury trial must be conducted."). Accordingly, even if Plaintiff has a valid jury right, this Court would nonetheless be authorized to preside over all pre-trial issues (including making recommendations regarding dispositive motions) before withdrawing the reference, and would be better positioned than the District Court to do so due to its familiarity with the facts, as discussed below.[5]

B. Permissive Withdrawal Is Not Warranted

20. Plaintiff does not seek withdrawal of the reference on a permissive basis. While Plaintiff's failure to raise any argument whatsoever to support permissive withdrawal is itself telling, the law is also clear that permissive withdrawal should not be granted in this case.

21. To satisfy the requirements of permissive withdrawal, courts in the Fifth Circuit look to several factors, including whether (i) the underlying lawsuit is a non-core proceeding; (ii) uniformity in bankruptcy administration will be promoted; (iii) forum shopping and confusion will be reduced; (iv) economical use of debtors' and creditors' resources will be fostered; (v) the

[5] The relevant statute, 28 U.S.C. § 157(d), permits district courts to withdraw proceedings "in whole or in part." District courts may withdraw the reference for trial while reserving for the bankruptcy court "the power to oversee pretrial matters arising in the proceeding, including the power to make interlocutory rulings and make proposed rulings upon any dispositive motions." *In re Adelphi Inst.*, 112 B.R. at 539. That is the preferred arrangement because it "provid[es] the district court the benefit of the analyses and insight of the bankruptcy court's consideration of any dispositive motions." *In re Adler*, *Coleman Clearing Corp*., 270 B.R. 562, 565 (S.D.N.Y. 2001).

bankruptcy process will be expedited; and (vi) a party has demanded a jury trial. *Holland America Insurance co. v. Succession of Roy*, 777 F.2d 992, 999 (5th Cir. 1985).

22. Here, the majority of these factors plainly weigh in favor of this Court maintaining jurisdiction over the Adversary Proceeding. Courts have generally held that, unless the District Court already has some specialized knowledge of the case, a report-and-recommendation system tends to be *more* efficient and economical because it provides overburdened district courts with "the benefit of the analyses and insight of the bankruptcy court's consideration" of the case. *In re Adler, Coleman Clearing Corp.,* 270 B.R. 562, 565 (S.D.N.Y. 2001*); see also Nattel, LLC v. Oceanic Digital Commc'ns, Inc. (In re Nattel, LLC),* No. 06-50421 & Adv. No. 07-05037, 2010 WL 2977133, at *2 (D. Conn. July 22, 2010*); Mishkin v. Ageloff (In re Keene Corp.)*, 182 B.R. 379, 385 (S.D.N.Y. 1995); *Bus. Commc'ns, Inc. v. Freeman*, 129 B.R. 165, 166 (N.D. Ill. 1991); *In re Vicars Ins. Agency,* 96 F.3d at 952 (reading 28 U.S.C. § 157(d) too broadly might "encourage delaying tactics . . . and generally unnecessary litigation").

23. . The District Court has no specialized knowledge of this Adversary Proceeding. This Court, on the other hand, has already considered the Complaint and the Debtors' answer thereto, and is generally familiar with the facts of the Adversary Proceeding and the Debtors' underlying chapter 11 cases.

24. Transferring this litigation to an overburdened District Court at this stage will only frustrate the Plan Administrator's ongoing efforts to make the distributions required by the Plan and wind-down the Debtors' estates. Withdrawal would almost certainly extend the litigation timeline, which would increase administrative costs, delay and diminish distributions to the Debtors' other creditors, and needlessly prolong the uncertainty regarding the Debtors' alleged WARN liability to the putative class. Such considerations are contrary to the permissive

withdrawal factors of expediting the bankruptcy process, ensuring the economical use of estate resources, and ensuring uniformity in bankruptcy administration. Moreover, the Motion appears to be motivated by forum shopping, as Plaintiff fails to explain why this Court cannot adequately and efficiently adjudicate the Adversary Proceeding. This Court can set a discovery and briefing schedule to expeditiously resolve this litigation, and principles of judicial economy and expediency clearly favor allowing this Adversary Proceeding to proceed in this Court.

25. Additionally, through the Adversary Proceeding, Plaintiff is seeking a claim against the Debtors' estates for damages arising under the WARN Act. *See In re Commercial Financial Services, Inc.*, 252 B.R. 516, 525 (Bankr. N.D. Okla. 2000) ("Plaintiffs' WARN Act claims against CFS, regardless of the procedural vehicle with which they are asserted, fall unambiguously within the Bankruptcy Code's definition of 'claim'[.]"). It is a "core" function of bankruptcy courts to determine the allowance and disallowance of claims pursuant to 28 U.S.C. § 157(b)(2). Even so, the Supreme Court has held that just because a matter is non-core does not mean it should immediately or even ultimately be withdrawn. *Exec. Benefits Ins. Agency v. Arkinson,* 573 U.S. 25, 36 (2014) (stating that if withdrawal were justified merely because a proceeding is "non-core," then the district court would be required "to hear all [such claims] in the first instance" without the benefit of a report and recommendation from the bankruptcy court).

26. Finally, as noted *supra*, while Plaintiff has demanded a jury trial (to which she may not be entitled), these allegations, even if true, are in no way dispositive and are vastly outweighed by the other factors clearly favoring denial of the Motion.

Reservation of Rights

27. The Plan Administrator respectfully reserves all rights with regard to the ultimate adjudication of all claims asserted in the Complaint, regardless of the forum where such claims may ultimately be heard.

[*Remainder of page intentionally left blank*]

WHEREFORE, the Plan Administrator respectfully requests that the Court enter an order denying the Motion in its entirety or, at a minimum, holding it in abeyance pending resolution of all pre-trial matters in this case.

Dated: January 22, 2021

/s/ James W. Walker
James W. Walker, Esq. (TX Bar No. 20709600)
COLE SCHOTZ P.C.
901 Main Street, Suite 4120
Dallas, TX 75202
Telephone: (469) 557-9390
Facsimile: (469) 533-1587
Email: jwalker@coleschotz.com

- and -

Seth Van Aalten, Esq. (admitted *pro hac vice*)
Sarah A. Carnes, Esq. (admitted *pro hac vice*)
Matthew J. Livingston, Esq. (admitted *pro hac vice*)
COLE SCHOTZ P.C.
1325 Avenue of the Americas, 19th Floor
New York, NY 10019
Telephone: (212) 752-8000
Facsimile: (212) 752-8393
Email: svanaalten@coleschotz.com
scarnes@coleschotz.com
mlivingston@coleschotz.com

- and -

Judah Balasiano, Esq.
Balasiano & Associates, PLLC
6701 Bay Parkway, 3rd Floor
Brooklyn, NY 11204
Telephone: (917) 902-9901
Email: judah@balasianolaw.com

Co-Counsel to Steven Balasiano as Plan Administrator of Defendants.

Certificate of Service

I certify that on January 22, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ James Walker
James W. Walker

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
STAGE STORES, INC., *et al*.,[1]	)	Case No. 20-32564 (DRJ)
Debtors.	)	(Jointly Administered)
AMY STUMPF, Individually and On Behalf of All Others Similarly Situated, CHRISTINE BAXTER, RACHEL MCCORMACK MARGARET PUALK, KRISTIN MCCANDLESS, HANNAH SORENSEN, ELIZABETH MARTINEZ, CYNTHIA SHEPHERD, BROOKE LINDEMAN, ANN SUBRT, ANGELICA GALVEZ, ALICIA COOPER, ALANA MCNEAL And DENISE AGUILAR,	)	Adv. Proc. No. 20-03303
Plaintiffs,	)	**Re Docket No. 22**
v.	)	
STAGE STORES, INC. and SPECIALTY RETAILERS, INC.	)	
Defendants.	)	

ORDER DENYING PLAINTIFF'S MOTION TO WITHDRAW THE REFERENCE

And now, upon consideration of Plaintiff Amy Stumpf's Motion to Withdraw the Reference (the "Motion") in the above-referenced bankruptcy adversary proceeding and the objection filed thereto by the Plan Administrator and for good cause, it is hereby **ORDERED** that the Motion is **DENIED**.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Stage Stores, Inc. (6900) and Specialty Retailers, Inc. (1900).

Houston, Texas
Dated: _____, 2021

THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE