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12 UNITED STATES BANKRUPTCY COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 LOS ANGELES DIVISION

15 In re:

16 Nicole R. Prause,

17 Debtor,

) Case No. 2:20-bk-17525-NB  
) Chapter 7  
)

) MEMORANDUM OF POINTS AND  
) AUTHORITIES IN SUPPORT OF  
) MOTION BY DONALD L. HILTON,  
) JR. FOR RELIEF FROM THE  
) AUTOMATIC STAY (ACTION IN A  
) NONBANKRUPTCY FORUM);  
) DECLARATION OF DANIEL W.  
) PACKARD  
)

20 )  
21 ) Date: 01/05/2021  
22 ) Time: 10:00am  
23 ) Courtroom: 1545  
24 )

25 To: The Honorable Neil W. Bason, United States Bankruptcy  
26 Judge, and Debtor Nicole Prause and her attorney of record:  
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I.

**STATEMENT OF THE ISSUE AND SUMMARY OF THE ARGUMENT**

Movant Donald L. Hilton is a creditor in this bankruptcy who has a pending defamation case filed in the United States District Court for the Western District Of Texas where he seeks declaratory, monetary, and injunctive relief. On 11/10/2020, Movant Hilton filed a Complaint To Determine Dischargeability Of Debt Pursuant To 11 U.S.C. Section 523(a)(6) with this honorable Court. Adversary proceeding number 2:20-ap-01658-NB was assigned. He now seeks relief from the automatic stay and leave from the Court to pursue his defamation action in United States District Court in Texas. Movant Hilton submits that the Court should grant the Motion for a number of reasons including the following:

A. The case in Texas has been pending since May 8, 2019, Texas law will apply, and the parties are deep into the case;

B. Debtor Prause has insurance that is financing her defense in Texas. However, if she is required to litigate the defamation case as part of the bankruptcy proceedings, she may be required to finance the defense herself. If this happens, it would deplete the estate for all other creditors, would cause unnecessary hardship for Debtor Prause, and would cause undue expense and hardship to Movant Hilton, who lives in San Antonio, Texas.

C. The factors set forth in In re Curtis, 40 B.R. 795 (Bankr. D. Utah 1984), weigh heavily in favor of lifting the stay so that the litigation can proceed in the United States District Court. For example, lifting the stay, assuming that the District Court's judgment includes appropriate nondischargeability language, will

1 resolve all issues as to Movant Hilton. Moreover, Movant Hilton's  
2 defamation action lacks a connection to the bankruptcy case, it  
3 involves no other parties, and it will not implicate the other  
4 creditors if it is allowed to proceed in Texas. Finally, the  
5 interests of judicial economy support allowing the defamation case  
6 to be adjudicated in Texas.

7 D. Movant Hilton is alleging that Debtor Prause intentionally  
8 and maliciously defamed him specifically to destroy his reputation  
9 by accusing him of sexual harassment, stalking, cyberstalking,  
10 threatening behavior and falsifying his academic credentials  
11 knowing that such accusations were totally fabricated. Indeed, she  
12 has a long history of falsely accusing other professionals and  
13 activists who disagree with her on the substance of her  
14 professional work. Because this is an intentional injury, any  
15 judgment obtained will not be dischargeable and should be resolved  
16 in Texas.

17 **II.**

18 **FACTUAL AND PROCEDURAL BACKGROUND**

19 Movant Hilton is a neurosurgeon who lives and works in San  
20 Antonio, Texas. He is the program director of the Methodist  
21 Hospital rotation for the neurosurgical residency program at  
22 University of Texas Health Science Center at San Antonio ('UT  
23 Health'). He is also the director of the spine fellowship at the  
24 Department of Neurosurgery at UT Health. In addition to his  
25 medical practice, he also devotes a substantial amount of his  
26 professional work researching, publishing and speaking about the  
27 harmful and addicting effects of pornography.

1 Debtor Prause is a psychologist who lives in Los Angeles,  
2 California. She devotes a substantial amount of her work to the  
3 subject of pornography, and she argues that it is not addicting and  
4 should not be considered a public health hazard.

5 For more than a decade, Movant Hilton and Debtor Prause have  
6 engaged in a lively debate in the published literature and in  
7 lecture halls about whether pornography is harmful to the brain.  
8 Movant Hilton is not alone in his view that pornography is harmful  
9 and addicting, and he points to a growing body of scientific  
10 literature supporting his belief.

11 Debtor Prause argues that pornography is neither harmful nor  
12 addicting, but rather than focusing her efforts on the merits of  
13 the arguments, she has attempted to assassinate the character of  
14 the researchers and experts who disagree with her. For example,  
15 she has falsely accused more than 10 scholars or activists - filing  
16 written complaints with various medical boards, academic  
17 institutions and employers. With some of these complaints, Debtor  
18 Prause has falsely accused her critics of personally sexually  
19 harassing her, stalking her, committing Title IX violations and/or  
20 committing other forms of sexual misconduct towards her. She also  
21 made other false accusations against these individuals.

22 In April of 2019, Defendant Prause maliciously attempted to  
23 destroy Movant Hilton's livelihood and career because he criticized  
24 her ideas and argued that pornography is addicting. For example,  
25 in April 2019, Defendant Prause authored a series of written  
26 communications to UT Health making serious and false accusation of  
27 sexual harassment against Dr. Hilton. Specifically, on April 16,  
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1 2019, Defendant Prause sent an email to UT Health, which included  
2 the following statements:

3 A. "I am a neuroscientist with two university appointments  
4 being openly sexually harassed by your faculty member Dr. Donald  
5 Dr. Hilton."

6 B. "I have filed a complaint against Dr. Hilton's medical  
7 license for sexual harassment. However, he clearly uses his UT  
8 affiliation to promote his sexual harassment. As a female  
9 scientist, he is uniquely attacking my gender with these false  
10 claims about my sexuality."

11 C. "Please direct my sexual harassment complaint against  
12 Dr. Donald Hilton to the appropriate officer for investigation."

13 Debtor Prause authored and sent other emails to UT Health  
14 including the following:

15 A. "Would you please confirm that this sexual harassment  
16 complaint is being directed to the appropriate office for  
17 investigation?" (April 17, 2019).

18 B. "Would you confirm that this sexual harassment will be  
19 or is being investigated? I will need to start escalating to  
20 others if these inquiries are unresponsive." (April 19, 2019).

21 C. "Dr. Hilton has been defaming and libeling me using  
22 misogyny for years, while claiming to be representing the views  
23 of UTSA. I want the sexual harassment and the libel to stop, and  
24 the false information (that I molest children in my lab and  
25 perform in pornography) publicly corrected." (April 29, 2019).

26 D. "If you are giving these titles to people, and they use  
27 them to defame and sexually harass scientists, it seems their  
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1 title should be rescinded. Here are a few of the many places he  
2 has claimed to be an 'adjunct' at your institution. If these are  
3 incorrect, please let me know and I will address his false  
4 credentials with his licensing board." (April 30, 2019).

5 Additionally, on May 20, 2019, Movant Hilton received notice  
6 that Debtor Prause had also made false accusations against him to  
7 the Texas Medical Board, where she went after his medical license  
8 by falsely accusing him of sexual harassment. The notice Movant  
9 Hilton received from the Texas Medical Board states:

10 It has been alleged that you are stalking, cyberstalking,  
11 harassing, threatening, and issuing libelous and/or false  
12 statements regarding Nicole Prause, Ph.D. Please furnish a  
13 narrative to include whether or not you face any civil and/or  
14 criminal charges concerning these matters, and provide the  
15 cause numbers, case status, and contact information.<sup>1</sup>

16 Finally, in May 2019, Movant Hilton received notification of  
17 two additional complaints - this time from two journals which had  
18 published articles that he authored/co-authored. One journal was  
19 the prestigious Proceedings Of The National Academy Of Sciences  
20 (PNAS), and the other was the peer-reviewed journal Surgical  
21 Neurology International. When communicating to the journals,  
22 Debtor Prause falsely claimed that Movant Hilton  
23 falsified/exaggerated his credentials - specifically, that he had  
24 claimed to be on the faculty of UT Health when he allegedly was  
25 not.

26 The statements made by Prause to UT Health, to TMB and to the  
27 journals claiming that Dr. Hilton "openly sexually harassed" her,  
28 that he "stalked" her, that he "cyberstalked" her, that he

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<sup>1</sup> A copy of this letter is attached to Dr. Hilton's declaration, attached as Exhibit "A."

1 "threatened" her, and that he falsified his academic credentials  
2 are all categorically false. Dr. Hilton has signed a sworn  
3 declaration, attached and incorporated herein as Exhibit "A", which  
4 establishes the following:

5 · Movant Hilton has never sexually harassed Debtor Prause. In  
6 fact, he has only had one personal encounter with Debtor  
7 Prause. With his wife standing next to him, Movant Hilton  
8 met Debtor Prause briefly in a crowded meeting room on  
9 November 14, 2009 (more than 10 years ago) after a  
10 professional presentation he had given. Nothing of a sexual  
11 nature was said or done during that brief encounter.  
12 (Exhibit "A" at P. 3-4).

13  
14 · Movant Hilton and Debtor Prause have not had any personal  
15 communications or interactions since 2009 - not face to  
16 face, not by phone, not by email or social media - nothing.  
17 (Exhibit "A" at P. 4).

18  
19 · Movant Hilton has never flirted with Debtor Prause, made  
20 any sexual advancements towards her, or committed any other  
21 type of sexual misconduct towards her. (Exhibit "A" at P.  
22 4).

23  
24 · Movant Hilton has never "stalked" Debtor Prause. He has  
25 never been to Debtor Prause's house, does not know where  
26 she works, and has never followed her movements or kept  
27 track of where she is. (Exhibit "A" at P. 7).

1  
2 · Movant Hilton has never "cyberstalked" Debtor Prause.

3 Indeed, he has never had any online communications with her  
4 of any kind - not through email, Facebook, or any other  
5 kind of social medial. Moreover, Movant Hilton doesn't  
6 follow Debtor Prause on her social media. (Exhibit "A" at  
7 P. 4 and 5).

8  
9 · Movant Hilton never "threatened" Debtor Prause. For  
10 example, he never said "I am going to do 'X' to you." In  
11 fact, he has never said anything to Debtor Prause except  
12 for that encounter in 2009. (Exhibit "A" at P. 7).

13  
14 · Movant Hilton never gave false credentials to any academic  
15 journal. He told the journals that he was on the faculty  
16 at UT Health, which was true and still is true. (Exhibit  
17 "A" at P. 7).

18  
19 Debtor Prause knew perfectly well that her accusations against  
20 Movant Hilton were false. After all, since the sexual harassment,  
21 stalking, cyberstalking and threatening conduct were supposedly  
22 committed against her personally, she obviously knew that none of  
23 it ever occurred.

24 As mentioned above, Debtor Prause has an extensive history of  
25 making false accusations against people who, like Movant Hilton,  
26 believe that the science supports the notion that pornography is  
27 addicting. Indeed, Movant Hilton is the third male professional

Debtor Prause has falsely accused of stalking and sexual harassment. Debtor Prause's pervasive pattern of false accusations against similarly-minded scientists and activists provides strong evidence of Debtor Prause's intentional, malicious intent.

After Debtor Prause falsely accused Movant Hilton, Movant Hilton obtained an affidavit from nine of Debtor Prause's other victims, which affidavits are attached to Movant Hilton's Amended Complaint filed in San Antonio.<sup>2</sup> The affidavits are briefly summarized below:

• **John Adler, MD.** Dr. Adler is a Harvard-trained neurosurgeon who is the editor of the peer-reviewed journal *Cureus*. He is the Dorothy and Thye King emeritus professor of neurosurgery at Stanford University. Defendant Prause did not agree with a paper his journal published, so she made an allegation of "stalking" against Dr. Adler and filed a Title IX violation against him with Stanford University. This claim was found to be false. Debtor Prause's false allegations against Dr. Alder are detailed more fully in his affidavit, which is attached as Exhibit "I" to Hilton's Amended Complaint.

• **Gary Wilson.** Mr. Wilson manages a web page called Your Brain on Porn, has written a book by the same name, and has given a TED talk on this subject. Debtor Prause has relentlessly attacked Mr. Wilson with numerous false accusations. For instance, she has claimed that Mr. Wilson physically stalked her in Los Angeles when, in fact, he has not even been in Los Angeles for years. She also reported him to the Oregon Counseling Board, which complaint was ultimately dismissed because it was meritless. She filed a police report in which she told the police that she saw Mr. Wilson "wearing a sleeping bag and armed with a long sleeved sweater." All these allegations are false. Debtor Prause also claims that she reported Mr. Wilson to the police for stalking her, threatening her lab and mapping a route to her lab. Debtor Prause has publicly stated that she filed two FBI reports on Mr. Wilson. All these allegations are false. Debtor Prause's false allegations against Mr. Wilson are detailed more fully in his affidavit, which is attached as Exhibit "J" to Movant Hilton's Amended Complaint.

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<sup>2</sup> Dr. Prause has actually falsely accused more than nine other people, but these are the victims from whom Dr. Hilton was able to obtain an affidavit before filing suit.

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2 · **Alexander Rhodes.** Mr. Rhodes founded an online community of  
3 over 200,000 individuals trying to quit using pornography.  
4 Debtor Prause stated that she had filed a complaint against  
5 Mr. Rhodes with the FBI and claimed that he was being  
6 investigated by that agency. We do not have confirmation that  
7 she actually made a complaint to the FBI or that the agency  
8 ever conducted any investigation. However, the mere statement  
in writing wherein Debtor Prause claimed that she reported him  
to the FBI and that the FBI was investigating him is an  
intimidating false statement designed to silence Mr. Rhodes.  
Debtor Prause's false allegations against Mr. Rhodes are  
detailed more fully in his affidavit, which is attached as  
Exhibit "K" to Hilton's Amended Complaint..

9 · **Staci Sprout, LCSW.** Staci Sprout is a therapist in Washington  
10 State. Defendant Prause reported Ms. Sprout to the state  
11 licensure agency, falsely accusing her of engaging in  
12 conspiracy theories. This was after falsely accusing her on  
13 Facebook of practicing without a license. Debtor Prause did  
14 this because Ms. Sprout supports an addictive model for  
15 problematic sexuality and pornography use. Debtor Prause's  
16 false allegations against Ms. Sprout are detailed more fully  
17 in her affidavit, which is attached as Exhibit "L" to Hilton's  
18 Amended Complaint.

19 · **Linda Hatch, PhD.** Debtor Prause falsely reported Dr. Hatch to  
20 the California Psychology Board because Dr. Hatch supports an  
21 addictive model for problematic pornography use. Dr. hatch had  
22 to defend herself to the Board and go through an extensive  
23 process. She was exonerated. Debtor Prause's false  
24 allegations against Dr. Hatch are detailed more fully in her  
25 affidavit, which is attached as Exhibit "M" to Movant Hilton's  
Amended Complaint.

26 · **Bradley Green, PhD.** Debtor Prause falsely reported Dr. Green  
27 to the University of Southern Mississippi, his academic  
28 institution, because Dr. Green supports an addictive model for  
problematic pornography use. She accused him of unethical  
behavior and of lying, and reported the paper he wrote with  
Dr. Stefanie Carnes to the publisher Taylor and Francis, which  
initiated a lengthy review. In May 2019, Dr. Green was  
formally and completely cleared of falsification of data, thus  
establishing Debtor Prause's attack as another false  
accusation against a professional. Debtor Prause's false  
allegations against Dr. Green are detailed more fully in his  
affidavit, which is attached as Exhibit "N" to Hilton's  
Amended Complaint.

· **Stefanie Carnes, PhD.** Dr. Carnes was a co-author with Dr.  
Green on the above-referenced paper. In addition, Debtor  
Prause defamed and smeared the organization headed by Dr.

1 Carnes, the International Institute for Trauma and Addiction  
2 Professionals, (IITAP) of profiting from treating people  
3 seeking help from compulsive, addictive, and or out of control  
4 sexual behavior. Debtor Prause has accused IITAP of profiting  
5 from helping people overcome sexual addiction, a problem  
6 Debtor Prause says doesn't exist. Debtor Prause's false  
7 allegations against Dr. Carnes are detailed more fully in her  
8 affidavit, which is attached as Exhibit "O" to Movant Hilton's  
9 Amended Complaint.

10 · **Geoff Goodman, PhD.** Debtor Prause falsely reported Dr.  
11 Goodman to his institution (Long Island University) because he  
12 supports an addictive model for problematic pornography use.  
13 He underwent an extensive and embarrassing process in clearing  
14 his name from what were ultimately found to be false  
15 allegations. Debtor Prause's false allegations against Dr.  
16 Goodman are detailed more fully in his affidavit, which is  
17 attached as Exhibit "P" to Hilton's Amended Complaint.

18 · **Exodus Cry.** This is an abolition group fighting prostitution.  
19 Debtor Prause falsely reported this organization to the  
20 Missouri Attorney General for allegedly having a fraudulent  
21 501(c)(3) (non-profit) mission statement. Their attorneys had  
22 to defend Exodus Cry and go through a lengthy process, and  
23 they were ultimately exonerated. Debtor Prause's false  
24 allegations against Exodus Cry are detailed more fully in the  
25 affidavit of Laila Mickelwait, which is attached as Exhibit  
26 "Q" to Movant Hilton's Amended Complaint.

27 From Movant Hilton's perspective, this pattern of false  
28 accusations demonstrates that Debtor Prause maliciously and  
intentionally injured Movant Hilton when she made her false  
accusations against him.

On May 8, 2019, Movant Hilton filed a defamation *per se*  
lawsuit against Debtor Prause and her company Liberos, LLC through  
a verified petition, which was filed in the District Court for  
Bexar County, Texas. Debtor Prause was/is covered by an insurance  
policy, which has financed her defense in the case. On June 26,  
2019, Debtor Prause removed the case to the United States District  
Court for the Western District of Texas. Debtor Prause has never  
challenged venue in Texas. Movant Hilton did not challenge the

1 removal. After removal, litigation commenced. Debtor Prause  
2 initially filed a motion to dismiss under the Texas Anti-SLAPP  
3 statute. That motion was hotly contested and extensively briefed  
4 - with at least twelve (12) filings and hundreds of pages of  
5 briefing and exhibits. On December 11, 2019, the District Court  
6 denied the motion to dismiss. Thus, discovery in the case  
7 commenced. Extensive documentation was produced by both sides, and  
8 as depositions were being scheduled, Debtor Prause fired her  
9 attorney. Thus, the case was delayed so that new counsel would  
10 have an opportunity to familiarize herself with the case (see  
11 Declaration of Daniel Packard attached hereto). Finally, Debtor  
12 Prause's deposition was noticed for November 16, 2020. At the same  
13 time, Alex Rhodes, one of Debtor Prause's other victims, was  
14 pursuing his own defamation action and had agreed to take her  
15 deposition on August 19, 2020.

16 In an obvious and overt effort to prevent/delay her  
17 deposition, Debtor Prause filed bankruptcy on August 18, 2020.  
18 Thus, on November 10, 2020, Movant Hilton filed his Complaint to  
19 Determine Dischargability. Movant Hilton now seeks a lifting of  
20 the automatic stay. Specifically, he seeks an Order that (1)  
21 grants relief from stay to allow Movant Hilton to continue and  
22 complete his Texas District Court action for damages and injunctive  
23 relief against Debtor Prause and (2) stays Movant Hilton's recently  
24 filed adversary proceeding until his Texas defamation action  
25 concludes.

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III.

ARGUMENT

11 U.S.C. § 362(d) provides that "the court shall grant relief from the stay ... such as by terminating, annulling, modifying, or conditioning such stay-(1) for cause." "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." *In re Mac Donald*, 755 F.2d 715, 716 (9th Cir. 1985); see also *In re Anderson*, 36 B.R. 120, 123 (Bankr. D. Haw. 1983) ("Any 'cause' convincing the Court that the stay should be modified is adequate"). "A decision to lift the automatic stay under 11 U.S.C. § 362 is within the discretion of the bankruptcy judge." *In re Mac Donald*, 755 F.2d at 716.

The burden of proof on a motion to modify the automatic stay is a shifting one. *Sonnax Indus., Inc. v. Tri Component Prods. Corp.* (*In re Sonnax Indus., Inc.*), 907 F.2d 1280, 1285 (2nd Cir.1990). To obtain relief from the automatic stay, the party seeking relief must first establish a *prima facie* case that "cause" exists for relief under § 362(d)(1). *Mazzeo v. Lenhart*, 167 F.3d 139, 142 (2nd Cir.1999); *Duvar Apt., Inc. v. Fed. Deposit Ins. Corp.*, 205 B.R. 196, 200 (9th Cir. BAP 1996). Once a *prima facie* case has been established, the burden shifts to the debtor to show that relief from the stay is unwarranted. *Sonnax*, 907 F.2d at 1285; *Duvar Apt.*, 205 B.R. at 200.

There are 12 non-exclusive factors that courts weigh to determine whether "cause" exists to grant relief to allow an entity

1 to continue pending litigation against a debtor in a non-bankruptcy  
2 forum - sometimes known as the "Curtis Factors". *In re American*  
3 *Spectrum Realty, Inc.*, 540 B.R. 730, 737 (Bankr. C.D. Cal. 2015),  
4 *In re Plumberex Specialty Products, Inc.*, 311 B.R. 551, 559 (Bankr.  
5 C.D. Cal. 2004) (citing *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah  
6 1984)). Not all the factors will be relevant, and some will carry  
7 more weight than others. *Id.* at 560. In the present case, many of  
8 the factors are applicable and they all weigh in favor of lifting  
9 the stay and allowing Movant Hilton's defamation action to proceed  
10 in Texas. Each factor will be analyzed separately below:

11 **Factor #1 - Will lifting the automatic stay result in complete**  
12 **resolution of the issues?**

13 Granting relief from the stay would allow Movant Hilton's  
14 action pending in Texas to proceed to judgment and, assuming the  
15 resulting judgment contains language that assures this Court that  
16 the obligation is nondischargeable, effectively resolve all of the  
17 issues presently pending between Movant Hilton and Debtor Prause.  
18 This is likely a "no asset" case, and there is no issue regarding  
19 Movant Hilton's priority as compared to other creditors.  
20 Furthermore, once the litigation in Texas concludes, Debtor  
21 Prause's liability to Movant Hilton, if any, as well as Movant  
22 Hilton's entitlement of injunctive relief will all be established.  
23 Additionally, the Texas litigation will provide a judicial  
24 determination about whether Debtor Prause acted intentionally, and  
25 will therefore establish the factual predicate necessary to  
26 determine that the debt owed by Debtor Prause is not dischargeable.  
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1 (In re Tiscareno, 551 B.R. 1, 20 (Bankr, N.D. Cal. 2016)  
2 (defamation claims are not dischargeable when the defamatory  
3 statements were made intentionally). This alone is sufficient to  
4 lift the stay. See *Acevedo v. Van Dorn Plastic Mach. Co.*, 68 B.R.  
5 495, 498 (Bankr. E.D.N.Y. 1986 ("The court presumes that non-  
6 dischargability constitutes 'cause' to lift the automatic stay  
7 against litigation of a claim").

8 Of course, if Debtor Prause were to prevail in the Texas  
9 litigation against Movant Hilton, then there would be no need for  
10 this honorable Court to hear Movant Hilton's dischargability  
11 complaint because there would be no debt to discharge. Thus, this  
12 factor weighs in favor of granting relief from stay.

13 **Factor #2 - If the Stay is lifted, will the Texas litigation**  
14 **interfere with the bankruptcy case?**

15 "The most important factor in determining whether to grant  
16 relief from the automatic stay to permit litigation against the  
17 debtor in another forum is the effect of such litigation on the  
18 administration of the estate." *In re Curtis*, 40 B.R. 795, 806  
19 (Bankr. D.Utah 1984). In this case, lifting the stay so that  
20 Movant Hilton's District Court action in Texas can proceed will not  
21 interfere with the bankruptcy estate. Indeed, Debtor Prause's  
22 insurance company is covering her litigation expenses in her Texas  
23 action, so the proceeding will have no effect on the bankruptcy  
24 estate. However, if these allegations are litigated in the  
25 bankruptcy proceeding, Debtor Prause will potentially be required  
26 to finance her defense out of her own pocket - which might reduce  
27

1 the bankruptcy estate. Moreover, the defamatory statements  
2 occurred in Texas and many of the witnesses are in Texas. Thus,  
3 litigating this matter in California would drive up litigation  
4 expenses for all parties. Simply put, nothing that happens in the  
5 Texas litigation would interfere with the administration of the  
6 bankruptcy estate. Thus, this factor weighs in favor of lifting  
7 the stay.

8 **Factor #3 - Does the foreign proceeding involve the debtor as a**  
9 **fiduciary?**

10 This factor is not applicable.

11 **Factor #4 - Has a specialized tribunal been established to hear**  
12 **the particular cause of action and does that tribunal have the**  
13 **expertise to hear such cases?**

14 There is no special tribunal set up to hear defamation cases.  
15 However, the United States District Court in Texas does have  
16 extensive experience applying Texas tort law as well as specific  
17 experience with this case. Thus, to the extent that this factor is  
18 applicable, it weighs in favor of lifting the stay.

19 **Factor #5 - Has the debtor's insurance carrier assumed full**  
20 **financial responsibility for defending the litigation?**

21 Debtor Prause is covered by insurance, who has assumed full  
22 responsibility to finance her defense of the Texas District Court  
23 action under a reservation of rights. Movant Hilton's  
24 understanding is that if the issues are resolved in Texas, then all  
25 litigation expenses will be borne by Debtor Prause's insurance  
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1 company. Thus, this factor weighs heavily in favor of granting  
2 relief from the automatic stay.

3 Factor #6 - Does the Texas action essentially involve third  
4 parties where the debtor functions only as a bailee or conduit  
5 for the goods or proceeds in question?

6 This factor is not applicable.

7 Factor #7 - Will litigating the Hilton/Prause dispute in Texas  
8 prejudice the interests of other creditors, the creditors'  
9 committee and other interested parties?

10 To the extent that there can be prejudice in a 'no asset'  
11 case, litigating Movant Hilton's claims as part of the Bankruptcy  
12 case would prejudice the other creditors because it would deplete  
13 the assets of the estate.

14 Factor #8 - Will any judgment claim arising from the Texas  
15 litigation be subject to equitable subordination under Section  
16 510(c)?

17 This factor is not applicable.

18 Factor #9 - Will Movant Hilton's success in the Texas litigation  
19 result in a judicial lien avoidable by the debtor under Section  
20 522(f)?

21 This factor is not applicable.

22 Factor #10 - Which forum would best protect the interests of  
23 judicial economy and the expeditious and economical  
24 determination of litigation for the parties?

25 Judicial economy is an important factor to be considered by  
26 bankruptcy courts when deciding lift stay issues. See *Piombo Corp.*  
27

1 v. *Castlerock Prop. (In re Castlerock Prop.)*, 781 F.2d 159, 163  
2 (9th Cir.1986); *Packerland Packing Co. v. Griffith Brokerage Co.*  
3 (*In re Kemble*), 776 F.2d 802, 807 (9th Cir.1985).

4 Courts in the Ninth Circuit have granted relief from the stay  
5 under § 362(d)(1) when necessary to permit pending litigation to be  
6 concluded in another forum. See, e.g., *Christensen v. Tucson*  
7 *Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166  
8 (9th Cir.1990) (stating that "[w]here a bankruptcy court may  
9 abstain from deciding issues in favor of an imminent state court  
10 trial involving the same issues, cause may exist for lifting the  
11 stay as to the state court trial"); *In re Kemble*, 776 F.2d 802, 807  
12 (9th Cir.1985) (affirming an order lifting the stay to permit a  
13 creditor to pursue a conversion and fraudulent conveyance action  
14 pending in the federal district court following a remand of the  
15 case by the appellate court for a retrial on the damages issue);  
16 *Santa Clara County Fair Ass'n v. Sanders (In re Santa Clara County*  
17 *Fair Ass'n)*, 180 B.R. 564, 566 (9th Cir.BAP1995) (affirming an  
18 order lifting the stay to allow prosecution of a pending Title VII  
19 claim against the debtor in the federal district court). Section  
20 362(a)'s legislative history supports this conclusion:

21  
22 [I]t will often be more appropriate to permit proceedings to  
23 continue in their place of origin, when no great prejudice to  
24 the bankruptcy estate would result, in order to leave the  
parties to their chosen forum and to relieve the bankruptcy  
court from many duties that may be handled elsewhere.

25 H.R.Rep. No. 95-595, at 341 (1977); S.Rep. No. 95-989, at 50  
26 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5836.



**Factor #11 - Has the Texas litigation progressed to the point where the parties are prepared for trial?**

Daniel Packard's declaration affirms that as soon as Movant Hilton can take Debtor Prause's deposition, he will be ready to go to trial. All his witnesses are ready to testify and all documents have been exchanged.

**Factor #12 - What is the impact of the stay on the parties and what is the "balance of hurt?"**

The balance of hurt factor is an effort to weigh "which party would stand to suffer more should relief from stay be denied or granted, respectively." *In re Roger*, 539 B.R. 837, 852 (2015). In this case, both parties would suffer more hurt if Movant Hilton's claims were not allowed to proceed in Texas. Certainly, Movant Hilton would suffer. It would add tremendously to his burden and expense if he were required to bring all his witnesses to California to resolve this matter.

**IV.**

**CONCLUSION**

**WHEREFORE**, Movant Hilton prays that for all of the reasons stated, his motion for relief from the automatic stay should be

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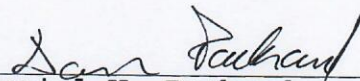
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1  
2 granted, and an order entered accordingly, and for such other and  
3 further relief as this Court may deem just and proper.

4 Respectfully submitted,

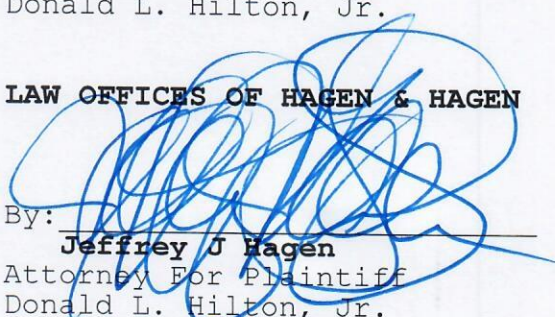
5 Dated: 12/\_\_\_\_/2020

**THE PACKARD LAW FIRM**

6  
7  
8 By:   
Daniel W. Packard  
Attorneys For Plaintiff  
Donald L. Hilton, Jr.

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10  
11 Dated: 12/ 1 /2020

**LAW OFFICES OF HAGEN & HAGEN**

12  
13 By:   
Jeffrey J. Hagen  
Attorney For Plaintiff  
Donald L. Hilton, Jr.

**DECLARATION OF DANIEL W. PACKARD**

I, Daniel W. Packard, state and declare as follows:

1. I am licensed to practice law in Texas and serve as counsel of record for Donald Hilton, M.D. in the defamation action currently pending in the Western District of Texas (SA: 19-CV-00755-OLG; *Donald L. Hilton, Jr. v. Nicole Prause and Liberos LLC*). I am over the age of eighteen years. I have never been convicted of a felony or crime of moral turpitude, and I am fully competent to make this declaration. This declaration is based on my personal knowledge.
2. On or about May 8, 2019, I filed a defamation lawsuit on Dr. Hilton's behalf against Nicole Prause and her company Liberos, LLC through a verified petition. The petition was filed in Bexar County, Texas.
3. On June 26, 2019, Defendant Prause removed the case to federal court in the Western District of Texas. In the notice of removal, Defendant Prause affirmatively established the Court's jurisdiction, which has never been challenged by either party. Dr. Hilton did not dispute Defendant Prause's right to remove to federal court because jurisdiction was proper, and the amount in controversy exceeds the jurisdictional amount.
4. Defendant Prause has never challenged venue in Texas, and she was content to litigate the case in San Antonio, Texas for approximately 18 months until the case was stayed by her recent bankruptcy filing.
5. On July 26, 2019, Defendant Prause filed a Motion to Dismiss under the Texas Anti-SLAPP statute, and I submit that Defendant Prause's filing is an acknowledgement that Texas substantive law applies in this case.

6. After Defendant Prause filed bankruptcy, we filed our complaint in intervention, which mirrored our allegations in the Texas action. We did this to preserve our rights, but we never intended to litigate the substantive claims in the bankruptcy forum.
7. Defendant Prause's defamatory conduct occurred in Texas and many of the third-party witnesses live in Texas. For example, the faculty and staff at the University of Texas Health Science Center who received the defamatory emails are needed to explain what the emails were, how they were understood by the people at UT Health, the investigation that occurred into Dr. Hilton and the impact it has had on Dr. Hilton. Two of these individuals are David F. Jimenez, M.D., Former professor and chairman of the Department of Neurosurgery at University of Texas Health Science Center who works in San Antonio Texas. Another witness is John Floyd, M.D., Chairman of the Department of Neurosurgery at University of Texas Health Science Center who also works in San Antonio. Moreover, Belinda West, Manager of Investigations for the Texas Medical Board, lives in Texas. Dan Lype, Dr. Hilton's attorney who represented him against the false accusations made to the Texas Medical Board also lives and works in Texas. He has information about what these false accusations cost Dr. Hilton and what he had to do to deal with the aftermath caused by Defendant Prause's false accusations. Requiring all these witnesses to travel to California so the defamation issue can be heard would involve considerable expense, and it would disrupt the important work that is occurring at UT Health.
8. I know that Defendant Prause is being defended by her insurance company, which defense is being provided under a reservation of rights. The insurance adjuster assigned to this case participated in a recent mediation, which mediation was conducted by Daniel S. Marley, who was recommended by Defendant Prause's counsel and who lives in Texas. My

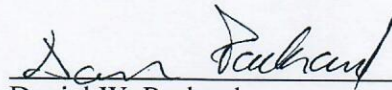
understanding is that the reservation of rights relates to whether Defendant Prause's insurance company will pay any judgment that may be obtained by Dr. Hilton, but the duty to defend has already been established as long as the case continues to be litigated in Texas. However, my understanding is that the duty to defend might not apply if the merits of Dr. Hilton's case were to be decided in the context of a bankruptcy proceeding. I recently raised this issue with defense counsel and expressed my concerns on this point. Counsel for Defendant Prause did not commit one way or the other on that issue, and based on the conversation, my understanding is that it is certainly possible that Defendant Prause will lose her insurance defense if the case is to be litigated in the context of a bankruptcy proceeding. I recognize that Defendant Prause is in the best position to answer the question of whether her insurance company's duty to defend her will be impacted if the merits of Dr. Hilton's defamation action are resolved in California as part of the bankruptcy proceeding, but so far, Defendant Prause has not taken the opportunity to answer the question. I also note that the issue was squarely raised in Alexander Rhodes' Motion to Lift the Stay, but it was completely ignored by Defendant Prause in her opposition papers.

9. Defendant Prause cannot credibly claim that Dr. Hilton's litigation has put her into bankruptcy. Although we have had several hearings with the Court in San Antonio, Defendant Prause has never attended any of the hearings. Defendant Prause attended her mediation by Zoom, and she has thus far avoided her deposition. Thus, she has incurred no travel expenses, and her insurance company has paid all of her defense costs.
10. From Dr. Hilton's perspective, the only procedural step preventing this matter from going to trial in the United States District Court for the Western District of Texas is the taking of Debtor Prause's deposition. After her deposition, Dr. Hilton will be prepared to announce

“ready” for trial. From our perspective, Defendant Prause is the only reason that depositions in this case have not been fully completed. First, Defendant Prause switched lawyers. Although initially, her lawyers were from the same firm, it still took some time for her new lawyer to come up to speed on the case. Several months later, Defendant Prause then fired her law firm, and it took additional time for her to retain new counsel, who then needed more time to become familiar with the case. Then, when we finally agreed to a deposition date, Defendant Prause filed bankruptcy. We submit that these actions demonstrate that Defendant Prause does not want to sit for her deposition. As soon as we obtain permission from the Court, we will take Defendant Prause’s deposition, and we are willing to travel to Los Angeles if necessary. Moreover, if COVID makes travel impossible or unsafe, we are willing to depose her by Zoom.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 1, 2020 in San Antonio, Texas.

  
Daniel W. Packard