

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Case No. 05-18439 (MG)
WILLIAM ROBERT PAWSON, : (Chapter 13)
Debtor . :
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STIPULATION AND ORDER

WHEREAS, on September 22, 2008, the debtor William Robert Pawson (the "Debtor") filed a voluntary petition pursuant to Chapter 13 of the Bankruptcy Code (ECF No. 1); and

WHEREAS, on June 20, 2008, JPMorgan Chase Bank, N.A. f/k/a "JPMorgan Chase Bank" ("Chase"), filed a motion to lift the automatic stay pursuant to Section 362 of the Bankruptcy Code with respect to premises located at 16 West 16th Street, Apt. 8DS, New York, New York (ECF No. 10); and

WHEREAS, on July 14, 2008, the Debtor responded to Chase's lift-stay motion and cross-moved for sanctions pursuant to Section 105 of the Bankruptcy Code and Title 28, United States Code, Section 1927 (ECF No. 13); and

WHEREAS, on July 17, 2008, the Debtor requested that his sanctions motion be withdrawn (ECF No. 14); and

WHEREAS, by order entered on August 7, 2008 (ECF No. 15), the Court scheduled a hearing on the lift-stay motion and the sanctions motion to be held on August 13, 2008; and

WHEREAS, at the August 13, 2008 hearing (ECF No. 21), (a) Chase's counsel described certain practices instituted by Chase in the wake of In re Schuessler, 386 B.R. 458 (Bankr. S.D.N.Y. 2008); (b) a settlement between Chase and the Debtor was read into the record; and (c) the Court directed the United States Trustee for the Southern District of New York (the "United States Trustee") to discuss procedures to be followed by Chase with respect to motions to lift the automatic stay filed in individual cases in the Southern District of New York (the "Lift-Stay Motions"); and

WHEREAS, Chase has produced certain documents concerning its Lift-Stay Motions to the United States Trustee, and counsel for Chase and the United States Trustee have conferred concerning Chase's practices in cases filed in the United States Bankruptcy Court for the Southern District of New York;

IT IS STIPULATED AND AGREED by and between Chase and the United States Trustee as follows:

1. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This is a core proceeding under 28 U.S.C. § 157(b)(2).

2. Venue in the United States Bankruptcy Court for the Southern District of New York is proper.

3. The Court is empowered to approve and enforce the

terms of this order pursuant to 11 U.S.C. § 105(a) and under its inherent authority.

4. By entering into this Stipulation and Order, Chase has not admitted any wrongdoing, and entry of this Stipulation and Order is not an admission of any wrongdoing or violation of law. Nonetheless, Chase stipulates and agrees to entry of this Stipulation and Order to settle and resolve the instant issues in this matter.

5. Chase waives all rights to seek judicial review or otherwise challenge or contest the validity of this Stipulation and Order, and Chase waives any right that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412.

6. The United States Trustee and Chase, by and through counsel, have agreed that entry of this Stipulation and Order resolves only those matters between them arising from the facts and circumstances in this case, up to the date of the entry of this Stipulation and Order, and no other pending or open issues.

7. This Court shall retain exclusive jurisdiction to enforce the terms of this Stipulation and Order, as well as to hear and adjudicate any motions for its enforcement or contempt related thereto.

8. This Stipulation and Order will be binding on Chase, its successors, officers, agents, employees, and others to

the extent provided in Fed. R. Civ. P. 65(d) and Fed. R. Bankr. P. 7065.

Procedures Prior To Filing A Lift-Stay Motion

9. Prior to filing a Lift-Stay Motion against an individual debtor, Chase shall deliver a default notification (the "default notice") setting forth with specificity the alleged post-petition default, along with a copy of the debtor's post-petition loan history showing all post-petition payments received and their application. The default notice shall be provided by U.S. Mail, facsimile or electronic mail to the debtor's attorney, if any, and the pro se debtor. Delivery of the default notice shall be a condition precedent to Chase filing a Lift-Stay Motion.

10. Prior to filing a Lift-Stay Motion, and following the delivery of the default notice set forth in paragraph 9, supra, Chase must make a good faith attempt to contact the debtor's counsel or pro se debtor, via telephone or e-mail, to discuss whether a settlement can be reached resolving the alleged post-petition default. If the parties reach agreement, they may submit a stipulation and proposed order under Fed. R. Bankr. P. 4001. In all communications undertaken pursuant to this paragraph, Chase or its outside counsel must provide the debtor's attorney or pro se debtor with the name and direct telephone number of a Chase representatives for inquiries and future

communications. Chase shall not file its Lift-Stay Motion until the latter of: (a) seven business days after the initial attempt to confer pursuant to this paragraph, if a settlement has not been reduced to writing, or (b) such other period of time as Chase and the debtor's counsel or pro se debtor may agree.

11. All Lift-Stay Motions hereinafter filed by Chase shall include a verified statement from a responsible officer attesting to the following: (a) the debtor's loan history has been audited; (b) any alleged account delinquency has legal and factual support; and (c) each and every allegation contained in the Lift-Stay Motion is accurate, including but not limited to allegations concerning Chase's standing to bring the motion, the delinquency of the account and the lack of equity in the property that is the subject of the Lift-Stay Motion. The responsible officer shall execute a written verification attesting to the review performed in each specific case, a copy of which shall be attached as an exhibit to the Lift-Stay Motion.

Procedures To Be Followed
After The Filing Of A Lift-Stay Motion

12. A "Dispute" shall arise whenever the debtor challenges any allegation in the Lift-Stay Motion that debtor is in arrears in making post-petition payments, whether: (a) by oral or written communication to Chase or its outside counsel; (b) by filing a response or objection to the Lift-Stay Motion; or (c) in the case of a pro se debtor, by appearing at the hearing of the

Lift-Stay Motion and orally disputing the allegation. Whenever a Dispute arises, Chase shall: (a) adjourn the Lift-Stay Motion sine die while the issue is investigated; and (b) notify the United States Trustee in writing within two (2) business days of learning of the Dispute pursuant to the notice provision in paragraph 15, infra. In investigating any Dispute, Chase acknowledges that proof of payment tendered by the debtor may include payment attempted to be made to: (a) a local branch other than the address designated by Chase once the debtor filed a bankruptcy petition; (b) on-line; or (c) any method employed by the debtor pre-petition. Post-petition communication between any debtor and a representative of Chase concerning a payment tendered by the debtor post-petition shall not, standing alone, constitute a violation of the automatic stay under 11 U.S.C. § 362(a).

Procedures Prior To Filing
Proofs of Claim and Plan Objections

13. All proofs of claim ("Proofs Of Claim") hereinafter filed by Chase shall include a verified statement from a responsible officer attesting to the following: (a) Chase has standing to file the Proof of Claim; (b) the debtor's loan history has been audited; (c) any alleged pre-petition arrearage is authorized by the operative loan documents and has factual support; (d) any alleged charges, costs or fees are (i) separately itemized; (ii) authorized by the operative loan

documents; (iii) have a basis in fact; and (iv) are reasonable and necessary.

14. All objections to chapter 13 plans ("Plan Objections") hereinafter filed by Chase shall include a verified statement from a responsible officer attesting to the following: (a) Chase has standing to file the Plan Objection; (b) the debtor's loan history has been audited; (c) the Plan Objection has been reviewed for legal and factual sufficiency; and (d) each and every allegation contained in the Plan Objection has evidentiary support.

Notice and Miscellaneous Provisions

15. Chase shall serve all Lift-Stay Motions, Proofs of Claim, Plan Objections and other notices filed in the Southern District of New York upon the United States Trustee. Unless the United States Trustee advises Chase otherwise, service shall be made as follows: United States Trustee, 33 Whitehall St., 21st Floor, New York, New York 10004, Att: Serene K. Nakano, Esq., (fax) 212-668-2256, (e-mail) serene.nakano@usdoj.gov.

16. Chase shall deliver a copy of this Stipulation and Order to its principals, officers, directors, managers, employees, agents, and representatives having supervisory responsibility with respect to the matters and obligations arising in this Stipulation and Order. For current personnel, delivery shall be within thirty (30) days of service of this

Stipulation and Order upon Chase. For new personnel, delivery shall occur prior to the assumption of their responsibilities.

17. In the event the United States Trustee determines that Chase is in violation of this Stipulation and Order, it shall provide notice of such violation to Chase and provide Chase thirty (30) days to cure or otherwise purge the conduct deemed by the United States Trustee to constitute the violation prior to the filing of any motion to enforce this Stipulation and Order in this Court.

18. This Court shall retain jurisdiction of this Stipulation and Order.

19. This Stipulation is subject to the approval of the Bankruptcy Court.

Dated: Chicago, IL
December __, 2008

BURKE WARREN, MACKAY
& SERRITELLA, P.C.
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Chicago, IL 60611
(312) 840-7007

By: _____
EDWARD J. LESNIAK, ESQ.
Attorneys for JPMorgan Chase
Bank, N.A., f/k/a "JPMorgan
Chase Bank"

Dated: New York, New York
December , 2008

DIANA G. ADAMS
UNITED STATES TRUSTEE

By:

SERENE K. NAKANO
Trial Attorney
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21st Floor
New York, New York 10004
(212) 510-0505

SO ORDERED:

Dated: New York, New York
December , 2008

HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE