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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Lynnell Levingston,

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No. CV-09-08138-PCT-LOA

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Plaintiff,

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ORDER

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vs.

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Patricia Piburn, Victoria Earle, Steve West, David Gregory, Jody Tapia, Carol Haverstick, Erasmo Chavez, Mike Nuttail, Mel Cody, Jerry McLain, Vicki Wilkins, Kenneth Issacson, Thomas "Benny" Garms, Roger Vanderpool, David Denlinger, Raymon Piburn,

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Defendants.

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This case arises upon the Court's review of Defendant Piburn's Notice of Plaintiff's Bankruptcy Filing. (docket # 71) First reviewed on December 2, 2009, this Notice informs the Court and the parties of Plaintiff's recent bankruptcy filing.

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The Court has independently confirmed that Plaintiff Lynnell Levingston has filed for bankruptcy protection on November 10, 2009 in the United States Bankruptcy Court for the District of Arizona in case No. BK-09-29095-PHX-RTB.

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By virtue of the automatic stay imposed pursuant to 11 U.S.C. § 362(a)(1) with the filing of Plaintiff's Chapter 7 Bankruptcy Petition, all pending matters against Defendants are, and will remain stayed, until further order of the Court. 11 U.S.C. § 362(a)(1); *O'Donnell v. Vencor Inc.*, 466 F.3d. 1104 (9th Cir. 2006).

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1 Plaintiff's bankruptcy docket, No. BK-09-29095-PHX-RTB, reflects Mr.
2 Lawrence J. Warfield, P.O. Box 14647, Scottsdale, Az 85267 was appointed as the
3 Bankruptcy Trustee for Plaintiff's bankruptcy estate. A bankruptcy trustee is vested with the
4 exclusive right to sue on behalf of a bankruptcy estate. Title 11 U.S.C. § 323; *Estate of*
5 *Spirtos v. One San Bernardino County Superior Court Case Numbered SPR 02211*, 443 F.3d
6 1172, 1176 (9th Cir. 2006) (“[T]he bankruptcy code endows the bankruptcy trustee with the
7 exclusive right to sue on behalf of the estate.”). The Ninth Circuit makes clear that although
8 “the trustee may authorize others to bring suit, . . . the right to bring suit - or choose not to
9 do so - belongs to the trustee in the first instance.” *Id.* at 1175(citing with approval, among
10 others, *Parker v. Wendy's Int'l, Inc.*, 365 F.3d 1268, 1272 (11th Cir. 2004) (“[A] trustee, as
11 the representative of the bankruptcy estate, is the proper party in interest, and is the only
12 party with standing to prosecute causes of action belonging to the estate.”)).

13 In *O'Donnell*, plaintiff's federal civil action was placed on inactive status to
14 give her sufficient time to move to lift a bankruptcy stay, to reduce her Title VII claims
15 against defendant to judgment in the bankruptcy court, or to otherwise demonstrate a
16 reasonable basis to continue her District Court civil case on inactive status. 466 F.3d. at
17 1107-08. O'Donnell was warned that failure to comply with the court's order would result
18 in dismissal of her complaint for failure to prosecute under Federal Rule of Civil Procedure
19 41(b). Eleven days after the expiration of the deadline, O'Donnell filed an untimely motion,
20 seeking a continuance of her case on inactive status and requesting an informal status
21 conference. After a status conference hearing was set, O'Donnell failed to appear at the
22 hearing. O'Donnell's complaint was dismissed without prejudice under Rule 41(b). She did
23 not appeal that dismissal. *Id.* at 1108. “Although [t]he general rule is that actions taken in
24 violation of an automatic stay are void, the dismissal for failure to prosecute was not void
25 because it did not constitute a continuation of a judicial proceeding against the debtor under
26 11 U.S.C. § 362(a)(1).” *Id.* (internal quotation marks and citations omitted). Dismissal of
27 O'Donnell's complaint was affirmed.

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1 Plaintiff is similarly advised that her lawsuit against Defendants will be
2 dismissed on or shortly after March 5, 2010 (90 days) pursuant to Rule 41(b), FED.R.CIV.P.,
3 (dismissal for lack of prosecution) unless prior to the scheduled dismissal date, Plaintiff,
4 with express written authorization from the Bankruptcy Trustee, or the Trustee demonstrates
5 that the bankruptcy stay has been lifted; Plaintiff or the Trustee has sought to reduce
6 Plaintiff's claims against Defendants to judgment in the Bankruptcy Court in an adversary
7 proceeding which has not yet been adjudicated despite Plaintiff's or the Trustee's due
8 diligence to do so; or Plaintiff or the Trustee timely demonstrates to the undersigned a
9 reasonable basis for continuance of this lawsuit on inactive status. Any party herein may
10 request the Court to schedule an informal status conference before the 90-day period expires
11 to inform the Court what action, if any, has been undertaken in the Bankruptcy Court that
12 would permit this lawsuit to proceed.

13 On the Court's own motion,

14 **IT IS ORDERED** staying this lawsuit in its entirety and placing it on inactive
15 status until **March 5, 2010** (90 days) for dismissal without prejudice.

16 **IT IS FURTHER ORDERED** directing the Clerk to mail a copy of this Order
17 to Mr. Lawrence J. Warfield, P.O. Box 14647, Scottsdale, Az 85267.

18 Dated this 3rd day of December, 2009.

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21 Lawrence O. Anderson
22 United States Magistrate Judge
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