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7  
 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 OAKLAND DIVISION

11 GREGORY W. ABBETT,

12 Plaintiff,

13 v.

14 ABBETT ELECTRIC CORPORATION

15 Defendant.

No.: CV 10-02076 SBA

San Francisco Superior Court Case No.: CGC-10-498763

ABBETT ELECTRIC CORPORATION'S  
 NOTICE OF MOTION AND MOTION TO  
 TRANSFER VENUE TO UNITED STATES  
 DISTRICT COURT OF THE EASTERN  
 DISTRICT OF CALIFORNIA FOR  
 REFERENCE TO UNITED STATES  
 BANKRUPTCY COURT OF THE EASTERN  
 DISTRICT OF CALIFORNIA,  
 SACRAMENTO DIVISION

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DATE: July 27, 2010  
 TIME: 1:00 p.m.  
 COURTROOM: 1

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1 PLEASE TAKE NOTICE that on July 27, 2010, at 1:00 p.m., or as soon  
2 thereafter that counsel may be heard before Sandra B. Armstrong, United States District Court  
3 Judge, in Courtroom No. 1 of the United States District Court, 1301 Clay Street, 4th Floor,  
4 Oakland, California, 94612, a hearing will be held on Abbett Electric Corporation's Motion to  
5 Transfer Venue to United States District Court of the Eastern District of California for Reference  
6 to United States Bankruptcy Court of the Eastern District of California, Sacramento Division.

7 PLEASE TAKE FURTHER NOTICE that, pursuant to the provisions of Civil  
8 Rule 7-3(a), opposition, if any, to the granting of the Motion shall be served and filed with the  
9 Court not less than twenty-one (21) days before the aforesaid hearing date.

10 **MOTION**

11 COMES NOW, ABBETT ELECTRIC CORPORATION, a California corporation  
12 (hereinafter "AEC" or "Defendant"), hereby moves this Court to make and enter an Order  
13 transferring venue of the above-captioned removed action (the "Removed Action") to the United  
14 States District Court for the Eastern District of California, (the "Eastern District"), for referral to  
15 the United States Bankruptcy Court for the Eastern District of California, Sacramento Division,  
16 (the "Bankruptcy Court"), which is currently presiding over the above-captioned Plaintiff's  
17 Chapter 11 bankruptcy case.

18 **PRELIMINARY STATEMENT**

19 The venue of the Removed Action should be transferred to the Eastern District for  
20 referral to the Bankruptcy Court currently presiding over the above-captioned Plaintiff's Chapter  
21 11 bankruptcy proceeding because it will serve the interests of justice, judicial efficiency, and is  
22 convenient for the parties. The Removed Action involves core proceedings subject to  
23 Bankruptcy Court jurisdiction, is paramount to Debtor's reorganization prospects and is  
24 inextricably entangled with AEC's claims against the estate. Accordingly, it is in the interest of  
25 justice that the matters be resolved globally in the context of Debtor's reorganization. Upon  
26

1 transfer of the Removed Action to the Eastern District, it will be automatically referred to the  
2 Bankruptcy Court.

3 **STATEMENT OF FACTS**

4 On April 27, 2009, Gregory W. Abbett, (the “Debtor” or “Plaintiff”), filed a  
5 voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States  
6 Bankruptcy Court, Eastern District of California, and an Order for Relief was entered on that  
7 date, (the “Bankruptcy Case”). (Request for Judicial Notice (“RJN”) No. 1, Ex. A.) The Debtor  
8 remains in possession of his assets and continues to operate as a debtor-in-possession, pursuant  
9 to 11 U.S.C. §§ 1101(1), 1107 and 1108.

10 On April 26, 2009, AEC filed a secured claim in the Bankruptcy Case in the  
11 amount of \$298,670.04 based on a Stipulated Judgment against the Debtor from the judgment  
12 creditors which is secured by AEC shares. (RJN No. 2, Ex. B.) In addition, on April 26, 2009,  
13 AEC filed an unsecured claim in the Bankruptcy Case in the amount of \$6,925,897.54, based on:  
14 1) a claim against the Debtor for Breach of Fiduciary Duty, Egregious Misconduct of a Director  
15 While Acting as a Director of Abbett Electric, Interference with Contract: Tahoe Property Sale;  
16 2) a claim against the Debtor for Breach of Fiduciary Duty, Egregious Misconduct of a Director  
17 While Acting as a Director of Abbett Electric, Interference with Contract: Tahoe Property  
18 Rental, in the amount of approximately \$840,000.00; and 3) a claim against the Debtor for  
19 Breach of Fiduciary Duty, Egregious Misconduct of a Director While Acting as a Director of  
20 Abbett Electric, and Interference with Contract: Mitchell Engineering Obayashi Corporation.  
(RJN No. 3, Ex. C.)

21 The Debtor purports to own a 50% interest in AEC. (Docket No. 1, Ex. A. ¶ 3,  
22 filed May 14, 2010.) On April 16, 2010, the Debtor filed a Complaint for Involuntary  
23 Dissolution of Corporation; Misappropriation; and Conversion, (the “Complaint”), in the  
24 Superior Court of the State of California, County of San Francisco, Case No. CGC-10-498763,  
25 *Abbett v. Abbett Electric Corporation, et al.* (RJN No. 4, Ex. D.) The Complaint seeks an  
26

1 Involuntary Dissolution of AEC, and causes of action against Jeffrey Abbett (Debtor's brother  
2 and majority shareholder of AEC) for misappropriation and conversion. (*Id.*) The Complaint  
3 seeks to dissolve AEC so that the Debtor may liquidate AEC assets for use in his Chapter 11  
4 reorganization. (RJN No. 5, Ex. E., p. 8.) The ownership interest that the Debtor maintains in  
5 AEC, if any, is "property of the [bankruptcy] estate" pursuant to section 541 of the Bankruptcy  
6 Code. 11 U.S.C. § 541 (defining "Property of the estate").

7 On May 14, 2010, the State Court Action was timely removed to this Court,  
8 pursuant to Federal Rules of Bankruptcy Procedure Rule 9027, (Fed. R. Bankr. P. 9027), and  
9 sections 157(a), (b)(1), (b)(2), 1334, and 1452 of title 28, (28 U.S.C. §§ 157(a), (b)(1), (b)(2),  
10 1334, and 1452). (Docket No. 1, filed May 14, 2010.) Section 1452 of title 28 provides that:

11 A party may remove any claim or cause of action in a civil action other than a  
12 proceeding before the United States Tax Court or a civil action by a governmental  
13 unit to enforce such governmental unit's police or regulatory power, to the district  
14 court for the district where such civil action is pending, if such district court has  
15 jurisdiction of such claim or cause of action under section 1334 of this title.

16 29 U.S.C. § 1452. The Cause of Action is not a proceeding before the United States Tax Court  
17 or a civil action by a governmental unit. This Court has jurisdiction of the Cause of Action under  
18 section 1334 of title 28 because the Cause of Action is a "civil proceeding[] . . . arising in or  
19 related to" a case under title 11. *See* 28 U.S.C. § 1334(b).

### 20 MOTION

21 Section 1412 of title 28, ("Change of Venue"), provides that "[a] district court  
22 may transfer a case or proceeding under title 11 to a district court for another district, in the  
23 interest of justice or for the convenience of the parties." 28 U.S.C. § 1412. "Because the criteria  
24 under § 1412 is phrased in the disjunctive, the bankruptcy case or proceeding is transferable  
25 upon a sufficient showing of either the interest of justice or for the convenience of the parties."  
26 *In re Harnischfeger Indus., Inc. (Irwin v. Beloit Corp.)*, 246 B.R. 421, 435 (Bankr. N. D. Ala.  
2000). Section 1404 of title 28 ("Change of Venue"), provides: "[f]or the convenience of parties  
and witnesses, in the interest of justice, a district court may transfer any civil action to any other

1 district where it might have been brought.”<sup>1</sup> 28 U.S.C. § 1404(a). “Jurisdiction is granted to the  
2 district courts by 28 U.S.C. § 1334(b) over civil proceedings arising under title 11, or arising in  
3 or related to cases under title 11. The appropriate venue for these proceedings is determined by  
4 28 U.S.C. § 1409. Section 1412 deals with motions for change of venue in such  
5 proceedings . . . .” 1-4 COLLIER ON BANKRUPTCY 4.05[3][b] (15th Ed. Rev. 2009); *see also*  
6 *Harnischfeger*, 246 B.R. at 434-435 (holding that “most courts look to 28 U.S.C. § 1412 for  
7 authority to determine the outcome of a motion to transfer venue of a cause of action removed to  
8 the bankruptcy court” (*citations omitted*.) However, “the factors courts apply in determining  
9 whether to transfer venue are the same under either section 1404(a) or 1412.” *In re JCC Capital*  
10 *Corp. (Couri v. Fisher)*, 147 B.R. 349, 356 (Bankr. S.D.N.Y. 1992). “The party that seeks to  
11 transfer venue bears the burden of showing by a preponderance of the evidence that transfer  
12 would be appropriate.” *In re TIG Ins. Co. v. Smolker (In re Tig Ins. Co.)*, 264 B.R. 661, 668  
13 (Bankr. C. D. Cal. 2001) (*citations omitted*).

14 **I. IT IS IN THE INTEREST OF JUSTICE TO TRANSFER THE REMOVED**  
15 **PROCEEDING**

16 “The ‘interest of justice’ component of § 1412 is a broad flexible standard which  
17 must be applied on a case-by-case basis.” *In re Manville Forest Prods. Corp. (Gulf States*  
18 *Exploration Co.)*, 896 F.2d 1384, 1391 (2nd Cir. 1990). Courts use different factors to determine  
19 whether it is in the “interest of justice” to grant a change of venue request. In *Manville Forest*,  
20 the court found that it required “consideration of whether transferring venue would promote the

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21 <sup>1</sup> “There is no requirement in section 1412 that the transfer be to a district in which the case  
22 could have been brought, as there is in 28 U.S.C. § 1406. The major distinctions between the two  
23 sections lead one to conclude, therefore, that precedents under section 1406(a) may not be  
24 relevant in interpreting section 1412.” 1-4 COLLIER ON BANKRUPTCY 4.05[4][b]. Nonetheless,  
25 section 1409 of title 28, (“Venue of proceedings arising under title 11 or arising in or related to  
26 a case under title 11”), provides that “a proceeding arising under title 11 or arising in or related to  
a case under title 11 may be commenced in the district court in which such case is pending.” 28  
USC § 1409. Accordingly, the Removed Action could have been filed as an adversary  
proceeding before the Bankruptcy Court pursuant to 28 U.S.C. §§ 157, 1334(b), 1409(a), and  
Federal Rules of Bankruptcy Procedure Rule 7001 *et seq.* Fed. R. Bankr. P. 7001 *et seq.*

1 efficient administration of the bankruptcy estate, judicial economy, timeliness, and fairness . . . .”  
2 *Id.* at 1391. The Bankruptcy Court for the District of Delaware found that the consideration of  
3 “judicial economy” and “expediency” were crucial, and considered the following factors: “the  
4 availability of subpoena power for the unwilling witnesses,” “the expense related to obtaining  
5 witnesses,” “the enforceability of any judgment rendered,” “the ability to receive a fair trial,”  
6 “the state's interest in having local controversies decided within its borders, by those familiar  
7 with its law,” and “the economics of estate administration.” *In re Continental Airlines, Inc.*  
8 (*Continental Airlines, Inc. v. Chrysler*), 133 B.R. 585, 587-588 (Bankr. D. Del. 1991) (*citations*  
9 *omitted*). The Bankruptcy Court for the Central District of California stated that:

10 [u]nder the heading of the interests of justice, courts have considered, in addition  
11 to the location of the pending bankruptcy: whether the transfer would promote the  
12 economic and efficient administration of the bankruptcy estate; whether the  
13 interests of judicial economy would be served by the transfer; whether the parties  
14 would be able to receive a fair trial in each of the possible venues; whether either  
15 forum has an interest in having the controversy decided within its borders; whether  
16 the enforceability of any judgment obtained would be affected by the transfer; and  
17 whether the plaintiff's original choice of forum should be disturbed.

18 *TIG Ins.*, 264 B.R. 661, 668 (Bankr. C.D. Cal. 2001).

19 **A. The Debtor's Bankruptcy Case is Pending in the Eastern District of**  
20 **California**

21 “As a general rule, venue is proper in the primary district for any civil litigation  
22 brought by or against the debtor or the estate, i.e., the bankruptcy court where the case is  
23 pending.” *Continental Airlines*, 133 B.R. at 587 (*citing* 28 U.S.C. § 1409(a)); *see also Manville*,  
24 896 F.2d at 1391 (“the district in which the underlying bankruptcy case is pending is presumed to  
25 be the appropriate district for hearing and determination of a proceeding in bankruptcy”  
26 (*citations omitted*)); *see also TIG Ins.*, 264 B.R. at 688 (considering “the location of the pending  
bankruptcy”).

The general rule is that the court where the bankruptcy case is pending is the proper venue for all related proceedings within the court's jurisdiction, because speedy and economic administration of cases is a paramount consideration in the

1 bankruptcy process . . . Accordingly, there is a strong presumption in favor of  
2 placing venue in the district where the bankruptcy case is pending.

3 *In re Vital Link Lodi, Inc. (Aliant Health Mgmt. Servs., Inc. v. Vital Link Private Duty Lodi, Inc.)*,  
4 240 B.R. 15, 19 (Bankr. W.D. Mo. 1999) (*citations omitted*); *see also Consol. Lewis Inv. Corp. v.*  
5 *First Nat'l Bank of Jefferson Parish*, 74 B.R. 648, 651 (E.D. La. 1987) (“the interest of justice’  
6 is best served by allowing the [bankruptcy court] . . . the opportunity to review all lawsuits with a  
7 nexus to [the] bankruptcy”).

8 In this case, the Debtor’s bankruptcy case is pending in the United States  
9 Bankruptcy Court for the Eastern District of California, Sacramento Division; according to the  
10 Debtor’s Petition, he resides at 110 Hollyann Drive, Folsom, California, (RJN 1, Ex. A), which is  
11 located in the Eastern District of California. Accordingly, the Eastern District is presumed to be  
12 the proper forum for the Removed Action. *See Continental Airlines*, 133 B.R. at 587 (*citing* 28  
13 U.S.C. § 1409(a)); *see also Manville*, 896 F.2d at 1391.

14 **B. The Transfer Would Promote the Economic and Efficient Administration  
15 of the Bankruptcy Estate**

16 “Some courts have held that the most important factor to be considered in  
17 determining whether to transfer venue of a bankruptcy proceeding under the interest of justice  
18 prong is whether transfer would promote the economic and efficient administration of the  
19 bankruptcy estate.” *In re Harnischfeger*, 246 B.R. at 435. In this case, resolution of the claims  
20 asserted in the Removed Action are core proceedings under section 157(b)(2) of title 28,  
21 including, but not limited to: “matters concerning the administration of the estate,” “allowance or  
22 disallowance of claims against the estate,” “estimation of claims or interests for the purposes of  
23 confirming a plan under Chapter 11,” “counter claims by the estate against persons filing claims  
24 against the estate,” and “other proceedings affecting the liquidation of the assets of the  
25 estate . . . .” 28 U.S.C. §§ 157(b)(2)( A), (B), (C), and (O). Moreover, Debtor’s interest in AEC,  
26 if any, and the value of Debtor’s interest in AEC, if any, have a clear and direct impact on the  
property of the estate, claims against the estate, and the Bankruptcy Case, generally. *See* 11

1 U.S.C. § 541.

2 **1. The Removed Action is Paramount to Debtor's Reorganization**  
3 **Prospects**

4 Debtor's Schedules state that the value of Debtor's purported AEC interest  
5 represents over 91% of Debtor's total assets. (RJN No.6, Ex. F (total assets = \$10,951,456.90;  
6 purported value of AEC interest = \$10,000,000.00).) On August 25, 2009, Debtor filed  
7 Disclosure Statement in Support of Debtor's Plan of Reorganization dated August 25, 2009, (the  
8 "Disclosure Statement"), and Plan of Reorganization, dated August 25, 2009, (the "Plan"). (RJN  
9 Nos. 5, 7.) The Disclosure Statement, under the heading "Means of Implementing the Plan,"  
10 stated "[p]roceeds for the implementation of the Plan will be derived primarily from liquidation  
11 of [AEC] or sale of Debtor's shares in such entity . . . ." (RJN No. 7, Ex. G, p. 8.)<sup>2</sup> As such,  
12 Debtor's entire Plan is based on the liquidation of AEC to fund Debtor's plan of reorganization.

13 The Bankruptcy Court is already knowledgeable about the Debtor and the  
14 Debtor's assets. The Bankruptcy Court has reviewed the Debtor's Schedules, Disclosure  
15 Statement and Plan of Reorganization. By contrast, the Superior Court of the State of California,  
16 and the U.S. District Court for the Northern District of California, Oakland, have not held any  
17 hearings and have not invested a substantial amount of time, if any, reviewing the issues. Where  
18 one forum has already invested time and effort to become familiar with the issues, it is more  
19 economic and efficient to transfer overlapping matters to the informed court. *See e.g. In re*  
20 *Manville*, 896 F.2d at 1391 ("the bankruptcy court had developed a substantial 'learning curve'  
21 and [] transferring venue [from the Southern District of New York Bankruptcy Court to the U.S.  
22 District Court for the Western District of Louisiana] would have delayed the final resolution of  
23 the bankruptcy case." The Court properly held that "it would have been inappropriate to shift the  
24 burden of adjudicating the [] proceeding to another court").

25 <sup>2</sup> On October 23, 2009, the Bankruptcy Court entered an Order Denying Approval of Debtor's  
26 Disclosure Statement. (RJN No. 8, Ex. H.) However, given the fact that the Debtor is  
unemployed, there appears to be no other source of funding for a plan of reorganization.

1           Moreover, the Bankruptcy Court clearly has the experience and expertise  
2 necessary to value and liquidate business interests by the very nature of its role and function. *See*  
3 *e.g.* 11 U.S.C. § 701 *et seq.* (“Liquidation,” providing for the orderly liquidation of business  
4 debtors); *see also* 11 U.S.C. § 506 and Fed. R. Bankr. P. 3012 (providing a process for the  
5 Bankruptcy Court to determine secured status); *see also* Fed. R. Bankr. P. 7001 (adversary  
6 proceeding process is available to “recover money or property,” “determine the validity, priority,  
7 or extent of a lien or other interest in property,” “a proceeding to obtain approval under § 363(h)  
8 for the sale of both the interest of the estate and of a co-owner in property”); *see also* 11 U.S.C. §  
9 1129(a)(11) (bankruptcy courts must analyze a liquidation analysis). Undoubtedly, the Removed  
10 Action—which essentially seeks to liquidate property of the estate—unmistakably falls within  
11 the purview of the Bankruptcy Court.

12           Clearly, since the funding and ultimate success of Debtor’s plan of reorganization  
13 is entirely dependent on the Removed Action, the Bankruptcy Court is already knowledgeable  
14 about the Debtor and the Debtor’s assets, and since the Bankruptcy Court has expertise in the  
15 type of action, it is in the interest of justice to seat both the bankruptcy and the Removed Action  
16 before the same court. To find otherwise would not “promote the economic and efficient  
17 administration of the bankruptcy estate.” *See TIG Ins.*, 264 B.R. at 668; *see also Continental*  
18 *Airlines*, 133 B.R. at 587-588 (considering “the economics of estate administration”).

19           **2. The Removed Action is Inextricably Entangled with AEC’s Claims  
20 Against the Estate Which Will be Litigated in the Bankruptcy Court**

21           On April 26, 2009, AEC filed a secured claim in the Bankruptcy Case in the  
22 amount of \$298,670.04 based on a Stipulated Judgment against the Debtor from the judgment  
23 creditors which is secured by AEC shares. (RJN No. 2, Ex. B.) In addition, on April 26, 2009,  
24 AEC filed an unsecured claim in the Bankruptcy Case in the amount of \$6,925,897.54, based on:  
25 1) a claim against the Debtor for Breach of Fiduciary Duty, Egregious Misconduct of a Director  
26 While Acting as a Director of Abbett Electric, Interference with Contract: Tahoe Property Sale;

1 2) a claim against the Debtor for Breach of Fiduciary Duty, Egregious Misconduct of a Director  
2 While Acting as a Director of Abbett Electric, Interference with Contract: Tahoe Property  
3 Rental, in the amount of approximately \$840,000.00; and 3) a claim against the Debtor for  
4 Breach of Fiduciary Duty, Egregious Misconduct of a Director While Acting as a Director of  
5 Abbett Electric, and Interference with Contract: Mitchell Engineering Obayashi Corporation.  
6 (RJN No. 3 Ex. C.)

7 AEC's claims amount to over \$8 million and directly impact the causes of action  
8 named in the Removed Action. Furthermore, because AEC holds a claim secured by the Debtor's  
9 AEC shares, the Debtor cannot liquidate AEC without first seeking, and obtaining, Bankruptcy  
10 Court permission pursuant to section 363(c)(2). 11 U.S.C. § 363(c)(2) (the debtor "may not use,  
11 sell, or lease cash collateral . . . unless each entity that has an interest in such cash collateral  
12 consents; or [] the court, after notice and a hearing, authorizes such use, sale . . . in accordance  
13 with the provisions of this section").<sup>3</sup> In addition, because the Debtor's AEC shares are property  
14 of the estate (*see* 11 U.S.C. § 541), the Debtor may not sell (liquidate) the shares<sup>4</sup> without a  
15 notice and a hearing. 11 U.S.C. § 363(b)(1).

16 Accordingly, it would not be economic or efficient to litigate the related matters in  
17 two separate courts. *See TIG Ins.*, 264 B.R. at 668 (considering "whether the interests of judicial  
18 economy would be served by the transfer"). Because adjudication of AEC's claims are a  
19 fundamental aspect of the Bankruptcy Case, and the Bankruptcy Court already has familiarity  
20 with the issues and parties, it is in the interest of justice to transfer the removed action to the  
21 Eastern District for automatic referral to the Bankruptcy Court.

22  
23  
24 <sup>3</sup> Section 363(a) of title 11 defines "cash collateral" as "cash, negotiable instruments, documents  
25 of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the  
26 estate and an entity other than the estate have an interest and *includes the proceeds*, the products,  
offspring, rents, or profits of property . . . ." 11 U.S.C. § 363(a) (*emphasis added*).

<sup>4</sup> Selling the property would not be within the "ordinary course of business." *See* 11 U.S.C. §  
363(b)(1).

1                   **C.     The Balance of the Factors Weighs in Favor of Transfer**

2                   The balance of the factors weighs in favor of transfer. To begin with, both this  
3 Court and the Bankruptcy Court are in the same state; therefore there will not be any  
4 enforceability problems once a judgment is rendered. *Continental Airlines*, 133 B.R. at 587-588;  
5 *see also TIG Ins.*, 264 B.R. at 688 (considering “whether the enforceability of any judgment  
6 obtained would be affected by the transfer”). There is no perceived inability to receive a fair trial  
7 in the Bankruptcy Court, (*Continental Airlines*, 133 B.R. at 587-588; *see also TIG Ins.*, 264 B.R.  
8 at 668 (considering “whether the parties would be able to receive a fair trial in each of the  
9 possible venues”)); the Debtor chose the Bankruptcy Court to adjudicate claims against the  
10 estate, and, as discussed *supra*, the Removed Action is substantially related to the Bankruptcy  
11 Case. Finally, because both forums are in California, there is no concern that one court would be  
12 unfamiliar with California law. *See Continental Airlines*, 133 B.R. at 585 (“the state’s interest in  
13 having local controversies decided within its borders, by those familiar with its law”).

14                   Clearly, in this case, because resolution of the Removed Action is paramount to  
15 Debtor’s reorganization prospects and the Removed Action is inextricably entangled with AEC’s  
16 claims against the estate, it is in the interest of justice that the matters be resolved globally in the  
17 context of Debtor’s reorganization. *See* 28 U.S.C. §§ 1412, 1404. Upon transfer of the Removed  
18 Action to the Eastern District, the matter will automatically be referred to the Bankruptcy Court.<sup>5</sup>

19                   **II.     IT IS CONVENIENT FOR THE PARTIES TO TRANSFER THE REMOVED  
20 PROCEEDING**

21                   The Bankruptcy Court for the Central District of California has found that  
22 “[u]nder the heading of the convenience of the parties, courts have considered the location of the

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23 <sup>5</sup> The matter should be automatically referred to the Bankruptcy Court pursuant to the Eastern  
24 District’s General Order No. 161, July 10, 1984, (“Pursuant to 28 U.S.C. § 157(a), all cases  
25 under Title 11, United States Code, and all proceedings arising under Title 11 or arising in or  
26 related to a case under Title 11 are referred to the bankruptcy judges of this district”). E. D. Cal.  
Gen. Or. 161 (July 10, 1984); (*see also* E. D. Cal. Gen. Or. 182 (May 14, 1985); E. D. Cal. Gen.  
Or. 223 (Oct. 22, 1987).)

1 plaintiff and the defendant, the ease of access to the necessary proof, the convenience of the  
2 witnesses and the parties and their relative physical and financial condition, the availability of  
3 the subpoena power for unwilling witnesses, and the expense related to obtaining witnesses.” *In*  
4 *re TIG Ins.*, 261 B.R. at 668; *see also Continental Airlines*, 133 B.R. at 587-588 (providing  
5 similar factors).

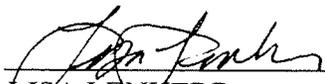
6 In this case, the choice is between Oakland and Sacramento. Presumably,  
7 Sacramento is the most convenient venue for Debtor because the Debtor resides in the Eastern  
8 District and selected Sacramento for adjudication of his Chapter 11 bankruptcy case. Although  
9 AEC’s headquarters are located in San Francisco, AEC strongly believes that it would be more  
10 convenient to litigate the Removed Action part and parcel with the Debtor’s Bankruptcy Case  
11 and the AEC claims that have been filed in the Bankruptcy Case. Moreover, as the Debtor’s most  
12 recent monthly operating report indicates, the Debtor cannot afford to travel between Sacramento  
13 and Oakland on a regular basis, (RJN No. 9, Ex. I), where AEC is financially able to do so.  
14 Finally, AEC does not believe that access to proof and unwilling witnesses are relevant factors as  
15 related to the Removed Action. Therefore, it is no less convenient for the parties to litigate the  
16 Removed Action before the Bankruptcy Court in Sacramento than before the District Court in  
17 Oakland.

### 18 CONCLUSION

19 For all the foregoing reasons, AEC respectfully requests that this Court make and  
20 enter and Order transferring venue of the Removed Action to the Eastern District for referral to  
21 the Bankruptcy Court, and for such other and further relief as this Court deems proper.

22 Dated: June 2, 2010

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23  
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