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13 Special Counsel for Appellee and  
 14 Cross-Appellant David Flemmer,  
 15 Chapter 11 Trustee

16 UNITED STATES DISTRICT COURT  
 17 EASTERN DISTRICT OF CALIFORNIA

18 In Re CWS Enterprises, Inc., a California  
 19 Corporation,

20 Debtor,

21 Spiller McProud,

22 Appellant,

23 v.

24 CWS Enterprises, Inc., a California  
 25 Corporation, David D. Flemmer, Chapter 11  
 26 Trustee, and Charles W. Siller,

27 Appellees.

28 And consolidated appeals and cross-appeals

Case No.: CIV S-12-0142 KJM

Bankr. Court Case No. 09-26849-C-11

Adv. Proc. Case No. 10-02226-C

**STIPULATION AND ORDER FOR STAY  
 PENDING APPEAL**

1 **RECITALS**

2 1. This Court entered an order on September 17, 2014, and a judgment on September  
3 30, 2014 (the "Order and Judgment"), in the above-referenced appeal from the bankruptcy court  
4 (the "Bankruptcy Case"). CWS Enterprises, Inc. ("CWS") has commenced an appeal of the Order  
5 and Judgment to the Ninth Circuit Court of Appeals.

6 2. Under the Third Amended Plan of Reorganization (the "Plan") confirmed in the  
7 Bankruptcy Case, claimant Spiller McProud ("Spiller") maintains deeds of trust on multiple  
8 properties owned by CWS to secure any payment owing to Spiller following resolution of appeals  
9 relating to its claim (the "Deeds of Trust"). The Plan further provides:

10 In the event the Class 2.6.b Claimant [Spiller] prevails on its appeal or appeals  
11 or the final allowed claim is established by compromise, and the final allowed  
12 amount of its claim is determined to be in excess of the amount of the Interim  
13 Payment, the excess amount shall bear interest at 4.0% per annum from the  
14 Petition Date until paid in full. Trustee/Plan Administrator shall use his best  
15 efforts to pay in full the excess amount plus interest within 6 months following  
16 entry of the order finally determining the Class 2.6.b Allowed Claim.

17 3. CWS and Charles Siller subsequently filed a motion for stay pending appeal,  
18 without the posting of a supersedeas bond, of the Order and Judgment. They argued in the motion  
19 that the Deeds of Trust were adequate security in lieu of a bond. Spiller opposed the motions,  
20 expressing its preference for a more liquid form of security.

21 4. The parties have agreed to compromise the dispute as set forth below.

22 **STIPULATION**

23 The Order and Judgment shall be stayed pending appeal, without the posting of a  
24 supersedeas bond, on the conditions set forth below:

25 1. In the event the final resolution of the appeal (and any remand) involves further  
26 payment to Spiller on its claim in the Bankruptcy Case, the interest on such payment shall  
27 increase, effective September 17, 2014, from 4% (as provided in the Plan) to 7% per annum.

28 2. CWS shall maintain \$3 million as security for payment of any sums due to Spiller  
in either of the following forms (or in combination, provided that the total amount of such security  
shall be \$3 million): (a) available borrowing under its existing line of credit, the limit of which is

1 being increased from \$2.5 million to more than \$3 million), and/or (b) cash in a blocked account.  
2 As an example, if CWS deposits \$500,000 in a blocked account, its obligation to maintain  
3 available borrowing under its line of credit shall be reduced to \$2.5 million. Spiller will cooperate  
4 with CWS in establishing any such blocked account. If such an account is opened, CWS will  
5 provide account statements on a quarterly basis to Spiller.

6 3. At such time as CWS confirms to Spiller that it has \$3 million in security through  
7 either or both of the forms described above, Spiller will reconvey the Deeds of Trust to CWS. In  
8 the event any of the properties encumbered by the Deeds of Trust are required as security by  
9 CWS's lender for the increased line of credit, Spiller will cooperate with CWS to facilitate the  
10 transfer of such security. CWS shall establish such \$3 million in security by January 30, 2015.

11 4. CWS shall provide quarterly financial statements to Spiller.

12 5. Upon final entry of any order, following all appeals, that CWS must make  
13 additional payment on Spiller's claim in the Bankruptcy Case, such payment shall be made within  
14 30 days of such order.

15  
16 Dated: December 19, 2014

BENBROOK LAW GROUP, PC

17  
18 By /s/ Bradley A. Benbrook  
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Attorney for David Flemmer, Trustee

21 Dated: December 19, 2014

DAHL LAW

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**ORDER**

1. The Order and Judgment shall be stayed pending appeal, without the posting of a supersedeas bond, on the conditions set forth in the Stipulation above.

2. The motions for stay filed by CWS and Charles Spiller shall be taken off calendar.

DATED: December 19, 2014.

  
UNITED STATES DISTRICT JUDGE