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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

In re INTERNATIONAL
MANUFACTURING GROUP, INC.,

Debtor.

BEVERLY N. McFARLAND, Chapter
11 Trustee for International
Manufacturing Group, Inc.,

Plaintiff,

v.

BYRON L. YOUNGER, JR.; JANE
YOUNGER; BYRON L. YOUNGER,
JR. FAMILY TRUST; WESTERN
BUILDING SPECIALTIES OF
SACRAMENTO; WESTERN
BUSINESS SOLUTIONS
INCORPORATED d/b/a WESTERN
BATH & SHOWER INC.; THE
ENTRUST GROUP, INC. FBO BYRON
& JANE YOUNGER; and RELIABLE
MEDICAL & DENTAL SALES, LLC,

Defendants.

No. 2:17-cv-1695-MCE

MEMORANDUM AND ORDER

Presently before the Court is a motion to withdraw reference of this action to the U.S. Bankruptcy Court brought by Defendants Western Building Specialties of Sacramento and Western Business Solutions Incorporated doing business as Western

1 Bath & Shower Inc. (the “Western Defendants”). Withdrawal of the reference of an
2 adversary proceeding from bankruptcy court is governed by 28 U.S.C. § 157(d), which
3 provides that:

4 The district court may withdraw, in whole or in part, any case
5 or proceeding referred under this section, on its own motion
6 or on timely motion of any party, for cause shown. The district
7 court shall, on timely motion of a party, so withdraw a
8 proceeding if the court determines that resolution of the
proceeding requires consideration of both title 11 and other
laws of the United States regulating organizations or activities
affecting interstate commerce.

9 28 U.S.C. § 157(d). Section 157(d) “contains two distinct provisions: the first sentence
10 allows permissive withdrawal, while the second sentence requires mandatory withdrawal
11 in certain situations.” In re Coe-Truman Technologies, Inc., 214 B.R. 183, 185 (N.D.
12 Ill.1997); see In re Nat’l Consumer Mortgage, LLC, SACV 09-792 CAS, 2009 WL
13 2985243 (C.D. Cal. Sept. 14, 2009).

14 With regard to permissive withdrawal, a court’s decision to withdraw the reference
15 is generally discretionary, see, e.g., Vreugdenhil v. Hoekstra, 773 F.2d 213, 215 (8th
16 Cir.1985) (cited by In re Cinematronics, Inc., 916 F.2d 1444, 1451 (9th Cir. 1990)), and
17 “[p]ermissive withdrawal is permitted only in a limited number of circumstances,”
18 Hawaiian Airlines, Inc., 355 B.R. at 223 (citing In re Ponce Marine Farm, Inc., 172 B.R.
19 722 (D.P.R. 1994) for the proposition that “[i]n order to insure that the exception does not
20 swallow the rule, courts remain cautious in applying § 157(d)”). Under controlling Ninth
21 Circuit law, however, where a defendant has preserved its Seventh Amendment right to
22 a jury trial in a noncore proceeding in which the Bankruptcy Court lacks authorization to
23 conduct a jury trial, withdrawal of the reference is appropriate.

24 Here, the parties do not dispute that the Western Defendants are entitled to a jury
25 trial before this Court as they have timely demanded such a trial and have not consented
26 to the jurisdiction of the Bankruptcy Court in this matter. The Court agrees and finds that
27 withdrawal of the reference is appropriate with respect to the Western Defendants, who
28 have properly preserved their Seventh Amendment right to a jury trial in the district court.

1 The parties further agree that it is within this Court's discretion to withdraw
2 reference of the case in its entirety, or to bifurcate the Western Defendants from the
3 remaining defendants and to withdraw the reference with respect to those claims
4 asserted against the Western Defendants only. See 28 U.S.C. § 157(d); see also,
5 Security Farms v. Int'l Brotherhood of Teamsters, 124 F.3d 999, 1008 (9th Cir. 1997) ("In
6 determining whether cause exists, a district court should consider the efficient use of
7 judicial resources, delay and costs to the parties, uniformity of bankruptcy administration,
8 the prevention of forum shopping, and other related factors."); Fed. R. Civ. Proc. 42(b)
9 (providing similar factors for consideration in determining whether to bifurcate claims for
10 trial). In considering the relevant factors, the Court finds the Defendants to be
11 interconnected and the claims against the Western Defendants fundamentally tied to the
12 claims against the other Defendants, such that bifurcation would frustrate judicial
13 economy and waste the time and resources of both the parties and the Court.
14 Moreover, bifurcation would result in the potential for inconsistent judgments between
15 substantially identical cases. For these reasons, the Court declines to bifurcate this
16 matter.

17 For the foregoing reasons, the Court hereby GRANTS the Western Defendants'
18 unopposed motion to withdraw reference of this action to the U.S. Bankruptcy Court
19 (ECF No. 1). To the extent that motion requests bifurcation of the case, that request is
20 DENIED. Reference of the action in its entirety is hereby WITHDRAWN.

21 The parties are hereby ORDERED to file a Joint Status Report/Joint Notice of
22 Trial Readiness not later than October 30, 2017. The parties are to set forth therein a
23 brief background discussing the status of the case, the appropriateness of special
24 procedures, whether this case is related to any other case(s) on file in the Eastern
25 District of California, the prospect for settlement, their estimated trial length, any request
26 for a jury, and their availability for trial. After review of the parties' Joint Status
27 Report/Joint Notice of Trial Readiness, the Court will issue an order that sets forth a final
28 pretrial conference and trial.

1 A status conference is hereby scheduled and confirmed for November 2, 2017, at
2 11:00 a.m. in Courtroom 7.

3 IT IS SO ORDERED.

4 Dated: October 23, 2017

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6 MORRISON C. ENGLAND, JR.
7 UNITED STATES DISTRICT JUDGE
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