

1 TRACY HOPE DAVIS
 2 United States Trustee
 3 **TERRI H. DIDION** State Bar # CA133491
 4 Trial Attorney
 5 **UNITED STATES DEPARTMENT OF JUSTICE**
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12 Attorney for Tracy Hope Davis,
 13 United States Trustee

14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**

16 In re:)	Case No. 3:16-cv-00181-EMC
)	
17 JOSEPH JOHN VIOLA,)	Bankruptcy Case No. 10-30904 DM
)	Adversary No. 10-3154 DM
)	San Francisco Division
18 Appellant,)	<u>AMENDED</u>
19 v.)	UNITED STATES TRUSTEE'S
)	MOTION TO STAY APPEAL
20 UNITED STATES TRUSTEE,)	BRIEFING DEADLINES
21 Appellee.)	

22
 23 Appellee, Tracy Hope Davis, the United States Trustee for Region 17
 24 (United States Trustee”), hereby file this Motion to Stay Appeal Briefing
 25 Deadlines until the Court has considered the Motion for Dismissal of Untimely
 26 Appeal filed by the United States Trustee. (Dkt. No. 9). This motion is brought
 27 pursuant to Fed. R. Bankr. P. 8013(b) and 9006(b)(1) and Civil LR 6-1(b) and 6-

1 3. The motion is made with reference to the following:

2 **1. Status of the Appeal**

3 This proceeding was commenced on January 8, 2016, when Appellant
4 filed a notice of appeal of the bankruptcy court's entry of default under Fed. R.
5 Civ. P. 55(a)(made applicable by Fed. R. Bankr. P. 7055) after Appellant failed to
6 file and serve an answer to a complaint objecting to his bankruptcy discharge.
7 (A.P. Dkt. No. 54).¹ Appellant filed a designation of record and a statement of the
8 issues. (A.P. Dkt. No. 67).

9 In accordance with Fed. R. Bankr. P. 8009, Appellee timely filed her
10 supplement designation of record. (A.P. Dkt. No. 69). The record on appeal was
11 transmitted by the bankruptcy court on March 11, 2016. (A.P. Dkt. No. 72). The
12 District Court issued its Notice of Briefing setting forth the deadlines for the filing
13 of the opening, responsive, and reply briefs in this appeal. (Dkt. No. 6).

14 In its report and recommendation to this court, the bankruptcy court stated
15 (1) that the appeal is untimely under Fed. R. Bankr. P. 8002(a); (2) does not
16 identify any specific order being appealed in violation of Fed. R. Bankr. P.
17 8003(a)(3)(B); (3) utilizes a shotgun approach to designating documents that has
18 severely impeded the bankruptcy court's ability to certify and transmit the record
19 in accordance with Fed. R. Bankr. P. 8009; (4) no appeal filing fee has been paid;
20 and (5) that, as trial court, it certified pursuant to 28 U.S.C. § 1915(a)(3) that the
21 appeal has not been taken in good faith, and thus may not be taken in forma
22 pauperis. (Dkt. No. 11).

23 **2. Request to Stay Appeal Deadlines**

24 a. When the briefs are currently due. Appellant's opening brief was
25 due on March 16, 2016. The brief was filed with the court on March 17, 2016, and
26

27 ¹ "A.P. Docket" refers to the docket for Adversary Proceeding No. 3:10-ap-3154-DM of the
28 United States Bankruptcy Court, Northern District of California, San Francisco Division.

1 served on the United States Trustee on March 14, 2016. (Dkt. No. 16). Pursuant to
2 the text of docket entry no. 16, Appellee's answering brief is due on April 7, 2016.
3 A reply brief by Appellant is due on or about April 21, 2016.

4 b. How many extensions of time or stays have been granted? No
5 prior extensions or stays have been requested.

6 c. Reason why the stay is necessary. The United States
7 Trustee filed a Motion for Dismissal of Untimely Appeal on March 10, 2016, and
8 it is pending on this court's docket. (Dkt. No. 9). Until such time that the court
9 considers and decides the motion to dismiss Appellant's appeal, any further
10 briefing deadlines should be stayed. A short suspension of the appellate
11 proceedings will not prejudice any of the parties.

12 d. Specific amount of time requested. The United States Trustee
13 seeks a stay of the remaining briefing deadlines pending the outcome of her
14 motion to dismiss the appeal.² If the motion is granted, there will be no need for
15 any further briefs to be filed. If the motion is denied, the United States Trustee will
16 file her responsive brief within thirty (30) days after the entry of the Court's order
17 denying the motion to dismiss, and the bankruptcy appeal will proceed on the
18 merits. *See Declaration of Terri H. Didion filed concurrently with the motion.*

19 **3. Conclusion**

20 Wherefore, the United States Trustee requests that this motion to stay appeal
21 deadlines be granted as follows:

- 22 a. The District Court shall suspend all remaining appeal briefing deadlines,
23 effective the date of the filing of this motion, pending the decision

24
25
26 ² Fed. R. Bankr. P. 8013(b) provides authority for seeking a motion for a procedural order,
27 which includes a motion for enlargement of time, if the motion is made prior to the expiration of
28 the original deadline. The court may rule on such a motion at any time without notice or waiting
for a response. Fed. R. Bankr. P. 8013(b) and 9006(b)(1).

1 regarding the United States Trustee's motion to dismiss the appeal filed
2 as docket number 9.

3 b. If the District Court grants the motion to dismiss, no further briefing will
4 be required by the parties to this bankruptcy appeal.

5 c. If the District Court denies the motion to dismiss, the United States
6 Trustee will file her responsive brief within thirty (30) days after the
7 entry of the order denying the motion to dismiss. Appellant's reply brief
8 will be due fourteen (14) days after service of the United States Trustee's
9 responsive brief.

10
11 Dated: March 23, 2016

Respectfully Submitted,

12 By: /s/ TERRI H. DIDION

13 Terri H. Didion

14 Trial Attorney for U.S. Trustee

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Exhibit A

[Proposed Order Granting Motion to Stay Appeal Deadlines]

1 TRACY HOPE DAVIS
United States Trustee
2 TERRI H. DIDION CSB #133491
Trial Attorney
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8 Attorney for Tracy Hope Davis,
United States Trustee
9

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

13 In re:) **Case No. 3:16-cv-00181-EMC**
14)
15 **JOSEPH JOHN VIOLA,**)
16 **Debtor.**) Bankruptcy Case No. 10-30904 DM
17) Adversary No. 10-3154 DM
18) San Francisco Division
19 **JOSEPH JOHN VIOLA,**)
20 **Appellant,**)
21 vs.)
22 **UNITED STATES TRUSTEE,**) **[PROPOSED] ORDER GRANTING**
23 **Appellee.**) **UNITED STATES TRUSTEE’S**
24) **MOTION TO STAY APPEAL**
25) **BRIEFING DEADLINES**
26)
27)
28)

24 On March 23, 2016, Tracy Hope Davis, the United States Trustee for
25 Region 17 (“Appellee”), filed her motion to stay appeal briefing deadlines until the
26 Court has considered a pending Motion for Dismissal of Untimely Appeal filed
27

1 by Appellee. (Dkt. No. 9). Pursuant to Fed. R. Bankr. P. 8013(b) and 9006(b)(1),
2 the court may stay the briefing deadlines without notice or waiting for a response.
3 The court finds that a short suspension of the appellate proceedings will not
4 prejudice any of the parties.

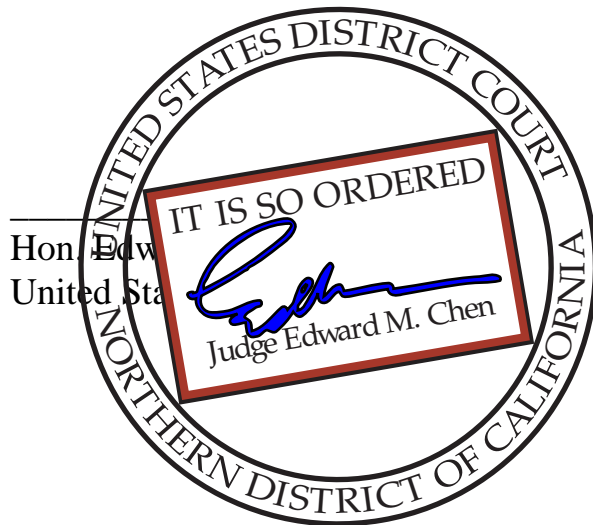
5 **IT IS HEREBY ORDERED THAT**

- 6 1. The United States Trustee's motion to stay appeal briefing deadlines is
7 granted.
- 8 2. The Court shall suspend all remaining appeal briefing deadlines, effective
9 the date of the filing of this motion, pending the decision regarding the
10 United States Trustee's motion to dismiss the appeal filed as docket
11 number 9.
- 12 3. If the Court grants the motion to dismiss, no further briefing will be
13 required by the parties to this bankruptcy appeal.
- 14 4. If the Court denies the motion to dismiss, the United States Trustee will file
15 her responsive brief within thirty (30) days after the entry of the order
16 denying the motion to dismiss. Appellant's reply brief will be due fourteen
17 (14) days after service of the United States Trustee's responsive brief.

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19 **IT IS SO ORDERED.**

20 Dated: 3/25/16

21
22 Hon. Edward M. Chen
23 United States District Judge



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PROOF OF SERVICE

I, Terri H. Didion, declare as follows:

I am a resident of and employed in the State of California, County of Fresno. I am over the age of 18 years and not a party to the above-entitled action. On March 23, 2016, I served a true and correct copy of the following documents:

1. **United States Trustee’s Amended Motion to Stay Appeal Briefing Deadlines**
2. **Amended Declaration of Terri H. Didion in Support of Motion to Stay Appeal Briefing Deadlines**
3. **Proposed Order Granting United States Trustee’s Motion to Stay Appeal Briefing Deadlines**

on parties in this action as follows:

BY CM/ECF: I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Northern District of California, by using the CM/ECF system. I certify that parties of record to this case who are either registered CM/ECF users, or who have registered for electronic notice, or who have consented in writing to electronic service will be served through the CM/ECF system as follows: NONE.

BY U.S. MAIL: All non-registered CM/ECF users are served by 1st class mail, postage prepaid as follows:

Appellant, Pro Se
Joseph John Viola
Aspc Yuma-Cibola, 6a47
P.O. Box 8909
San Luis, AZ 85349

I declare under penalty of perjury that the documents were served by methods indicated above and the foregoing is true and correct.

Dated: March 23, 2016.

/s/ Terri H. Didion
Terri H. Didion
Attorney for United States Trustee