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

**LANCE TULLER,**

Plaintiff,

vs.

**TINTRI, INC., ET AL.,**

Defendants.

CASE NO. 17-cv-05714-YGR

**ORDER DENYING MOTION AND  
MAINTAINING STAY AGAINST NON-DEBTOR  
DEFENDANTS**

Re: Dkt. No. 69

Plaintiffs bring this putative class action against defendants Tintri, Inc. (“Tintri” or “Debtor”) and Ken Klein, Ian Halifax, and Kieran Harty (collectively, the “Individual Defendants”), as well as various underwriters for alleged material misrepresentations related to Tintri’s June 30, 2017 initial public offering (the “IPO”) in violation of federal securities laws.<sup>1</sup> (*See* Dkt. No. 1; *see also* Dkt. No. 41 (“CA Compl.”).) On July 10, 2018, Tintri and the Individual Defendants filed a Notice informing the Court that Tintri had filed a voluntary Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware (the “Bankruptcy Action”). (Dkt. No. 67 (“Bankruptcy Notice”).) On July 12, 2018, the Court stayed the instant lawsuit pending resolution of the Bankruptcy Action. (Dkt. No. 68.) Now before the Court is plaintiffs’ motion for relief from the stay solely with respect to the Non-Debtors. (Dkt. No. 69 (“Motion”).) Having carefully reviewed the papers submitted, and for the reasons set forth more fully below, the Court **DENIES** plaintiffs’ motion for relief from the stay with respect to their claims against the Non-Debtors.

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<sup>1</sup> Underwriter defendants include: Morgan Stanley & Co.; Merrill Lynch, Pierce, Fenner & Smith Inc.; Pacific Crest Securities, a division of KeyBlau Capital Markets Inc.; Needham & Co., LLC. (collectively, the “Underwriter Defendants”). The Underwriter Defendants and the Individual Defendants are referred to collectively herein as the “Non-Debtors.”

1           **I.       BACKGROUND**

2           Plaintiff Tuller filed his complaint, individually and on behalf of all others similarly  
3 situated, on September 18, 2017 alleging that Tintri and the Individual Defendants engaged in  
4 material misrepresentations related to Tintri’s June 30, 2017 IPO in violation of federal securities  
5 laws. (Dkt. No. 1.) On October 6, 2017, the Court issued an order relating this action to two  
6 similar lawsuits, *Clayton v. Tintri, Inc.*, Case No. 17-cv-05683-YGR and *Nurlybayev v. Tintri,*  
7 *Inc.*, Case No. 17-cv-05684-CRB. (Dkt. No. 17.) On December 13, 2017, the Court granted the  
8 motion of Henrick Thørring for appointment as lead plaintiff and approval of Glancy Prongay &  
9 Murray LLP as lead counsel. (Dkt. No. 35.) On February 2, 2018, lead plaintiff Thørring filed a  
10 consolidated class action complaint against Tintri, the Individual Defendants, and the Underwriter  
11 Defendants for alleged material misrepresentations regarding Tintri’s June 30, 2017 IPO in  
12 violation of federal securities laws. (*See* CA Compl.)

13           On March 30, 2018, defendants’ filed two motions to dismiss, one by Tintri and the  
14 Individual Defendants (collectively, “Tintri Defendants”) (Dkt. No. 51 (“Tintri MTD”)) and  
15 another by the Underwriter Defendants (Dkt. No. 54 (“Underwriter MTD”)). These motions were  
16 set for hearing on August 14, 2018. (Dkt. No. 61.) On July 10, 2018, the Tintri Defendants filed a  
17 Notice informing the Court that Tintri had filed a voluntary Chapter 11 petition in the U.S.  
18 Bankruptcy Court for the District of Delaware (the “Bankruptcy Action”). (*See* Bankruptcy  
19 Notice.) Subsequently, on July 12, 2018, the Court stayed the instant lawsuit pending resolution  
20 of the Bankruptcy Action. (Dkt. No. 68.) Shortly thereafter, on July 30, 2018, lead plaintiff  
21 Henrick Thørring filed a motion for relief from the stay solely with respect to plaintiffs’ claims  
22 against the Non-Debtors.<sup>2</sup> (Motion.)

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27           <sup>2</sup> The Court is unpersuaded by Non-Debtors argument that plaintiffs’ motion constitutes a  
28 request that the Court reconsider its order staying the instant action. The Court routinely stays  
actions automatically upon receipt of notice of a bankruptcy filing. Accordingly, the Court will  
evaluate plaintiffs’ motion as one to lift the automatic stay as to the Non-Debtors.

1           **II.     DISCUSSION**

2           The automatic stay under Section 362(a)(1) of the U.S. Bankruptcy Code may be limited to  
3 debtor defendant(s) when special circumstances are not present. *See Ingersoll-Rand Financial*  
4 *Corp. v. Miller Min. Co., Inc.* 817 F.2d 1424, 1427 (9th Cir. 1987) (“In the absence of special  
5 circumstances, stays pursuant to section 362(a) are limited to debtors and do not include non-  
6 bankrupt co-defendants.”). Special circumstances arise where “there is such identity between the  
7 debtor and the third-party defendant that the debtor may be said to be the real party defendant and  
8 that a judgment against the third-party defendant will in effect be a judgment or finding against the  
9 debtor.” *Duval v. Gleason*, No. C-90-0242-DLJ, 1990 WL 261364, at \*3 (N.D. Cal. Oct. 19,  
10 1990).<sup>3</sup>

11           Here, plaintiffs’ complaint addresses allegations of misconduct by all defendants without  
12 much, if any, particularization as to the specific role played by each defendant. (*See, e.g.*, CA  
13 Compl. ¶ 155 (“Defendants sold 8,572,000 shares . . . pursuant to the Registration Statement.”);  
14 *see also id.* ¶ 158 (“In the Registration Statement, Defendants also misrepresented . . .”); ¶162  
15 (“Further . . . Defendants misleadingly warned investors . . .”). Stated differently, the complaint  
16 does not attribute the basis of the alleged misconduct, material misrepresentations made in the  
17 registration statement accompanying Debtor Tintri’s IPO, to specific defendants or groups of  
18 defendants such that one could parse between a determination as to the liability of the Non-

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21           <sup>3</sup> Of the remaining opinions cited by plaintiffs, none are persuasive as none relate to class  
22 actions for alleged securities fraud. *See Ingersoll-Rand Financial Corp.*, 817 F.2d at 1427  
23 (finding that the automatic stay did not apply to non-debtor’s appeal in an action by creditor for  
24 deficiency judgment); *Morici v. Hashfast Techs. LLC*, No.: 5:14-cv-00087-EJD, 2014 WL  
25 4983854, at \*1 (N.D. Cal. Oct. 6, 2014) (granting motion to lift stay as to non-debtor defendant in  
26 action for failure to timely delivery purchased goods); *C.H. Robinson Worldwide, Inc. v. Portola*  
27 *Farm & Food Distributors, Inc.*, No. SA-CV\_1502073 CJC (JCGx), 2016 WL 8849023, at \*1  
28 (C.D. Cal. May 26, 2016) (same in action for violation of regulations pertaining to purchase and  
sale of perishable agricultural goods); *Acosta v. Valley Garlic, Inc.*, No: 1:16-cv-01156-AWI  
(EPG), 2017 WL 3641761, at \*5 n.1 (E.D. Cal. Aug. 24, 2017) (noting that proceedings against  
non-debtor defendants continue in personal injury action arising from a car crash); *Fed. Deposit*  
*Ins. Corp. v. Appraisal Pac., Inc.*, No. 14-cv-0079-H-BLM, 2014 WL 12564365, at \*1-2 (S.D.  
Cal. Sept 17, 2014) (declining to apply stay to non-debtor defendants in action for breach of  
contract); *Teachers Ins. & Annuity Ass’n v. Butler*, 803 F.2d 61, 65 (2d Cir. 1986) (finding that  
bankruptcy court improperly extended automatic stay to non-bankrupt partners of debtor pursuant  
to general equity powers under 11 U.S.C. Section 105 in Chapter 13 bankruptcy action, where  
Section 362(a) does not apply).

1 Debtors as compared to a determination as to the liability of the Debtor Tintri.

2 There can be no determination as to the liability of the Individual Defendants or  
3 Underwriter Defendants without first resolving whether Debtor Tintri has made a material  
4 misrepresentation in violation of the securities laws at issue. Thus, any “judgment against the  
5 [Non-Debtors] will in effect be a judgment or finding against [Debtor Tintri].” *Duval*, No. C-90-  
6 0242-DLJ, 1990 WL 261364, at \*3. Accordingly, plaintiffs’ allegations present a special  
7 circumstance under which the automatic stay under Section 362(a)(1) of the U.S. Bankruptcy  
8 Code may apply to defendants other than the debtor. *Id.*; see also *Ingersoll-Rand Financial Corp.*,  
9 817 F.2d at 1427.

10 Moreover, a stay of the instant action as it applies to Non-Debtors is in the interest of  
11 efficiency and will avoid relitigation of the issues presented. See *Mediterranean Enters., Inc. v.*  
12 *Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983) (holding that a “trial court may, with  
13 propriety, find it efficient for its own docket and the fairest course for the parties to enter a stay of  
14 action before it, pending resolution of independent proceedings which bear upon the case”)  
15 (internal citation omitted); see also *Wordtech Sys., Inc. v. Integrated network Solutions, Inc.*, No.  
16 2:04-cv-01971-MCE-EFB, 2012 WL 6049592, at \*9 (E.D. Cal. Dec. 5, 2012) (discretionarily  
17 staying action against non-bankrupt co-defendant where “a later trial of the claims against another  
18 defendant could involve the relitigation of most if not all of the issues litigated in the first  
19 proceeding” or where “it would be more efficient to stay the entire case . . . rather than to proceed  
20 . . . on a piecemeal basis”) (internal citations omitted).


21 **III. CONCLUSION**

22 For the reasons discussed above, the Court **DENIES** plaintiffs’ motion for relief from the  
23 stay with respect to their claims against the Non-Debtors.

24 This Order terminates Docket Number 69.

25 **IT IS SO ORDERED.**

26 Dated: September 14, 2018

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28 YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE