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*Attorneys for Defendant Big Brothers Big
Sisters of Central Arizona*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

JOHN CD DOE, a single man,

Plaintiff,

v.

BIG BROTHERS BIG SISTERS OF
AMERICA, a District of Columbia, non-
profit corporation; BIG BROTHERS BIG
SISTERS OF CENTRAL ARIZONA, an
Arizona corporation; JOHN DOE 1-100;
JANE DOE 1-100; and BLACK & WHITE
CORPORATIONS 1-100,

Defendants.

NO. CV2020-014920

**DEFENDANT BIG BROTHERS BIG
SISTERS OF CENTRAL ARIZONA'S
MOTION VACATE FEBRUARY 26,
2025 ORDER RE: BANKRUPTCY**

(Assigned to Hon. Christopher Whitten)

Defendant Big Brothers Big Sisters of Central Arizona ("**Defendant**" or
"**BBBSCA**") files this motion to vacate the order issued by the Court through the *Notice of
Bankruptcy* (the "**Subject Order**") dated February 26, 2025 for the reasons set forth below.

MEMORANDUM OF POINTS AND AUTHORITIES

On June 29, 2021, Plaintiff David Campbell¹ ("**Plaintiff**") filed his *First Amended
Complaint* ("**Complaint**"), among others, alleging liability for misconduct occurring in
1983. Subsequent to the alleged misconduct (but prior to the filing of the Complaint)

¹ Plaintiff is identified as a John Doe in the First Amended Complaint, but Plaintiff's
real name is David Campbell.

1 Plaintiff filed two Chapter 7 bankruptcy petitions in the United States Bankruptcy Court for
2 the District of Arizona (the “**Bankruptcy Court**”).²

3 On December 26, 2024, Defendant filed a *Motion for Summary Judgment* (the
4 “**MSJ**”) with this Court, asserting that as a result of Plaintiff’s bankruptcies the claims in
5 this lawsuit were property of the bankruptcy estate(s), and not Plaintiff, and therefore the
6 case should be dismissed. Defendant earlier disclosed that it would make that argument
7 eleven (11) months earlier, on January 22, 2024, in its *First Supplemental Disclosure*
8 *Statement*.

9 On January 24, 2025, ten (10) days before Plaintiff’s response to the MSJ was due,
10 Plaintiff requested an extension of the response deadline, asserting that the extension was
11 needed because Plaintiff’s counsel was unaware of Defendant’s motion for summary
12 judgment (notwithstanding the fact that Plaintiff’s counsel was emailed a copy of the MSJ
13 on December 26, 2024, and received service of the MSJ via AZ TurboCourt the day the
14 MSJ was filed). Regardless, Defendant agreed to the extension, and on January 31, 2025,
15 Plaintiff and Defendant filed a stipulation and joint motion to extend Plaintiff’s deadline to
16 February 24, 2025 (noting in the stipulation that the extension was in lieu of requesting Rule
17 56(d) relief).

18 Undisclosed to Defendant, Plaintiff was already preparing motions to re-open the
19 bankruptcy cases, and filed them two days after Plaintiff’s counsel requested an extension
20 of the deadline to respond to the MSJ because of the ostensible failure to receive the MSJ.
21 *See* 2009 Bankruptcy Case, Dkt. 37, Ex. 1.

22 Plaintiff clearly recognized that the MSJ was meritorious because Plaintiff filed his
23 *Motion To Re-Open Bankruptcies And Debtor’s Motion For An Order To Stay Underlying*
24 *Tort Claim* [2009 Bankruptcy Case, Dkt. No. 37; 2017 Bankruptcy Case, Dkt. No. 46] (the
25 “**Motions to Reopen**”) in the Bankruptcy Court on January 30, 2025. In the Motions to
26 Reopen, Plaintiff requested that the Bankruptcy Court reopen Plaintiff’s Bankruptcy Cases

27 ² Case No. 2:09-bk-12121-BKM (the “**2009 Bankruptcy Case**”) and Case No. 2:17-bk-
28 09863-BKM (the “**2017 Bankruptcy Case**” and collectively with the 2009 Bankruptcy
Case, the “**Bankruptcy Cases**”).

1 so that the causes of action in this lawsuit could be administered as part of Plaintiff's
2 bankruptcy estate(s). Plaintiff also requested that the Bankruptcy Court order a stay of this
3 litigation.

4 The Bankruptcy Court has not granted the motion to stay this case. Also, Defendant
5 objected to Plaintiff's request for imposition of a stay because federal law is clear (as
6 explained more fully below) that the automatic stay does not "arise anew" when a
7 bankruptcy case is re-opened.

8 On February 21, 2025, the Bankruptcy Court entered an *Order Granting In Part*
9 *Debtor's Motion To Reopen Bankruptcies And Motion For An Order To Stay Underlying*
10 *Tort Claim* in each of the Bankruptcy Cases ("**Reopening Orders**"), wherein the
11 Bankruptcy Court reopened the Bankruptcy Cases and set a hearing on automatic stay issue
12 for on March 25, 2025 (the "**Stay Hearing**"). The Bankruptcy Court has not ruled on
13 Plaintiff's request for stay, however, so there is no stay in place.

14 On February 28, 2025, this Court filed the Subject Order entering a stay order in this
15 case and placing the case on the dismissal calendar. The Subject Order stated that the Court
16 had "received notification that a petition under the Bankruptcy Code has been filed by
17 defendants *Big Brothers Big Sisters of America and Big Brothers Big Sisters of Central*
18 *Arizona*" in the Bankruptcy Cases. Subject Order, p. 1 (emphasis added). This is incorrect,
19 as neither of the defendants have filed for bankruptcy. Also there is no automatic stay in
20 effect with respect to the re-opened Bankruptcy Cases.; and (2) no defendant in this lawsuit
21 has filed for bankruptcy. For those reasons, Defendant requests that the Subject Order be
22 vacated.

23 With respect to the existing Bankruptcy Cases referenced in the Subject Order, those
24 cases were only re-opened, and are not new bankruptcy petitions under which the automatic
25 stay would arise. The automatic stay does not "arise anew" when debtor re-opens a
26 bankruptcy case. *In re Lee*, 2022 WL 4706527, at *3 (Bankr. D. Nev. Sept. 30, 2022). And
27 "[t]he weight of authority further supports the conclusion that re-opening of the bankruptcy
28 proceedings does not reinstate an automatic stay." *In re Phenylpropanolamine (PPA) Prods.*

1 *Liab. Litig.*, 2006 WL 2136722, at *1 (W.D. Wash. July 28, 2006) (*citing In re Menk*, 241
2 B.R. 896, 914 (B.A.P. 9th Cir. 1999)). Moreover, the Bankruptcy Court has set the Stay
3 Hearing to determine whether any stay would apply to these proceedings—implicitly, no
4 such stay can be effective unless and until the Bankruptcy Court has ruled that it is in effect.
5 Accordingly, the re-opening of the Bankruptcy Cases do not operate as a stay of these
6 proceedings.

7 Furthermore, the automatic stay imposed through the filing of a new bankruptcy
8 petition operates to stay litigation *against* the Debtor. *See* 11 U.S.C. § 362(a) (“[A] petition
9 filed under [the applicable Bankruptcy title] operates as a stay, applicable to all entities, of
10 . . . the commencement or continuation . . . of a juridical, administrative, or other action or
11 proceeding *against the debtor* . . . or to recover a claim *against the debtor* that arose before
12 the commencement of the [bankruptcy case].”) (emphasis added). Here, the Debtor in the
13 Bankruptcy Cases is the Plaintiff. None of the Defendants in this lawsuit have filed for
14 bankruptcy. Accordingly, there are no claims against any debtors in this lawsuit, and no
15 automatic stay would apply.

16 For these reasons, BBBSCA asserts that the Subject Order was entered in error. Good
17 cause exists for the Court to vacate the Subject Order and to remove this matter from the
18 dismissal calendar.

19 **RESPECTFULLY SUBMITTED** this 7th day of March, 2025.

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24 By /s/ Anthony F. Pusateri

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1 **E-FILED** via AZ TurboCourt
2 this 7th day of March, 2025.

3 **COPY** of the foregoing served
4 via First Class mail and e-mail
5 this 7th day of March, 2025, to:

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