

Motion

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2 P. J. Zimmermann, the Chapter 7 Trustee (hereinafter "Trustee") for the above-entitled case
3 hereby respectfully moves this Court for an order approving dismissal of the Chapter 7 bankruptcy
4 with prejudice for the following reasons:
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6 1. P. J. Zimmermann is the duly appointed Trustee of the above-entitled bankruptcy estate.

7 2. The Debtor, UST Dry Utilities, Inc. (hereinafter "Debtor") filed its Chapter 7 bankruptcy
8 on October 1, 2009. The first 341A hearing was scheduled for November 13, 2009 at 1:00 p.m.
9 The Debtor and counsel appeared at the hearing.

10 3. At the 341A hearing on November 13, 2009, the Trustee requested the following:

11 a) location of the secured Caterpillar equipment per request by Attorney Poniatowski who
12 had attempted to locate the equipment on behalf of his client, Caterpillar Financial Services Corp.,
13 without success. On the record, the President of the corporation, David Bell (hereinafter "Bell"),
14 stated he was not sure where the equipment was located, but would provide that information to his
attorney the next day.

15 b) turnover of bank account monies in the amount of \$2,700 and information on accounts
receivables including name and telephone number of person involved in collecting the A/R.

16 c) 2007 and 2008 tax returns and P/L for any business in 2009 (there appeared to be a
discrepancy as to when the business ceased doing business).

17 d) turnover of bank statements for 2008 and 2009, including check registers

18 e) set up meeting in the next week with my agent to meet at location where inventory and
equipment was stored.

19 The 341A hearing was then continued to December 7, 2009 at 9:30 a.m.

20 4. At the hearing on December 7, 2009, Bell appeared and provided none of the requested
21 documents, bank statements, bank monies, or the address for the Caterpillar equipment. Bell had
22 failed to meet with the Trustee's adjuster and the Trustee learned that Bell was still doing business
23 under a different corporate name. Bell claimed that it was a different kind of business, but it had the
24 same location, telephone number and per a creditor's information, contracts for the same kind of
25 work with the City of Rancho Cucamonga. Michael R. Schaefer, an attorney representing a creditor,
26 R.P. Wages, Inc., provided documentation showing that insiders of the Debtor took significant
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1 monies from the Debtor during 2009, even though the business ended, per the statement of affairs,
2 on 1/09. Attorney Schaefer also had the Debtor's 2007 tax return showing both a different address
3 for the business and actual income of the business in 2007 at \$1.7 million not \$1.00. The Statement
4 of Affairs claims the business closed in 1/09 and that there were no transfers to insiders. Both the
5 Debtor's petition, which Bell signed, and Bell's statements at the hearings were not truthful. The
6 Trustee requested that the Debtor cooperate, provide the documents requested, turnover the assets
7 and amend the inaccurate petition. The Trustee continued the hearing to January 15, 2010 at 10:30
8 a.m. and stated that the bankruptcy would be dismissed if Debtor failed to comply with the Trustee's
9 requests.
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12 5. David Bell failed to appear at the hearing on January 15, 2010. His counsel was present,
13 but had no requested documents or funds. More than two months after the first 341A hearing, the
14 Trustee received none of the requested documents, tax returns, bank statements and bank funds, or
15 amendments to the inaccurate statement of affairs. The Trustee did not continue the hearing and told
16 counsel that a motion to dismiss with prejudice would be filed.
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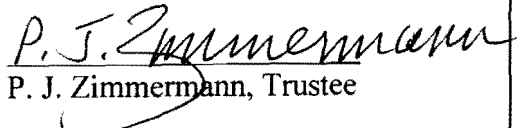
18 6. Per the statement of affairs, this business has existed three (3) years, yet there are over 40
19 pages of creditors, Debtor owes over \$5 million in unsecured debt. More than 40 lawsuits have been
20 filed against the Debtor. Although the business closed in 1/09 per the petition, the Debtor transferred
21 over \$300,000 to insiders between October, 2008 and July, 2009.. In addition, Bell did not turnover
22 the equipment to Caterpillar as he stated at the prior hearing. The Trustee learned after the hearing
23 from Attorney Poniatowski that his client still did not have the equipment. Given Debtor's failure to
24 cooperate as required under 11 U.S.C. §521 of the bankruptcy code and false statements in its
25 petition, the Trustee believes that this is an abusive fling under 11 U.S.C. §707, to stop litigation
26 while Debtor does business under a different name.
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1 7. Given the above, the Trustee requests that the court dismiss the Chapter 7 bankruptcy case
2 with prejudice pursuant to 11 U.S.C. §707(a) and §105(a), so the Debtor cannot refile bankruptcy on
3 any of the debts that the Debtor had at the time of filing of this Chapter 7 bankruptcy. This will
4 allow the creditors to continue their lawsuits against the Debtor and any alter egos. In the alternative,
5 at least the case should be dismissed with a 180 day bar to refile for failure to cooperate with the
6 Trustee and for false statements in the bankruptcy petition.
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8 I declare under penalty of perjury under the laws of the United States of America, that the
9 forgoing is true and correct to the best of my knowledge. Executed on the date stated below in
10 Canyon Lake, California.
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12 Wherefore, the Trustee prays that the court enter an order dismissing the Debtor's Chapter 7
13 bankruptcy with prejudice and for such other and further relief as the Court deems just and proper.
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15 Dated: 2/1/2010


P. J. Zimmermann, Trustee

In re: UST DRY UTILITIES, INC.	CHAPTER 7 Debtor(s). CASE NUMBER 6:09-33340RN
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NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 31566 RAILROAD CANYON ROAD, #306, CANYON LAKE, CA 92587.

A true and correct copy of the foregoing document described as: NOTICE OF MOTION AND TRUSTEE'S MOTION TO DISMISS THE CHAPTER 7 BANKRUPTCY OF UST DRY UTILITIES, INC. WITH PREJUDICE

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below: See Attached Service List.

I. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On _____ I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL** (indicate method for each person or entity served):

On 2-1-2010 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

SERVICE LIST ATTACHED

Service information continued on attached page

III. **SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method for each person or entity served):

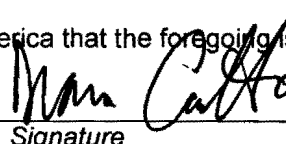
Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____ I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

2-1-2010
Date

Diana Castillo
Type Name


Signature

In re: UST DRY UTILITIES, INC.	Debtor(s).	CHAPTER 7 CASE NUMBER 6:09-33340RN
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