# UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

In re:

Bankruptcy Case No. 13-53846

City of Detroit, Michigan,

Debtor.

Bankruptcy Case No. 13-53846

Honorable Thomas J. Tucker

Chapter 9

# CITY OF DETROIT'S OBJECTION TO M. DUJON JOHNSON'S MOTION TO REINSTATE SECURED CLAIM

The City of Detroit, Michigan ("<u>City</u>") by its undersigned counsel, files this Objection to M. Dujon Johnson's ("<u>Johnson</u>") *Motion to Reinstate Secured Claim* ("<u>Motion</u>," Doc. No. 10716). In support of this Objection, the City respectfully states as follows:

#### I. Johnson's Claim

On October 29, 2013, Johnson filed a letter with the Court. **Exhibit 1.** In the letter, Johnson asserts that he currently has a "judgment against the City of Detroit (parking division) for \$5.300.00 due to their illegally towing, and the auctioning, of my vehicle... <u>I am asking the court to grant me the status of a secured creditor.</u>" Johnson did not identify any collateral securing his alleged claim. The Clerk of the Court treated the letter as a proof of claim which asserted a secured claim in the amount of \$5,300. This letter was forwarded to the City's claims and noticing agent, Kurtzman Carson Consultants ("<u>KCC</u>"), and assigned claim number 117 ("<u>Claim No. 117</u>"). At the time of the filing of Claim No. 117, Johnson indicated that he was residing in the People's Republic of China.

The second claim filed by Johnson was filed on a Proof of Claim form with KCC on February 14, 2014 and was assigned claim number 1032 ("Claim No. 1032"). **Exhibit 2**. Claim No. 1032 is also in the amount of \$5,300 but it does not assert a secured claim. On Claim No. 1032, Johnson lists his address as: 15474 Stoepel, Detroit, MI 48238 ("Stoepel Address").

Further, on October 3, 2014, Johnson filed a letter with the Court stating that he no longer resided in the People's Republic of China and that his mailing address was the Stoepel Address. (Doc. No. 7978).

### II. The City's Objection to the Duplicate Claim.

On February 13, 2015, the City filed its Eleventh Omnibus Objection to Certain Claims (Duplicate Claims) ("Eleventh Omnibus Objection," Doc. No. 9263), requesting that Claim No. 117 be expunged as a duplicative claim. On the same date, KCC filed a Certificate of Service ("Certificate of Service," Doc. No. 9281) stating that it served a copy of the Eleventh Omnibus Objection upon Johnson, via first class mail, at his Stoepel Address.

No response to the Eleventh Omnibus Objection was filed with the Court or received by the City. On April 7, 2015, the City filed the Certificate of No Response to Debtor's Eleventh Omnibus Objection to Certain Claims. (Doc. No. 9636). On April 10, 2015, this Court entered the Order Sustaining Debtor's Eleventh Omnibus Objection to Certain Claims which disallowed and expunged Claim No. 117 but left Claim No. 1032 as a surviving unsecured claim. (Doc. No. 9653)

### III. Johnson's Subsequent Letters and Motion

On August 19, 2015, Johnson filed a letter with the Court that is substantially identical to the letter attached to the Motion ("August 2015 Letter"). (Docket No. 10148). The August 2015 Letter is dated August 1, 2015, and asserts that Johnson did not receive notice of the Eleventh Omnibus Objection. On August 21, 2015, the Court issued a Notice of Deficient Filing with respect to the August 2015 Letter. (Docket No. 10151). The Notice of Deficient Filing stated the Court may strike the August 2015 Letter from the record if certain deficiencies with respect to the August 2015 Letter were not cured. The deficiencies were not cured.

On December 11, 2015, Johnson filed another letter with the Court that is substantially identical to the letter attached to the Motion. (Docket No. 10704). The Court again issued a Notice of Deficient Filing. (Docket No. 10706).

On December 18, 2015, Johnson filed his Motion with the Court, requesting that his alleged secured claim be reinstated. In the Motion, Johnson states that he would have responded to the City's objection to his Claim No 117, but did not, as he did not receive notice of the Eleventh Omnibus Objection.

#### **ARGUMENT**

The Court should deny the Motion because Johnson has failed to establish excusable neglect. As set forth in *Pioneer*, the Court should consider the following factors to determine whether a party's neglect is excusable: (1) the danger of prejudice to the debtor, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith. *Pioneer Inv. Servs. Co. v. Brunswick Associates Ltd. P'ship*, 507 U.S. 380 (1993)

### I. The Danger of Prejudice to the Debtor

Deadlines and bar dates are designed to promote finality and efficient administration of the bankruptcy process. *In re Nat'l Steel Corp.*, 316 B.R. 510, 514 (Bankr. N.D. Ill. 2004). "Case administration in large bankruptcy cases such as this one is more often than not a long and complex road to travel. For this reason, fixing a bar date is not merely a routine step, but rather it promotes efficiency in the reorganization process by promptly identifying claims that the plan must consider for the Debtor and other plan proponents." *Id.* (citations and internal quotation marks omitted). Although a court may extend a bar date or deadline for "excusable neglect," a "pro se litigant[']s failure to timely meet a deadline because of '[i]nadvertence, ignorance of the rules, or mistakes construing the rules do[es] not usually constitute "excusable neglect."" *In re* 

Settlement Facility Dow Corning Trust, No. 08-12019, 2009 WL 4506433 at \*2 (E.D. Mich. Nov. 25, 2009) (quoting Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 392 (1993)). And, even when a court considers extending a bar date or deadline after it has passed, it will only do so if, in addition to not being prejudicial to the debtor and its bankruptcy case, there is no prejudice on other timely or late filed claims that remain barred. Settlement Facility Dow Corning Trust, 2009 WL 4506433 at \*2-3.

Over 3,900 proofs of claim were filed against the City. Analyzing, reconciling and otherwise addressing this enormous volume of varied claims has been an overwhelming undertaking for the City. This task will become even more difficult if parties are allowed relief from orders previously entered by this Court. The danger of prejudice to the City is that other parties will seek similar relief if the Motion is granted.

# II. The length of the delay and its potential impact on judicial proceedings and whether the Movant acted in good faith

The length of the delay is substantial. The Motion was filed over ten months after the Eleventh Omnibus Objection and over eight months after an order was entered granting the Eleventh Omnibus Objection. Johnson provides no reason for the delay. Johnson was aware of the Eleventh Omnibus Objection no later than August 1, 2015, because that is the date of the August 2015 Letter. Yet, Johnson waited for over four months after he was aware that his claim had been expunged to file the Motion.

# III. The reason for the delay, including whether it was within the reasonable control of the movant

The Certificate of Service provides that the Eleventh Omnibus Objection was mailed to Johnson at the Stoepel Address. As the Sixth Circuit Court of Appeals held in *Yoder*, "The common law has long recognized a presumption that an item properly mailed was received by

the addressee. The presumption arises upon proof that the item was properly addressed, had

sufficient postage, and was deposited in the mail." In re Yoder, 758 F.2d 1114, 1116-1118 (6th

Cir. 1985). The presumption is rebutted upon the introduction of evidence which would support

a finding of the nonexistence of the presumed fact. Id. Johnson has not provided any evidence

to support his assertion that he did not receive the Eleventh Omnibus Objection. Thus, the Court

should conclude that the Eleventh Omnibus Objection was received by Johnson and that the

reason for the delay for was within Johnson's reasonable control.

**CONCLUSION** 

The City respectfully requests that the Motion be denied.

DATED: January 4, 2016 Respectfully submitted,

By: /s/ Marc N. Swanson

Jonathan S. Green (P33140)

Marc N. Swanson (P71149)

MILLER, CANFIELD, PADDOCK AND

STONE, P.L.C.

150 West Jefferson, Suite 2500

Detroit, Michigan 48226

Telephone: (313) 496-7591

Facsimile: (313) 496-8451

green@millercanfield.com

swansonm@millercanfield.com

ATTORNEYS FOR THE CITY OF DETROIT

### **EXHIBIT 1 – CERTIFICATE OF SERVICE**

# UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

In re:	Bankruptcy Case No. 13-53846
City of Detroit, Michigan,	Honorable Thomas J. Tucker
Debtor.	Chapter 9

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 4, 2016, he served a copy of the foregoing *City Of Detroit's Objection to M. Dujon Johnson's Motion To Reinstate Secured Claim* as listed below, via First Class United States Mail:

M. Dujon Johnson 15474 Stoepel Detroit, MI 48238

DATED: January 4, 2016

By: /s/ Marc N. Swanson
Marc N. Swanson
150 West Jefferson, Suite 2500
Detroit, Michigan 48226
Telephone: (313) 496-7591
Facsimile: (313) 496-8451

swansonm@millercanfield.com



Hon. Stephen J. Rhodes Theodore Levin Building 231 W. Lafayette Detroit, Michigan 48224

September 23, 2013

# Dear Honorable Rhodes:

I have recently become aware that a deadline recently passed for those opposing the bankruptcy filing by the City of Detroit. I do not oppose such a filing by the City of Detroit but I currently have a judgment against the City of Detroit (parking division) for \$5.300.00 due to their illegally towing, and the auctioning, of my vehicle. The City of Detroit's position (pre bankruptcy) was that they did not believe that I knew how to collect so their attitude was 'catch us if you can.' Now the City of Detroit stated position to me is 'now we are in bankruptcy...too bad!' The City of Detroit has filed a stay with the 36th district court regarding this judgment against them due to the bankruptcy filing and it has been granted by that court.

The towing of my personal vehicle has caused me great hardship and I know of at least two positions of employment that I could not accept due to my lack of transportation. The hardship has been so severe that I have had to take a job in the People's Republic of China teaching English for \$913.00 per month just to support my family. I am asking this court to grant me the status of a secured creditor. Because I am currently residing in China it is most likely that this letter will be screened and there will be a delay in your office receiving it; I ask for your forgiveness for the delay in this matter.

Sincerely,

M. Dujon Johnson mdujon@gmail.com

Chongqing University of Technology

No. 69, Hongguang Avenue, Banan District

Chongqing 400054

PR of China

# Eastern District of Michigan Claims Register

13-53846-swr City of Detroit, Michigan

**Judge:** Steven W. Rhodes Chapter: 9

Office: Detroit Last Date to file claims:

Trustee: Last Date to file (Govt):

Creditor: (22470512) M. Dujon Johnson Chongqing University of Technology No. 69, Hongguang Avenue, Banan District Chongqing 400054	Claim No: 23 Original Filed Date: 10/29/2013 Original Entered Date: 11/04/2013	Status: Filed by: CR Entered by: ckata Modified:	
PR of China  Amount claimed: \$5300.00  Secured claimed: \$5300.00	JI.		
History:  Details 23-1 10/29/2013 Claim #23 filed by M. Dujon Johnson, Amount claimed: \$5300.00 (ckata)			
Description:			
Remarks:			

# **Claims Register Summary**

Case Name: City of Detroit, Michigan Case Number: 13-53846-swr

Chapter: 9
Date Filed: 07/18/2013
Total Number Of Claims: 1

Total Amount Claimed*	\$5300.00
Total Amount Allowed*	

<sup>\*</sup>Includes general unsecured claims

The values are reflective of the data entered. Always refer to claim documents for actual amounts.

	Claimed	Allowed
Secured	\$5300.00	
Priority		
Administrative		

	<b>PACER Service Center</b>	
Transaction Receipt		

# **EXHIBIT 2**

Claim #1032 Date Filed: 2/14/2014

B10 (Official Form 10) (04/13) (Modified) CHAPTER 9 UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT of MICHIGAN PROOF OF CLAIM Name of Debtor: City of Detroit, Michigan Case Number: 13-53846 NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. Name of Creditor (the person or other entity to whom the debtor owes money or property): M. DUJON JOHNSON COURT USE ONLY Name and address where notices should be sent: ☐ Check this box if this claim amends a 15474 STOEPEC previously filed claim. DETROIT MICHIGAN 48238 Court Claim Number: (If known) Telephone number: Telephone number: email: MdJ Over chart L.co.n.
Name and address where payment should be sent (if different from above): Filed on: ☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars Telephone number: 1. Amount of Claim as of Date Case Filed: 5300.00 If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that iter 2. Basis for Claim: Dodg & we ver For illegal TOW IF CAR AUD AUCTION OF IT. (See instruction #2) 3. Last four digits of any number by which creditor identifies debtor: 3a. Debtor may have scheduled account as: (See instruction #3a) 4. Secured Claim (See instruction #4) Amount of arrearage and other charges, as of the time case was filed, Check the appropriate box if the claim is secured by a lien on property or a right of included in secured claim, if any: setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: □Real Estate □ Motor Vehicle □ Other Basis for perfection: Describe: Value of Property: \$\_ **Amount of Secured Claim:** Annual Interest Rate (when case was filed)\_ \_\_% □Fixed or □Variable Amount Unsecured: 5. Amount of Claim Entitled to Priority as an Administrative Expense under 11 U.S.C. §§ 503(b)(9) and 507(a)(2). 5b. Amount of Claim Otherwise Entitled to Priority. Specify Applicable Section of 11 U.S.C. § 6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6) 7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders; invoices tremized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and reducted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "reducted".) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:

8. Signature: (See instruction # 8) Check the appropriate box.		
☐ I am the creditor. ☐ I am the creditor's authorized agent.	☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.)	☐ I am a guarantor, surety, indorser, or other codebte (See Bankruptcy Rule 3005.)
I declare under penalty of perjury that the information provided in Print Name: M. Down Sow Sow Sow.  Title:	n this claim is true and correct to the bes	t of my knowledge, information, and reasonable belief.

Address and telephone number (if different from notice address above): Telephone number:

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

STATE OF MICHIGAN

36th JUDICIAL DISTRICT

JUDICIAL CIRCUIT

### ORDER FOR ADMINISTRATIVE CLOSING DUE TO BANKRUPTCY STAY

CASE NO.

12-202678-GC

Court address

421 Madison Ave, Detroit, MI 48226

Court telephone no.

(313) 965-6098

NOTE: Do not use this form in domestic relations cases.

Plaintiff name(s) and address(es)

M. Dujon Johnson 15474 Stoepel Detroit, MI 48238

Plaintiff(s) attorney, bar no., address, and telephone no.

M. DuJon Johnson, In Pro Per 15474 Stoepel Detroit, MI 48238 Defendant name(s) and address(es) CITY OF DETROIT

2 Woodward Ave, Suite 500 Detroit, MI 48226

Defendant(s) attorney, bar no., address, and telephone no.

MARY BETH COBBS (P40080) 2 WOODWARD AVE, STE. 500

DETROIT, MI 48226 313.237.3075 **1113** 

This case has been stayed in bankruptcy.

Bankruptcy petition no.

United States District Court

13-53846 SWR

EASTERN DISTRICT OF MICHIGAN

#### IT IS ORDERED:

- 1. This case is closed for administrative purposes without prejudice.
- 2. This closing does not constitute a dismissal or a decision on the merits.

3. When the bankruptcy stay has been removed this case may be reopened on motion of any party

\_\_\_

Judge

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A TRUE COPY

SOTH DISTRICT COURT

CASE NO: 12202678GC GC STATE OF MICHIGAN STATUS: CLSD 36TH JUDICIAL DISTRICT REGISTER OF ACTIONS Court Address 421 MADISON AVENUE Court Telephone (313) 965-5794 DETROIT MI 48226 JUDGE OF RECORD: COLEMAN, DONALD, P-39982 Attorney (CLSD) P01 PLAINTIFF JOHNSON/M/DUJON 15474 STOPEL DETROIT MI 48238 D01 DEFENDANT (CLSD) P-40080 CITY OF DETROIT PARKING// COBBS, MARY BETH, 660 WOODWARD AVE 1600 W. LAFAYETTE MI 48216 STE 1800 DETROIT DETROIT MI 48226 (313) 237-3075 DATE ACTIONS, JUDGMENTS, CASE NOTES **INITIALS** 12/18/12 P01 AFFDV & CLM FILED \$5,000.00 658 D01 AFFDV & CLM CERTIFIED MAIL - ISSUED 658 658 ALLHEARING SMALL CLAIMS SCHEDULED 01/28/13 08:30A \$65.00 RCPT # CH57225 FILING FEE PAID 658 CERTIF. MAIL PAID \$10.30 RCPT # CH57225 658 CREDIT CARD TENDERED 658 12/20/12 794 P01 ADDRESS ADDED 794 D01 ADDRESS ADDED 01/17/13 794 D01 AFFDV & CLM CERTIFIED MAIL - SERVED 01/28/13 047 ALLHEARING HELD ALL 047 HEARING ADJOURNED ALLHEARING SMALL CLAIMS SCHEDULED 047 04/10/13 08:30A CASE CALLED. PARTIES IN COURT. COPIES GIVEN. 047 PARTIES TO GET ADD'L DOC.S FOR THEIR POSITIONS 047 PLAINTIFF TO FILE BRIEF BY END OF FEB. 2013. 047 DEFENDANT TO SUBMIT BY MARCH 22, 2013. 047 MAGISTRATE LAURA A. ECHARTEA/APAYTON 047 RETURNED TO SMALL CLAIMS 047 01/29/13 JUDGE OF RECORD/MAGISTRATE CHANGED 047 FROM: 00997 SMALL CLAIMS, SC 047 TO: 41489 ECHARTEA, LAURA A 047 04/09/13 JUDGMENT SMALL CLAIMS ISSUED 001 D01 04/10/13 D01 PREV. 1600 W. LAFAYETTE 078 078 ADDR: ORDER FOR REMOVAL TO GEN CIVIL ENTERED ALL 078 CASE CALLED, BOTH PARTIES APPEARED. 078

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
	THIS DEMAND IS MADE BY THE PLAINTIFF. IT IS	078
	ORDERED: THIS CASE IS REMOVED TO THE GENERAL	078
	CIVIL DIVISION OF THE COURT FOR FURTHER	078
	PROCEEDINGS. THE DEFENDANT SHALL FILE A	078
	WRITTEN ANSWER ANS SERVE IT WITHIN 14 DAYS	078
	FROM THE DATE OF THIS ORDER AS PROVIDED IN THE	078
	COURT RULE. COPIES GIVEN TO ALL PARTIES.	078
	MAGISTRATE SIDNEY BARTHWELL JR./TRACIE CHANEY	078
04/11/13		
	JUDGE OF RECORD/MAGISTRATE CHANGED	078
	FROM: 41489 ECHARTEA, LAURA A	078
	TO: 44450 BARTHWELL, SIDNEY	078
	FILE RETURNED TO SMALL CLAIMS. TRACIE CHANEY	078
04/12/13	•	
,,	TRANSFERRED FROM CASE # 12202678	788
	CASE CHANGED TO 12-202678GC	788
	ANSWER DUE BY 04/25/13/ KARISSA SMITH	788
04/29/13	ANDWER DOE DI 04/25/15/ RARIBBA BMIIII	,00
D01	DEFAULT ISSUED	788
DOI	NO RESPONSE FROM DEFENDANT. DEFAULT MAILED OUT	788 788
		788
	AND THE FILE IS RETURNED TO THE RECORDS ROOM/	
/ /	KARISSA SMITH	788
05/10/13		
P01	DEFAULT FILED	727
05/14/13		
	DEFAULT JUDGMENT SENT TO JUDGE COLEMAN FOR	788
	REVIEW. DEFENDANT FAILED TO RESPOND/	788
	KARISSA SMITH	788
05/17/13		The state of the s
D01	JUDGMENT BY DEFAULT ENTERED \$5,300.00	/ 057
	COPIES MAILED. JUDGE DONALD COLEMAN/TRICE (	057
	FILE SENT TO FILE ROOM.	057
06/26/13		
D01	MOTION TO SET ASIDE DEFAULT JUD ENTERED	785
D01	MOTION TO SET ASIDE DEFAULT JUD REQUESTED	785
	BRUCE CLINTON	785
07/16/13	DROOF CEINION	
07/10/13	MOTION TO SET ASIDE DEFAULT JUDGMENT	785
	(DATED 6/26/13) SENT TO JUDGE COLEMAN WITH	785
	FILE.BRUCE CLINTON	785
07/25/13	FIDE. DRUCE CHINION	703
07/25/13	ORDER FOR BANKRUPTCY FILED. C.LYONS	869
00/01/12	ORDER FOR BANKRUPICY FILED. C.LIONS	603
08/21/13	MORTON TO GET AGENT DEPARTE THE GRANGED	057
D01	MOTION TO SET ASIDE DEFAULT JUD GRANTED	057
D01	ORDER TO SET ASIDE DEFAULT JUD ENTERED	057
	THE MOTION TO SET ASIDE DEFAULT JUDGMENT IS	057
	GRANTED AND THIS MATTER IS SET FOR A HEARING	057
	ON THE MOTION TO DISMISS.	057
${f ALL}$	HEARING TO DISMISS SCHEDULED	057
	09/09/13 10:00A	
${f A}{f L}{f L}$	NOTICE TO APPEAR ISSUED	057
	COPIES MAILED. JUDGE DONALD COLEMAN/TRICE	057
	FILE IN 436.	057
D01	APPEARANCE FILED COBBS, MARY BETH P-	40080 057
	D01 PREV. 1600 W. LAFAYETTE	057

JOHNSON/M/DUJON

# v CITY OF DETROIT PARKIN CASE NO: 12202678GC PAGE 3

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
	ADDR:	057
08/23/13		
	ORDER FOR ADMINISTRATIVE CLOSING DUE TO	869
	BANKRUPTCY STAY SENT TO JUDGE. CARL LYONS	869
08/26/13		
	ORDER FOR ADMINISTRATIVE CLOSING DUE TO	057
	BANKRUPTCY STAY	057
D01	ORDER FOR BANKRUPTCY STAY RECEIVED	057
	AND SIGNED. COPIES MAILED. JUDGE DONALD	057
	COLEMAN/TRICE. FILE SENT TO DOCKET DEPARTMENT.	057
09/04/13	·	
. ,	FUTURE CALENDAR DATE(S) REMOVED	057