

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

In re:

MOHAMED ALI SAMANTAR

Debtor.

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Case No. 12-11085 (BFK)
Chapter 7

**NOTICE OF HEARING ON MOTION OF BASHE ABDI YOUSUF, ET AL.
TO DISMISS THE CHAPTER 7 CASE PURSUANT TO 11 U.S.C. § 707(A)**

PLEASE TAKE NOTICE that on April 30, 2012, Bashe Abdi Yousuf, Buralle Salah Mohamoud, Ahmed Jama Gulaid and Aziz Mohamed Deria, in his capacity as the personal representative of the estates of Mohamed Deria Ali, Mustafa Mohamed Deria, Abdullahi Salah Mohamoud, the deceased brother of Buralle Salah Mohamoud, and Cawil Salah Mohamoud, the deceased brother of Buralle Salah Mohamoud (collectively, the "Tort Claimants"), by and through their undersigned counsel, filed a motion (the "Motion") for entry of an order, pursuant to section 707(a) of title 11 of the United States Code, dismissing the above captioned bankruptcy case (the "Bankruptcy Case").

PLEASE TAKE FURTHER NOTICE that the Motion will be heard before the Hon. Brian F. Kenney, United States Bankruptcy Judge, on **June 12, 2012 at 10:00 a.m. (ET)** in Courtroom 1, United States Bankruptcy Court, 200 South Washington Street, Alexandria, VA 22314 (the "Hearing Date"). If you do not want the Court to grant the relief sought in the Motion, or if you want the Court to consider your views on the Motion, then you or your attorney must do all of the following:

- (1) On or before **June 5, 2012 at 5:00 p.m. (ET) (the "Objection Deadline")** (or such other date as the Court may determine), file with the Court, at the address shown below, a written response and supporting memorandum pursuant to Local Bankruptcy Rules 4001(a)-1(C) and 9013-1(H). If you mail your response to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the Objection Deadline:

Clerk of the Court
United States Bankruptcy Court
200 South Washington Street
Alexandria, VA 22314

- (2) Serve a copy of your response and supporting memorandum on counsel for the Tort Claimants and any other parties in interests.

(3) Attend the hearing on the Motion before the Hon. Brian F. Kenney, United States Bankruptcy Judge, on **June 12, 2012 at 10:00 a.m. (ET)**, in Courtroom 1, United States Bankruptcy Court, 200 South Washington Street, Alexandria, VA 22314. If you do not attend the hearing, the Court may grant the relief requested in the Motion. The Tort Claimants reserve the right to request that the Court adjourn the hearing from time to time.

YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

UNLESS ALL OF THESE STEPS ARE FOLLOWED, THE COURT MAY DEEM OPPOSITION WAIVED, TREAT THE MOTION AS CONCEDED, AND ISSUE AN ORDER GRANTING THE REQUESTED RELIEF WITHOUT FURTHER NOTICE OR HEARING.

Dated: April 30, 2012

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ Catherine E. Creely
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Counsel for the Tort Claimants

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

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In re: : Chapter 7
MOHAMED ALI SAMANTAR, :
 : Case No. 12-11085 (BFK)
 :
 : **Hearing Date:**
 : **June 12, 2012 at 10:00 a.m. (ET)**
 Debtors. :
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**MOTION OF BASHE ABDI YOUSUF, ET AL.
TO DISMISS THE CHAPTER 7 CASE PURSUANT TO 11 U.S.C. § 707(A)**

Bashe Abdi Yousuf, Buralle Salah Mohamoud, Ahmed Jama Gulaid and Aziz Mohamed Deria, in his capacity as the personal representative of the estates of Mohamed Deria Ali, Mustafa Mohamed Deria, Abdullahi Salah Mohamoud, the deceased brother of Buralle Salah Mohamoud, and Cawil Salah Mohamoud, the deceased brother of Buralle Salah Mohamoud (collectively, the "Tort Claimants"), by and through their undersigned counsel, hereby submit this motion (the "Motion") for entry of an order, pursuant to section 707(a) of title 11 of the United States Code (the "Bankruptcy Code") and substantially in the form attached hereto as Exhibit A, dismissing the above captioned bankruptcy case (the "Bankruptcy Case"). In support of this Motion, the Tort Claimants respectfully state as follows:

PRELIMINARY STATEMENT

1. In 2004, the Tort Claimants commenced a civil action (the “Tort Action”)¹ against the Debtor in the United States District Court for the Eastern District of Virginia (the “District Court”) seeking damages for egregious violations of the Tort Claimants’ human rights (the “Tort Claims”) committed against them and their family members as part of a systematic campaign of violence orchestrated by the Debtor, a General and former Commander of the Somali Armed Forces, Defense Minister and Prime Minister of Somalia. Since 2007, the Debtor has deliberately and persistently — and, in many instances, frivolously — attempted to prevent the Tort Action from proceeding.

2. After the Debtor’s repeated attempts to frustrate adjudication of the Tort Claims were rejected by every level of the federal judicial system, the Debtor made a last-ditch attempt to avoid liability for his violations of the Tort Claimants’ human rights: filing a voluntary petition for relief under chapter 7 of the Bankruptcy Code.

3. As discussed below, **this Bankruptcy Case presents at least six of the eleven factors that courts consider when determining whether a Chapter 7 petition should be dismissed as a bad faith filing pursuant to section 707(a) of the Bankruptcy Code.**

Consequently, the totality of the circumstances demonstrates that the Debtor lacked good faith in filing the Petition and, therefore, the Bankruptcy Case must be dismissed for cause pursuant to section 707(a).²

¹ See Yousuf v. Samantar, No. 1:04 CV 1360 (E.D. Va.).

² To be sure, the District Court determined that some of the factual bases for this Motion did not warrant the imposition of sanctions against the Debtor’s counsel pursuant to 18 U.S.C. § 1927. However, the District Court did not determine whether any of the factual bases for this Motion nonetheless demonstrate bad faith sufficient to warrant dismissing the Bankruptcy Case for cause pursuant section pursuant to 707(a) of the Bankruptcy Code.

FACTUAL SUMMARY

A. The Debtor's Five-Year Campaign to Frustrate Adjudication of the Tort Claims

4. In 2007, the Debtor moved to dismiss the Tort Action for lack of jurisdiction on various grounds, including immunity from suit under the common law and the Foreign Sovereign Immunities Act (the "FSIA"), 28 U.S.C. §§ 1330, 1602, et seq.³ Although the District Court granted the Debtor's motion, the United States Court of Appeals for the Fourth Circuit (the "Fourth Circuit") reversed the District Court's ruling and reinstated the Tort Action.⁴ The Debtor appealed the Fourth Circuit's ruling to the United States Supreme Court, which unanimously affirmed the Fourth Circuit's ruling on June 1, 2010, and remanded the Action to the District Court.⁵

5. In February 2011, the United States Department of State (the "Department of State") filed a Statement of Interest in the District Court explaining that the Debtor is not entitled to immunity.⁶ In April 2011, the District Court entered an order denying the Debtor's motion to dismiss (the "Motion to Dismiss Order"), concluding that the Department of State's determination was well-reasoned and entitled to deference.⁷ Nevertheless, the Debtor moved the District Court to reconsider the Motion to Dismiss Order; the District Court promptly denied the Debtor's request.⁸

³ (See Motion to Dismiss Second Amended Complaint, Tort Action, Docket No. 89 (3/29/2007); Memorandum in Support of Motion to Dismiss, Tort Action, Docket No. 90 (3/29/2007).)

⁴ (See Judgment as to Notice of Appeal, Tort Action, Docket No. 114 (2/10/2009).)

⁵ See Samantar v. Yousuf, 130 S. Ct. 2278, 2292–93 (2010).

⁶ (See Statement of Interest, Tort Action, Docket No. 147 (Feb. 14, 2011).) Due to the voluminous nature of the pleadings filed in connection with the Tort Action, the pleadings cited herein have not been attached as exhibits to the Motion. The Tort Claimants will provide copies of any such pleadings to the Court upon request.

⁷ (See Order Denying Motion to Dismiss, Tort Action, Docket No. 158 (Apr. 1, 2011); Hr. Tr. of 4/1/2011 Proceedings, Tort Action, Docket No. 159 (Apr. 27, 2011).)

⁸ (See Order Denying Motion to Dismiss, Tort Action, Docket No. 158 (Apr. 1, 2011).)

6. Having failed to convince the District Court to reconsider its decision, the Debtor moved the District Court for a stay pending appeal of the Motion to Dismiss Order.⁹ Notably, the District Court not only denied the Debtor's request for a stay, but also characterized the Debtor's appeal of the Motion to Dismiss Order as "frivolous."¹⁰ Nevertheless, one month later the Debtor moved the Fourth Circuit for a stay pending appeal of the Motion to Dismiss Order.¹¹ The Fourth Circuit summarily denied the Debtor's request.¹²

7. With the Tort Action free to proceed, the Tort Claimants conducted the oral deposition (the "July 28 Deposition") of the Debtor on July 28, 2011. During the July 28 Deposition, the Debtor testified under penalty of perjury that he owned "probably two" houses in Somalia.¹³

8. On October 20, 2011, the District Court scheduled trial to commence on February 21, 2012.¹⁴ However, on February 9, 2012 — less than two weeks before the trial in the Tort Action was scheduled to begin — the Debtor yet again moved the District Court for a stay of the proceedings pending appeal.¹⁵ And yet again, the District Court rejected the Debtor's request. In so doing, however, the District Court predicted the "likelihood of [the Debtor] succeeding on this appeal is extremely . . . slight," and noted the prejudice that a stay would impose on the plaintiffs.¹⁶

⁹ (See Notice of Appeal, Tort Action, Docket No. 160 (Apr. 29, 2011); Motion to Stay, Tort Action, Docket No. 162 (May 13, 2011).)

¹⁰ (See Order Denying Motion to Stay, Tort Action, Docket No. 168 (May 18, 2011).)

¹¹ (See Motion to Stay, Yousuf v. Samantar, No. 11-1479 (4th Cir. June 18, 2011), Docket No. 14-1.)

¹² (See Court Order, Yousuf v. Samantar, No. 11-1479 (4th Cir. July 8, 2011), Docket No. 23.)

¹³ (See Tort Action, Samantar Dep. 461:7–13 (July 28, 2011) ("Q. And do you have property anywhere outside the United States? A. I own some in Somalia. Q. What do you own in Somalia? A. Houses. Q. About how many? A. (In English) probably two."))

¹⁴ (See Minute Entry, Tort Action, Docket No. 233 (10/20/2011).)

¹⁵ (See Motion to Stay, Tort Action, Docket No. 311 (Feb. 9, 2012).)

¹⁶ (See Order Denying Renewed Motion to Stay, Tort Action, Docket No. 326 (2/14/2012); Hr. Tr. 2/14/2012 Proceedings, Tort Action, Docket No. 329 (Feb. 14, 2012).)

9. Notwithstanding the District Court's stated interest in having the Tort Action proceed to trial on schedule, on February 10, 2012 the Debtor moved the District Court to terminate the Tort Action in its entirety based upon a delay in his receipt of one of the Tort Claimant's immigration documents.¹⁷

10. On February 15, 2012, the District Court summarily rejected the Debtor's request.¹⁸ Unfazed, the Debtor yet again moved the Fourth Circuit to stay the trial in the Tort Action the very next day.¹⁹ And yet again, the Fourth Circuit promptly rejected the Debtor's request.²⁰

B. The Debtor's Last-Ditch Attempt to Frustrate Adjudication of the Tort Claims

11. On February 19, 2012 (the "Petition Date") — less than two days before the trial in the Tort Action was scheduled to begin — the Debtor filed a voluntary petition (the "Petition") for relief under chapter 7 of the Bankruptcy Code in this Court. That same night, the Debtor filed a Suggestion of Bankruptcy in the District Court.²¹

12. Because the trial in the Tort Action — which had been in the making for more than seven years — was scheduled to begin just two days later, the Tort Claimants moved the Court on February 21, 2012, for relief from the automatic stay.²² The Court granted the Tort Claimants' request the very same day, and permitted the trial in the Tort Action to proceed.²³

¹⁷ (See Defendant Samantar's Motion for Terminating Sanctions, Tort Action, Docket No. 316 (Feb. 10, 2012).)

¹⁸ (See Order Denying Renewed Motion to Stay, Tort Action, Docket No. 326 (2/14/2012).)

¹⁹ (See Second Emergency Motion for a Stay of Proceedings, Yousuf v. Samantar, No. 11-1479 (4th Cir. Feb. 15, 2012), Docket No. 55.)

²⁰ (See Order Denying Motion for Stay, Yousuf v. Samantar, No. 11-1479 (4th Cir. Feb. 17, 2012), Docket No. 61.)

²¹ (See Voluntary Petition, Bankruptcy Case, Docket No. 1 (Feb. 19, 2012).)

²² (See Emergency Motion of Bashe Abdi Yousuf, et al. for (A) Relief from the Automatic Stay and (B) the Scheduling of an Expedited Hearing, Bankruptcy Case, Docket No. 4 (Feb. 21, 2012).)

²³ (See Order Granting Motion for Relief from Stay, Bankruptcy Case, Docket No. 12 (Feb. 21, 2012).)

C. The Debtor's Fraudulent Attempts to Frustrate Collection on the Tort Claims

13. On February 23, 2012, the trial in the Tort Action finally commenced. The very same day, however, the Debtor took the stand, conceded liability as well as the existence of damages, and defaulted in connection with all of the Tort Claims.²⁴ The District Court accepted the Debtor's admissions, and currently is considering the amount of damages that will be awarded to the prevailing Tort Claimants.

14. Meanwhile in this Court, the Debtor filed its schedules and statement of financial affairs (the "Schedules and Statements") on March 23, 2012, after receiving several extensions.²⁵ In Schedule A of the Schedules and Statements, the Debtor declared under penalty of perjury — yet contradicting his testimony at the July 28 Deposition — that he holds no legal, equitable, or future interest in any real property, or rights and powers exercisable for the Debtor's own benefit.²⁶ Furthermore, in Schedule I of the Schedules and Statements, the Debtor declared under penalty of perjury that his average monthly income is zero.²⁷

15. On March 29, 2012, the chapter 7 trustee (the "Chapter 7 Trustee") conducted the required meeting (the "341 Meeting") of creditors pursuant to section 341 of the Bankruptcy Code. At the 341 Meeting, the Debtor testified under penalty of perjury that the Schedules and Statements were true and accurate, and: (a) reaffirmed — again, contradicting his testimony at the July 28 Deposition — that he holds no legal, equitable, or future interest in any real property, or rights and powers exercisable for the Debtor's own benefit; and (b) testified — this time, in contradiction to Schedule I of the Statements and Schedules — that he receives financial

²⁴ (See Minute Entry, Tort Action, Docket No. 353 (Feb. 23, 2012).)

²⁵ (See Summary of Schedules, Bankruptcy Case, Docket No. 37 (Mar. 23, 2012).)

²⁶ (See id. at Schedule A.)

²⁷ (See id. at Schedule I.)

assistance from his family.²⁸ In reliance upon these (mis)statements, the Chapter 7 Trustee filed a Report of No Distribution on April 3, 2012.²⁹

16. On April 6, 2012, the Tort Claimants sent a letter to the Chapter 7 Trustee and the United States Trustee advising of the Debtor's misrepresentations, and stating that the Tort Claimants are examining whether the facts and circumstances surrounding the filing of the Petition support the filing of this Motion to dismiss the Bankruptcy Case.

JURISDICTION AND VENUE

17. This Court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 1334 and 157(a). This contested matter is a core proceeding properly heard by this Court pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

RELIEF REQUESTED

18. By this Motion, the Tort Claimants respectfully request that the Court enter an order, pursuant to section 707(a) the Bankruptcy Code and substantially in the form attached hereto as Exhibit A, dismissing the Bankruptcy Case.

BASIS FOR RELIEF

19. The Bankruptcy Case should be dismissed with cause, pursuant to section 707(a) of the Bankruptcy Code, because the Petition was not filed in good faith.

20. Section 707(a) of the Bankruptcy Code provides that “[t]he court may dismiss a case under this chapter only after notice and a hearing and only for cause, including”

²⁸ At the time this Motion was filed, the Tort Claimants have been unable to procure a transcript of the 341 Meeting. Consequently, the Tort Claimants reserve their right to present a copy of such transcript if and when it becomes available.

²⁹ (See Chapter 7 Trustee's Report of No Distribution, Bankruptcy Case, Docket No. 41 (DATE).)

unreasonable delay by the debtor that is prejudicial to its creditors, nonpayment of filing fees, and failure to file required statements or schedules. 11 U.S.C. § 707(a). Because the word “including” is not exclusive, see 11 U.S.C. § 102(3), this Court has recognized that “cases may be dismissed [for cause] on grounds other than those specifically enumerated in [section] 707(a).” In re Ferry, No. 08-12483-SSM, 2008 WL 4560672, at *2 (Bankr. E.D. Va. Oct. 8, 2008) (citing McDow v. Smith, 295 B.R. 69, 75 (E.D. Va. 2003)).

21. The term “cause” is not expressly defined in section 707(a). However, the United States District Court for the Eastern District of Virginia — as well as bankruptcy, district, and appellate courts across the nation — consistently hold that “cause for dismissal under [section] 707(a) includes a debtor’s bad faith acts or omissions” that “constitute a misuse or abuse of the provisions, purpose, or spirit of the Bankruptcy Code.” McDow, 295 B.R. at 74–75. Accord Tamecki v. Frank (In re Tamecki), 229 F.3d 205, 208 (3d Cir. 2000) (concluding that lack of good faith in filing a bankruptcy petition is “cause” for its dismissal under § 707(a)); Huckfeldt v. Huckfeldt (In re Huckfeldt), 39 F.3d 829, 831 (8th Cir. 1994) (same); Indus. Ins. Servs., Inc. v. Zick (In re Zick), 931 F.2d 1124, 1127 (6th Cir. 1991) (same); U.S. v. Pedigo, 329 B.R. 47, 51 (S.D. Ind. 2005) (same); In re Gilman, No. 11-06036-8-SWH, 2012 WL 1230276, at *2 (Bankr. E.D.N.C. Apr. 12, 2012) (same); In re O’Brien, 328 B.R. 669, 675 (Bankr. W.D.N.Y. 2005); In re Eddy, 288 B.R. 500, 504 (Bankr. E.D. Tenn. 2002) (same); In re Spagnolia, 199 B.R. 362, 365 (Bankr. W.D. Ky. 1995) (same); In re Griffith, 209 B.R. 823, 827 (Bankr. N.D.N.Y. 1996) (same); In re Cappuccetti, 172 B.R. 37, 39 (Bankr. E.D. Ark. 1994) (same). See Carolin Corp. v. Miller, 886 F.2d 693, 698–99 (4th Cir. 1989) (concluding that the term “cause” in section 1112(b), the chapter 11 analogue to section 707(a), permits a court to dismiss a bankruptcy case where the petition is filed in bad faith.).

22. The United States Court of Appeal for the Fourth Circuit has long recognized that “an implicit prerequisite to the right to file [a bankruptcy petition] is ‘good faith’ on the part of the debtor, the absence of which may constitute cause for dismissal.” Carolin, 886 F.2d at 698. This good-faith requirement protects “the jurisdictional integrity of the bankruptcy courts by rendering their powerful equitable weapons (i.e. . . . discharge of debts . . .) available only to those debtors and creditors with ‘clean hands.’” Carolin, 886 F.2d at 698. As a result, bankruptcy courts “have traditionally drawn upon their powers of equity to prevent abuse of the bankruptcy process and to ensure that a case be commenced in good faith to reflect the intended policies of the Code.” See Kestell v. Kestell (In re Kestell), 99 F.3d 146, 147 (4th Cir. 1996).

23. When considering whether a case should be dismissed for lack of good faith under section 707(a), courts in this district and elsewhere employ a “totality of the circumstances test” which considers a variety of factors, including:

- (1) **“The debtor’s concealment or misrepresentation of assets and/or sources of income, such as the improper or unexplained transfers of assets prior to filing”;**
- (2) **“The debtor’s lack of candor and completeness in his statements and schedules, such as the inflation of his expenses to disguise his financial well-being”;**
- (3) “The debtor has sufficient resources to repay his debts, and leads a lavish lifestyle, continuing to have excessive and continued expenditures”;
- (4) **“The debtor’s motivation in filing is to avoid a large single debt incurred through conduct akin to fraud, misconduct, or gross negligence, such as a judgment in pending litigation, or a collection action”;**
- (5) **“The debtor’s petition is part of a ‘deliberate and persistent pattern’ of evading a single creditor”;**
- (6) “The debtor is ‘overutilizing the protection of the Code’ to the detriment to his creditors”;

- (7) “The debtor reduced his creditors to a single creditor prior to filing the petition”;
- (8) “The debtor’s lack of attempt to repay creditors”;
- (9) “The debtor’s payment of debts to insider creditors”;
- (10) **“The debtor’s ‘procedural gymnastics’ that have the effect of frustrating creditors”**; and
- (11) **“The unfairness of the debtor’s use of the bankruptcy process”**.

McDow, 295 B.R. at 80 n.22 (emphasis added). Accord In re Gilman, 2012 WL 1230276, at *2–3 (enumerating similar factors that courts consider when determining whether a case should be dismissed for lack of good faith under section 707(a)); In re O’Brien, 328 B.R. at 675 (same); In re Eddy, 288 B.R. at 504–05 (same); In re Spagnolia, 199 B.R. at 364 (same); In re Griffieth, 209 B.R. at 827 (same); In re Cappuccetti, 172 B.R. at 39 (same).

24. Although “the presence of only one of these factors is not sufficient to support a [section] 707(a) dismissal,” where “a combination of these factors are present, courts have held that a [section] 707(a) dismissal is warranted.” In re Spagnolia, 199 B.R. at 365. Accord In re Gilman, 2012 WL 1230276, at *2–3 (dismissing chapter 7 petition “for cause” under section 707(a) because “multiple factors” were present); In re Eddy, 288 B.R. at 505 (same); In re Griffieth, 209 B.R. at 831 (same); In re Cappuccetti, 172 B.R. at 39 (same).

25. As discussed below, **this Bankruptcy Case presents at least six of the eleven factors that courts consider when determining whether a Chapter 7 petition should be dismissed as a bad faith filing pursuant to section 707(a) of the Bankruptcy Code.**

Consequently, the totality of the circumstances demonstrates that the Debtor lacked good faith in filing the Petition and, therefore, the Bankruptcy Case must be dismissed for cause pursuant to section 707(a).

26. **First**, the Debtor has “conceal[ed] or misrepresent[ed] . . . assets and/or sources of income.” McDow, 295 B.R. at 80 n.22. For example, in Schedule A of the Schedules and Statements the Debtor declared under penalty of perjury that he holds no legal, equitable, or future interest in any real property, or rights and powers exercisable for the Debtor’s own benefit.³⁰ However, at the July 28 Deposition — and in direct contradiction to Schedule A — the Debtor testified under penalty of perjury that he owned “probably two” houses in Somalia.³¹ Furthermore, in Schedule I of the Schedules and Statements the Debtor declared under penalty of perjury that his average monthly income is zero.³² However, at the 341 Meeting — and in direct contradiction to Schedule I — the Debtor testified under penalty of perjury that he receives financial assistance from his family; that financial assistance should have been included on, but is conspicuously absent from, Schedule I. See AM. BAR ASSOC. AD HOC COMM. ON BANKRUPTCY COURT STRUCTURE & INSOLVENCY PROCESSES, BEST PRACTICES FOR DEBTOR’S ATTORNEYS, 64 BUS. LAW. 79, 117 (Nov. 2008) (“Line 13: Other monthly income. Initial Inquiry and /or Document Review: Inquire regarding family assistance received on a routine basis Further Inquiry: Family assistance should be documented.”). The Debtor’s concealment and misrepresentation of assets and sources of income are, as a matter of law, evidence of his lack of good faith in filing the Petition.

³⁰ (See Schedule A, Bankruptcy Case, Docket No. 37 (Mar. 23, 2012).)

³¹ (July 28 Deposition at 461:7–13 (“Q. And do you have property anywhere outside the United States? A. I own some in Somalia. Q. What do you own in Somalia? A. Houses. Q. About how many? A. (In English) probably two.”).) To be sure, it is possible that the Debtor disposed of his “probably two” houses during the seven months between the date he proffered the deposition testimony in connection with the Tort Action, and the Petition Date. If that were the case, however, the Debtor either: (a) further misrepresented his assets by failing to include the sale proceeds on Schedule B annexed to the Petition; (b) secreted the sale proceeds before filing the Petition; (c) spent the sale proceeds, which is implausible, considering that in Schedule J annexed to the Petition the Debtor declared under penalty of perjury that his current expenditures total only \$50 per month); or (d) fraudulently transferred the properties either— (i) for less than reasonably equivalent value while the Debtor was insolvent, or (ii) to hinder, delay, or defraud his creditors, including the Tort Claimants. Regardless of which alternative hews closest to reality, all of them further evidence that the Debtor lacked good faith in filing his bankruptcy petition, and it must be dismissed for cause pursuant to section 707(a).

³² (See Schedule I, Bankruptcy Case, Docket No. 37 (Mar. 23, 2012).)

27. **Second**, the Debtor has “lack[ed] . . . candor and completeness in his statements and schedules.” McDow, 295 B.R. at 80 n.22. Indeed, as discussed above, the Debtor has concealed and misrepresented assets and sources of income from Schedules A and I respectively. The Debtor’s lack of candor and completeness in the statements and schedules annexed to the Petition are, as a matter of law, evidence of his lack of good faith in filing the Petition.

28. **Third**, it is clear that the Debtor’s “motivation in filing is to avoid a large single debt incurred through conduct akin to fraud, misconduct, or gross negligence, such as a judgment in pending litigation” — here, the imminent judgment in the pending Tort Action. McDow, 295 B.R. at 80 n.22. Courts have long identified certain red flags that evidence a lack of good faith where a debtor files for bankruptcy in an attempt to avoid a large single debt incurred through misconduct or a judgment in a pending litigation. All of those red flags are present here.

29. For example, in In re Lombardo, the debtor’s largest creditor moved to dismiss the debtor’s bankruptcy case for cause pursuant to section 707(a), asserting that the Chapter 7 petition was not filed in good faith because, in part, the Debtor filed the petition with the sole purpose of frustrating the moving creditor’s collection efforts. 370 B.R. 506, 510 (Bankr. E.D.N.Y. 2007). After reviewing the relevant factors to determine whether the debtor acted in bad faith, the United States Bankruptcy Court for the Eastern District of New York concluded that the Chapter 7 petition was not filed in good faith and dismissed the case. See id. at 512. In so doing, the court observed that the debt owed to the moving creditor comprised 87 percent of the debtor’s total debt and, other than the imminent commencement of litigation by moving creditor, “there was no evidence that the [d]ebtor suffered any sudden loss of income or incurred any unexpected, significant expenses in the months leading up to the [d]ebtor’s bankruptcy filing that would lead her to seek a fresh start under the Bankruptcy Code.” Id. at 512–13.

30. Similarly, in In re Cappuccetti, the debtors' largest creditor moved to dismiss the debtors' bankruptcy case for cause pursuant to section 707(a), asserting that the Chapter 7 petition was not filed in good faith because, in part, the debtors filed the petition in response to the creditor's collection efforts, and "the case essentially involve[d] a single creditor." 172 B.R. at 38. After reviewing the factors which courts utilize to determine whether a Chapter 7 case was filed in bad faith, the United States Bankruptcy Court for the Eastern District of Arkansas concluded that the Chapter 7 petition was not filed in good faith and dismissed the case. See id. at 39. In so doing, the court observed that, although the schedules annexed to the petition listed three creditors, "[t]his is essentially a one creditor case" because the debt owed to the moving creditor comprised between 85 and 90 percent of the debtors' total debt. Id. The court also reasoned that "[t]he Chapter 7 petition was filed in response to collection activities by the [moving creditor]" because, "[r]ather than negotiating with the [moving creditor] on the monthly [payment] amount, the debtors filed the instant Chapter 7 case." Id. at 40. At bottom, the court determined that "[t]he fact that the debtors would not even negotiate a monthly payment amount, combined with the fact that collection activities by the debtors' single majority creditor were on-going is a factor indicating a lack of good faith." Id.

31. Here, the Tort Claimants are the Debtor's single largest creditor. Indeed, in Schedule F of the Schedules and Statements the Debtor declared that the claims held by creditors holding unsecured, nonpriority claims total \$12,350.70 — not including claims held by the Tort Claimants.³³ In contrast, it is likely that the Tort Claimants will be awarded many millions of dollars on account of the Tort Claims — claims to which the Debtor already has admitted his liability, but for which he has made no effort to negotiate a settlement. See, e.g., Arce v. Garcia,

³³ (See Schedule F, Bankruptcy Case, Docket No. 37 (Mar. 23, 2012).)

434 F.3d 1254 (11th Cir. 2006) (awarding \$54 million in compensatory and punitive damages for human rights claims similar to those asserted in the Tort Action); Jean v. Dorelien, 431 F.3d 776 (11th Cir. 2005) (awarding \$4.3 million for human rights claims similar to those asserted in the Tort Action); Chavez v. Carranza, 413 F. Supp. 2d 891 (W.D. Tenn. 2005) (awarding \$6 million in compensatory and punitive damages for human rights claims similar to those asserted in the Tort Action); Doe v. Saravia, 348 F. Supp. 2d 1112 (E.D. Cal. 2004) (awarding \$10 million in compensatory and punitive damages for human rights claims similar to those asserted in the Tort Action); Mehinovic v. Vuckovic, 198 F. Supp. 2d 1322 (N.D. Ga. 2002) (awarding \$140 million in compensatory and punitive damages for human rights claims similar to those asserted in the Tort Action).

32. Even if the Tort Claimants were awarded just \$1 million — which is significantly less than the typical award in similar human rights cases — the claims held by the Tort Claimants would constitute more than 98% of the Debtors’ total unsecured, nonpriority claims.

Consequently, as in Cappuccetti, this case “essentially involves a single creditor”: the Tort Claimants. 172 B.R. at 38. Moreover, as in Lombardo, “there [i]s no evidence that the Debtor suffered any sudden loss of income or incurred any unexpected, significant expenses in the months leading up to the Debtor’s bankruptcy filing” — other than the imminent judgment in the pending Tort Action, of course. 370 B.R. at 512–13. Instead, the Debtor’s motivation in filing the Petition was to avoid the imminent judgment in the pending Tort Action, and such motivation is, as a matter of law, evidence of his lack of good faith in filing the Petition.

33. **Fourth**, the Debtor’s ““procedural gymnastics’ . . . have [had] the effect of frustrating creditors.” McDow, 295 B.R. at 80 n.22. As discussed above, the Debtor has

deliberately and persistently — and, in many instances, frivolously — abused the judicial process to prevent the Tort Action from proceeding. For example:

- Notwithstanding that the Department of State had filed a Statement of Interest in the District Court explaining that the Debtor is not entitled to FSIA immunity from suit³⁴ — and notwithstanding that the District Court,³⁵ the Fourth Circuit,³⁶ and the United States Supreme Court³⁷ all agreed with this determination — the Debtor nevertheless (unsuccessfully) moved the District Court to reconsider the Motion to Dismiss Order,³⁸ and for a stay pending appeal of the Motion to Dismiss Order³⁹ — an appeal that the District Court characterized as “frivolous.”⁴⁰
- Notwithstanding that the District Court denied the Debtor’s request for a stay pending appeal of the Motion to Dismiss Order,⁴¹ and characterized the Debtor’s appeal of the Motion to Dismiss Order as “frivolous,”⁴² the Debtor nevertheless (unsuccessfully) moved the Fourth Circuit for a stay pending appeal of the Motion to Dismiss Order.⁴³
- Notwithstanding that the District Court⁴⁴ and the Fourth Circuit⁴⁵ had previously denied the Debtor’s numerous requests for a stay pending appeal, less than two weeks before the trial in the Tort Action was scheduled to begin the Debtor once again (unsuccessfully) moved the District Court⁴⁶ as well as the Fourth Circuit⁴⁷ for a stay of the proceedings pending appeal.
- Notwithstanding the District Court’s stated interest in having the Tort Action proceed to trial on schedule, less than two weeks before the trial in the Tort Action was scheduled to begin the Debtor (unsuccessfully) moved the District Court to terminate

³⁴ (See Statement of Interest, Tort Action, Docket No. 147 (Feb. 14, 2011).) Due to the voluminous nature of the pleadings filed in connection with the Tort Action, the pleadings cited herein have not been attached as exhibits to the Motion. The Tort Claimants will provide copies of any such pleadings to the Court upon request.

³⁵ (See Order Denying Motion to Dismiss, Tort Action, Docket No. 158 (Apr. 1, 2011); Hr. Tr. of 4/1/2011 Proceedings, Tort Action, Docket No. 159 (Apr. 27, 2011).)

³⁶ (See Judgment as to Notice of Appeal, Tort Action, Docket No. 114 (2/10/2009).)

³⁷ See Samantar v. Yousuf, 130 S. Ct. at 2292–93.

³⁸ (See Order Denying Motion to Dismiss, Tort Action, Docket No. 158 (Apr. 1, 2011).)

³⁹ (See Notice of Appeal, Tort Action, Docket No. 160 (Apr. 29, 2011); Motion to Stay, Tort Action, Docket No. 162 (May 13, 2011).)

⁴⁰ (See Order Denying Motion to Stay, Tort Action, Docket No. 168 (May 18, 2011).)

⁴¹ (See id.)

⁴² (See id.)

⁴³ (See Motion to Stay, Yousuf v. Samantar, No. 11-1479 (4th Cir. June 18, 2011), Docket No. 14-1.)

⁴⁴ (See Order Denying Motion to Stay, Tort Action, Docket No. 168 (May 18, 2011).)

⁴⁵ (See Yousuf v. Samantar, No. 11-1479 (4th Cir. June 18, 2011), Docket No. 14-1.)

⁴⁶ (See Motion to Stay, Tort Action, Docket No. 311 (Feb. 9, 2012).)

⁴⁷ (See Second Emergency Motion for a Stay of Proceedings, Yousuf v. Samantar, No. 11-1479 (4th Cir. Feb. 15, 2012), Docket No. 55.)

the Tort Action in its entirety based upon a delay in his receipt of one of the Tort Claimant's immigration documents.⁴⁸

34. The fact that the Debtor has now admitted liability to all of the Tort Claims underscores that the Debtor's five-year campaign of procedural maneuvers were dilatory tactics. To be sure, the Debtor's procedural gymnastics have accomplished nothing more than hindering and delaying the Debtor's largest creditor and are, as a matter of law, evidence of his lack of good faith in filing the Petition.

35. **Fifth**, the Petition "is part of a 'deliberate and persistent pattern' of evading a single creditor." McDow, 295 B.R. at 80 n.22. As discussed above, the Petition is merely the Debtor's most recent tactic in a five-year campaign of deliberate and persistent — and, in many instances, frivolous — procedural maneuvers geared towards hindering and delaying the Tort Claimants. Indeed, the Debtor filed the Petition only after the Debtor's repeated attempts to frustrate adjudication of the Tort Claims were rejected by every level of the federal judicial system — not because the Debtor "suffered any sudden loss of income or incurred any unexpected, significant expenses in the months leading up to the Debtor's bankruptcy filing." Lombardo, 370 B.R. at 513. In fact, the Debtor's counsel has even admitted that "the bankruptcy filing would not [have] be[en] necessary" had the District Court or the Fourth Circuit granted a stay of the Tort Action in the week leading up to the trial.⁴⁹ This deliberate and persistent pattern of evading the Tort Claimants is, as a matter of law, evidence of the Debtor's lack of good faith in filing the Petition.

⁴⁸ (See Defendant Samantar's Motion for Terminating Sanctions, Tort Action, Docket No. 316 (Feb 10, 2012).)

⁴⁹ (Bankruptcy Counsel's Verified Opposition to Plaintiff's Motion for Sanctions, Tort Action, Docket No. 362 (Apr. 18, 2012) ("As long as there was a possibility that the District Court or the Fourth Circuit would grant a stay, the bankruptcy filing would not be necessary.").)

36. **Sixth**, “[t]he unfairness of the debtor’s use of the bankruptcy process” has permeated the entire Bankruptcy Case since its inception. McDow, 295 B.R. at 80 n.22. As discussed above, the Petition is merely the Debtor’s most recent ploy in a series of deliberate and persistent — and, in many instances, frivolous — procedural maneuvers geared towards preventing the Tort Claimants from obtaining relief for the Debtor’s admitted violations of the Tort Claimant’s human rights. Rather than prepare for trial in good faith after more than seven years of protracted litigation, the Debtor exhibited no respect whatsoever for the time and resources of the Tort Claimants, this Court, the District Court, or the Fourth Circuit — each of which were required to consider and rule upon multiple, unnecessary motions in the days leading up to a trial that the Debtor knew would never occur.

37. Lest there be any doubt, the Debtor knew all along that a trial in the Tort Action would never occur. Although the Debtor received the required credit counseling on February 15, 2012 — just six days before the trial in the Tort Action was scheduled to begin — the Debtor did absolutely nothing to advise the District Court or the Tort Claimants that he intended to file for bankruptcy protection instead of proceeding to trial.⁵⁰ To the contrary, while appearing before the District Court on Friday, February 17, 2012, the Debtor’s attorney sat silently as he pretended that the trial would proceed as scheduled on Tuesday morning. In fact, as soon as two days after the Debtor filed the Petition, even the District Court realized that the Debtor had pulled the wool over everybody’s eyes:

I’m very concerned that you did not give the Court as well as opposing counsel some indication that this might happen. My experience has been that as a courtesy counsel advises the Court that the case is going to be delayed because of a bankruptcy filing, and to have this happen on the eve of trial, knowing that a jury was being called in, it really does concern the Court. . . . I’m just going

⁵⁰ (See Voluntary Petition, Bankruptcy Case, Docket No. 1 (Feb. 19, 2012).)

to put on the record that I think it's an outrageous waste of the taxpayers' dollars to have a jury come in when you know that there's not going to be a trial.⁵¹

38. The Debtor, of course, did not extend that courtesy to either the Tort Claimants or the District Court. Even after this Court and the Fourth Circuit denied his pending motions on February 17, 2012, the Debtor did not immediately file the Petition. Instead, the Debtor filed the Petition late on a Sunday night over a holiday weekend, thereby maximizing the cost to the Court and to the Tort Claimants as well as minimizing the time period in which the Tort Claimants could to try to lift the stay and still have trial commence that same week. As the District Court correctly observed, "the timing of th[e filing of the Petition], especially after the Fourth Circuit denied the motion for a stay so late on Friday afternoon, just suggests that this use of the bankruptcy proceedings is extremely questionable."⁵² This patent unfairness of the debtor's use of the bankruptcy process is, as a matter of law, evidence of the Debtor's lack of good faith in filing the Petition.

39. At bottom, **this Bankruptcy Case presents at least six of the eleven factors that courts consider when determining whether a Chapter 7 petition should be dismissed as a bad faith filing pursuant to section 707(a) of the Bankruptcy Code.** Consequently, the totality of the circumstances evidences that the Debtor lacked good faith in filing the Petition and, therefore, the Bankruptcy Case must be dismissed for cause pursuant to section 707(a).

40. Furthermore, it is well settled that "[w]here a party calls into question a debtor's good faith and the party has met the burden of showing cause for dismissal, the burden shifts to the debtor to prove her good faith." In re Lombardo, 370 B.R. at 514. Accord In re Tamecki, 229 F.3d at 207 (shifting the burden to the debtor to prove his good faith after a party proffered

⁵¹ (Hr. Tr. 2/21/2012 Proceedings, Tort Action, Docket No. 350 (Feb. 21, 2012).)

⁵² (Id.)

evidence sufficient to impugn the debtor's good faith). In re Marks, 174 B.R. 37, 40 (E.D. Pa. 1994) (same). Because the Tort Claimants have established that this case presents no less than 6 of the 11 factors which courts utilize to determine whether a Chapter 7 petition was filed in bad faith, the Tort Claimants have met their burden of showing cause for dismissal. Therefore, the Debtor now bears the burden of proving that he filed the Petition in good faith.

WAIVER OF MEMORANDUM OF LAW

41. Pursuant to Local Rule 9013-1(G), and because there are no novel issues of law presented in the Motion, the Tort Claimants request a waiver of the requirement that all motions be accompanied by a written memorandum of law.

NO PRIOR REQUEST

42. No previous request for the relief sought in the Motion has been made to this Court or any other court.

RESERVATION OF RIGHTS

43. The Tort Claimants expressly reserve any and all rights in connection with the Tort Action and any and all property not listed in the Schedules and Statements. Nothing contained in this Motion shall operate as a waiver of any of the Tort Claimants' claims, rights, or remedies. The Tort Claimants further reserve the right to supplement this Motion to respond to any reply filed by the Debtor, the Chapter 7 Trustee, the United States Trustee, or any other party in interest to the Bankruptcy Case.

NOTICE

44. Notice of the Motion has been provided to: (a) counsel to the Debtor; (b) the Office of the United States Trustee for the Eastern District of Virginia, Alexandria Division; (c) the Chapter 7 Trustee; and (d) all other parties who have requested notice. The Tort Claimants submit that no other or further notice of the Motion is required.

CONCLUSION

WHEREFORE, the Tort Claimants respectfully request that the Court enter an order: (a) dismissing the Bankruptcy Case; and (b) granting the Tort Claimants any other relief that the Court deems just and proper.

Dated: April 30, 2012

Respectfully Submitted,

/s/ Catherine E. Creely, Esq.

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Counsel for the Tort Claimants

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

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In re: :
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MOHAMED ALI SAMANTAR, : Chapter 7
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: Case No. 12-11085 (BFK)
Debtors. :
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**[PROPOSED] ORDER GRANTING MOTION OF BASHE ABDI YOUSUF, ET AL.
TO DISMISS THE CHAPTER 7 CASE PURSUANT TO 11 U.S.C. § 707(A)**

Upon the motion (the “Motion”) of Bashe Abdi Yousuf, Buralle Salah Mohamoud, Ahmed Jama Gulaid and Aziz Mohamed Deria, in their capacities as the personal representatives of the estates of Mohamed Deria Ali, Mustafa Mohamed Deria, Abdullahi Salah Mohamoud, the deceased brother of Buralle Salah Mohamoud, and Cawil Salah Mohamoud, the deceased brother of Buraale Salah Mohamoud (collectively, the “Tort Claimants”) for entry of an order dismissing the above captioned bankruptcy case (the “Bankruptcy Case”); and upon consideration of the Motion, and any pleadings related thereto; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this matter is a core proceeding within the meaning of 28 U.S.C. § 157; and the Court having found that venue is proper in this Court under 28 U.S.C. § 1409; and the Court having found that notice of the Motion was due and proper under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish sufficient cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best

interests of the Debtor's estate, its creditors and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby:

ORDERED that the Motion is granted; and it is further

ORDERED that the Bankruptcy Case is dismissed; and it is further

ORDERED that this Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2012
Alexandria, Virginia

THE HONORABLE BRIAN F. KENNEY
UNITED STATES BANKRUPTCY JUDGE