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9 UNITED STATES BANKRUPTCY COURT  
10 EASTERN DISTRICT OF CALIFORNIA  
11 SACRAMENTO DIVISION

13 In re:  
14 CITY OF STOCKTON, CALIFORNIA,  
15 Debtor.

Case No. 2012-32118  
DC No. OHS-4  
Chapter 9

16 **EMERGENCY MOTION FOR LEAVE**  
17 **TO INTRODUCE EVIDENCE**  
18 **RELATING TO NEUTRAL**  
19 **EVALUATION PROCESS UNDER**  
20 **GOVERNMENT CODE SECTION**  
21 **53760.3(q)**

22 Date: Friday, July 6, 2012  
23 Time: 10:00 a.m.  
24 Place: United States Courthouse  
25 Dept. A, Courtroom 28  
26 501 I Street  
27 Sacramento, CA 95814

28 The City of Stockton, California (the "City" or "Stockton"), hereby requests that the Court issue an order authorizing it to submit evidence regarding its participation in a neutral evaluation process initiated pursuant to California Government Code section 53760 *et seq.* This motion is supported by the Declaration of Marc A. Levinson In Support Of Emergency Motion For Leave

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1 To Introduce Evidence Relating To Neutral Evaluation Process Under Government Code Section  
2 53670.3(q) (“Levinson Decl.”).

3 **I. FACTUAL AND PROCEDURAL HISTORY**

4 Enacted last year and effective on January 1, 2012, Assembly Bill 506, California  
5 Government Code section 53760 *et seq.*, conditions the State of California’s authorization of a  
6 local public entity (i.e., a municipality) to file a bankruptcy petition on the local public entity’s  
7 either (1) having engaged in a neutral evaluation process (the “AB 506 Process”), or (2) having  
8 declared a fiscal emergency and adopted a resolution by majority vote that the finances of the  
9 municipality jeopardizes the health, safety or well-being of its residents. Prior to the enactment of  
10 AB 506, California municipalities were granted “the broadest possible” access to bankruptcy  
11 courts, and were not subject to separate state law requirements as a prerequisite to being eligible  
12 to file a chapter 9 petition. *See Int’l Bhd. of Elec. Workers, Local 2376 v. City of Vallejo (In re*  
13 *City of Vallejo)*, 432 B.R. 262, 268 (E.D. Cal. 2010); Cal. Gov’t Code § 53760 (2008) (prior  
14 version of statute, repealed and replaced by AB 506). The purpose of the AB 506 process is to  
15 require a municipality, prior to seeking bankruptcy relief, to communicate with its creditors, make  
16 relevant financial information available to them and to the mediator, and attempt to negotiate a  
17 mutual restructuring of its debt outside of bankruptcy. *See generally* 2011 Cal. Stat. ch. 675, pp.  
18 1-2.

19 Following a public hearing on February 28, 2012, the Stockton City Council determined  
20 that the City “is or likely will become unable to meet its financial obligations as and when those  
21 obligations are due or become due and owing,” Cal. Gov’t Code § 53760.3, and voted to  
22 commence the AB 506 process. Levinson Decl., ¶ 2. The next day, the City transmitted by  
23 certified mail to approximately 30 interested parties its “Notice of Initiation” of the process.  
24 Levinson Decl., ¶ 3. Cal. Gov’t Code § 53760.3(a). By March 15, 2012, nearly all of the  
25 potential interested parties elected to participate in the mediation, including all nine of the City’s  
26 employee groups, the indenture trustees of its public debt issuances, bond insurers, judgment  
27 creditors and a group representing retirees. Levinson Decl., ¶ 4, Ex. A. Cal. Gov’t Code §  
28 53760.3(b). On March 26, 2012, the participants selected Ralph Mabey to serve as a “neutral

1 evaluator,” or mediator, from the list of five candidates submitted by the City. Levinson Decl., ¶  
2 5. Cal. Gov’t Code § 53760.3(c)(1). Mabey, a former bankruptcy judge and accomplished  
3 bankruptcy lawyer and mediator, accepted the role the following day. Levinson Decl., ¶ 5, Ex. A.

4 Beginning on March 27, 2012, the AB 506 process lasted 60 days, as mandated by statute.  
5 Levinson Decl., ¶ 6. Cal. Gov’t Code § 53760.3(r). On or around May 21, 2012, a majority of the  
6 interested parties notified the City that the process would be extended by an additional 30 days.

7 Levinson Decl., ¶ 6. Cal. Gov’t Code § 53760.3(r). Despite good faith efforts by the City and the  
8 interested parties, when the AB 506 process concluded on June 25, 2012, the City had not

9 “resolved all pending disputes with creditors.” Levinson Decl., ¶ 7. Cal. Gov’t Code § 53760.3.

10 On June 28, 2012, the City filed its chapter 9 petition.

## 11 **II. DISCUSSION**

12 The purpose of this motion is to reconcile the City’s need to present evidence to prove its  
13 eligibility to be a chapter 9 debtor with the confidentiality provisions of the statute.

14 Mediations are conducted in confidence, and mediation provisions typically contain broad  
15 confidentiality provisions. Not surprisingly, parties to an AB 506 Process are required to  
16 maintain the confidentiality of such process, including statements made, information disclosed,  
17 and documents prepared or produced, Cal. Gov’t Code § 53760.3(q). However, the statute  
18 anticipates and addresses the situation in which the City finds itself, and thus provides that the  
19 confidentiality of the mediation can be overridden if the production of such evidence is “deemed  
20 necessary . . . to determine the eligibility of a municipality to proceed with a bankruptcy  
21 proceeding,” Cal. Gov’t Code § 53760.3(q)(2).

22 If authorized by this Court, the City is prepared to present extensive evidence regarding its  
23 participation in the AB 506 Process, including evidence as to the number and length of meetings  
24 between the City and its various creditors, the identity of the participants at such meetings, the  
25 types of issues discussed, the financial and other information shared, the offers exchanged and the  
26 discussions between the parties, and the status of negotiations between the City and each  
27 interested party as of the petition date. One specific piece of evidence the City believes that it  
28 must present is a 790-page “ask” created by the City that details the City’s current financial

1 situation and lays out a proposed plan – equivalent in detail to a chapter 9 plan – to address the  
 2 City’s financial shortfall and to put Stockton back on solid financial footing for the near and the  
 3 long term.

4 This evidence the City seeks approval to disclose details the Stockton’s compliance with  
 5 state law during its negotiations with its creditors. It is highly relevant to proving compliance  
 6 with 11 U.S.C. § 109(c), which provides that a municipality is eligible to be a debtor under  
 7 chapter 9 if it:

8 (c)(2) is specifically authorized, in its capacity as a municipality or  
 9 by name, to be a debtor under such chapter by State law, or by a  
 10 governmental officer or organization empowered by State law to  
 authorize such entity to be a debtor under such chapter;

11 ...

12 (c)(5)(B) has negotiated in good faith with creditors and has failed  
 13 to obtain the agreement of creditors holding at least a majority in  
 amount of the claims of each class that such entity intends to impair  
 under a plan in a case under such chapter; [or]

14 (c)(5)(C) is unable to negotiate with creditors because such  
 15 negotiation is impracticable.

16 The evidence also is highly relevant to proving that the City filed its petition in “good  
 17 faith.” 11 U.S.C. § 921(c).

18 For example, extensive evidence of the “bid and ask” of the labor mediations that  
 19 preceded the filing of the chapter 9 case by the City of Vallejo (Eastern District of California  
 20 Case No. 2008-26813-A-9) was deemed sufficiently important by Judge Michael McManus to  
 21 devote nine highly detailed findings of fact (one with six subparagraphs) to the subject in his  
 22 Findings of Fact and Conclusions of Law that resulted in the entry of an order for relief. In re  
 23 City of Vallejo, California, 2008 WL 4180008, \* 9-10 (Findings 81-89) (Bankr. E.D. Ca.  
 24 September 5, 2008).<sup>1</sup> The issue there was good faith, as Government Code § 53760 had not yet

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 26 <sup>1</sup> In fact, at the eligibility hearing, one of Vallejo’s counsel, Norman Hile, objected to the introduction of evidence of  
 27 the mediation bid and ask, invoking the confidentiality of mediation discussions. In overruling the objection, Judge  
 28 McManus said, among other things: “... my understanding of the issue whether there were negotiations or  
 bargaining in good faith requires that the court engage in sort of a factor analysis to look at all facts and  
 circumstances. I don’t know how I can do that without talking about what happened at the mediation.” Corrected  
 transcript of the hearing of July 24, 2008, at page 46, line 6 *et seq.* [Dkt. No. 192 in the Vallejo case]. A copy of the  
 cover page of such transcript and of pages 44-50 thereof is attached as Exhibit B to the Levinson Decl.

