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11 **UNITED STATES BANKRUPTCY COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**
13 **SACRAMENTO DIVISION**
14

15 In re:

16 City of Stockton, California
17 Debtor

18 Case No. 2012-32118
19 Hearing Date: November 26, 2013
20 Hearing Time: 9:30 AM
21 Courtroom 35 – Dept. C
22 The Hon. Judge Christopher M. Klein
23 Docket Control No.: TCB-01

24 **MOTION BY JERRY MOORE FOR RELIEF FROM AUTOMATIC STAY TO**
25 **ALLOW LITIGATION [11 U.S.C. §§ 362; Fed. R. Bankr. P. 4001, 9014]**

26 **JURISDICTION**

27 The Court has jurisdiction to consider this motion under 28 U.S.C. §§ 157 and 1334.

28 This matter is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (G). Venue is proper in
this Court under 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

Pursuant to 11 U.S.C. § 362(d)(1) and Rule 4001 of the Federal Rules of Bankruptcy
Procedure ("FRBP"), Movant requests that the Court enter an order modifying the automatic

1 stay of 11 U.S.C. § 362(a) in this case to permit him to pursue to judgment his action under
2 42 U.S.C. 1983, Civil Rights action for Fourth Amendment violations, as well as violations of
3 CA Constitution and laws, in order to establish liability of Debtor, any insurer or indemnitor
4 of the Debtor, and the Non-Debtor Defendants, in order to liquidate his claim in this
5 bankruptcy case.

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8 **ARGUMENT**

9 “A decision to lift the automatic stay under 11 U.S.C. § 362 is within the discretion of
10 the bankruptcy judge and reviewed for an abuse of discretion.” (In re Mac Donald 755 F.2d
11 715, 716 -717 (9th Cir. (Cal.) 1985), citing In re Frigitemp Corp., 8 B.R. 284
12 (S.D.N.Y.1981).) Under 11 U.S.C. § 362(d)(1), on request of a party in interest, the court
13 shall grant relief from the automatic stay “for cause”. As a contingent creditor, Movant has
14 standing to bring this Motion. (In re Kronemyer 405 B.R. 915, 921 (9th Cir. BAP 2009).)
15 Although the Code does not provide a definition of what constitutes “cause”, it is well-
16 established that the existence of pending litigation against the debtor in a non-bankruptcy
17 forum can satisfy the requirement. (In re Coachworks Holdings, Inc. 418 B.R. 490, 492
18 (Bkrcty.M.D.Ga.,2009), citing Smith v. Tricare Rehab. Sys., Inc. (In re Tricare Rehab. Sys.,
19 Inc.), 181 B.R. 569, 572 n. 7 (Bankr.N.D.Ala.1994). See also In Re Santa Clara County Fair
20 Assoc., Inc. 180 B.R. 564, 566 (9th Cir. BAP 1995).)

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22
23 The Lawsuit will not be proceeding which arises under the Code, within the meaning
24 of 28 U.S.C. §157. The Lawsuit is not a proceeding which arises in a case under the Code,
25 within the meaning of 28 U.S.C. §157. Movant asserts the Lawsuit is not a proceeding
26 "related to" a case under the Code, within the meaning of 28 U.S.C. §157. Even if the
27 Lawsuit were determined to fall within this court's "related to" jurisdiction, 28 U.S.C.
28

1 §157(b)(5) mandates that it be tried in the U.S. District Court for the Eastern District of
2 California, the very court where the Lawsuit will be commenced.

3 Cause exists in this case because any harm to Debtor is substantially outweighed by
4 harm to the Movant in denying him relief from the automatic stay.

5
6 **Jerry Moore (“Movant”), a creditor of the City of Stockton (“Debtor”), through his
7 attorney represents as follows:**

- 8 1. On or about December 10, 2011, Movant was arrested and subsequently charged
9 under California Penal Code section 148.
- 10 2. During that arrest Movant sustained injuries from the arresting police officers and a
11 police dog.
- 12 3. On June 7, 2012, Movant filed a claim against the City of Stockton for the injuries
13 pursuant to California Government Code sections 910 et seq.
- 14 4. On June 28, 2012, the Debtor filed a petition for under Chapter 9 of Title 11 of the
15 United States Bankruptcy Code (“Code”). Bankruptcy protection.
- 16 5. On July 3, 2012, the City of Stockton mailed the Movant a letter rejecting his claim
17 against them.
- 18 6. On April 11, 2013, the Movant was acquitted of the criminal charge of Penal Code
19 section 148.
- 20 7. On August 13, 2013, Movant through his attorney filed a Proof of Claim under this
21 Bankruptcy proceeding.
- 22 8. The Debtor has assigned 11–299–2499A as indentifying creditor.
- 23 9. Based upon the acquittal date of April 11, 2013, Movant through his attorney believes
24 the deadline for filing California State causes of action in a Lawsuit against the
25 individual officers and/or the City of Stockton could be October 10, 2013.
- 26 10. To prevent making a procedural error regarding the statute of limitations, Movant will
27 be filing this motion now with a court date in the future related to the ruling on this
28 motion. The Lawsuit will be filed after the filing of this motion, but before its
decision.
11. Movant does not intend on serving the lawsuit on the City of Stockton or the
individually named officer until this motion has been ruled upon.
12. Movant will be entitled to and will request a jury trial of the Lawsuit.

- 1 13. If the automatic stay of Debtor's bankruptcy case is not modified to allow prosecution
2 of the Lawsuit, Movant will be significantly prejudiced. The Lawsuit seeks
3 compensation for significant, and potentially permanent, personal injuries suffered by
4 Movant. The delay in the prosecution of the Lawsuit is materially prejudicial to
5 Movant. He has inadequate medical care and is unable to fully recover from the
6 injuries.
- 7 14. Modification of the automatic stay of Debtor's case will not result in material
8 prejudice to Debtor.
- 9 15. Movant seeks modification of the stay to allow prosecution of the Lawsuit, through
10 and including entry of judgment.
- 11 16. In addition to the points raised above, denial of the motion would deprive Movant of
12 his constitutional right to a jury trial as to the Debtor. It would also prevent him from
13 proceeding against even the Non-Debtor Defendants, possibly for several years, while
14 this Chapter 9 bankruptcy case progresses due to the district court's order extending
15 the stay to them. During that delay, witnesses' memories will necessarily fade, crucial
16 witnesses may move away, fall ill or otherwise be rendered unavailable, and crucial
17 documentary evidence that is available today may be lost or destroyed.
- 18 17. Good cause therefore exists pursuant to Section 362(c)(1) of the Code to grant to
19 Movant relief from the automatic stay of Section 362(a) of the Code.

20
21 **WHEREFORE**, Movant prays:

- 22 1. For an order granting relief from the automatic stay of 11 U.S. C. 362(a) to allow
23 prosecution of the Lawsuit, through and including entry of judgment, and for
24 collection of any damages and;
- 25 2. For such other and further relief as the court deems proper.

26
27 Respectfully submitted on October 10, 2013

28 /s/ Tai C. Bogan, Esq.
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