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MAR 11 2013

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

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9 UNITED STATES BANKRPUTCY COURT  
10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11 In Re: City of Stockton, California,  
12 Debtor.

13 ) Case No.: 2012-32118  
14 ) Docket Control No.: SEJ-1  
15 ) Chapter 9  
16 )  
17 ) **DECLARATION OF E. GREG KENT IN**  
18 ) **SUPPORT OF MOTION AND MOTION**  
19 ) **FOR RELIEF FROM STAY TO**  
20 ) **PROCEED WITH THE PENDING SAN**  
21 ) **JOAQUIN COUNTY SUPERIOR COURT**  
22 ) **CASE**  
23 )  
24 ) **Date: April 23, 2013**  
25 ) **Time: 9:30 a.m.**  
26 ) **Ctrm: 35**

27 I, E. Greg Kent, declare as follows:

- 28 1. I owned the property located at 212 Frank West Circle, Stockton, California.
- 29 2. CALAMCO entered into a written contract with me whereby CALAMCO agreed  
30 to pay rent monthly in advance for an extended period of time starting on or about June 17, 1987  
31 and through fully executed extensions this lease would have expired on October 31, 2012. Thus,  
32 the lease required advance monthly payments from CALAMCO to me for the period from April  
33 1, 2009 through February 28, 2010. A copy of the lease and extensions are attached hereto as  
34 Exhibit A.
- 35 3. The CITY OF STOCKTON and UNIVERSAL FIELD SERVICES, INC.  
36 interfered with my relationship with my tenant CALAMCO. They either forcing or enticed

1 CALAMCO to vacate the property even though the lease was still in effect. They made it  
2 impossible to rent any portion of the subject property from April 2009 until February 2010  
3 because any prospective tenant would be informed of the eminent domain case and prevented  
4 from moving into the property, or enticed to not rent the property, or threatened with eminent  
5 domain if the tenant did in fact lease any portion of the subject property.

6 4. The CITY prepared a "Hold Vacant Agreement" whereby the CITY admitted it  
7 was going to remove tenant CALAMCO from the premises and in return promised to pay to me  
8 \$5,892.00 per month from April 1, 2009 until "the close of escrow for the City's acquisition of  
9 the Property" or "the effective date of an Order for Immediate Possession of the Property." The  
10 City never closed escrow on the property. Another government agency, CALTRANS, filed an  
11 eminent domain action and obtained an Order for Immediate Possession which took effect 30  
12 days after the service of the notice of entry of order, making the effective date of possession  
13 February 28, 2010 (which is the date of the "condemnation" of the property for all purposes in  
14 the lease). The subject property was not taken for public use prior to February 28, 2010. The  
15 CITY failed to pay any sums due for lost rent, failed to honor the terms of the Hold Vacant  
16 Agreement, and continues to refuse to do so.

17 5. If it were not for the acts of CITY and UNIVERSAL FIELD SERVICES, INC.,  
18 CALAMCO would have had a legal obligation to pay rent from April 1, 2009 through October  
19 31, 2012.

20 6. CALAMCO admitted that it would refuse to abide by the terms of the lease in a  
21 letter dated March 13, 2009, attached hereto as Exhibit B. In that letter CALAMCO confirms  
22 that it is bound by the lease which does not expire until October 31, 2012, and advised that  
23 CALAMCO does not intend to satisfy the terms of the lease and instead will and did stop paying  
24 rent as of April 1, 2009. CALAMCO states in the letter that the City of Stockton and/or Caltrans  
25 will assume responsibility for the lease payments; however, neither the City of Stockton nor  
26 Caltrans has assumed or paid those lease payments. Therefore CALAMCO is responsible for the  
27 full lease payments, interest, penalties, and attorney's fees incurred from April 1, 2009 until  
28 February 28, 2010.

1 7. CALAMCO had no authority to assign the responsibility of payments to CITY or  
2 anyone, further breaching the contract.

3 8. CALAMCO breached and defaulted on the contract and failed to abide by the  
4 terms of the contract by vacating the property in violation of Paragraph 19 of the initial lease, by  
5 failing to make rent payments, and by attempting to assign the payment obligation to a third  
6 party in violation of Paragraph 13.

7 9. I am informed that on January 26, 2012, my wife and I filed San Joaquin Superior  
8 Court Action No. 39-2012-00279803-CU-EI-STK against three defendants: The City of  
9 Stockton; Universal Field Services, Inc., and California Ammonia Company (CALAMCO).  
10 The gravamen of the complaint is that CALAMCO breached its lease with me, leaving the  
11 property before the expiration of the lease, owing some \$70,000.00 in unpaid rent. The  
12 complaint alleges that defendants City of Stockton and Universal Field Services assisted and  
13 encouraged CALAMCO to breach the lease because of a looming eminent domain case. The  
14 eminent domain case went to jury verdict, but only included the value of the property and not the  
15 loss of rent (the City of Stockton was not the condemning agency, CalTrans condemned the  
16 property).

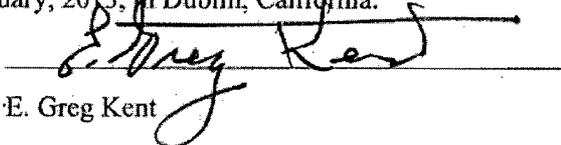
17 10. I am informed that on June 28, 2012, one defendant, the City of Stockton, filed a  
18 bankruptcy petition under chapter 9 of the United States Bankruptcy Code, 11 U.S.C. § 101, *et*.  
19 *seq.* On July 9, 2012, my attorney received a DEBTOR CITY OF STOCKTON'S NOTICE OF  
20 AUTOMATIC STAY which stayed the entire action by way of automatic stay.

21 11. I now request a relief of stay from the bankruptcy proceedings against all three  
22 defendants. In the alternative, if this court is not inclined to remove the stay from the debtor City  
23 of Stockton, I request that there be a partial relief of the stay so that I may proceed with my case  
24 against non-bankruptcy defendants Universal Field Services, Inc. and CALAMCO.

25 I declare under penalty of perjury under the laws of the State of California that the above  
26 is true and correct to the best of my understanding and if called as a witness I could competently  
27 testify to the truth of the matters herein asserted.

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1 Dated this 28<sup>th</sup> day of February, 2013, in Dublin, California.

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4 E. Greg Kent  
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