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**UNITED STATES BANKRUPTCY COURT**  
**EASTERN DISTRICT OF CALIFORNIA**  
**SACRAMENTO DIVISION**

In re:  
CITY OF STOCKTON,  
CALIFORNIA,  
  
Debtor,

Case No. 12-32118-C-9  
DC No.: JTS-02

**Judge: Hon. Christopher M. Klein**

**DEAN ANDAL'S REPLY TO CITY OF STOCKTON'S OPPOSITION TO MOTION FOR ORDER SHORTENING TIME TO HEAR MOTION FOR RELIEF FROM AUTOMATIC STAY**

DEAN ANDAL (hereinafter "Movant"), respectfully submits the following Reply to CITY OF STOCKTON, CALIFORNIA (hereinafter "Debtor")'s Opposition to Motion for Order Shortening Time to Hear Motion for Relief from Automatic Stay (hereinafter "Opposition"). Specifically, Debtor opposes the Motion for an Order Shortening Time (hereinafter "OST") on two grounds:

- 1) The Debtor alleges the emergency relief is self inflicted in that Movant unnecessarily delayed in filing its Motion for Relief from the Automatic Stay(hereinafter "Stay Motion"); and
- 2) That the Debtor has not been provided with the moving papers for the proposed state court writ of mandate proceeding that is the basis for Movant's Stay Motion.

1 Debtor's two points are extremely misplaced and fail to state any rational basis for  
2 denying the OST. Specifically, addressing each of Debtors two points in turn, Debtor correctly  
3 points out that the measure that is the subject of the proposed writ of mandate proceeding was  
4 approved by the Stockton City Council on July 9, 2013. What Debtor fails to explain, however, is  
5 how Movant delayed in bringing the OST and Stay Motion. Movant retained Koeller, Nebeker,  
6 Carlson & Haluck, LLP (hereinafter "Firm") to pursue the writ of mandate proceeding on July 25,  
7 2013 (See Declaration of Joseph T. Speaker ¶ 2 filed concurrently herewith.) Prior to contacting  
8 Firm, Movant was unaware that in order to pursue the Debtor on the state law writ of mandate  
9 proceeding, steps would need to be taken in the Federal Bankruptcy Court. (Speaker Decl. ¶3.)  
10 Moreover, as a lay person, Movant cannot be expected to understand the complex relationship  
11 between a bankrupt municipality under Chapter 9 and Movant's constitutional statutory rights  
12 under California Elections Code. Indeed, the situation this Court is faced with in the instant  
13 matter is a brand new issue facing bankruptcy court's around the country, as municipalities file  
14 for Chapter 9 protection, and is hardly a novel area of the law.

15 Upon being retained by Movant on July 25, 2013, Firm attempted to stipulate to relief  
16 with counsel for Debtor (See Speaker Decl. ¶ 4 and Opposition pg. 3)<sup>1</sup> Counsel for Debtor and  
17 counsel for Movant exchanged several emails back and forward requesting additional  
18 information, however it became apparent to Movant that no such stipulation would be granted and  
19 after repeated notice, Movant filed the Stay Motion and OST in order to preserve its rights. (See  
20 Speaker Decl. ¶¶ 5,7 .) The Stay Motion and OST were filed only eight days after being retained  
21 by Movant. This eight day period can hardly be considered an "unnecessary delay", especially  
22 given that part of the delay was caused by Debtor's inability to discuss conditions for a  
23 stipulation, despite Movant's reasonable efforts to do so. For these reasons there was no  
24 "unreasonable delay" on the part of Movant, but rather the delay, if any, was caused by Debtor.

25 Next, Debtor opposes the OST on the grounds that Movant has not provided the moving  
26 papers for the state court writ of mandate proceeding. Debtor offers no authority for why Movant

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28 <sup>1</sup> Debtor incorrectly provides in its Opposition that it was first contacted on July 20, 2013 by counsel for Movant (See Opposition pg. 3.) Movant first contacted Debtor on July 30, 2013, not July 20, 2013, as represented by Debtor's counsel. The declaration of Joseph T. Speaker filed concurrently herewith provides a true and correct copy of the email chain as Exhibit "A".

1 is required to provide its moving papers prior to the statutory period for filing of such papers, nor  
2 why Movant's explanation of the basis for bringing the state court action is insufficient.  
3 Moreover, Debtor also fails to inform this court that on Wednesday July 31, 2013, Firm was  
4 contacted by John Luebberke, City Attorney for the City of Stockton, who asked specific  
5 questions regarding the writ of mandate proceeding, all of which were answered by counsel for  
6 Movant. (See Speaker Decl. ¶ 6.) Mr. Luebberke was informed that any questions he had would  
7 be answered, but that Firm was not authorized to divulge the moving papers prior to the statutory  
8 period. (See Speaker Decl. ¶ 6.) Thus, the Debtor has already been provided with details  
9 regarding the writ of mandate proceeding.

10 As previously provided, pursuant to California Elections Code section 9295(b)(1) any  
11 voter challenging proposed language for a ballot must bring a writ of mandate during a "10-  
12 calendar-day public examination period." Movant is informed and believes that the "10-calendar-  
13 day public examination period" for the measure for which Movant seeks to challenge is scheduled  
14 to open on August 13, 2013. This means, Movant cannot file any writ of mandate until the 10 day  
15 examination period has begun, which is likely August 13, 2013, though may be before if the  
16 elections official deems so. Debtor's request for a copy of the moving papers early is merely a  
17 veiled attempt to review the writ of mandate prior to the statutory period. The legislature saw fit  
18 to limit the time period that a party had to engage in the writ of mandate process and Movant is  
19 not prepared to give Debtor a strategic advantage without any authority authorizing it to do so.  
20 Since Debtor has provided no legal authority or basis for why the actual moving papers, versus  
21 the description provided to this Court and Mr. Luebberke are required, Movant sees no reason  
22 why the lack of the actual moving papers should be grounds for denying the OST or Stay Motion.

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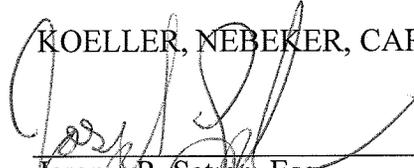
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CONCLUSION

Because Debtor's Opposition is based purely on conjecture and unfounded conclusions, Movant prays that this Court issue an Order Shortening Time to Hear Movant's Motion for relief from the automatic stay to allow Movant to proceed with the timely filing of the writ of mandate prior to the noticed August 20, 2013 hearing date.

DATED: August 7, 2013

KOELLER, NEBEKER, CARLSON & HALUCK, LLP



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Jerome R. Satran, Esq.  
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Attorneys for Movant  
DEAN ANDAL

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