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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-03

Judge: Hon. Christopher M. Klein

**DEAN ANDAL'S MOTION FOR
RECONSIDERATION OF MOTION
FOR ORDER SHORTENING TIME TO
HEAR MOTION FOR RELIEF FROM
AUTOMATIC STAY**

DEAN ANDAL (hereinafter "Movant"), respectfully requests that this Court, Reconsider the Motion for entry of an order shortening time to hear a Motion for Relief from the Automatic Stay filed by Movant on August 2, 2013 in the above matter, based on new developments in this matter. Specifically, the purpose for the previously filed Motion for Relief from the Automatic Stay (DCN JTS-01) is to allow Movant to bring a writ of mandate in the Superior Court for the County of San Joaquin against the CITY OF STOCKTON, CALIFORNIA (hereinafter "Debtor") as real party in interest, pursuant to California Elections Code section 9295. Movant's writ of mandate will challenge the impartiality of proposed language on the upcoming November 5, 2013

1 ballot.¹ The Debtor, through its elected City Council, approved proposed language for a measure
2 to be placed on the November 5, 2013 ballot. Movant makes the instant Motion FOR
3 Reconsideration requesting that this Court Reconsider Movant’s Motion for an order shortening
4 the time to hear a Motion for Relief from the Automatic Stay in order to allow Movant sufficient
5 time to proceed in state court with the writ of mandate. Movant requests that any hearing on the
6 Motion for an order shortening time take place immediately, so that an order may issue on the
7 underlying Motion for Relief from the Automatic Stay on or before **August 15, 2013**.

8 As this Court is aware, Movant filed a similar Motion for an Order Shortening Time to
9 hear Movant’s Motion for Relief from the Automatic Stay on August 2, 2013. Despite being
10 properly filed and properly briefed, at the direction of the Clerk of the Court for Chief Judge
11 Klein, Movant has been instructed to submit this Motion for Reconsideration of its previously
12 filed Motion for an Order Shortening Time requesting the same relief. (Declaration of Joseph T.
13 Speaker in support of Motion for Reconsideration of Motion for Relief from the Automatic Stay ¶
14 7, hereinafter “Speaker Decl.”)

15 Pursuant to California Elections Code section 9295(b)(1) any voter challenging proposed
16 language for a ballot must bring a writ of mandate during a “10-calendar-day public examination
17 period.” Movant previously informed this Court that the “10-calendar-day public examination
18 period” for the measure for which Movant seeks to challenge was scheduled to open on **August**
19 **13, 2013**. For unexplained reasons, Debtor, who controls when this “10-calendar-day public
20 examination period” opens, saw fit to expedite the process and opened the “10-calendar-day
21 public examination period” on August 8, 2013. (Speaker Decl. ¶ 4.) This new fact was first
22 discovered by Movant near the end of business day on August 12, 2013. (Speaker Decl. ¶ 5.) This
23 means Movant must file the state court writ of mandate by no later than August 18, 2013. As
24 August 18, 2013 is a Sunday, **Movant’s final day to file a writ of Mandate is this Friday, August**
25 **16, 2013**. As a result, Movant will be irreparably harmed if an order shortening the time to hear a
26 Motion for Relief from the Automatic Stay is not granted in order to allow Movant the sufficient

27 ¹ The actions of the City Council for the City of Stockton occurred on July 9, 2013, which is post-petition. Additionally, 11 U.S.C § 904 and 11
28 U.S.C. § 362(a)(1) appear to carve out claims such as the writ of mandate from the “automatic stay” and the jurisdiction and expertise of the
bankruptcy court. Despite likely being able to proceed in state court without bankruptcy approval on this ministerial governmental and purely state
law action, Movant has brought the instant motions out of an abundance of caution and out of respect for the bankruptcy court.

1 time to seek relief from the automatic stay in this matter and bring a timely writ of mandate in
2 state court.

3 **RELIEF REQUESTED**

4 Pursuant to Local Rule 9014-1(f)(3), the Court can, for good cause shown, order that the
5 amount of notice for a hearing be shortened to fewer than 14 days. Because of the time sensitivity
6 described herein, Movant respectfully requests reconsideration of its Motion for an order to
7 shorten the notice period, so that the previously filed Motion for Relief from the Automatic Stay
8 will be heard prior to the noticed August 20, 2013 hearing date. Specifically, the most recent
9 need to have the Motion for Relief from the Automatic Stay heard on a shortened basis was
10 created by Debtor in opening the 10-day public examination period earlier than scheduled, on
11 August 8, 2013, such that the noticed hearing date of August 20, 2013 for the Motion for Relief
12 from the Automatic Stay is no longer going to provide timely leave to file the writ of mandate. A
13 Motion for an Order Shortening Time is the only way to allow Movant sufficient time to file the
14 writ of mandate in San Joaquin County Superior Court within the 10 day public examination
15 period closing on August 16, 2013.

16 Movant moves for relief from the automatic stay as to Debtor and Debtor's bankruptcy
17 estate in order to proceed in the Superior Court for the County of San Joaquin with a petition for
18 writ of mandate challenging proposed ballot language on the November 5, 2013 ballot
19 (hereinafter Non-Bankruptcy Action). Pursuant to California Elections Code section 9295, a state
20 court may issue a writ of mandate to prevent the publication of false or misleading information in
21 the ballot pamphlet for any election. Movant seeks to challenge the proposed language of a
22 measure titled "Law Enforcement, Crime Prevention, and other essential City Services Measure"
23 (hereinafter "Measure") in the upcoming November 5, 2013 election. Movant believes the
24 proposed Measure language is misleading to the average voter and seeks a writ of mandate in
25 state court ordering the language altered. A copy of the resolution adopting the proposed Measure
26 language is attached as Exhibit "A" to the Speaker Decl.

27 The state court writ of mandate proceeding is based on California Elections Code section
28 9295, which states in pertinent part:

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(3) The elections official shall make a copy of the material ... available for public examination in the elections official's office for a period of 10 calendar days immediately following the filing deadline for submission of those materials.

...

(b)(1) During the 10-calendar-day public examination period provided by this section, any voter of the jurisdiction in which the election is being held, or the elections official, himself or herself, may seek a writ of mandate or an injunction requiring any or all of the materials to be amended or deleted. The writ of mandate or injunction request shall be filed no later than the end of the 10-calendar-day public examination period.

(2) A peremptory writ of mandate or an injunction shall be issued only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements of this chapter, and that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law.

(3) The elections official shall be named as respondent, and the person or official who authored the material in question shall be named as real parties in interest. In the case of the elections official bringing the mandamus or injunctive action, the board of supervisors of the county shall be named as the respondent and the person or official who authored the material in question shall be named as the real party in interest.

Specifically, Movant believes that the Measure's language is "false, misleading, or inconsistent" with the requirements of California Elections Code. (Cal. Elec. Code § 9295(b)(2).)

On July 9, 2013 the City Council of Stockton passed a resolution titled, "RESOLUTION OF THE CITY COUNCIL OF THE CITY OF STOCKTON CALIFORNIA, ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY OF STOCKTON A CERTAIN MEASURE RELATING TO A PROPOSED ORDINANCE IMPOSING A 3/4 CENT TRANSACTION AND USE TAX FOR GENERAL PURPOSES, GIVING NOTICE, AND REQUESTING CONSOLIDATION OF A SPECIAL ELECTION TO BE HELD TUESDAY, NOVEMBER 5, 2013" (hereinafter "Resolution") to hold a special election on November 5, 2013 regarding the Measure. (Speaker Decl. ¶ 8.)

1 The Measure reads:

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3 **Law Enforcement, Crime Prevention, and Other Essential City**
4 **Services Measure**

5 **To pay for law enforcement and crime prevention services**
6 **such as those described in Stockton's Marshall Plan on Crime,**
7 **to help end the bankruptcy and restore other City services;**
8 **and provided it shall sunset in ten years or when economic**
9 **recovery occurs, a Citizen's Oversight Committee reports on**
10 **the use of proceeds, and independent audits are done annually;**
11 **shall Ordinance ____ be adopted to impose a 3/4-cent**
12 **transaction and use (sales) tax?**

13 The Resolution (attached as Exhibit "A" to Speaker Decl.) states that the Measure is a
14 "general tax" requiring a simple majority. The California Constitution mandates that a tax to be
15 used for "general governmental purposes" may not be earmarked for any specific purpose.
16 (*Howard Jarvis Taxpayer's Association v. City of Roseville* (2003) 106 Cal.App.4th 1178, 1185
17 citing Cal. Const., art. XIII C, § 1, subd. (a).) In contrast, a "special tax" is any tax earmarked for
18 specific purposes (i.e. funding law enforcement or crime prevention), even if the proceeds are
19 placed into a general fund. (*Howard Jarvis Taxpayer's Association, supra*, 106 Cal.App.4th at
20 1185 citing Cal. Const., art. XIII C, § 1, subd. (d).) A "special tax", however, requires a 2/3 vote,
21 while a "general tax" requires only a simple majority. (*Id.*) The Measure at issue is a "general
22 tax" being disguised as a "special tax". The clear text of the Measure states that the funds are to
23 be used "[t]o pay for law enforcement and crime prevention services..." The clear problem is that
24 pursuant to the California Constitution, Article XIII C, § 1, subd. (a), and *Howard Jarvis*
25 *Taxpayer's Association, supra*, 106 Cal.App.4th at 1185 the tax proposed in the Measure cannot
26 be earmarked for a specific purpose. The text of the Measure therefore misleads the average voter
27 into believing the Measure "must" be used for "law enforcement and crime prevention" when in
28 reality it "can" be used for any "general governmental purpose", including non-law enforcement
and crime prevention services. Movant seeks only to have the language of the Measure clarified
to prevent misleading voters.

1 Even more important, the title of the Measure reads, “Law Enforcement, Crime
2 Prevention, and Other Essential City Services Measure.” Nowhere in the title is the word “tax”.
3 The failure of the Measure to be listed as a “tax” also misleads the voters into believing the
4 Measure is for the purpose of increasing law enforcement and crime prevention, when in reality
5 all the Measure does is create a ¾ cent use tax. At the end of the day Movant only seeks to ensure
6 the Measure states exactly what it is, a ¾ cent use tax for general purposes. Any reference to any
7 earmarked purpose other than “general government services” is misleading and deceptive and
8 violates California Elections Code section 9295 and California Constitution, Article XIII C, § 1,
9 subd. (a) and (d). The proposed tax cannot guarantee where or how the money is spent, thus any
10 reference to an earmarked beneficiary of the tax is misleading and inaccurate.

11 As discussed above, Movant only has a brief ten (10) calendar day window to file the
12 Non-Bankruptcy Action. Movant is informed and believes that the 10-day public examination
13 period has been unilaterally moved up by the Debtor and is set close on August 18, 2013. For this
14 reason, time is of the essence with obtaining relief from the automatic stay in order to allow
15 Movant to timely file the Non-Bankruptcy Action.

16 **SERVICE OF MOTION**

17 The supporting Declaration of Joseph T. Speaker is attached hereto. Pursuant to Local
18 Rule 9014-1(f)(3), no written opposition to the Motion for Relief from the Automatic Stay is
19 necessary.

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CONCLUSION

WHEREFORE, Movant prays that this Court reconsider Movant’s Motion for an Order Shortening Time and issue an Order Shortening Time to Hear Movant’s Motion for relief from the automatic stay immediately to allow Movant to proceed with the timely filing of the Non-Bankruptcy Action on or before **August 15, 2013**.

DATED: August 13, 2013

KOELLER, NEBEKER, CARLSON & HALUCK, LLP

/s/ Joseph T. Speaker/

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