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UNITED STATES BANKRUPTCY COURT

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EASTERN DISTRICT OF CALIFORNIA

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SACRAMENTO DIVISION

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

Case No. 2012-32118

D.C. No. MH-001

Chapter 9

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**CITY OF STOCKTON'S OPPOSITION
 TO MOTION BY RONALD HITTLE
 FOR RELIEF FROM AUTOMATIC
 STAY**

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Date: November 20, 2012

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Time: 9:30 A.M.

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Dept: C, Courtroom 35

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Judge: Hon. Christopher M. Klein

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1 Debtor City of Stockton, California (the “City”), respectfully submits its opposition to the
2 Motion by Ronald Hittle (“Hittle”) for Relief from the Automatic Stay (the “Motion”), filed
3 October 23, 2012. The Motion seeks relief from the automatic stay to proceed with a lawsuit
4 against the City (the “Hittle Litigation”). Lifting the stay would severely prejudice the City. It
5 would impose a significant financial burden when the City is struggling to provide basic
6 municipal services and interfere with the administration of the City’s pending chapter 9 case.
7 This prejudice outweighs any potential harm to Hittle from leaving the stay intact. The Motion
8 should be denied.

9 **I. FACTUAL BACKGROUND**

10 The City filed its chapter 9 petition on June 28, 2012 (the “Petition Date”). Dkt. No. 1.
11 The City currently has pending against it more than 160 prepetition claims filed pursuant to the
12 California Tort Claims Act, Cal. Gov’t Code § 810 *et seq.*, including approximately 50 active tort
13 and employment civil actions in which the City is named directly as a defendant, or is otherwise
14 obligated to defend and indemnify a City employee. Declaration of Neal C. Lutterman in Support
15 of Opposition to Motion for Relief from Stay (“Lutterman Decl.”) ¶ 6. All of these cases are
16 subject to the automatic stay. *Id.* The City also has approximately 35 postpetition claims pending
17 against it. *Id.* ¶ 7. None of the postpetition claimants have filed a lawsuit yet, but it is anticipated
18 that some will. *Id.* And, as the court is well aware, the City is having to litigate its way to
19 chapter 9 eligibility because several of the City’s creditors have vigorously contested its
20 eligibility for chapter 9 restructuring. This litigation already has cost the City hundreds of
21 thousands of dollars in attorney’s fees and substantially increased the workload of the City
22 Attorney’s Office and other City departments, particularly Finance. *Id.* ¶ 8.

23 The City Attorney’s Office is very understaffed. In 2007, the office employed nine full-
24 time attorneys; now it employs only five full-time attorneys and one part-time attorney. *Id.* ¶ 5.
25 The City also has had to reduce the number of support staff. In 2007, the Office employed seven
26 clerical staff; it currently employs only two. *Id.* Of the office’s six attorneys, only four have
27 significant litigation experience. *Id.* ¶ 4. Of those four, only three are currently assigned to
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1 litigation matters, and each of those three attorneys has a full or near-full workload of non-
2 litigation matters. *Id.* The remaining three attorneys in the City Attorney's Office also have a full
3 workload of non-litigation responsibilities. *Id.* With its three litigators almost fully consumed
4 with non-litigation matters (many related to this bankruptcy case) and only two support staff for
5 the entire office, the City Attorney's Office currently has a minimal litigation capability.

6 Due to this heavy workload and these severe staff shortages, approximately 10 pending
7 pre-petition tort and employment cases against the City already have been assigned to outside
8 counsel. *Id.* ¶ 9. During the fiscal year beginning on July 1, 2011 and ending on June 30, 2012,
9 the City expended approximately \$213,862 in fees to outside counsel to defend tort cases against
10 the City. Declaration of Steven J. Hunt in Support of Opposition to Motion for Relief from Stay
11 ("Hunt Decl.") ¶ 3. During that same fiscal year, the City expended a total of \$350,135 in non-
12 overhead costs to litigate pending tort cases. *Id.*

13 The City Attorney's Office hired Neal Lutterman in September 2011 in large part to try to
14 reduce these costs by keeping more litigation in house. Lutterman Decl. ¶ 10. Mr. Lutterman has
15 18 years of litigation experience and his primary responsibility was supposed to be supervising
16 the City's litigators. *Id.* But the City's financial difficulties and the resulting chapter 9 petition
17 necessitated a change of focus, and in any event the City Attorney's Office presently has more
18 non-litigation work than it can comfortably manage. *Id.* Because of the office's understaffing
19 and heavy workload, Mr. Lutterman anticipates that should the stay be lifted, the City's only two
20 options will be to retain outside counsel to handle a large number of the City's tort cases or to
21 shift staff resources to litigation at the expense of providing critical legal advice to the City and its
22 departments during the pendency of its chapter 9 case and related reorganization efforts. *Id.*

23 One of the pending pre-petition cases presently subject to the stay is the Hittle Litigation.
24 Declaration of Erich W. Shiners in Support of Opposition to Motion for Relief from Stay
25 ("Shiners Decl.") ¶ 3. The case was commenced on or about March 23, 2012, in the U.S. District
26 Court, Eastern District of California. *Id.* ¶ 1. The suit alleges claims against the City and two of
27 its employees, City Manager Robert Deis and Deputy City Manager Laurie Montes. *Id.* The City
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1 has retained outside counsel, Renne Sloan Holtzman Sakai LLP (“Renne Sloan”), to defend the
2 action against the City and its employees Deis and Montes. *Id.* To date, Renne Sloan has
3 invoiced the City for \$14,446.04 in legal fees for the Hittle Litigation, and discovery has yet to
4 begin. *Id.* ¶ 3. Based on the legal fees and expenses Renne Sloan incurred in a comparable case,
5 it is anticipated that defending the Hittle Litigation through trial would cost the City
6 approximately \$350,000 to \$400,000 in legal fees. *Id.* ¶ 4.

7 **II. ARGUMENT**

8 **A. Hittle Has Not Demonstrated Cause for Relief from the Automatic Stay.**

9 The automatic stay, 11 U.S.C. § 362(a), is “one of the fundamental debtor protections
10 provided by the bankruptcy laws.” *Midatlantic Nat’l Bank v. N. J. Dep’t of Env’t Prot.*, 474
11 U.S. 494, 503 (1986) (quoting S. Rep. No. 989, 95th Cong., 2d Sess. 54 (1978)). The stay is
12 intended to provide debtors a “breathing spell” from their creditors. *Delpit v. Comm’r*, 18 F.3d
13 768, 771 (9th Cir. 1994) (quoting H.R. Rep. No. 595, 95th Cong., 2d Sess. (1978)). This
14 breathing spell enables the debtor “to focus its efforts on reorganization.” *Truebro, Inc. v.*
15 *Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 556
16 (Bankr. C.D. Cal. 2004). “While this breathing spell is often thought of in terms of relief from
17 collection efforts, . . . a related fundamental purpose is to provide relief from litigation.” *Shepard*
18 *v. Patel (In re Patel)*, 291 B.R. 169, 173 (Bankr. D. Ariz. 2003). To this end, the automatic stay
19 enjoins the continuation of almost all judicial proceedings against the debtor. 11 U.S.C. §
20 362(a)(1); *see also Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1081–82 (9th
21 Cir. 2000) (the automatic stay “sweeps broadly”).

22 A party in interest may obtain relief from the stay if, after notice and a hearing, the party
23 establishes “cause.” 11 U.S.C. § 362(d)(1). “‘Cause’ has no clear definition and is determined on
24 a case-by-case basis.” *Benedor Corp. v. Conejo Enters., Inc. (In re Conejo Enters., Inc.)*, 96 F.3d
25 346, 352 (9th Cir. 1996). Whether to grant or deny relief from the stay “is committed to the
26 sound discretion of the bankruptcy court.” *Id.* at 351.

27 In non-chapter 9 cases, courts have catalogued a broad range of factors that bear on
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1 whether or not cause exists. *See, e.g., In re Gindi*, 642 F.3d 865, 872 (10th Cir. 2011) (non-
 2 exhaustive list of three factors), *overruled on other grounds by TW Telecom Holdings Inc. v.*
 3 *Carolina Internet Ltd.*, 661 F.3d 495 (10th Cir. 2011); *Sonnax Indus., Inc. v. Tri Component*
 4 *Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2d Cir. 1990) (endorsing twelve
 5 factors) (citing *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984)); *In re Universal Life Church*,
 6 127 B.R. 453, 455 (E.D. Cal. 1991) (considering seven factors). These cases routinely identify
 7 the relative harms to the debtor and the movant as important factors to be weighed. *See, e.g., In*
 8 *re Gindi*, 642 F.3d at 872 (considering whether “the hardship to the non-bankrupt party by
 9 maintenance of the stay considerably outweighs the hardship to the debtor”). Indeed, the *Curtis*
 10 case—which developed the twelve-factor standard on which Hittle relies—singled out the balance
 11 of harms, and particularly any prejudice to the debtor, as the “most important factor.” 40 B.R. at
 12 806 (“Even slight interference with the administration [of the estate] may be enough to preclude
 13 relief in the absence of a commensurate benefit.”).¹

14 **1. The potential harm to the City is substantial.**

15 Lifting the stay would prejudice the City in several ways. Most immediately, defending
 16 the Hittle Litigation will likely be expensive. The City’s outside counsel, Renne Sloan,
 17 anticipates that the City will incur \$350,000 to \$400,000 to litigate the case through trial. Shiners
 18 Decl. ¶ 4. Lifting the stay would also increase the administrative burden on the City Attorney’s
 19 Office, which is understaffed and overburdened already. *See* Lutterman Decl. ¶ 11–12
 20 (explaining the responsibilities of staff attorneys for administering and overseeing cases assigned
 21 to outside counsel). Lifting the stay would also burden Deis and Montes at a time when their
 22 focus and energy are consumed by doing their best to manage an insolvent municipality and
 23 supporting the City’s chapter 9 restructuring efforts. This is just the sort of interference with the
 24 administration of a debtor that justifies denial of relief from the stay to litigate claims in another
 25 forum. *See Curtis*, 40 B.R. at 806 (recognizing that “[e]ven slight interference with the

26 ¹ Although Hittle mechanically applies each *Curtis* factor, several are irrelevant. *See In re Mazzeo*, 167 F.3d 139,
 27 143 (2d Cir. 1999) (“Not all of these [*Curtis*] factors will be relevant in every case.”). In any event, the dispositive
 28 factor here is the one that *Curtis* deemed “most important”—the severe prejudice to the City and considerable
 interference with its chapter 9 case, should the stay be lifted. 40 B.R. at 806.

1 administration [of the debtor's estate] may . . . preclude relief" from the stay).

2 The broader concern for the City is that the Hittle Litigation is only the tip of the iceberg,
3 which can be viewed as three separate groups of cases. First, the City had approximately 50
4 active tort and employment cases and upwards of 160 Tort Claims Act claims pending against it
5 as of the Petition Date. Lutterman Decl. ¶ 6. Second, litigation on *postpetition* claims against the
6 City is not stayed; the City already has 35 post-petition claims pending against it and can
7 reasonably expect some of these claimants to file lawsuits. *Id.* ¶ 7. Finally, the City supervises a
8 significant volume of bankruptcy litigation, like this motion and the City's eligibility fight. *Id.* ¶¶
9 4, 8. Although whether to grant or deny relief from the stay must be determined on a case-by-
10 case basis, *see Conejo Enters., Inc.*, 96 F.3d at 352, these other pending cases must be taken into
11 account when assessing the potential burden on the City of lifting the stay.

12 As is, the City is on a knife's-edge in terms of attorney staffing. With litigation relating to
13 postpetition claims and bankruptcy litigation *already* beginning to pile up against the City, should
14 any substantial number of the stayed cases be permitted to proceed, the City will have to choose
15 between one of two grave alternatives. It will be faced with either retaining outside counsel to
16 handle a large number of its tort and employment cases or shifting City Attorney's Office staff to
17 litigation at the expense of their providing critical legal advice to the City and its departments
18 during the pendency of its chapter 9 case and related reorganization efforts. Lutterman Decl. ¶
19 10. Forcing the City into this latter alternative would undermine the policy of the automatic stay.
20 Far from allowing the City to "focus its efforts on reorganization," *Plumberex Specialty Prods.,*
21 *Inc.*, 311 B.R. at 556, it would interfere with the City's reorganization efforts and deprive the City
22 of its "breathing spell." *See Patel*, 291 B.R. at 173 (a "fundamental purpose" of the breathing
23 spell is "to provide relief from litigation").

24 Simply put, the City lacks the resources to litigate its stayed tort and employment cases
25 while simultaneously devoting due attention to its vigorously contested bankruptcy case and
26 postpetition cases. It also must still provide basic city services and be free to exercise its
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1 sovereign governmental authority. *Cf.* 11 U.S.C. §§ 903, 904.² Chapter 9 cases like the City’s
 2 are far from the “[o]rdinar[y]” case in which “litigation costs to a bankruptcy estate do not
 3 compel a court to deny stay relief.” *In re Santa Clara County Fair Ass’n, Inc.*, 180 B.R. 564, 566
 4 (B.A.P. 9th Cir. 1995).

5 **2. The City’s potential harm outweighs Hittle’s harm.**

6 Balanced against the severe prejudice that the City would suffer should the stay be lifted is
 7 the harm Hittle may endure due to delayed compensation, assuming *arguendo* that the City is
 8 liable. But this potential harm is no different than that suffered by the hundreds of other creditors
 9 subject to the automatic stay. *Cf. Ass’n of Retired Emps. of the City of Stockton v. City of*
 10 *Stockton, Cal. (In re City of Stockton, Cal.)*, 478 B.R. 8, 13 (Bankr. E.D. Cal. 2012) (denying
 11 injunctive relief “although the City’s unilateral interim reduction of retiree health benefit
 12 payments may lead to tragic hardships for individuals in the interval before their claims are
 13 redressed in a chapter 9 plan of adjustment”).

14 **3. Judicial economy would not be served by lifting the stay.**

15 Hittle’s judicial economy argument rests on the false assumption that the only way to
 16 ensure the adjudication of all of his claims in one forum is to lift the stay. To the contrary, if the
 17 stay is left in place and Hittle files a proof of claim in the ordinary chapter 9 claims process,
 18 either this court or the district court can adjudicate all of Hittle’s claims at that time. Hittle is
 19 incorrect that this court lacks jurisdiction over his claims against Deis and Montes. This court has
 20 “related to” jurisdiction, *see* 28 U.S.C. §§ 157(a), 1334(b), because “the outcome of the
 21 proceeding could conceivably have an[] effect on the [debtor’s] estate.” *Fietz v. Great W.*
 22 *Savings (In re Fietz)*, 852 F.2d 455, 457 (9th Cir. 1988) (emphasis omitted). “An action is related
 23 to bankruptcy if the outcome could alter the debtor’s rights, liabilities, options, or freedom of
 24 action.” *Id.* The City must pay the defense costs for Deis and Montes, *see* Shiners Decl. ¶ 1, and
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26 ² The prejudice to the City is not cured by the fact that Hittle seeks relief that would allow him to obtain a judgment
 27 against the City but not to collect on that judgment outside of the chapter 9 claims process. The City’s excess
 28 insurance coverage pool is not triggered until the City has expended \$1,000,000 in out-of-pocket costs in connection
 with the lawsuit. *Id.* ¶ 13. Thus, were the stay lifted as to 50 pending cases, for example, the City’s maximum
 current exposure, in litigation costs alone, would be \$50,000,000.

