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1 Mark S. Adams, State Bar No. 78706
2 William J. Gorham III, State Bar No. 151773
3 **LAW OFFICES OF MAYALL HURLEY, PC**
4 2453 Grand Canal Boulevard, Second Floor
5 Stockton, California 95207
6 Telephone: (209) 477-3833
7 Facsimile: (209) 473-4818
8 E-mail: MAAdams@Mayallaw.com
9 wgorham@mayallaw.com

10 Attorneys for Ronald Hittle

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

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

Case No. 12-32118
DCN: MH-1
Chapter 9

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

Date: November 20, 2012
Time: 9:30 a.m.
Judge: Hon. Christopher M. Klein
Location: 501 "I" Street, 6th Flr
Courtroom No. 35
Sacramento, CA

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23 Creditor RONALD HITTLE respectfully submits the following reply to the City Of
24 Stockton's Opposition To Motion By Ronald Hittle For Relief From Automatic Stay (the
25 "Motion"). Granting relief from the automatic stay will not prejudice the Debtor, but will
26 actually help preserve its resources by reducing the number of federal actions in which it must
27 incur legal expenses to defend itself and its employees to a single unified civil action. Moreover,
28 denying the motion will severely prejudice his rights by denying him the right to a jury trial on

1 the facts of his case as to the Debtor, forcing him to incur substantial additional expenses to try
2 his action in multiple federal cases and venues, and severely delaying and hampering his ability
3 to try his action against the individual defendants who are not Debtors in the bankruptcy case.

4 **ARGUMENT**

5 In opposition to the Motion, the Debtor disregards most of the twelve factors
6 commonly considered by bankruptcy courts in determining whether, in their sound discretion,
7 “cause” exists for granting relief from the automatic stay under 11 U.S.C. § 362(d)(1),
8 choosing to focus solely on the balance of harms analysis. Although the balance of harms is
9 clearly an important factor for the court’s consideration, many of the other 11 factors also
10 provide crucial information. Some of the more important common factors in this case that
11 were set forth in the motion (and the Declaration of Mark S. Adams) but the Debtor chose not
12 to discuss are:

13 (1) the relief sought will result in a complete resolution of the issues;

14 (2) allowing the district court action to continue would streamline the bankruptcy, not
15 interfere with it;

16 (3) that the personal liability of the non-debtor individual defendants is a substantial
17 portion of the district court action; and

18 (4) that permitting the district court action to proceed will have no impact on the rights
19 of the other creditors.

20 Undoubtedly, had the Debtor felt that any of the facts elicited by those factors favored
21 its position it would not have been so quick to discard them.

22 The Debtor’s balance of harms argument is grossly misleading. Contrary to the
23 assertions in Debtor’s opposition, a denial of the Motion would impose substantial unjustified
24 harm on Mr. HITTLE. To be clear, it would deprive Mr. HITTLE of his right to a jury trial
25 under the 7th Amendment to the United State Constitution as to the Debtor. It will also prevent
26 him from proceeding with his action against the individual defendants throughout the pendency
27 of the bankruptcy case, which is projected to last for several years. During that extensive delay
28 valuable documentary evidence and witness testimony that could be obtained today will almost

1 certainly be lost before Mr. HITTLE is permitted to even identify it and request it through the
2 discovery process. The loss of that evidence may substantially impair his ability to put on his
3 case as to the Debtor and as to the non-debtor individual defendants, effectively denying him
4 justice against any defendant for the damages he has suffered. He will also be forced to incur
5 significant additional costs to try the case twice: once in the bankruptcy case against the
6 Debtor, and once in the District Court against the individual defendants, in addition to the costs
7 to seek *de novo* review by the district court of the bankruptcy court's rulings under 28 U.S.C. §
8 157(c)(1). Despite the fact that these points were clearly stated in the Motion itself, Debtor's
9 opposition misstates the harm to Mr. HITTLE as merely delayed compensation, if he is even
10 able to establish the Debtor's liability.

11 The Debtor argues that two trials will not be required because even if the Motion is
12 denied, because the individual defendants are subject to the jurisdiction of the bankruptcy court
13 on a "related to" basis under 28 U.S.C. §§ 157(a) and 1334(b), because the outcome of the
14 action against DEIS and MONTES "could alter the debtor's rights, liabilities, options, or
15 freedom of action." (Fietz v. great Western Savings (In re Fietz) 852 F.2d 455 (9th Cir. 1988).)
16 The Debtor asserts DEIS' and MONTES' statutory rights to demand that the Debtor defend
17 and indemnify it in that action, under Government Code §§ 825 and 825.2 as evidence that a
18 judgment against them will have such an impact. But for that argument to be true, those
19 sections would have to provide Mr. HITTLE with a right to collect any personal judgment
20 against DEIS or MONTES directly from the Debtor, and prevent Mr. HITTLE from enforcing
21 such a judgment against DEIS and MONTES themselves. Those sections provide no such
22 powers or protections. They simply provide DEIS and MONTES with a potential right of
23 indemnity and defense. Those sections do not render Mr. HITTLE's actions against the
24 individual defendants personally "related to" the bankruptcy within the meaning of 28 U.S.C.
25 §§ 157(a) and 1334(b), as the Debtor suggests.

26 It must also be remembered that any exercise of jurisdiction by the bankruptcy court
27 over the case against the individual defendants would exacerbate the denial of Mr. HITTLE's
28 7th Amendment rights to a jury trial by extending it to the individual defendants as well.

1 Debtor argues that granting the Motion will also prejudice it by forcing it to incur legal
2 costs to defend itself in the district court action. But, as addressed in the Motion, litigation
3 costs alone do not compel denial of stay relief. (In re Santa Clara County Fair Ass'n 180 B.R.
4 564, 566 (9th Cir. BAP 1995).) Although courts have recognized that in some extreme cases
5 the potential litigation expenses might justify enjoining litigation against the debtor, “the
6 circumstances must be extraordinary.” (In re Todd Shipyards Corp. 92 B.R. 600, 603, fn. 4
7 (Bkrcty.D.N.J.,1988).)

8 The court in Todd Shipyards Corp. held that the debtor, a large corporation, would not
9 be imperiled by the costs to defend against the 65 pending tort actions against it. By way of
10 perspective, that court cited a few examples of cases that do demonstrate the extraordinary
11 circumstances warranting denial of a relief motion. Specifically, that court cited: *In re Johns–*
12 *Manville Corp.* (45 B.R. 823 (S.D.N.Y.1984)), in which a bankruptcy court ruled that the costs
13 to defend against 25,000 pending lawsuits would endanger the existence of the debtor; *In re*
14 *UNR Industries, Inc.*, (45 B.R. 322 (N.D.Ill.1984)), in which the costs to defend 17,000 claims
15 pending against the debtor would drain the estate irreparably; and *A.H. Robins Co., Inc. v.*
16 *Piccinin* (788 F.2d 994 (4th Cir.1986)) wherein granting relief would require the debtor to
17 defend against 5,000 pending lawsuits, and an equal number that had not yet been filed, the
18 costs of which would have exhausted the estate.

19 The theme underlying the “extraordinary circumstances” standard referenced in Todd
20 Shipyards Corp., and applied to the 9th Circuit in In re Santa Clara County Fair Ass'n, is the
21 very real concern by the court that the costs to defend against 10,000 or more claims or actions
22 would exhaust the bankruptcy estates. Weighed against the fact that the Debtor is a major
23 municipality, estimated to be the 65th largest city in the United States, with an estimated annual
24 budget of seven billion dollars (\$7,000,000,000.00), the “iceberg” depicted in the Debtor’s
25 opposition (160 pre-petition claims, including only 50 in which the Debtor is named as a
26 defendant or has a duty to defend an employee) simply do not present a threat that would
27 imperil the Debtor’s continued existence or its ability to reorganize its debt. Those potential
28 costs do not justify a denial of the Motion in this case.

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2 The Debtor's assertion that the City Attorney's Office is understaffed and over
3 whelmed with work is irrelevant. As Debtor readily acknowledges in its opposition, Renne
4 Sloan Holtzman Sakai, LLP ("Renne Sloan") has been its outside defense counsel in the
5 subject district court case from the beginning. Clearly the Debtor does not lack the resources
6 necessary to defend this case; it took the steps necessary to supplement those resources with
7 outside counsel months before filing its bankruptcy petition. Granting relief from the stay to
8 permit Mr. HITTLE to liquidate the value of his claim against the city by way of that action
9 will not increase the work load on the City Attorney's Office.

10 The Debtor's last argument may be the most telling of its true intentions in opposing
11 the Motion. Debtor opines that denying the Motion would actually promote judicial economy
12 by making it "more readily apparent to creditors like Hittle that they will not receive anything
13 close to the one hundred cents on the dollars on any recovery against [Debtor]." Mr. HITTLE
14 is not laboring under a delusion that he will somehow avoid the shriveling affect of the Chapter
15 9 bankruptcy on any judgment he obtain against the Debtor, as Debtor seems to think. The
16 Motion expressly limits the relief sought to permitting the action to proceed to judgment, not to
17 enforce any such judgment as to the Debtor. Mr. HITTLE has never argued that his claim is
18 non-dischargeable. He merely seeks to have the opportunity to liquidate the value of his claim.
19 The Debtor's final argument also reinforces the Debtor's apparent belief that Mr. HITTLE will
20 be required to collect any judgment against the non-debtor individual defendants from the
21 Debtor, and that such judgments against non-debtors will still be subject to the bankruptcy.
22 Again, that is simply not the case. Mr. HITTLE plans to enforce any judgment against the
23 individual defendants against them personally to the greatest extent possible.

24 CONCLUSION

25 For the above stated reasons, and those set forth in the Motion By Ronald Hittle For
26 Relief From Automatic Stay, Creditor RONALD HITTLE respectfully stands on his request
27 that the Court enter an order modifying the automatic stay of 11 U.S.C. § 362(a) in this case to
28 allow him to pursue to judgment his action under Title VII, 42 U.S.C. 1983, and the related

1 state statutes and causes, now pending before the United States District Court for the Eastern
2 District of California (Case No. 2:12-cv-00766-GEB-KJN).

3 Dated: November 12, 2012

LAW OFFICES OF MAYALL HURLEY, PC

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By /s/ Mark S. Adams

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MARK S. ADAMS
Attorneys For Ronald Hittle

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