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IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In the Matter of  
CITY OF STOCKTON,  
CALIFORNIA,  
  
Debtor.

Case No: 12-32118-C-9  
DC: DRJ-1  
  
Date: January 20, 2015  
Time: 9:30 a.m.  
Dept. C, Judge Klein  
501 I Street, 6th Floor,  
Courtroom 35, Sacramento, CA

**MOTION BY MARTI LYNN COOK FOR RELIEF  
FROM THE AUTOMATIC STAY**

Marti Lynn Cook (“Movant”), by her undersigned attorney, moves for the entry of an Order granting relief from the automatic stay imposed by 11 U.S.C. §§ 362 and 922, so that Movant may file and serve a complaint against the Debtor and Stockton Police Officer James Todd Larios in the Fresno County Superior Court and prosecute to judgment the lawsuit so commenced. Movant also seeks a waiver of the 14-day stay regarding orders granting relief from the automatic stay to a creditor, as referenced in Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure. The basis for the proposed complaint is more particularly set forth below. In support of this Motion, Movant alleges and cites the following:

1. This bankruptcy case was commenced on June 28, 2012, when the Debtor filed a petition seeking relief under Chapter 9 of the Bankruptcy Code.
2. This Court has jurisdiction over this proceeding under 28 U.S.C. §1334,

1 §157 and the Order of Reference of the District Court; this is a core proceeding under 28  
2 U.S.C. §157(2)(G); and venue in this Court is proper under 28 U.S.C. §1409.

3 3. This Motion is brought pursuant to §§ 362 and 922 of the Code, and Rules  
4 4001 and 9014 of the Federal Rules of Bankruptcy Procedure.

5 4. Officer Larios and his K-9 partner, Koda, reside in Fresno and  
6 commute to Stockton. On Sunday, June 1, 2014, Movant was introduced by Officer  
7 Larios to Koda at Dry Creek Park in Clovis, California. Movant attempted to pet Koda.  
8 Officer Larios failed to control Koda who jumped up and bit Movant on the face causing  
9 lacerations to her left cheek, puncture wounds to her right cheek and upper lip, and  
10 severe bruising. Pursuant to California Government Code 810 et seq., Movant, through  
11 counsel, filed with the Debtor the "Claim For Damages" a true copy of which is annexed  
12 hereto marked as Exhibit A. The claim was rejected by the Debtor on August 11, 2014.

13 5. Except to the extent that the running of time to commence a civil action  
14 may be tolled by reason of the automatic stay, the deadline for Movant to commence a  
15 civil action to determine, liquidate, and enforce her claim will expire on February 11,  
16 2015. It is not clear to what extent the stays provided for by §§362 and 922 apply.

17 6. Section 362 enjoins, in pertinent part, "(1) the commencement or  
18 continuation, including the issuance or employment of process, of a judicial,  
19 administrative, or other action or proceeding against the debtor **that was or could have**  
20 **been commenced before the commencement of the case under this title**, or to  
21 recover a claim against the debtor **that arose before the commencement of the case**  
22 **under this title**; ... and (6) any act to collect, assess, or recover a claim against the  
23 debtor **that arose before the commencement of the case under this title**. [Emphasis  
24 added]. Movant's claim did not arise until more than 2 years after the commencement of  
25 the Debtor's bankruptcy case and, therefore, could not have been commenced before the  
26 commencement of the bankruptcy case. Ergo, it would seem that §362 does not apply.  
27 On the other hand, post bankruptcy pre-discharge claims are dischargeable in a Chapter  
28 9 case. 11 USC §944(b), *O'Loughlin v. County of Orange*, 229 F.3d 871 (9th Cir. Cal.

1 2000). It seems incongruous to the Movant that a claim that will be discharged upon  
2 entry of an order confirming a plan would not be stayed in the meantime. Movant  
3 respectfully requests an order granting relief from the §362 stay or, alternatively,  
4 denying such relief on the grounds that the §362 stay does not apply.

5           7. Section 922 enjoins, in pertinent part, “the commencement or  
6 continuation, including the issuance or employment of process, of a judicial,  
7 administrative, or other action or proceeding against an officer or inhabitant of the  
8 debtor that seeks to enforce a claim against the debtor.” Officer Larios resides in Fresno  
9 and is, therefore, not an inhabitant of the Debtor. Although his job title includes the  
10 word "officer," the Movant doubts that this makes him an "officer" within the meaning  
11 of §922. The term "officer" is not defined in the Bankruptcy Code. Looking to state  
12 law, Movant notes that Cal Gov Code § 56025 defines the term "city officer" to mean  
13 "the mayor or a member of the city council." Movant respectfully requests an order  
14 granting relief from the §922 stay or, alternatively, denying such relief on the grounds  
15 that the §922 stay does not apply.

16           8. Movant seeks relief from the stays of §§362 and 922 to permit her to  
17 file and prosecute to judgment a civil action before the Fresno County Superior Court to  
18 determine and liquidate her claim against the Debtor and Officer Larios. Movant seeks  
19 relief for “cause” pursuant to §362(d). Judicial economy is a recognized basis on which  
20 relief from stay can be granted for "cause." *In re Kemble*, 776 F.2d 802 (9th Cir. Cal.  
21 1985). Movant submits that cause exists based on the following facts:

- 22                   A. Movant's claim needs to be determined and liquidated;
- 23                   B. The Bankruptcy Court cannot determine and liquidate the claim  
24 due to the restrictions imposed by 28 USC §157(b)(2)(B) and (O);
- 25                   C. Although the United States District Court for the Eastern  
26 District of California could liquidate and determine Movant's claim, in light of its well-  
27 known extraordinarily heavy workload, the District Court is far more likely to exercise  
28 discretionary abstention under 28 USC §1334; and,

1 D. The Movant's proposed lawsuit is a garden-variety personal  
2 injury claim that the Fresno County Superior Court is well-positioned to promptly and  
3 efficiently resolve- responding to the proposed lawsuit should not, therefore, move  
4 unduly burdensome to the Debtor or its attorneys.

5 9. Movant is unaware of the nature and extent of any insurance coverage  
6 that may be available to pay any judgment that she may obtain. Movant is aware, from  
7 reviewing the Debtor's plan and disclosure statement, that the Debtor has some  
8 insurance coverage applicable to at least some tort claims. Movant seeks relief from stay  
9 only to permit her to commence and prosecute to judgment a lawsuit seeking to  
10 determine and liquidate her claim. Movant understands that any recovery on any  
11 judgment obtained against the Debtor will be limited to insurance proceeds and such  
12 distributions as Movant may be entitled to receive under a confirmed plan.

13 WHEREFORE Movant respectfully requests:

14 A. That the Bankruptcy Court enter an order modifying the stay under §§ 362 and  
15 922 of the Code to allow Movant to file, serve a complaint against the Debtor and Officer  
16 Larios in the Fresno County Superior Court and to prosecute the lawsuit so commenced to  
17 judgment;

18 B. That the Bankruptcy Court waive the 14-day stay regarding orders granting  
19 relief from the automatic stay to a creditor, as referenced in Rule 4001(a)(3) of the Federal  
20 Rules of Bankruptcy Procedure;

21 C. Alternatively, to the extent that the Court determines that either the §362  
22 stay, the §922 stay, or both of them do not apply, that the Court enter an order denying  
23 relief on the grounds that the stay is inapplicable; and

24 D. For such further relief as the Court deems just and equitable.

25 Dated: December 21, 2014

26  
27 /s/ David R. Jenkins  
28 David R. Jenkins, Attorney for Movant

# CLAIM FOR DAMAGES

## CITY OF STOCKTON

**Note:** Claims for bodily injury or death, damage to personal property, or damage to growing crops may be filed on this form, not later than six months after the occurrence out of which the claims arose. All other claims must be filed not later than one year after the occurrence out of which the claims arose. (Refer to California Government Code sections 910.4 and 911.2)

**DIRECTION:** The original claim must be filed with the City of Stockton City Clerk's Office, 425 North El Dorado Street, Stockton, California 95202. Retain the yellow copy for your records.

NAME OF CLAIMANT: Cook Marti Lynn Date of Birth 7/25/70  
(Last) (First) (Middle)

HOME ADDRESS/PHONE: 349 Vermont Ave., Clovis, CA 93619 (559) 285-8447  
(Number/Street) (City/State/Zip Code) (Phone Number)

~~BUSINESS~~ <sup>ATTORNEY</sup> ADDRESS/PHONE: 720 W. Alluvial Fresno, CA 93711 (559) 431-5366  
(Number/Street) (City/State/Zip Code) (Phone Number)

**DIRECTION:** Indicate to which address you wish notice sent  HOME  BUSINESS

WHEN DID INJURY OR DAMAGE OCCUR? 6/1/14 Sunday  
(Month/Day/Year) (Day of Week) (Time of Day)

WHERE DID INJURY OR DAMAGE OCCUR?  
(Street address, intersecting streets, or other location) Dry Creek Park, 855 N. Clovis Ave. Clovis, CA 93611

HOW DID INJURY OR DAMAGE OCCUR?  
(Describe accident or occurrence in complete detail) Officer Larios introduced Ms. Cook to his K-9 partner, Koda, and when Ms. Cook went to pet Koda, he jumped up and bit her on the face.

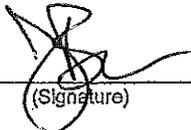
NAME OF CITY EMPLOYEE(S) INVOLVED? Stockton Police Officer James Todd Larios and K-9 Officer Koda  
WHAT ACTION OR INACTION OF CITY EMPLOYEE(S) CAUSED YOUR INJURY OR DAMAGES? Officer Larios Failed to control his K-9 partner, Koda, who bit Ms. Cook

WHAT INJURIES OR DAMAGES DID YOU SUFFER? Laceration to left cheek, puncture wounds to the right cheek and upper lip and severe bruising

TOTAL AMOUNT CLAIMED:  Unlimited case--over \$25,000.00  Limited case--\$25,000.00 or less

If under \$10,000.00, please specify amount \$ \_\_\_\_\_

**DIRECTION:** Sign and date this Claim For Damages below. If the signer is not the claimant, indicate the relationship of the signer to the claimant.

  
(Signature)

6/25/14  
(Month/Day/Year)

\_\_\_\_\_  
(Social Security Number-Optional)

Jason S. Bell, Attorney, Baradat & Paboojian, Inc.  
(Relationship of signer, if not claimant)

**DIRECTION:** You may attach and include with this completed form any bills for medical treatment and expenses, and any estimates or bills for personal property damage. Questions may be referred to (209) 937-8807

**NOTE:** PRESENTATION OF A FALSE CLAIM IS A FELONY (Refer to California Penal Code Section 72)