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9 UNITED STATES BANKRUPTCY COURT  
 10 EASTERN DISTRICT OF CALIFORNIA  
 11 SACRAMENTO DIVISION  
 12

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

Case No. 2012-32118  
 D.C. No. JTS-02  
 Chapter 9

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

[No Hearing Scheduled]

Judge: Hon. Christopher M. Klein

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 22 The City of Stockton, California ("City"), opposes the Motion For Order Shortening Time  
 23 To Hear Motion For Relief From Automatic Stay ("Motion" filed by Dean Andal, "Andal"). The  
 24 Motion and supporting pleadings were received by the City shortly after noon on Friday, August  
 25 2; the Motion seeks an order setting a hearing for Tuesday morning, August 6, on Andal's motion  
 26 for relief from the automatic stay ("Stay Motion"). The City opposes the Motion for two primary  
 27 reasons: First, the purported emergency was self-inflicted, in that Andal unnecessarily delayed  
 28 filing the Stay Motion. Second, the City cannot respond to the Stay Motion because it has not

1 been provided with the proposed writ petition (or other, similar pleading) that Andal would file in  
2 Superior Court were the stay vacated – despite the City having requested several times that it be  
3 provided with the pleading. Nor could the Court grant relief from the stay because it doesn't  
4 know what it would be permitting Andal to file.

5 The Self-Created Emergency. The alleged exigency described in the Motion is entirely of  
6 Andal's own creation. While he complains that he will have inadequate time to bring his writ if  
7 the Motion is not granted, the ballot language he intends to challenge was approved by the City  
8 Council on July 9, 2013. Declaration Of Bret Hunter In Support Of City Of Stockton's  
9 Opposition To Dean Andal's Motion For Order Shortening Time To Hear Motion For Relief  
10 From Automatic Stay ("Hunter Decl."), ¶¶ 2-3. The ballot language has been continuously  
11 available to the public since that date, and has remained unchanged. Hunter Decl., ¶¶ 3-4. Andal  
12 therefore has had over three weeks to seek relief from the automatic stay, and has only himself to  
13 blame for not doing so in a timely manner. An emergency created by a party's own delay does  
14 not satisfy the "good cause" requirement of Local Rule 9014-1(f)(3) and is therefore not a proper  
15 basis for an order shortening time. Moreover, Andal admits (at page 2, lines 4-7 of the Motion)  
16 that he has until August 22, 2013 to bring his proposed writ of mandate (the end of the 10-day  
17 period opening on August 13, 2013), which means that an August 20 hearing would still allow  
18 him to timely bring said writ if relief from the automatic stay is granted.

19 What Will the Writ Seek? The ballot measure that Andal seeks to challenge is of critical  
20 importance to the City and to its creditors. Yet Andal has failed to provide the Court, the City  
21 and other interested parties with a copy of the pleading he seeks to file to initiate the writ  
22 proceeding in state court. It's not that the City hasn't asked for a copy of the pleading. The email  
23 memoranda attached collectively as Exhibit A to the Declaration Of Joseph T. Speaker In Support  
24 Of Motion For Order Shortening Time To Hear Motion For Relief From Automatic Stay  
25 ("Speaker Decl.") tell the story, as does the attached Declaration of Betty J. Ramirez In Support  
26 Of Stockton's Opposition To Dean Andal's Motion For Order Shortening Time To Hear Motion  
27 For Relief From Automatic Stay ("Ramirez Decl.").

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1           ● On Tuesday, July 20, at 11:44 a.m., Speaker emailed Marc Levinson, counsel for the  
2 City, giving the City until close of business the following day to stipulate to relief from the  
3 automatic stay. Levinson responded by email about three hours later, saying

4                       Thanks for the heads up. Please forward a copy of the  
5                       petition/application/complaint that your client(s) seeks to file in the  
6                       Superior Court.

7           ● About 24 hours later, Speaker left Levinson a voicemail message, asking Levinson to  
8 call him to discuss, and saying:

9                       Part of the problem with providing the moving papers now is  
10                      there's slightly, or there could be a slight change to them depending  
11                      on the published ballot language, which will come out in about a  
12                      week or so. But I could give you something that's – you know – is  
13                      gonna be almost 99 percent what's going to be filed. But I can't  
14                      say 100 percent in the event that something is slightly altered on the  
15                      published ballot”

16 Ramirez Decl., Ex. A.

17           ● Speaker quickly followed up with a short email, and Levinson responded within an  
18 hour, saying:

19                       Sorry I missed your call. Thanks for the v/m and for the email. My  
20                       email of yesterday was sent because the City cannot decide whether  
21                       to stipulate to relief from the stay without knowing what the writ of  
22                       mandate lawsuit looks like. I understand from your v/m that the  
23                       pleading is largely complete, but may be amended once final ballot  
24                       language is presented. Even a near-complete draft would help the  
25                       City both understand the issues and get a sense of whether it can  
26                       stipulate to relief from the stay. I acknowledge and understand that  
27                       the pleading may change pending new developments. My  
28                       suggestion is that you mark each page as 7/31/13 DRAFT, and in  
                     your cover email expressly note that the draft may change in the  
                     future. If the draft is indeed 99% complete, as noted in your v/m, it  
                     ought to provide the City with what it needs in order to decide  
                     whether to agree with your stay request.

          ● The next communication from Speaker was the following morning, namely the Friday  
morning email that provided notice that Andal would be seeking both relief from the stay and an  
order shortening time for a hearing on Tuesday – thus providing the City with one and a half  
business days' notice to respond. This was the first communication that mentioned shortening  
time.

1 As noted above, the City has never received a copy of the proposed moving papers.  
2 Without knowing the exact nature of the challenge being brought against the City's ballot  
3 measure, the identity of the other defendants, if any, and precisely what relief will be sought, it is  
4 impossible for the City to accurately assess whether the automatic stay applies, let alone whether  
5 it will stipulate to relief from it.<sup>1</sup>

6 Conclusion. The City may ultimately choose to oppose the Stay Motion, but it cannot  
7 make that determination on one and a half business days of shortened time without the  
8 information it has requested since it was first contacted last week. Andal's purported need for  
9 urgency is his own doing, and his counsel has repeatedly failed to provide material information  
10 upon which the City, other parties, and this Court can weigh his request for relief. The City  
11 therefore respectfully submits that Andal should not be rewarded for his bad conduct, and  
12 requests that the Court deny the Motion, or, in the alternative, set the hearing on the Stay Motion  
13 on a date that provides it and parties in interest with adequate time to determine whether relief  
14 from the automatic stay is appropriate and to respond to the Stay Motion.

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16 Dated: August 5, 2013

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20 By:                   /s/ Marc A. Levinson                    
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23 City of Stockton  
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28 <sup>1</sup> The Stay Motion also contains a request that the Court abstain under 28 U.S.C. § 1334(c), but until the City sees the proposed writ papers, it cannot respond to that argument, either.