

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4
Jerome R. Satran, Esq. (SBN 188286)
Joseph T. Speaker, Esq. (SBN 277921)
KOELLER, NEBEKER, CARLSON & HALUCK, LLP
1478 Stone Point Drive, Suite 400
Roseville, CA 95661
Telephone: (916) 724-5700
Facsimile: (916) 788-2850

Attorney for Movants
DEAN ANDAL

**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 REPLY TO
OPPOSITION TO MOTION FOR
RECONSIDERATION OF MOTION
FOR ORDER SHORTENING TIME TO
HEAR MOTION FOR RELIEF FROM
AUTOMATIC STAY**

DEAN ANDAL (hereinafter "Movant"), respectfully submits this Reply to the Opposition of the CITY OF STOCKTON, CALIFORNIA (hereinafter "Debtor") to Movant's Motion for Reconsideration of Motion for Relief from the Automatic Stay filed by Movant on August 2, 2013 in the above matter. Simply, put, it is evident from the Debtor's Opposition that the Debtor is completely unfamiliar with the process outlined in the California Elections Code. As a result, the Debtor's Opposition not only brings up facts and evidence wholly unrelated to Movant's Motion for Relief from the Automatic Stay, but presents argument on an issue not even before this Court or being brought by Movant.

As has been provided to this Court and counsel for Debtor, Movant seeks relief from the automatic stay for a writ of mandate to challenge the proposed language of a recently adopted

1 measure that has been put on the November 5, 2013 ballot (hereinafter “Measure.”) Because it
2 appears that the Debtor’s counsel is wholly unfamiliar with this process, please allow the below
3 to provide a brief summary of the elections process as outlined by the California Elections Code.

4 Prior to an election, the elections official is charged with gathering the “election
5 materials” which will inevitably make up the ballot submitted to the voters. (Cal. Elec. Code §§
6 9223, 9280, 9281, 9282, 9285, and 9295.) The elections materials include the ballot title and
7 summary (hereinafter “ballot title”), which is merely the text of the measure which the voters are
8 asked to vote on. (See Cal. Elec. Code § 9295 and *McDonough v. Superior Court* (2012) 204
9 Cal.App.4th 1169.) In addition to the “ballot title”, voters are allowed to submit “arguments for
10 and against” the specific measure up for vote, which are printed with the ballot title and provided
11 to the voters. (Cal. Elec. Code §§9281 and 9282.) These “arguments for and against” are non-
12 neutral arguments in favor of and against the proposed measure. These are separate and apart
13 from any writ of mandate process called for in the Elections Code. Lastly, as part of the elections
14 material, the City Attorney is authorized to prepare an “impartial analysis” of the proposed
15 measure that simply articulates an impartial analysis of the measure’s purpose, which is also
16 printed with the “ballot title” and “arguments for and against” and provided to the voters in the
17 ballot pamphlet at the time of voting. (Cal. Elec. Code §9280.) Pursuant to California Elections
18 Code section 9295(a), once all of the above ballot materials are submitted to the elections official,
19 the elections official is directed to open the 10-calendar-day public examination period. (Cal.
20 Elec. Code §9295.) It is only during this ten (10) day window that a party may file a writ of
21 mandate challenging any of the proposed elections materials as being misleading. (*Ibid.*)

22 As explained, Movant seeks only to challenge the proposed language of the “ballot title”
23 via the writ of mandate, not the proposed “arguments for and against” and not the “impartial
24 analysis.”

25 California Elections Code section 9295 contemplates all of the elections materials being
26 “published” via the 10-calendar-day public examination period at the same time, so as to not
27 delay the printing of the ballot. (See Cal. Elec. Code §§9295(a)(b)(1) & (2).) Indeed this was the
28 apparent process contemplated for the instant elections materials based on the original Measure

1 Control Sheet prepared by the Registrar of Voters, prior to any challenge by Movant. A true and
2 correct copy of the original Measure Control Sheet identifying the dates for submission of the
3 various elections material and 10-calendar-day public examination period is attached as Exhibit
4 “A” to the attached Declaration of Dean Andal. Despite this being the normal process, the
5 Debtor, through the City Clerk, has opted to create separate 10-calendar-day public examination
6 periods for each of the separate elections materials. The result, is that instead of there being one
7 set date that all elections materials are due (i.e. August 13, 2013 as called for in Exhibit “A”), the
8 Debtor has elected to create separate deadlines for each of the elections materials, such that the
9 last day for the submission of the “impartial analysis” was August 8, 2013, and the last day for
10 the “arguments for and against” is August 16, 2013. (See Exhibit “B” to Andal Decl.; Opposition
11 pg. 2 ln. 18.) Once the last day occurs for the submission of the specific elections materials, the
12 10-calendar-day public examination period begins as to that specific elections material. (See Cal.
13 Elec. Code §9295.)

14 Based on the above summary, the Opposition by the Debtor wholly misses the mark with
15 regard to the basis for the underlying Motion for Relief from the Automatic Stay. The Opposition
16 focuses only on the apparent deadline for the “arguments for and against”, but fails to address the
17 deadline for the submission of the “ballot title.” Though the Debtor is correct the last day for the
18 submission of any “argument for and against” is August 16, 2013, it does not change the fact that
19 the last day for the submission of the “impartial analysis” occurred last week, thereby starting the
20 10-calendar-day public examination period as to any writ of mandate challenging the language of
21 the “ballot title.” It is the 10-calendar-day public examination period for the “ballot title” that
22 creates the prejudice for Movant, as Movant’s writ of mandate challenges only the proposed
23 language of the ballot title. Debtor has provided no opposition to Movant’s contention that the 10-
24 calendar-day public examination period for the ballot title is set to expire on August 18, 2013.

25 Lastly, Movant has articulated in detail the basis for his challenge to the ballot title in his
26 Motion for Reconsideration and Motion for Relief form the Automatic Stay. Any statement by
27 Debtor that it does not know “the exact nature of the action” is disingenuous and meant only to
28 obtain copies of Movant’s state court moving papers in advance of Movant being allowed to file.

1 This request for the moving papers in advance of Movant being allowed to file creates an unfair
2 advantage for Debtor that is specifically not allowed by the Elections Code.

3 **CONCLUSION**

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

8 DATED: August 14, 2013

KOELLER, NEBEKER, CARLSON & HALUCK, LLP

9

/s/ Joseph T. Speaker
Jerome R. Satran, Esq.
Joseph T. Speaker, Esq.
Attorneys for Movant
DEAN ANDAL

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28