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1 MARC A. LEVINSON (STATE BAR NO. 57613)
 malevinson@orrick.com
 2 NORMAN C. HILE (STATE BAR NO. 57299)
 nhile@orrick.com
 3 JOHN W. KILLEEN (STATE BAR NO. 258395)
 jkilleen@orrick.com
 4 ORRICK, HERRINGTON & SUTCLIFFE LLP
 400 Capitol Mall, Suite 3000
 5 Sacramento, California 95814-4497
 Telephone: (916) 447-9200
 6 Facsimile: (916) 329-4900

7 Attorneys for Debtor
 City of Stockton
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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. OHS-5
 Chapter 9

**CITY OF STOCKTON'S MOTION
 FOR ORDER (1) RULING THAT
 APPROVAL OF SETTLEMENT
 AGREEMENT IS NOT REQUIRED
 UNDER RULE 9019 OF THE
 FEDERAL RULES OF BANKRUPTCY
 PROCEDURE; OR ALTERNATIVELY
 (2) APPROVING SETTLEMENT
 AGREEMENT PURSUANT TO RULE
 9019**

Date: November 20, 2012
 Time: 9:30 a.m.
 Dept: C, Courtroom 35
 Judge: Hon. Christopher Klein

1 The City of Stockton, California, on behalf of itself and the Stockton Police Department
2 (“SPD”), Officer Christopher Slate, Officer Kyle Pierce, Officer Mitchell Tiner and Officer
3 Carlos Vina, Jr. (collectively, the “City”¹), respectfully moves this Court for an order ruling that
4 the City is not required to seek the Court’s approval of a settlement agreement (the “Settlement
5 Agreement”) by and between the City and Christopher Hallon (together with the City, the
6 “Parties”), a copy of which is attached as Exhibit B to the Declaration of Marci Arredondo
7 submitted in conjunction with this motion, under Rule 9019 of the Federal Rules of Bankruptcy
8 Procedure (the “Bankruptcy Rules”). The basis for the request is that Rule 9019 does not create
9 a substantive requirement to seek such approval and because such a requirement would
10 impermissibly conflict with the City’s substantive rights as a chapter 9 debtor under 11 U.S.C.
11 § 904. In the alternative, should the Court determine that bankruptcy court approval is required,
12 the City requests an order approving the Settlement Agreement pursuant to Rule 9019.²

13 The Settlement Agreement encompasses a settlement and resolution of the allowance,
14 determination and payment of certain claims (the “Claims”) arising from *Hallon v. City of*
15 *Stockton et al.*, Case No. 2:11-CV-00462-GEB-GGH (E.D. Cal. 2011) (the “District Court Case”)
16 and avoids the substantial costs associated with further litigation of the Claims. *See* Declaration
17 of Marci Arredondo (“Arredondo Decl.”), ¶¶ 7, 8. The Claims brought by Hallon in the District
18 Court Case allege damages against the City for claimed violations of certain of his constitutional
19 rights stemming from the defendants’ alleged use of excessive force. Arredondo Decl., ¶¶ 3-4. In
20 entering into the settlement with Hallon, the City factored into its calculations the likelihood that
21 unsecured creditors like Hallon will be substantially impaired by any plan of adjustment
22 confirmed in this case. Arredondo Decl., ¶ 9. Even with this consideration, the City believes that

23 ¹ Bringing this motion on behalf of the City and its individual employees is appropriate because, as a matter of state
24 law and City policy, the City generally is required to defend a civil action brought against its employees. *See* Cal.
25 Gov’t Code § 995. The City also is required to pay any claim or judgment against its employees in favor of third-
26 party plaintiffs. *See* Cal. Gov’t Code § 825. Thus, any dollar nominally recovered against an employee (such as the
27 officers here) ultimately comes out of the City’s pocket, as do all defense costs incurred defending the officers.

28 ² Even if the Court construes this as a request for a declaratory judgment, this does not require the commencement of
a separate adversary proceeding. Under Rule 7001, a proceeding to obtain a declaratory judgment requires an
adversary proceeding only if it relates to a prescribed category of actions. Fed. R. Bankr. P. 7001(10). This motion
falls within none of these categories, and thus no adversary proceeding is required (particularly where there is no
defendant against whom the City could file a complaint). *See generally* 10-7001 COLLIER ON BANKRUPTCY
¶ 7001.08 (16th ed. 2012) (notes omitted).

1 the terms of the Settlement Agreement—and specifically the amount of 100-cent dollars for
2 which the City has agreed to settle the case—are fair, reasonable and in the best interests of all the
3 Parties. *Id.*

4 As noted above and as explained below, the City submits that a chapter 9 debtor is not
5 required to seek the Court’s approval of a compromise or settlement under Rule 9019.
6 Nevertheless, out of an abundance of caution, the City seeks the alternative relief of a Court order
7 approving the Settlement Agreement.

8 **I. THE CITY IS NOT REQUIRED TO SEEK THE COURT’S APPROVAL OF THE**
9 **SETTLEMENT AGREEMENT BECAUSE RULE 9019 DOES NOT CREATE A**
10 **SUBSTANTIVE REQUIREMENT TO SEEK SUCH APPROVAL AND ITS**
11 **APPLICATION WOULD CONFLICT WITH 11 U.S.C. § 904.**

12 Rule 9019 provides in relevant part that “[o]n motion by the trustee . . . the court may
13 approve a compromise or settlement.” Fed. R. Bank. P. 9019. The City submits, however, that
14 Rule 9019 does not (and cannot) obligate the City to seek the Court’s approval of the Settlement
15 Agreement. The reasons for this are twofold: First, Rule 9019 does not, on its own, create a
16 substantive requirement that debtors seek court approval of settlements and compromises.
17 Second, even if Rule 9019 did impose such a requirement, it would improperly conflict with the
18 City’s freedom to control its property and revenues under section 904 of the Bankruptcy Code, in
19 violation of 28 U.S.C. § 2075.

20 **A. Rule 9019 Is A Procedural Rule That Does Not Create A Substantive**
21 **Requirement That Debtors Seek The Court’s Approval Of A Compromise Or**
22 **Settlement**

23 Rule 9019 is a rule of procedure, and thus “cannot create a substantive requirement for
24 court approval that does not exist in the Code itself.” *In re Telesphere Communications, Inc.*, 179
25 B.R. 544, 551-52 (Bankr. N.D. Ill. 1994); *see also In re Dow Corning Corp.*, 198 B.R. 214, 246
26 (Bankr. E.D. Mich. 1996) (Rule 9019 is “merely a rule, [it] can do no more than establish a
27 procedural mechanism for exercising statutory power.”). Multiple courts in non-chapter 9 cases
28 have recognized this, and have held that the substantive requirement to seek court approval of
compromises and settlements is instead found in 11 U.S.C. § 363, which permits the “use”
or “sale” of property of the estate only after “notice and a hearing.” *See Northview Motors, Inc.*

1 v. *Chrysler Motors Corp.*, 186 F.3d 346, 351 n. 4 (3d Cir. 1999) (“[A]s a matter of law,
2 Bankruptcy Rule 9019(a), a rule of procedure, cannot, by itself, create a substantive requirement
3 of judicial approval of [a] settlement . . . Section 363 of the Code is the substantive provision
4 requiring court approval.”); *In re Sparks*, 190 B.R. 842, 844 (Bankr. N.D. Ill. 1996) (holding that
5 Rule 9019 itself did not provide a basis for a Court’s refusal to enforce a settlement it did not
6 approve, but that such basis could be found in section 363). For example, in the leading Ninth
7 Circuit case on the interplay between Rule 9019(a) and § 363(b), the Bankruptcy Appellate Panel
8 for the Ninth Circuit held that “the disposition by way of ‘compromise’ of a claim that is an asset
9 of the estate is the equivalent of a sale of the intangible property represented by the claim, which
10 transaction simultaneously implicates the ‘sale’ provisions under section 363 as implemented by
11 Rule 6004 and the ‘compromise’ procedure of Rule 9019(a).” *In re Mickey Thompson Entm’t*
12 *Group, Inc. (Goodwin v. Mickey Thompson Entm’t Group, Inc.)*, 292 B.R. 415, 421 (B.A.P. 9th
13 Cir. 2003) (citing *Myers v. Martin (In re Martin)*, 91 F.3d 389, 394-95 (3d Cir. 1996)).

14 Section 363, however, is not applicable in chapter 9 cases. 11 U.S.C. § 901. Thus, as
15 Rule 9019 implicates no substantive requirement for seeking court approval of a settlement, and
16 as the Bankruptcy Code section that provides that requirement is inapplicable to a chapter 9
17 debtor, the Bankruptcy Code does not require the City to seek the Court’s approval of the
18 Settlement Agreement.

19 **B. Requiring A Chapter 9 Debtor To Seek The Court’s Approval Of A**
20 **Compromise Or Settlement Is Impermissible Under 11 U.S.C. § 904 and 28**
21 **U.S.C. § 2075.**

22 Even if Rule 9019 could supply a substantive requirement for court approval of
23 compromises and settlements, such a requirement could not be applied to a chapter 9 debtor
24 because it would conflict with a municipality’s freedom to control its property and revenues
25 under 11 U.S.C. § 904. Section 904 of the Bankruptcy Code, titled “Limitation on jurisdiction
26 and powers of court,” states that a bankruptcy court, absent the debtor’s consent or a plan
27 provision to the contrary, “may not, by any stay, order, or decree . . . interfere with - (1) any of
28 the political or governmental powers of the debtor; (2) any of the property or revenues of the
debtor; or (3) the debtor’s use or enjoyment of any income-producing property.” As this Court

1 recently held, “§ 904 performs the role of the clean-up hitter in baseball. Its preambular language
2 . . . is so comprehensive that it can only mean that a federal court can use no tool in its toolkit—
3 no inherent authority power, no implied equitable power, no Bankruptcy Code § 105 power, no
4 writ, no stay, no order—to interfere with a municipality regarding political or governmental
5 powers, property or revenues, or use or enjoyment of income-producing property.” *In re City of*
6 *Stockton, California*, 478 B.R. 8, 20 (Bankr. E.D. Cal. 2012).

7 Requiring the City to seek the Court’s approval of the Settlement Agreement is
8 impermissible because § 904 prohibits a court from interfering with a debtor’s property and
9 revenues without the debtor’s consent. 11 U.S.C. § 904(2). This Court has held that “[t]he
10 contents of the City treasury are ‘property and revenues’ within the meaning of § 904(2).” 478
11 B.R. at 21. The expenses of continuing to litigate the District Court Case will require payments
12 of additional attorneys’ fees and other costs, as will the expenses of settling the case – although
13 the latter expenses will be lower. These payments will come from the City of Stockton’s
14 treasury, which this Court has held constitute its property and revenues. Thus, requiring the City
15 to seek the Court’s approval of the Settlement Agreement—with the implication that the Court
16 could deny such approval—would interfere with the City’s freedom to control its property and
17 revenues.

18 Where there is a conflict between the Bankruptcy Code and the Bankruptcy Rules, that
19 conflict “must be settled in favor of the code.” *In re Pac. Atl. Trading Co.*, 33 F.3d 1064, 1066
20 (9th Cir. 1994). This is because 28 U.S.C. § 2075, which confers power on the Supreme Court to
21 prescribe the Bankruptcy Rules, expressly states that “[s]uch rules shall not abridge, enlarge, or
22 modify any substantive right.” Thus, a bankruptcy rule “cannot create an exception to the
23 Bankruptcy Code.” *In re Jastrem*, 253 F.3d 438, 441 (9th Cir. 2001); *see also In re Cisneros*, 994
24 F.2d 1462, 1465 (9th Cir. 1993) (where Bankruptcy Code and Bankruptcy Rules conflict, the
25 statute must take precedence).

26 Therefore, Rule 9019 cannot abridge the City’s substantive rights under section 904. Nor
27 can Rule 9019 create a substantive right or requirement where none exists. *See* Section I.A.,
28 *supra*. The City is not required to seek the Court’s approval of the Settlement Agreement.

1 **II. ALTERNATIVELY, THE COURT SHOULD APPROVE THE SETTLEMENT**
2 **AGREEMENT PURSUANT TO RULE 9019**

3 Should the Court deem Rule 9019 applicable, in the alternative, it should approve the
4 Settlement Agreement between the City and Hallon.

5 **A. The District Court Case**

6 As alleged in his complaint, on the evening of January 15, 2010, Hallon was walking
7 down a street in an area of downtown Stockton known for drug trafficking. *See* Arredondo Decl.,
8 ¶ 3, Ex. A. He was detained by Officers Slate, Pierce, Tiner and Vina, Jr. *Id.* The officers used
9 force during the detention. *Id.* Hallon argues that the force used was excessive; the City argues
10 that it was not. *Id.*

11 On February 18, 2011, Hallon initiated the District Court Case by filing a complaint in the
12 United States District Court for the Eastern District of California. Arredondo Decl., ¶ 2, Ex. A.
13 He brought the case under 42 U.S.C. § 1983 and other statutory and common law causes of action
14 to recover damages against the City for claimed violations of certain constitutional rights
15 resulting from the alleged use of excessive force during his detention. *Id.*, ¶ 4. On April 16,
16 2012, the City filed a motion for summary judgment, and on May 1, 2012, Hallon filed an
17 opposition, arguing that the motion must fail because it involved disputed facts. *Id.*, ¶ 5. On
18 June 28, 2012 (the “Petition Date”), the City filed its chapter 9 petition. *Id.* On July 6, 2012, the
19 district court judge ordered that the City’s motion for summary judgment be deemed withdrawn
20 in light of the imposition of the automatic stay. *Id.* On July 16, 2012, Hallon filed a notice of
21 settlement. *Id.*

22 **B. The Terms Of The Settlement Agreement**

23 **1. Payment By The City To Hallon**

24 Subject to Court approval, should the Court determine that approval is required, the City
25 agrees to pay Hallon \$55,000 (the “Settlement Amount”). *See* Arredondo Decl., ¶ 7, Ex. B. The
26 Parties arrived at this amount after a lengthy series of negotiations. *Id.*, ¶ 8. It reflects their
27 evaluation of the strengths of their respective cases, of Hallon’s potential recovery and of the
28 benefit they gain from reducing future litigation costs in the District Court Case. *Id.* As noted

1 above, in entering into the settlement with Hallon, the City was well aware of, and factored into
2 its calculations, the likelihood that unsecured creditors like Hallon will be substantially impaired
3 by any plan of adjustment confirmed in this case. *Id.*, ¶ 9. Subject to obtaining Court approval,
4 within fourteen days of the approval of the Settlement Agreement by the Stockton City Council,
5 the Settlement Amount will be paid to Hallon and his attorney of record, Richard G. Hyppa. *Id.*,
6 ¶ 7.

7 **2. Release**

8 Hallon will release and discharge the City of and from any and all liability, claims,
9 demands, damages, punitive damages, causes of action, disputes, suits, actions, claims for relief,
10 and causes of action arising out of or relating to the allegations of the Complaint or arising out of
11 related to the facts and circumstances underlying such allegations. *Id.*, ¶ 7, Ex. B.

12 **C. The Proposed Compromise Should Be Approved**

13 **1. The Legal Standard Pursuant To Rule 9019**

14 The Supreme Court set forth the standard for approval of a compromise in *Protective*
15 *Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414,
16 *reh'g denied*, 391 U.S. 909 (1968). In *TMT Trailer*, the Supreme Court held that compromises
17 reached during the course of insolvency proceedings must be “fair and reasonable.” 390 U.S. at
18 424. Significantly, the Court stated that “[b]asic to this process in every instance, of course, is the
19 need to compare the terms of the compromise with the likely rewards of litigation.” *Id.*

20 The Ninth Circuit Court of Appeals has held that the determination of whether a proposed
21 settlement agreement meets the requisite standards of fairness, equity and reasonableness, is a
22 function of several factors: (a) the probability of success in the litigation; (b) the difficulties, if
23 any, to be encountered in the matter of collection; (c) complexity of the litigation involved, and
24 the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of
25 creditors and a proper deference to their reasonable views. *See Martin v. Kane (In re A&C*
26 *Properties)*, 784 F.2d 1377, 1381 (9th Cir.), *cert. denied sub nom., Martin v. Robinson*, 479 U.S.
27 854 (1986); *accord Woodson v. Fireman's Fund Insur. Co. (In re Woodson)*, 839 F.2d 610, 620
28 (9th Cir. 1988); *In re MGS Marketing*, 111 B.R. 264, 267 (B.A.P. 9th Cir. 1990). Each of these

1 enumerated factors weighs in favor of approving the Settlement Agreement.

2 In ruling on a proposed compromise, a court should not substitute its own judgment for
3 that of the trustee or debtor in possession. See *In re Carla Leather, Inc.*, 44 B.R. 457, 466 (Bankr.
4 S.D.N.Y. 1984), *aff'd*, 50 B.R. 765 (S.D.N.Y. 1985). Nor is a court required to determine
5 whether the settlement was the best that the debtor could have obtained. See *In re W.T. Grant*,
6 699 F.2d 599, 608 (2d Cir. 1982), *cert. denied*, 464 U.S. 822 (1983). Rather, the court should
7 “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of
8 reasonableness.’” *Id.* at 608; *In re Bell & Beckwith*, 87 B.R. 472, 474 (N.D. Ohio 1987).

9 **2. The Settlement Agreement Meets The Standard For Approval Under**
10 **Bankruptcy Rule 9019**

11 The Settlement Agreement should be approved under the applicable decisional standards.
12 As applied here, the *A&C Properties* factors support this Court’s approval of the Settlement
13 Agreement as in the best interest of the City and its creditors. The Settlement Agreement should
14 be approved for the following reasons:

15 ***Probability of Success.*** The factual and legal arguments regarding the allowability of
16 Hallon’s Claims are disputed. Hallon maintains that the officers used excessive force when they
17 detained him, which excessive force resulted in significant bodily injury; by contrast, the City
18 maintains that the stop of Hallon and the force used were justified. See Arredondo Decl., ¶ 3.
19 Ultimately, a jury would be charged with deciding the validity of the Claims; thus, the outcome is
20 plagued with uncertainty. What is certain is that substantial time and resources would be
21 consumed in pursuing the litigation to trial, even if such litigation does not occur until after the
22 lifting of the automatic stay. Under the circumstances, the proposed compromise is fair and
23 reasonable, as it approximates the City’s and Hallon’s good-faith estimation of the risks
24 associated with their respective claims and defenses.

25 ***Complexity of Litigation; Related Expense.*** The disputes between the Parties—
26 one plaintiff and six defendants—about the facts of the case, as well as tendentious discovery
27 disputes involving such issues as expert witness disclosure have elevated the litigation’s
28 complexity. Continuing the litigation to resolve the case’s factual and legal disputes would

