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

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

17 **Case No. 12-32118**
18 **DCN: MH-001**
19 **Chapter 9**

20 **MOTION FOR RELIEF FROM THE**
21 **AUTOMATIC STAY OF 11 U.S.C. §**
22 **362(a) AS TO PENDING CIVIL**
23 **RIGHTS ACTION [11 U.S.C. §**
24 **362(d)(1)]; SUPPORTING**
25 **DECLARATION OF MARK S. ADAMS.**

26 **Date: November 20, 2012**
27 **Time: 9:30 a.m.**
28 **Judge: Hon. Christopher M. Klein**
Location: 501 'T' Street, 6th Flr
Courtroom No. 35
Sacramento, CA

29 **MOTION FOR RELIEF FROM THE AUTOMATIC STAY OF 11 U.S.C. § 362(a) AS**
30 **TO PENDING CIVIL RIGHTS ACTION.**
31 **[11 U.S.C. § 362(d)(1)]**

32 **INTRODUCTION**

33 Creditor RONALD HITTLE ("Movant"), for good cause as shall be demonstrated, files
34 this motion ("Motion") for an order of the Court granting him relief from the automatic stay in

1 this Chapter 9 bankruptcy matter, pursuant to 11 U.S.C. § 362(d)(1), to allow him to pursue to
2 judgment his pending action under Title VII, 42 U.S.C. § 1983, and various California state
3 statutes, now pending before the United States District Court for the Eastern District of
4 California (Case No. 2:12-cv-00766-GEB-KJN), in order to liquidate his claim in this
5 bankruptcy case. This Motion does not seek modification of the automatic stay to permit
6 collection of any judgment in that non-bankruptcy action against the debtor.

7 **BACKGROUND**

8 On March 26, 2012, RONALD HITTLE (“Movant”), a former Fire Chief with the City
9 of Stockton, filed a Complaint For Damages and Jury trial Demand (“Complaint”) in the
10 United States District Court for the Eastern District of California (Case No. 2:12-cv-00766-
11 GEB-KJN) against the City of Stockton (“Debtor”), as well as ROBERT DEIS (City Manager
12 for the Debtor) and LAURIE MONTES (Deputy City Manager for the Debtor), individually
13 and in their official capacities with Debtor. (See Complaint filed herewith as Exhibit 1.) The
14 Complaint alleges causes of action for religious discrimination, association discrimination and
15 retaliation in violation of the Federal Civil Rights act of 1964 (“Title VII”) and the California
16 Fair Employment and Housing Act (“FEHA”), for violations of 42 U.S.C. § 1983, and for
17 breach of contract. The causes of action against the Debtor are based in significant part on the
18 conduct of the DEIS and MONTES (jointly “Non-Debtor Defendants”) in their official
19 capacities with the Debtor.

20 This district court action was stayed, as to the Debtor, under 11 U.S.C. § 362(a) on June
21 28, 2012, by the Debtor’s filing of its Voluntary Petition under Chapter 9 of the U.S.
22 Bankruptcy Code. By order entered September 6, 2012 in the district court action, the court
23 extended the stay under section 362(a) to the Non-Debtor Defendants based on the court’s
24 finding of an identity of interests. (See Order filed herewith as Exhibit 2.)

25 Movant is informed and believes that Debtor enjoys some degree of coverage for
26 employment practices liability of the kind alleged in the district court action, under a joint
27 powers agreement and/or one or more policies of insurance. (Declaration of Mark S. Adams, ¶
28 7.) Discovery has not yet commenced in the district court action, due to the automatic stay and

1 the district court's order extending the same to the Non-Debtor Defendants. As a result,
2 Movant has not yet been able to investigate the existence, sources, extent, conditions and
3 limitations of that coverage. (Declaration of Mark S. Adams, ¶ 7.)

4 **JURISDICTION**

5 The Court has jurisdiction to consider this motion under 28 U.S.C. §§ 157 and 1334.
6 This matter is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (G). Venue is proper in
7 this Court under 28 U.S.C. §§ 1408 and 1409.

8 **RELIEF REQUESTED**

9 Pursuant to 11 U.S.C. § 362(d)(1) and Rule 4001 of the Federal Rules of Bankruptcy
10 Procedure ("FRBP"), Movant requests that the Court enter an order modifying the automatic
11 stay of 11 U.S.C. § 362(a) in this case to permit him to pursue to judgment his action under
12 Title VII, 42 U.S.C. 1983, the California FEHA, and other statutes, in order to establish
13 liability of Debtor, any insurer or indemnitor of the Debtor, and the Non-Debtor Defendants, in
14 order to liquidate his claim in this bankruptcy case.

15 **ARGUMENT**

16 "A decision to lift the automatic stay under 11 U.S.C. § 362 is within the discretion of
17 the bankruptcy judge and reviewed for an abuse of discretion." (In re Mac Donald 755 F.2d
18 715, 716 -717 (9th Cir. (Cal.) 1985), citing In re Frigitemp Corp., 8 B.R. 284 (S.D.N.Y.1981).)

19 Under 11 U.S.C. § 362(d)(1), on request of a party in interest, the court shall grant
20 relief from the automatic stay "for cause". As a contingent creditor, Movant has standing to
21 bring this Motion. (In re Kronemyer 405 B.R. 915, 921 (9th Cir. BAP 2009).)

22 Although the Code does not provide a definition of what constitutes "cause", it is well-
23 established that the existence of pending litigation against the debtor in a non-bankruptcy
24 forum can satisfy the requirement. (In re Coachworks Holdings, Inc. 418 B.R. 490,
25 492 (Bkrtcy.M.D.Ga.,2009), citing Smith v. Tricare Rehab. Sys., Inc. (In re Tricare Rehab.
26 Sys., Inc.), 181 B.R. 569, 572 n. 7 (Bankr.N.D.Ala.1994). See also In Re Santa Clara County
27 Fair Assoc., Inc. 180 B.R. 564, 566 (9th Cir. BAP 1995).)

28 Factors to be considered by the court in determining whether specific pending litigation

1 is sufficient “cause” for stay relief are: (1) whether relief would result in a partial or complete
2 resolution of the issues; (2) lack of any connection with or interference with the bankruptcy
3 case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a
4 specialized tribunal with the necessary expertise has been established to hear the cause of
5 action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6)
6 whether the action primarily involves third parties; (7) whether litigation in another forum
7 would prejudice the interests of other creditors; (8) whether the judgment claim arising from
8 the other action is subject to equitable subordination; (9) whether movant's success in the other
9 proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial
10 economy and the expeditious and economical resolution of litigation; (11) whether the parties
11 are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the
12 balance of harms. (See In re Sonnax Industries, Inc. 907 F.2d 1280, 1286 (2d Cir. 1990); In re
13 Hakim 212 B.R. 632, 639-640 (Bankr.N.D.Cal. 1997).)

14 Addressing these points in order:

15 (1) Permitting the district court action to proceed in this case would completely
16 resolve the question of liability as to the Debtor, their insurer or indemnitor, and the Non-
17 Debtor Defendants, thereby liquidating Movant’s claim in this bankruptcy case. (Declaration
18 of Mark S. Adams, ¶ 3.)

19 (2) The district court action will not interfere with the bankruptcy case, it will help
20 streamline the case by liquidating the Movant’s claim in a single action, instead of multiple
21 federal actions (discussed below). (Declaration of Mark S. Adams, ¶ 4.)

22 (3) The district court action does not involve Debtor as a fiduciary. (Declaration of
23 Mark S. Adams, ¶ 5.)

24 (4) No specialized tribunal has been established, nor will one be required, in the
25 district court action. (Declaration of Mark S. Adams, ¶ 6.)

26 (5) It is presently unknown whether any insurer or Joint Power Authority to which
27 the Debtor belongs has assumed responsibility for defending the district court action.
28 (Declaration of Mark S. Adams, ¶ 7.)

1 (6) The district court action primarily addresses the liability of the Debtor and the
2 Non-Debtor Defendants for the acts of the Non-Debtors, individually and in their official
3 capacities with Debtor. The liability of any insurer, indemnitor or other source providing
4 Debtor with coverage for employment practices liability will also be established. (See Exhibit
5 1, and Declaration of Mark S. Adams, ¶ 8.)

6 (7) Permitting Movant to proceed with the district court action will not prejudice
7 the interests of other creditors. It will only liquidate Movant's existing contingent claim. (See
8 Exhibit 1, and Declaration of Mark S. Adams, ¶ 9.)

9 (8) Movant's claim is not subject to equitable subordination. (Declaration of Mark
10 S. Adams, ¶ 10.)

11 (9) Movant is not seeking modification of the stay that would permit him to obtain
12 a judicial lien against, or otherwise attempt to collect from, the Debtor under any judgment
13 obtained in the district court action. (Declaration of Mark S. Adams, ¶ 11.)

14 (10) The interests of judicial economy strongly favor permitting the district court
15 action to proceed. Movant's case will need to be tried in order to liquidate his claim against
16 the Debtor. (Declaration of Mark S. Adams, ¶ 12.) To the extent that the Non-Debtor
17 Defendants are entitled to indemnity by the Debtor, liquidation of that claim will require the
18 action against them to be tried as well, but they are not subject to the jurisdiction of the
19 bankruptcy court in that action.

20 Moreover, the subject matter of the district court action is not a core proceeding under
21 28 U.S.C. §§ 157(b)(1) and (2). Any findings and judgment entered by the bankruptcy court
22 on that claim shall be subject to *de novo* review by the district court, under 28 U.S.C. §
23 157(c)(1), adding costs and delays for all parties and the courts.

24 Additionally, since the Non-Debtor Defendants are not subject to the bankruptcy
25 court's jurisdiction, liquidating the Movant's claim by bench trial in this Court will affect an
26 improper severance of the district court action. The Non-Debtor Defendants will still be
27 subject to a separate trial in the district court, needlessly expending additional judicial
28 resources, and the trial might result in a verdict that is inconsistent with the verdict entered as

1 to the Debtor in the bankruptcy case. To the extent that the Non-Debtor Defendants are
2 entitled to have a defense provided by their employer in the district court action the additional
3 trial would also significantly increase the Debtor's litigation costs.

4 (11) The parties are not ready for trial in the district court action, due to the fact that
5 Movant's complaint was filed only 3 months before the Debtor filed the petition in this
6 Chapter 9 bankruptcy case. (Declaration of Mark S. Adams, ¶13.)

7 (12) In addition to the points raised above, denial of the motion would deprive
8 Movant of his Constitutional right to a jury trial as to the Debtor. It would also prevent him
9 from proceeding against even the Non-Debtor Defendants, possibly for several years, while
10 this Chapter 9 bankruptcy case progresses due to the district court's order extending the stay to
11 them. During that delay, witnesses' memories will necessarily fade, crucial witnesses may
12 move away, fall ill or otherwise be rendered unavailable, and crucial documentary evidence
13 that is available today may be lost or destroyed. (Declaration of Mark S. Adams, ¶¶ 14 and
14 15.)

15 Debtor will likely argue in opposition to this Motion that modifying the stay as
16 requested will impact the present bankruptcy case, by forcing it to incur substantial defense
17 costs. But litigation costs alone do not compel denial of stay relief. (In re Santa Clara County
18 Fair Ass'n 180 B.R. 564, 566 (9th Cir. BAP 1995).) "the potential litigation expenses would
19 rise to a level justifying the enjoining of litigation against the debtor. However, the
20 circumstances must be extraordinary." (In re Todd Shipyards Corp. 92 B.R. 600, 603, fn. 4
21 (Bkrcty.D.N.J.,1988)¹.)

22 There is no reason to believe that stay relief with cause Debtor to suffer "extraordinary"
23 defense costs. In deed, as already touched upon, there is every reason to believe that
24 proceeding with a single trial in the district court as to Debtor and Non-Debtors alike will be
25 far less costly for the debtor (and the courts) than trying the claim in the bankruptcy court,
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27 ¹ Citing In re Johns-Manville Corp. 45 B.R. 823 (S.D.N.Y.1984) [Law suits enjoined because 25,000 suits would
28 endanger the existence of the debtor.]; In re UNR Industries, Inc., 45 B.R. 322 (N.D.Ill.1984) [17,000 claims
would drain the estate irreparably]; A.H. Robins Co., Inc. v. Piccinin, 788 F.2d 994 (4th Cir.1986) [5,000 suits
pending plus an equal number not filed would consume all the assets of the debtor.]

1 subjecting it to *de novo* review by the district court, then holding a separate district court trial
2 for the Non-Debtors whose defense costs will likely be paid by the Debtor. A single trial will
3 also avoid possible inconsistent verdicts being entered as to the Debtor and the Non-Debtors.

4 **CONCLUSION**

5 WHEREFORE, Creditor RONALD HITTLE respectfully requests that the Court enter
6 an order modifying the automatic stay of 11 U.S.C. § 362(a) in this case to allow him to pursue
7 to judgment his action under Title VII, 42 U.S.C. 1983, and the related state statutes and
8 causes, now pending before the United States District Court for the Eastern District of
9 California (Case No. 2:12-cv-00766-GEB-KJN).

10 Dated: October 23, 2012

LAW OFFICES OF MAYALL HURLEY, PC

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12 By /s/ Mark S. Adams

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