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City of Stockton

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

In re:
CITY OF STOCKTON, CALIFORNIA,
Debtor.
Case No. 2012-32118
D.C. No. DD-01
Chapter 9
**DECLARATION OF NEAL C.
LUTTERMAN IN SUPPORT OF
STOCKTON'S OPPOSITION TO
MOTION BY SALVADOR
BENAVIDES FOR RELIEF FROM
AUTOMATIC STAY**

Date: November 6, 2012
Time: 9:30 A.M.
Dept: C, Courtroom 35
Judge: Hon. Christopher M. Klein

1 I, Neal C. Lutterman, declare:

2 1. I am a Deputy City Attorney for the City of Stockton (the “City”). I make this
3 declaration in support of the City’s Objection to the Motion by Salvador Benavides, by and
4 through his Guardian ad Litem Patricia Soltero-Morfin, for Relief from the Automatic Stay to
5 Allow Continuation of Pre-Petition Litigation. Except as to those matters set forth on information
6 and belief, I have personal knowledge of the facts set forth herein and if called as a witness herein
7 I could testify competently to such facts.

8 2. I attended college at the University of California, Irvine, where I obtained a
9 Bachelor of Arts Degree in Social Ecology and Political Science in 1991. I obtained my Juris
10 Doctorate in 1994 from the University of the Pacific, McGeorge School of Law. I have been an
11 attorney for eighteen years and a Stockton Deputy City Attorney since September 2011.

12 3. The City Attorney’s Office (the “Office”) is currently staffed by one City
13 Attorney, one Assistant City Attorney, and four Deputy City Attorneys. The Office provides
14 legal advice to the City Council, and to City officials, boards, commissions, and departments
15 regarding a variety of legal and regulatory matters. It also provides a variety of transactional
16 services for the City Council and other officials and handles the majority of the City’s litigation.

17 4. Of these six attorneys, only four have significant litigation experience, and of
18 those four, only three—Deputy City Attorneys Lori Asuncion, Marci Arredondo, and I—are
19 currently responsible for handling litigation matters. In addition to her litigation responsibilities,
20 Ms. Asuncion is tasked with representing the Economic Development and Community Service
21 Departments in an advisory role. I estimate that this role consumes considerably more than half
22 of her time. Ms. Arredondo currently advises our Human Resources Department and is
23 responsible for prosecuting violations of the City’s municipal code, and litigating employee and
24 union grievances. Roughly 80 to 90 percent of her time is currently spent on non-litigation
25 matters. I currently spend approximately 30 percent of my time advising the Fire Department,
26 Administrative Services Department, Neighborhood Services Code Enforcement and the Office
27 of the City Clerk, and most of the remainder of my time on chapter 9 matters and other special
28 projects. I presently spend very little time on litigation matters. The remaining three attorneys in

1 the Office have a full workload of non-litigation responsibilities.

2 5. The Office is very understaffed. In 2007, the Office employed nine full-time
3 attorneys; now it employs only five full-time attorneys and one part-time attorney. The City has
4 also had to reduce the number of support staff. In 2007, the Office employed seven clerical staff;
5 it currently employs only two.

6 6. The City currently has approximately 50 active tort cases pending in which the
7 City is named directly as a defendant, or is otherwise obligated to defend and indemnify a City
8 employee pursuant to California Government Code Sections 995 and 995.2. Of these pending
9 cases, approximately 42 are personal injury and four are wrongful death cases. These cases have
10 been pending since at least June 28, 2012 and all are subject to the automatic stay.

11 7. Although the defense of the City's tort cases is generally handled by the City's
12 staff attorneys, approximately ten of these cases have been assigned out to private attorneys who
13 act as primary counsel, and who are referred to as "outside counsel." It has been necessary to
14 retain a number of outside counsel to deal with these cases because there are insufficient in-house
15 counsel, and insufficient resources allocated to the Office to properly handle the City's entire
16 litigation caseload.

17 8. I was hired last year in large part to try to reduce costs by keeping more litigation
18 in house. I have 18 years of litigation experience and my primary responsibility was supposed to
19 be supervising the City's litigators. But the City's financial difficulties and the resulting chapter
20 9 petition necessitated a change of focus. The Office already has more non-litigation work than it
21 can comfortably manage. Due to this heavy workload and the Office's considerable staff and
22 resource shortages, the City will experience a severe hardship should the cases subject to the
23 automatic stay be permitted to proceed at this time. Should this occur, the only options that I
24 foresee are retaining outside counsel to handle a large number of the City's cases or shifting staff
25 resources to litigation to the neglect of providing critical legal advice to the City and its
26 departments during the pendency of its chapter 9 case and related reorganization efforts.

27 9. In those cases that are assigned to outside counsel, the staff attorneys still maintain
28 responsibility for administering the active cases, which includes (1) ensuring the proper and

1 periodic reporting of the status of the City's ongoing cases to CJPRMA (the City's risk
 2 management pool); (2) providing direction to outside counsel regarding major decisions,
 3 including whether to settle a particular case; and (3) being present at key depositions, mediations,
 4 or arbitrations to properly weigh the case.

5 10. The recommendation and ultimate decision regarding whether to settle a particular
 6 case cannot be delegated to outside counsel. Depending on the dollar amount, once a settlement
 7 offer is made, the staff attorney assigned to the case presents the offer and his or her
 8 recommendation to the City Council. The City Council may provide authority to settle, but it
 9 relies on the informed opinion and recommendation of its staff attorneys. Thus, while outside
 10 counsel handles day-to-day matters in each case, the staff attorneys must remain abreast of each
 11 case so that they can make informed decisions regarding, for instance, whether to recommend
 12 settlement.

13 11. Included among the City's pending pre-petition cases is *Benavides v. City of*
14 Stockton, et al., Case No. 39-2012-00275791-CU-PA-STK (the "Benavides Litigation"), which
 15 was commenced on or about January 26, 2012, in the Superior Court of California, County of San
 16 Joaquin. The suit seeks recovery for personal injuries arising out of a motorcycle accident. The
 17 plaintiff, whose motorcycle struck an automobile that was making an illegal left turn, alleges that
 18 the City negligently caused a dangerous condition to exist at the intersection at which the accident
 19 is alleged to have occurred.

20 12. I have reviewed the Benavides Litigation and given the nature of the allegations, I
 21 anticipate that the case will be expensive to defend. Properly defending the case will require
 22 design engineering experts, accident reconstruction experts, medical experts, and a life care
 23 planner. Based on similar previous cases, I estimate that these expert fees could range from
 24 \$44,000 to \$61,900, depending on how the case unfolds and whether it goes to trial. These rough
 25 estimate totals are based on the following estimates per expert: (1) road design/traffic engineer:
 26 \$250 per hour for approximately 30 hours of review, site visits, recreations, and drawings; (2)
 27 accident reconstruction expert: \$250 per hour for approximately 20 to 30 hours of preparation; (3)
 28 rehabilitation expert/physiatrist: \$400 per hour for approximately 20 hours of examinations and

1 report preparation, and \$5,000 per day for trial; (4) ophthalmologist: \$600 per hour for
2 approximately 15 hours of review and preparation, and \$5,000 per day for trial; (5) life care
3 planner: \$250 per hour for approximately 30 hours of review and trial preparation, and \$300 per
4 hour for trial; and (6) neurologist: \$500 per hour for approximately 10 hours of preparation, and
5 \$5,000 per day for trial.

6 13. The City's excess insurance coverage pool will not take effect until the City has
7 expended \$1,000,000 in out-of-pocket costs in connection with this lawsuit. Thus, the City will
8 bear the cost of the expert witness fees that I anticipate the City will have to expend in connection
9 with the Benavides Litigation.

10 Executed this 23rd day of October, 2012, at Stockton, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.



Neal C. Luttermann