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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. MH-001  
 Chapter 9

**DECLARATION OF NEAL C.  
 LUTTERMAN IN SUPPORT OF  
 STOCKTON'S OPPOSITION TO  
 MOTION BY RONALD HITTLE FOR  
 RELIEF FROM AUTOMATIC STAY**

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

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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 Ronald Hittle for Relief from the  
4 Automatic Stay. Except as to those matters set forth on information and belief, I have personal  
5 knowledge of the facts set forth herein and if called as a witness herein I could testify  
6 competently to such facts.

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

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

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

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

5           6.       The City currently has pending against it more than 160 claims filed pursuant to  
6 the California Tort Claims Act, Cal. Gov't Code § 810 *et seq.*, including approximately 50 active  
7 tort and employment civil actions in which the City is named directly as a defendant, or is  
8 otherwise obligated to defend and indemnify a City employee. Only four of these 50 cases are  
9 employment lawsuits; the rest are tort cases. The City groups its employment and tort cases  
10 together for recordkeeping and insurance coverage purposes. These cases have been pending  
11 since at least June 28, 2012 and all are subject to the automatic stay.

12           7.       The City also has approximately 35 post-petition claims pending against it. None  
13 of the claimants have filed a lawsuit yet, although I anticipate that some will.

14           8.       Several of the City's creditors have vigorously contested the City's eligibility for  
15 chapter 9 restructuring. The City has already incurred hundreds of thousands of dollars in  
16 attorney's fees litigating its chapter 9 eligibility. In addition, the chapter 9 case has substantially  
17 increased the workload of the City Attorney's Office and other City departments, particularly  
18 Finance.

19           9.       Although the defense of the City's tort and employment cases has in the past  
20 generally been handled by the City's staff attorneys, approximately ten of these cases have been  
21 assigned out to private attorneys who act as primary counsel, and who are referred to as "outside  
22 counsel." It has been necessary to retain a number of outside counsel to deal with these cases  
23 because there are insufficient in-house counsel, and insufficient resources allocated to the Office  
24 to properly handle the City's entire litigation caseload. One of the cases delegated to outside  
25 counsel is *Hittle v. City of Stockton, et al.*, No. 2:12-cv-00766-GEB-KJN (E.D. Cal. filed Mar. 23,  
26 2012) (the "Hittle Litigation").

27           10.      I was hired last year in large part to try to reduce costs by keeping more litigation  
28 in house. I have 18 years of litigation experience and my primary responsibility was supposed to

1 be supervising the City's litigators. But the City's financial difficulties and the resulting chapter  
2 9 petition necessitated a change of focus. The Office already has more non-litigation work than it  
3 can comfortably manage. Due to this heavy workload and the Office's considerable staff and  
4 resource shortages, the City will experience a severe hardship should the cases subject to the  
5 automatic stay be permitted to proceed at this time. Should this occur, the only options that I  
6 foresee are retaining outside counsel to handle a large number of the City's cases or shifting staff  
7 resources to litigation to the neglect of providing critical legal advice to the City and its  
8 departments during the pendency of its chapter 9 case and related reorganization efforts.

9 11. In those cases that are assigned to outside counsel, the staff attorneys still maintain  
10 responsibility for administering the active cases, which includes (1) ensuring the proper and  
11 periodic reporting of the status of the City's ongoing cases to CJPRMA (the City's risk  
12 management pool); (2) providing direction to outside counsel regarding major decisions,  
13 including whether to settle a particular case; and (3) being present at key depositions, mediations,  
14 or arbitrations to properly weigh the case.

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

23 13. The City's excess insurance coverage pool will not take effect until the City has  
24 expended \$1,000,000 in out-of-pocket costs in connection with the Hittle Litigation. Under the  
25 terms of the City's insurance coverage, the City must expend \$1,000,000 with respect to each  
26 claim before coverage takes effect.

27 Executed this 6th day of November, 2012, at Sacramento, California.  
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1 I declare under penalty of perjury under the laws of the State of California and the United  
2 States of America that the foregoing is true and correct.



Neal C. Lutterman

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