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 14

15 **UNITED STATES BANKRUPTCY COURT**
 16 **EASTERN DISTRICT OF CALIFORNIA**
 17 **SACRAMENTO DIVISION**

18 In re
 19 CITY OF STOCKTON, CALIFORNIA,
 20 Debtor.

Case No. 2012-32118
 DC No. SEJ-1
 Chapter 9

21 **MEMORANDUM OF POINTS AND**
 22 **AUTHORITIES IN SUPPORT OF**
 23 **MOTION FOR ORDER (1) CONFIRMING**
 24 **INAPPLICABILITY OF AUTOMATIC**
 25 **STAY AND (2) GRANTING RELIEF**
 26 **FROM THE AUTOMATIC STAY TO THE**
 27 **EXTENT THE AUTOMATIC STAY IS**
 28 **APPLICABLE**

Date: July 1, 2014
 Time: 9:30 a.m.
 Place: United States Courthouse
 Dept. C, Courtroom 35
 501 "I" Street
 Sacramento, California 95814

1 Darshan Singh, an individual ("Singh"); Kulwinder Kaur, an individual ("Kaur"); Komal Bros,
2 Inc., a California corporation ("Komal Bros"); and Wilshire Bank fka Wilshire State Bank, a
3 California banking corporation ("Bank," and collectively with Singh, Kaur, and Komal Bros,
4 "Movants"), submit this Memorandum of Points and Authorities in Support of Motion for Order (1)
5 Confirming Inapplicability of Automatic Stay and (2) Granting Relief from the Automatic Stay to the
6 Extent the Automatic Stay Is Applicable ("Motion").

7 INTRODUCTION AND SUMMARY OF ARGUMENT

8 The Movants seek an order confirming that the filing of City of Stockton, California's
9 ("City's"), bankruptcy petition does not operate as a stay of an eminent domain action ("State Court
10 Action") pending before the California Superior Court for the County of San Joaquin ("State Court").
11 To the extent the automatic stay is applicable, the Movants also seek an order granting immediate
12 relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) (without any stay of such relief
13 pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3) or otherwise), by terminating or
14 modifying the automatic stay to permit the State Court Action to proceed to trial and judgment as to
15 all parties to the State Court Action.

16 The State Court Action is an eminent domain proceeding instituted by The People of the State
17 of California, acting by and through the Department of Transportation ("Caltrans"), in January 2011.
18 Caltrans seeks to acquire certain access rights to the real property located at 5777 South French Camp
19 Road, Stockton, California ("Property"), for the construction of the French Camp Road/Interstate 5
20 interchange. Singh and Kaur, husband and wife, own and (through Komal Bros) operate a gasoline
21 service station, convenience store, Togo's restaurant, and cardlock fueling facility on the Property.¹
22 The Bank is the beneficiary of deeds of trust on the Property. The State Court entered its Order for
23 Possession, permitting Caltrans to take possession of the real property at issue in the State Court
24 Action, in January 2012. The only issue for trial, which was set for May 27, 2014, is the fair market
25 value of the property rights taken.

26 _____
27 ¹ A cardlock fueling facility incorporates an automated payment system designed for use by
28 fleet vehicles such as trucks.

1 The City was not named as a defendant in the State Court Action but was fully aware of it
2 from its inception. On May 2, 2014, more than three years after commencement of the State Court
3 Action and just 25 days before the trial date, the City filed an answer to the complaint pursuant to
4 California Code of Civil Procedure ("CCP") § 1250.330.² The City claims an interest in the real
5 property at issue and alleges that Caltrans' actions "threaten to limit or usurp the City's land use
6 powers and responsibilities [and] to interfere with the City's proper exercise of its police powers with
7 respect to such property[.]" At the same time, the City filed in the State Court Action a Notice of
8 Automatic Stay as to the City. On May 7, 2014, the State Court entered an order in the State Court
9 Action vacating the May 27, 2014, trial date and setting a continued case management conference for
10 November 7, 2014, which date may be advanced if the automatic stay is no longer in effect.

11 The City's bankruptcy petition does not operate as a stay of the State Court Action because it is
12 an action by a governmental unit to enforce its police and regulatory power. 11 U.S.C. § 362(b)(4).
13 The City's bankruptcy petition also does not operate as a stay of the State Court Action because, while
14 the City is nominally a defendant, no party seeks to enforce rights against or recovery money from the
15 City. In substance, therefore, the State Court Action is not an action against the City within the
16 meaning of 11 U.S.C. § 362(a)(1).

17 To the extent the State Court Action is stayed by the City's bankruptcy petition, there is
18 "cause" under 11 U.S.C. § 362(d)(1) to terminate or modify the automatic stay to permit the State
19 Court Action to proceed. Caltrans has been in physical possession of the real property at issue since
20 October 2012. Caltrans' own experts believe the damages for the taking total **\$1,774,000**; the Bank's
21 appraiser believes the damages total **\$3,600,000**; and Singh, Kaur, and Komal Bros' appraisers
22 believes the damages total **\$4,180,000**. Yet Caltrans has deposited with the State Treasurer only
23 **\$1,000** as the probable amount of compensation for the taking.³

24 _____
25 ² CCP § 1250.230 states that "[a]ny person who claims a legal or equitable interest in the
26 property described in the complaint [commencing an eminent domain proceeding] may appear in the
27 proceeding. Whether or not such person is named as a defendant in the complaint, he shall appear as a
28 defendant."

³ CCP § 1255.410 permits the plaintiff in an eminent domain proceeding, "[a]t the time of
(footnote continued)

1 The three and a half years (so far) delay in awarding just compensation for Caltrans' taking
2 jeopardizes the viability of Singh and Kaur's business, raises serious constitutional concerns, and
3 frustrates the legislature's intent that eminent domain proceedings be "quickly heard and determined."
4 Cal. Civ. Proc. Code § 1260.010. The City, by contrast, will suffer little or no prejudice if the Court
5 permits the State Court Action to proceed. The City's bankruptcy case has been pending for nearly
6 two years, giving the City ample time to adjust its debts free from non-bankruptcy litigation.
7 Furthermore, whatever claims the City has against Caltrans have nothing to do with the Movants'
8 claims and could (and should) have been brought in a separate action. The City, having voluntarily
9 interjected itself in the State Court Action on the eve of trial after taking no action to protect its
10 interests for over three years, is ill-suited to claim that proceeding with the State Court Action would
11 prejudice its rights.

12 RELEVANT FACTUAL BACKGROUND

13 A. The State Court Action

14 Caltrans commenced the State Court Action, case number 39-2011-00256897, by filing a
15 Complaint in Eminent Domain on January 20, 2011. The complaint names as defendants Singh and
16 Kaur; Komal Bros; the Bank; and various other parties. The complaint does not name the City as a
17 defendant.⁴ [Request for Judicial Notice filed herewith ("RJN"), Ex. 1.]

18 On March 21, 2011, Caltrans filed its Notice of Deposit and Summary of the Basis for the
19 Appraisal. Caltrans thereby gave notice of its deposit with the State Treasurer of \$1,000, representing
20 its appraisal of the market value of the property to be taken. [*Id.*, Ex. 2.] On November 17, 2011,
21 Caltrans filed a Motion for Order of Possession. The motion seeks an order granting legal possession

22
23 filing the complaint or at any time after filing the complaint and prior to entry of judgment, [to] move
24 the court for an order of possession [by] demonstrating that the plaintiff is entitled to take the property
25 by eminent domain and has deposited" with the State Treasury the probable amount of compensation
26 for the taking (based on the plaintiff's appraisal). CCP § 1255.210 then permits an eminent domain
defendant to apply to the court for withdrawal of the deposit. One thousand dollars was the amount
Caltrans deposited pursuant to the Order for Possession.

27 ⁴ CCP § 1250.222(a) requires the plaintiff to an eminent domain proceeding to "name as
28 defendants...those persons who appear of record or are known by the plaintiff to have or claim an
interest in the property described in the complaint."

1 of the real property at issue in the State Court Action on the later of March 10, 2012, or 30 days
2 following entry of the order, followed by actual physical possession on October 1, 2012. [*Id.*, Ex. 3.]

3 Also on November 17, 2011, Alex Menor, Engineering Services Manager for the City Public
4 Works Department, submitted a declaration in support of the Motion for Order of Possession. Mr.
5 Menor testified that Caltrans, pursuant to a cooperative agreement with the City, was acquiring access
6 rights on the southern, western, and northern boundary lines of the Property.⁵ Caltrans' objective was
7 to realign French Camp Road at Interstate 5 and reconstruct the interstate entrance and exit ramp,
8 resulting in (among other things) the elimination of a driveway on the western boundary of the
9 Property providing direct access to and from Interstate 5. The purpose of the project is "to improve
10 mobility and accommodate growth in traffic due to planned growth in south Stockton." [*Id.*, Ex. 4.]

11 On January 4, 2012, the State Court entered its Order for Possession, which allowed Caltrans
12 to close access to the Property after October 1, 2012. [*Id.*, Ex. 5.]

13 On May 1, 2013, the State Court held a trial setting conference and set a mandatory settlement
14 conference for May 12, 2014, and a jury trial for May 27, 2014. [*Id.*, Ex. 6.]

15 The Bank filed an amended answer to the complaint on June 26, 2013. The Bank's amended
16 answer claims an interest in the Property based on, among other things, three deeds of trust executed
17 by Singh and Kaur. Each deed of trust states that

18 if any award is made or settlement entered into in any condemnation proceedings
19 affecting all or any part of the Property or by any proceeding or purchase in lieu of
20 condemnation, [Bank] may at its election, and to the extent permitted by law, require
21 that all or any portion of the award or settlement be applied to the Indebtedness and
22 to the repayment of all reasonable costs, expenses, and attorneys' fees incurred by
23 Trustee or [Bank] in connection with the condemnation proceedings.

22 The Bank also claims an interest in general intangibles, including goodwill, of the business operated
23 on the Property pursuant to, among other things, two commercial security agreements executed by
24 Komal Bros. [*Id.*, Ex. 7.]

25
26 ⁵ Given the fact that the City clearly knew about the project that is the subject of the State
27 Court Action in November 2011, almost three years ago, the timing of the City's answer and notice of
28 automatic stay leads Movants to suspect that Caltrans and the City may be colluding to further delay
the trial of the State Court Action.

1 No party contested Caltrans' right to take the property rights at issue in the State Court Action.
2 The Movants do contest the fair market value of their property rights taken, and have vigorously
3 litigated that issue over the last three years. The parties have disclosed and deposed numerous
4 witnesses for trial, including appraisers, civil engineers, petroleum industry professionals, and a
5 retired California Highway Patrol Officer.

6 Caltrans' appraisers now have opined that the value of the Movants' property taken is
7 **\$1,774,000**, consisting of \$955,000 in lost real property value and \$819,000 in lost goodwill. [RJN
8 Exs. 8-9.] The Bank's appraiser has opined that the value of the Movants' property taken is
9 **\$3,600,000**, consisting of \$2,350,000 in lost real property value and \$1,250,000 in lost goodwill.
10 [RJN, Ex. 10.] Singh, Kaur, and Komal Bros' appraisers have opined that the value of the Movants'
11 property taken is **\$4,180,000**, consisting of \$3,100,00 in lost real property value and \$1,080,000 in lost
12 goodwill. [RJN, Exs. 11-13.] Therefore, the jury will be asked to reach an award between \$1,774,000
13 and \$4,180,000. CACI Jury Instruction No. 3515.

14 On May 2, 2014, more than three years after commencement of the State Court Action and
15 only 25 days before the trial date, the City filed an answer to the complaint pursuant to CCP §
16 1250.230. [RJN, Ex. 14.] In its answer, the City vaguely and less-than-intelligibly claims

17 an interest in the subject matter of this action generally, and, more specifically, City
18 claims current and future interests in real property at issue and affected by this
19 action, including but not limited to: (a) Property subject to the affected 'abutter's
20 rights' (among the issues herein is the taking or impairment of named defendants'
21 alleged abutter's rights, which burden or otherwise affect, directly and indirectly,
22 property interests of the City); (b) City's ownership interests in the affected roadway
(French Camp Road) as it abuts real property at issue herein (CalTrans APN: 15992-
1) and may be affected by any judgment rendered herein; and (c) City's ownership
rights in the proposed roadway median itself, which is at issue herein.

23 The City further alleges that

24 the actions of CalTrans in pursuing its proposed acquisition of the property and
25 property rights at issue herein, including but not limited to, CalTrans' purported
26 agreement to allow a non-standard widening and reconfiguration of a driveway
27 affecting the future flow of traffic on French Camp Road, threaten to impair or usurp
the City's regulatory and land use powers and responsibilities with respect to said
property and property rights, and, also, to interfere with the City's proper exercise of
its police powers with respect to such property and French Camp Road generally.

1 At the same time, the City filed a Notice of Automatic Stay, asserting that the filing of the
2 City's bankruptcy petition operates as a stay of the State Court Action as to the City. [*Id.*, Ex. 15.] On
3 May 7, 2014, the State Court entered an order vacating the May 27, 2014, trial date and setting a
4 continued case management conference for November 7, 2014, which date may be advanced if the
5 automatic stay is no longer in effect. [*Id.*, Ex. 16.]

6 **B. The City's Bankruptcy Case**

7 The City filed its chapter 9 petition on June 28, 2012. [ECF No. 1.] On April 1, 2013, the
8 Court entered its Order for Relief pursuant to 11 U.S.C. § 921(d). [ECF No. 843.] A trial to consider
9 confirmation of the City's Proposed Plan of Adjustment was held May 12-14, 2014, and a final day of
10 trial is set for June 4, 2014. [ECF No. 1509.]

11 **ARGUMENT**

12 **A. The State Court Action is an Action by a Governmental Unit to Enforce its Police and**
13 **Regulatory Power**

14 The City's bankruptcy petition does not operate as a stay of the State Court Action because it is
15 an action by a governmental unit (Caltrans) to enforce its police and regulatory power. 11 U.S.C. §
16 362(b)(4). To determine whether the exception to the automatic stay in 11 U.S.C. § 362(b)(4) applies,
17 courts consider "whether the government action relates primarily to the protection of the government's
18 pecuniary interest in the debtor's property or to matters of public safety and welfare." *In re Universal*
19 *Life Church, Inc.*, 128 F.3d 1294, 1297 (9th Cir. 1997); *see also In re Bevelle*, 348 B.R. 812, 818
20 (Bankr. N.D. Ala. 2006) (eminent domain action not subject to automatic stay pursuant to 11 U.S.C. §
21 362(b)(4); noting that a state's eminent domain power is coextensive with its police powers).

22 As noted, none of the parties in the State Court Action contested that Caltrans was entitled to
23 take access rights to the Property for public use. The City's engineer, Mr. Menor, testified in the State
24 Court Action that the French Camp Road/Interstate 5 interchange was essential to alleviate traffic
25 congestion and thus improve public safety and welfare. Moreover, the City's allegations that Caltrans'
26 actions usurp the City's police and regulatory power amount to a tacit admission that the State Court
27 Action falls within the purview of 11 U.S.C. § 362(b)(4).

28 ///

1 **B. The State Court Action, in Substance, is Not an Action Against the City**

2 The City's bankruptcy petition also does not operate as a stay of the State Court Action
3 because neither Caltrans nor the defendants seek to enforce rights against or recover money from the
4 City. Eminent domain actions are different from other civil actions. Objections to the right to take are
5 generally heard and determined prior to the issue of compensation. Cal. Civ. Proc. Code § 1260.110.
6 The defendant is then required to "present his evidence on the issue of compensation first and [to]
7 commence and conclude the argument[;] neither the plaintiff nor the defendant has the burden of proof
8 on the issue of compensation." Cal. Civ. Proc. Code § 1260.210. The City is nominally a defendant
9 in the State Court Action, but the State Court Action, in substance, is not an action against the City
10 within the meaning of 11 U.S.C. § 362(a)(1).

11 **C. There Is "Cause" to Grant the City Relief from the Automatic Stay**

12 To the extent the State Court Action is stayed by the City's bankruptcy petition, there is
13 "cause" under 11 U.S.C. § 362(d)(1) to terminate or modify the automatic stay to permit the State
14 Court Action to proceed. "'Cause' is a generic concept without a specific definition that is committed
15 to the sound discretion of the bankruptcy court on a case-by-case basis." *In re City of Stockton,*
16 *California*, 484 B.R. 372, 377 (Bankr. E.D. Cal. 2012) (citing *In re Conejo Enters., Inc.*, 96 F.3d 346,
17 351-52 (9th Cir. 1996)). Should the City oppose stay relief, it will have the burden of proof to show
18 that "cause" does not exist to grant stay relief. 11 U.S.C. § 362(g).

19 In determining whether "cause" exists to permit non-bankruptcy litigation to proceed, courts
20 generally identify the relative prejudice to the debtor and the movant as important factors to be
21 weighed. Courts also consider whether granting relief from the automatic stay would impede an
22 orderly and efficient administration of the bankruptcy case or would threaten the debtor's ability to
23 reorganize. Courts, too, consider whether judicial economy and efficiency would be served by
24 granting stay relief. *See, e.g., In re Universal Life Church, Inc.*, 127 B.R. 453, 455 (E.D. Cal. 1991).

25 Caltrans has been in physical possession of the real property at issue for nearly two years.
26 Caltrans's own experts believe the damages for the taking total **\$1,774,000**; the Bank's appraiser
27 believe the damages total **\$3,600,000**; and Singh, Kaur, and Komal Bros' appraisers believe the
28 damages total **\$4,180,000**. Yet Caltrans has deposited only **\$1,000** as probable compensation.

1 order granting immediate relief from the automatic stay imposed by the filing of the City's bankruptcy
2 petition pursuant to 11 U.S.C. § 362(d)(1) (without any stay of such relief pursuant to Federal Rule of
3 Bankruptcy Procedure 4001(a)(3) or otherwise), by terminating or modifying the automatic stay to
4 permit the State Court Action to proceed to trial and judgment as to all parties to the State Court
5 Action.

6 DATED: June 3, 2014

JENNY & JENNY, LLP

7

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10

11 DATED: June 3, 2014

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