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9 UNITED STATES BANKRUPTCY COURT
 10 EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION

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

Case No. 2012-32118
 D.C. No. DD-01
 Chapter 9

16 **CITY OF STOCKTON'S OPPOSITION**
 17 **TO MOTION BY SALVADOR**
 18 **BENAVIDES FOR RELIEF FROM**
 19 **AUTOMATIC STAY**

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

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1 Debtor City of Stockton, California (the “City”), respectfully submits its opposition to the
2 Motion by Salvador Benavides (“Benavides”), by and through his Guardian ad Litem Patricia
3 Soltero-Morfin, for Relief from Automatic Stay to Allow Continuation of Pre-Petition Litigation
4 (the “Motion”), filed October 9, 2012. The Motion seeks relief from the automatic stay to
5 proceed with a lawsuit against the City (the “Benavides Litigation”). Benavides argues that the
6 balance of harms tilts in his favor based largely on the false premise that the City will not suffer
7 prejudice if the stay is lifted.

8 In fact, lifting the stay would severely prejudice the City in several ways. Not only will
9 defending the Benavides Litigation be expensive, but should the stay be lifted as to other cases,
10 the City will either have to expend considerable resources it does not have on outside counsel or it
11 will have to divert its already insufficient legal resources to litigating tort cases instead of
12 focusing on its reorganization efforts. Such a result would be directly at odds with the basic
13 policy of the automatic stay: preserving the bankruptcy estate and affording the debtor breathing
14 space to focus on reorganization. The balance of harms favors the City and the Motion should be
15 denied.

16 **I. FACTUAL BACKGROUND**

17 The City filed its chapter 9 petition on June 28, 2012 (the “Petition Date”). Dkt. No. 1.
18 Prior to the Petition Date, approximately 50 active tort cases were pending in which the City was
19 named as a defendant or was obligated to indemnify a City employee pursuant to Cal. Gov’t Code
20 sections 995 and 995.2. Declaration of Neal C. Lutterman in Support of Objection to Motion for
21 Relief from Stay (“Lutterman Decl.”) ¶ 6. Of these pending cases, approximately 42 are personal
22 injury and four are wrongful death cases. *Id.* These cases have been pending since at least June
23 28, 2012 and all are subject to the automatic stay. *Id.*

24 The City Attorney’s Office is very understaffed. In 2007, the office employed nine full-
25 time attorneys; now it employs only five full-time attorneys and one part-time attorney. *Id.* ¶ 5.
26 The City also has had to reduce the number of support staff. In 2007, the Office employed seven
27 clerical staff; it currently employs only two. *Id.* Of the office’s six attorneys, only four have
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1 significant litigation experience. *Id.* ¶ 4. Of those four, only three are currently assigned to
2 litigation matters, and each of those three attorneys has a full or near-full workload of non-
3 litigation matters. *Id.* The remaining three attorneys in the City Attorney’s Office also have a full
4 workload of non-litigation responsibilities. *Id.* With its three litigators almost fully consumed
5 with non-litigation matters (many related to this bankruptcy case) and only two support staff for
6 the entire office, the City Attorney’s Office currently has a minimal litigation capability.

7 Due to this heavy workload and these severe staff shortages, approximately 10 pending
8 tort cases against the City already have been assigned to outside counsel. *Id.* ¶ 7. During the
9 fiscal year beginning on July 1, 2011 and ending on June 30, 2012, the City expended
10 approximately \$213,862 in fees to outside counsel to defend tort cases against the City.

11 Declaration of Steven J. Hunt in Support of Objection to Motion for Relief from Stay (“Hunt
12 Decl.”) ¶ 3. During that same fiscal year, the City expended a total of \$350,135 in non-overhead
13 costs to litigate pending tort cases. *Id.*

14 The City Attorney’s Office hired Neal Lutterman in September 2011 in large part to try to
15 reduce these costs by keeping more litigation in house. Lutterman Decl. ¶ 8. Mr. Lutterman has
16 18 years of litigation experience and his primary responsibility was supposed to be supervising
17 the City’s litigators. *Id.* But the City’s financial difficulties and the resulting chapter 9 petition
18 necessitated a change of focus, and in any event the City Attorney’s Office presently has more
19 non-litigation work than it can comfortably manage. *Id.* Because of the office’s understaffing
20 and heavy workload, Mr. Lutterman anticipates that should the stay be lifted, the City’s only two
21 options will be to retain outside counsel to handle a large number of the City’s tort cases or to
22 shift staff resources to litigation at the expense of providing critical legal advice to the City and its
23 departments during the pendency of its chapter 9 case and related reorganization efforts. *Id.*

24 One of the pending pre-petition cases presently subject to the stay is the Benavides
25 Litigation. Lutterman Decl. ¶ 11. The case was commenced on or about January 26, 2012, in the
26 Superior Court of California, County of San Joaquin. *Id.* The suit seeks recovery for personal
27 injuries arising out of a motorcycle accident. *Id.* The plaintiff, whose motorcycle struck an
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1 automobile that was making an illegal left turn, alleges that the City negligently caused a
2 dangerous condition to exist at the intersection at which the accident is alleged to have occurred.
3 *Id.* The City will vigorously dispute its liability, since the party responsible for Mr. Benavides'
4 injury is not the City but the driver of the automobile that struck Mr. Benavides.

5 Having reviewed the case, Mr. Lutterman anticipates that properly defending it will
6 require retaining design engineering experts, accident reconstruction experts, medical experts, and
7 a life care planner. *Id.* ¶ 12. Based on similar previous cases, Mr. Lutterman estimates that these
8 expert fees could range from \$44,000 to \$61,900, depending on how the case unfolds and whether
9 it goes to trial. *Id.* Pursuant to the terms of the City's excess insurance coverage pool, the City is
10 responsible for the first \$1,000,000 of costs and fees of this lawsuit. *Id.* ¶ 13.

11 **II. ARGUMENT**

12 **A. Benavides Has Not Demonstrated Cause for Relief from the Automatic Stay.**

13 The automatic stay, 11 U.S.C. § 362(a), is “one of the fundamental debtor protections
14 provided by the bankruptcy laws.” *Midatlantic Nat'l Bank v. N. J. Dep't of Env't'l Prot.*, 474
15 U.S. 494, 503 (1986) (quoting S. Rep. No. 989, 95th Cong., 2d Sess. 54 (1978)). The stay is
16 intended to provide debtors a “breathing spell” from their creditors. *Delpit v. Comm'r*, 18 F.3d
17 768, 771 (9th Cir. 1994) (quoting H.R. Rep. No. 595, 95th Cong., 2d Sess. (1978)). This
18 breathing spell enables the debtor “to focus its efforts on reorganization.” *Truebro, Inc. v.*
19 *Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 556
20 (Bankr. C.D. Cal. 2004). “While this breathing spell is often thought of in terms of relief from
21 collection efforts, . . . a related fundamental purpose is to provide relief from litigation.” *Shepard*
22 *v. Patel (In re Patel)*, 291 B.R. 169, 173 (Bankr. D. Ariz. 2003). To this end, the automatic stay
23 enjoins the continuation of almost all judicial proceedings against the debtor. 11 U.S.C. §
24 362(a)(1); *see also Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1081–82 (9th
25 Cir. 2000) (the automatic stay “sweeps broadly”).

26 A party in interest may obtain relief from the stay if, after notice and a hearing, the party
27 establishes “cause.” 11 U.S.C. § 362(d)(1). “‘Cause’ has no clear definition and is determined on
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1 a case-by-case basis.” *Benedor Corp. v. Conejo Enters., Inc. (In re Conejo Enters., Inc.)*, 96 F.3d
2 346, 352 (9th Cir. 1996). Whether to grant or deny relief from the stay “is committed to the
3 sound discretion of the bankruptcy court.” *Id.* at 351.

4 In non-chapter 9 cases, courts have catalogued a broad range of factors that bear on
5 whether or not cause exists. *See, e.g., In re Gindi*, 642 F.3d 865, 872 (10th Cir. 2011) (non-
6 exhaustive list of three factors), *overruled on other grounds by TW Telecom Holdings Inc. v.*
7 *Carolina Internet Ltd.*, 661 F.3d 495 (10th Cir. 2011); *Sonnax Indus., Inc. v. Tri Component*
8 *Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2d Cir. 1990) (endorsing twelve
9 factors) (citing *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984)); *In re Universal Life Church*,
10 127 B.R. 453, 455 (E.D. Cal. 1991) (considering seven factors). These cases routinely identify
11 the relative harms to the debtor and the movant as important factors to be weighed. *See, e.g., In*
12 *re Gindi*, 642 F.3d at 872 (considering whether “any great prejudice to either the bankrupt estate
13 or the debtor will result from continuation of a civil suit” and whether “the hardship to the non-
14 bankrupt party by maintenance of the stay considerably outweighs the hardship to the debtor”
15 (alteration and internal quotation marks omitted)).

16 **1. The potential harm to the City is substantial.**

17 Lifting the stay would prejudice the City in several ways. Most immediately, defending
18 the Benavides Litigation will likely be expensive. The City will likely need to retain a design
19 engineering expert, accident reconstruction expert, life care planner, ophthalmologist, and
20 neurologist. Lutterman Decl. ¶ 12. It is estimated that these expert fees could range from
21 \$44,000 to \$61,900. *Id.* Lifting the stay would also impose a heavy burden on the City
22 Attorney’s Office and could force the City to retain outside counsel to defend the litigation. *Id.* ¶
23 8. The City Attorney’s Office is so understaffed at this point, and its non-litigation workload so
24 significant, that it cannot automatically keep any given case in house (let alone multiple cases, as
25 discussed below). *Id.* ¶¶ 4-8. In light of these anticipated expert witness fees and potential
26 outside counsel fees, Benavides is mistaken that lifting the stay will not materially prejudice the
27 City because it can defend the litigation with its own attorney-employees. Motion ¶ 13.

1 The broader concern for the City is that the Benavides Litigation is only the tip of the
2 iceberg, which can be viewed as three separate groups of cases. First, the City had approximately
3 50 active tort cases pending against it as of the Petition Date, of which 42 are personal injury
4 cases and 4 are wrongful death cases. Lutterman Decl. ¶ 6. Second, litigation on *postpetition*
5 claims against the City is not stayed; such claims have begun to trickle in and likely will continue
6 to increase in volume. Finally, the City supervises a significant volume of bankruptcy litigation,
7 like this motion and the City's eligibility fight. Although whether to grant or deny relief from the
8 stay must be determined on a case-by-case basis, *see Conejo Enters., Inc.*, 96 F.3d at 352, these
9 other pending cases must be taken into account when assessing the potential burden on the City of
10 lifting the stay.

11 As is, the City is on a knife's-edge in terms of attorney staffing. With litigation relating to
12 postpetition claims and bankruptcy litigation *already* beginning to pile up against the City, should
13 any substantial number of the stayed cases be permitted to proceed, the City will have to choose
14 between one of two grave alternatives. It will be faced with either retaining outside counsel to
15 handle a large number of its tort cases or shifting City Attorney's Office staff to litigation at the
16 expense of their providing critical legal advice to the City and its departments during the
17 pendency of its chapter 9 case and related reorganization efforts. Lutterman Decl. ¶ 8. Forcing
18 the City into this latter alternative would undermine the policy of the automatic stay. Far from
19 allowing the City to "focus its efforts on reorganization," *Plumberex Specialty Prods., Inc.*, 311
20 B.R. at 556, it would interfere with the City's reorganization efforts and deprive the City of its
21 "breathing spell." *See Patel*, 291 B.R. at 173 (a "fundamental purpose" of the breathing spell is
22 "to provide relief from litigation"). Simply put, the City lacks the resources to litigate its stayed
23 tort cases while simultaneously devoting due attention to its vigorously contested bankruptcy case
24 and postpetition tort cases.¹

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26 ¹ The prejudice to the City is not cured by the fact that Benavides seeks relief that would allow him to obtain a
27 judgment against the City but not to collect on that judgment outside of the chapter 9 claims process. The City's
28 excess insurance coverage pool is not triggered until the City has expended \$1,000,000 in out-of-pocket costs in
connection with the lawsuit. *Id.* ¶ 13. Thus, were the stay lifted as to 50 pending cases, for example, the City's
maximum current exposure, in litigation costs alone, would be \$50,000,000.

