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23 **UNITED STATES BANKRUPTCY COURT**  
24 **CENTRAL DISTRICT OF CALIFORNIA**  
25 **RIVERSIDE DIVISION**

26 In re

27 CITY OF SAN BERNARDINO,  
28 CALIFORNIA,

Debtor.

Case No. 6:12-bk-28006-MJ

Chapter 9

**CITY OF SAN BERNARDINO'S**  
**STATUS CONFERENCE REPORT**  
**FOR JUNE 19, 2014 STATUS CONFERENCE**

Status Conference

Date: June 19, 2014

Time: 1:30 p.m.

Place: Courtroom 301

3420 Twelfth Street

Riverside, CA 92501

1 **TO THE HONORABLE MEREDITH A. JURY, UNITED STATES BANKRUPTCY**  
2 **JUDGE, AND ALL PARTIES IN INTEREST:**

3 A status conference in the chapter 9 bankruptcy case of the City of San Bernardino,  
4 California (the "City") is scheduled for June 19, 2014. The City hereby submits this status  
5 conference report.

6 **A. Chapter 9 Plan Mediation: CalPERS Settlement Agreement**

7 The City continues to negotiate (a) terms of its chapter 9 plan with its largest creditors,  
8 and (b) new contracts for its unionized employees with their collective bargaining agents, all  
9 within a confidential court-ordered mediation process, with U.S. Bankruptcy Judge Gregg Zive  
10 appointed as the mediator (the "Mediator"). The mediation is governed by confidentiality  
11 requirements, and the City and the other parties are limited in what they can report publicly.  
12 Operating within those limitations, the City can report the following.

13 Recently, the City and CalPERS reached an interim agreement regarding various items  
14 that will help form the basis for a plan of adjustment. As a result, the parties will further  
15 continue the briefing schedule in the eligibility appeal and the City will make certain payments  
16 to CalPERS on deferred amounts owing. The terms of the agreement have been provided by the  
17 mediator to the other parties to the mediation subject to mediation confidentiality. The details of  
18 the agreement, including the timing and amount of payments to be made, will remain  
19 confidential as the mediation regarding a potential plan of adjustment is ongoing.

20 While the plan of adjustment mediation process has necessarily focused on a resolution  
21 with CalPERS, the City has also dedicated substantial resources to discussions and negotiations  
22 with the City's retirees, who are represented by an official committee, and the City's employee  
23 unions. The City and representatives of the San Bernardino Police Officers Association (the  
24 "Police Union") have been actively engaged in negotiations, and met face to face on May 27 and  
25 May 28, 2014 with the Mediator, and then without the Mediator on June 6, 2014. Detailed  
26 proposals have been exchanged, and the negotiations are continuing. During the course of these  
27 negotiations, the City has received and is responding to requests for financial information from  
28 the Police Union's financial advisor.

1 The City met with representatives of the San Bernardino City Professional Firefighters  
2 (the “Firefighters Union”) on May 23, 2014, outside of the mediation process and mediation  
3 confidentiality. At that meeting, the parties discussed, among other things, (i) the City’s budget  
4 process and proposed budget cuts (further discussed below) as they may affect the jobs and terms  
5 and conditions of employment of the Firefighters Union members, (ii) the City’s efforts to revise  
6 Section 186 of the City’s Charter, and (iii) the exchange of proposals for a new Memorandum of  
7 Understanding (a public employee collective bargaining agreement, an “MOU”) between the City  
8 and the Firefighters Union. The City subsequently delivered a detailed proposal for a new MOU  
9 to the Firefighters Union, and responses were exchanged through the Mediator. The City believes  
10 that further negotiations are required.

11 The Firefighters Union also made extensive document requests in connection with the  
12 May 23, 2014 meeting, and the City is providing documents, but that process also is not yet  
13 complete. Separately, last week, the Firefighters Union submitted three Public Records Act  
14 requests (“PRAs”) to the City. The City has responded to one of the PRAs, and expects to  
15 respond to the other two shortly. Many of the documents requested by the Firefighters Union, in  
16 connection with the exchange of MOU proposals as well as in connection with the PRAs, require  
17 review by the City’s attorneys for privilege, confidentiality and similar issues before they can be  
18 disclosed, a process that is time consuming and expensive. In addition, many of the documents  
19 requested by the Firefighters Union, *e.g.* many of the requested bank statements since May 2012,  
20 have previously been made available to the Firefighters Union via the Firmex database, in which  
21 they participate, and on the City’s website. All that said, the City expects to conclude responding  
22 to many of the requests for documents prior to the June 19, 2014 status conference and expects to  
23 respond to all remaining requests as soon as possible, considering the limits on the City’s  
24 resources.

25 Since the last status conference, on June 11, 2014, the City also met with representatives  
26 of Ambac and the holders of the city’s pension bonds.

1           **B.     Hearings on Budget for Fiscal Year 2014-15**

2           The City's Common Council (the "City Council") met and conducted budget workshops  
3 on May 21, 28 and 29 and June 3 and 10 to discuss and analyze the City's proposed budget for the  
4 fiscal year July 1, 2014 through June 30, 2015. Notices of the agenda of each budget workshop  
5 were placed on the City's website and the workshops were open to the public with opportunities  
6 for the public to provide input on the budget. The next budget workshop is scheduled for June 23,  
7 2014, and the City Council expects to adopt a budget at the Council meeting set for June 23, 2014.  
8 The agendas, agenda packets and videos of the budget workshops are publicly available on the  
9 City's website at <http://sanbernardinocityca.iqm2.com/Citizens/?Frame=no>.

10           In order to adopt a balanced budget, the City's projected budget will include significant  
11 reductions in costs that are required even after taking into effect the continued deferrals of  
12 payments on debts authorized and required under the Bankruptcy Code. Since employee  
13 compensation represents approximately 75% of the City's costs, many of the cost reductions  
14 inevitably are labor related.

15           **C.     The City's Charter Review Committee**

16           On March 17, 2014, the City Council voted to establish a Citizen's Based Charter Review  
17 Committee ("Committee"). The Committee was tasked with providing citizens' input regarding  
18 what revisions to the City Charter may be necessary and appropriate at this time, and to report  
19 back to the Common Council. The Committee conducted noticed meetings open to the public on  
20 April 9, April 15, April 22, April 29, May 6 and May 13. The opportunity for public participation  
21 was available at each meeting. The agendas and Minutes of the Committee's proceedings are  
22 available on the City's website at  
23 [www.sbcity.org/cityhall/city\\_clerk/volunteer\\_citizen\\_based\\_charter\\_committee\\_agendas.asp](http://www.sbcity.org/cityhall/city_clerk/volunteer_citizen_based_charter_committee_agendas.asp).

24           The Committee issued recommendations to the City Council on May 19, 2014, and those  
25 recommendations are available to the public on the City's website as part of the agenda for the  
26 May 19 City Council meeting. Further public hearings will be held on June 17 and July 17, 2014.

1           **D.     Status of the Labor Negotiations**

2           The City commenced its chapter 9 bankruptcy case on August 1, 2012. Very soon  
3 thereafter, the City approached the seven labor unions that represent most of the City’s employees  
4 to negotiate modifications to the then effective MOUs between the City and each of the unions.  
5 The City sought modifications to the MOUs consistent with the City’s developing pendency plan  
6 budget. The City and four unions<sup>1</sup> (the “Consenting Unions”) reached agreements that were  
7 ratified by the membership of the Consenting Unions and approved by resolutions of the City  
8 Council on January 28, 2013 and February 4, 2013.

9           With respect to the three remaining unions – the San Bernardino Public Employees  
10 Association (“SBPEA”), the Police Union, and the Firefighters Union) (collectively, the  
11 “Objecting Unions”) – the City unilaterally implemented essentially the same changes it had  
12 negotiated with Consenting Unions. The unilateral modifications to the MOUs were approved by  
13 resolution of the City Council on January 28, 2013, and became effective February 1, 2013.

14          Within two months thereafter, the Objecting Unions each filed motions for relief from the  
15 automatic stay to allow them to seek, inter alia, (a) a determination from the California Public  
16 Employee Relations Board that the unilateral modifications constituted an unfair labor practice  
17 under the Meyers-Milias-Brown Act (California Government Code 3500 *et seq.*, the “MMBA”),<sup>2</sup>  
18 and (b) additional relief from the state courts for breach of the MOUs and violations of various  
19 other state laws.

20          The City objected to the unions’ requests for relief from the automatic stay on the grounds  
21 that the Supreme Court’s decision in *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 104 S.Ct.  
22 1188, 1196-97 (1984) (“*Bildisco*”) precluded a finding of an unfair labor practice by the PERB or  
23 state court based upon the City’s unilateral imposition of contract modifications during the

24           <sup>1</sup> The Consenting Unions are the San Bernardino Confidential Management Association, the San Bernardino Fire  
25 Management Association, the San Bernardino Police Management Association, and the General Unit represented by  
the International Union of Operating Engineers (IUOE).

26           <sup>2</sup> The MMBA, applicable to public sector employees, is very closely modeled after the federal National Labor  
27 Relations Act, applicable to private section employees. *See e.g., County Sanitation District No. 2 of Los Angeles*  
28 *County v. Los Angeles County Employees' Association*, Local 660, 38 Cal. 3d 564; 699 P.2d 835 (1985) (“In sum, the  
MMBA establishes a system of rights and protections for public employees which closely mirrors those enjoyed by  
workers in the private sector.”); *Sullivan v. State Bd. of Control*, 176 Cal. App. 3d 1059, 225 Cal. Rptr. 454 (Cal.  
App. 1985) (provisions of the MMBA mirror provisions of the National Labor Relations Act).

1 bankruptcy case.<sup>3</sup> Because attempts to negotiate voluntary modifications to the MOUs of the  
2 Objecting Unions were not successful, the City filed a motion to reject the three MOUs under the  
3 authority of Bankruptcy Code Section 365 as applied in the *Bildisco* decision. At the preliminary  
4 hearing on the Objecting Unions' relief from stay motions and the City's MOU rejection motion,  
5 the Objecting Unions argued, among other things, that the Court should not reject the contracts  
6 until the Court had determined whether the City was eligible to be a chapter 9 debtor, and then  
7 only after a court-authorized plan mediation had run its course. The parties did in fact turn their  
8 attention to the eligibility proceedings, and soon thereafter to the plan mediation proceedings  
9 being conducted by Judge Zive. During that time, one of the Objecting Unions, the SBPEA,  
10 settled with the City on substantially the same terms as the other Consenting Unions.<sup>4</sup>

11 Having recently concluded its plan negotiations with the California Public Employees'  
12 Retirement System ("CalPERS"), the City, its officers and legal counsel are now fully engaged in  
13 negotiating replacement MOUs for the Police and Firefighters Unions. In many important  
14 respects, the City's efforts to negotiate new MOUs with the Objecting Unions have followed the  
15 procedures under Bankruptcy Code Section 1113 for rejecting private sector collective bargaining  
16 agreements in chapter 11 cases.<sup>5</sup> The City began that process by making proposals to the unions,  
17 negotiations ensued, the negotiations involved court ordered mediation, the Objecting Unions  
18 rejected the City's proposals, the City then filed a motion to reject the MOUs, and the parties are  
19 now back in negotiations, this time with Judge Zive acting as the Mediator. During all that time  
20 the City provided the Objecting Unions with information necessary to evaluate the City's  
21 proposals, and the City continues to prepare and deliver current information to the Objecting  
22 Unions. The negotiations, and the delivery of information by the City to the Objecting Unions,  
23  
24

25 <sup>3</sup> Every federal court to have considered the question has concluded that the *Bildisco* decision applies to unilateral  
26 modification and court approved rejection of MOUs in chapter 9 bankruptcy cases.

27 <sup>4</sup> The City is currently meeting with the SBPEA and the other Consenting Unions, and the parties have reached  
28 certain tentative agreements.

<sup>5</sup> Except that the City's unilateral imposition of contract modifications in February 2013 was not done consistent  
with the requirements of Section 1113. Rather, the City acted under the clear authority of the *Bildisco* decision  
authorizing unilateral modifications where Section 1113 does not apply.

1 have not yet been completed. The City hopes that the negotiations could be concluded by the end  
2 of August 2014, if not sooner.

3 It is possible that upon the conclusion of the negotiations the City and one or both of the  
4 Objecting Unions will not have reached agreement. At that point, the City will have made its last,  
5 best and final offer to the applicable union, the union will have rejected it, and it would be clear to  
6 the Court that further negotiation and mediation would not produce a consensual result regarding  
7 the MOUs. The City would then ask the Court to schedule a hearing on the City's motion to  
8 reject the applicable MOUs.

9 At some point in the rejection proceedings, the Court will be called upon to determine  
10 what is the practical effect of rejection. There appear to be no precedents in the chapter 9 cases on  
11 this issue, but plenty of precedent in the chapter 11 Section 1113 context, which precedent can  
12 provide substantial guidance to this Court on the question because, in many respects, Section 1113  
13 codified *Bildisco*'s central holding.<sup>6</sup> In the Section 1113 cases, the majority view is that, upon  
14 rejection, the debtor is entitled to impose its last, best and final offer, because it is just that  
15 particular offer that the bankruptcy court is required under Section 1113 to determine (a) satisfies  
16 the balance of the equities test, (b) provides for those modifications that are necessary to permit  
17 the reorganization of the debtor, and (c) treats all parties fairly and equitable.<sup>7</sup> The debtor cannot

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18  
19 <sup>6</sup> In *In re Northwest Airlines Corp.*, 483 F.3d 160, 166 (2d. Cir. 2006) the Court of Appeals for the Second Circuit  
20 explained that, in *Bildisco*, the Supreme Court held (1) that a debtor did not violate the National Labor Relations Act  
21 ("NLRA") by "unilaterally changing the terms of the [CBA]" after filing for bankruptcy, 465 U.S. at 519, and (2) that  
22 the "Bankruptcy Court should permit rejection of a [CBA] . . . that burdens the estate . . . [if] after careful scrutiny, the  
23 equities balance in favor of rejecting the labor contract," *id.* at 526. The Second circuit added that Section 1113, by  
24 precluding a debtor from unilaterally changing the terms of its CBA without bankruptcy court approval overturned  
25 the Supreme Court's first holding in *Bildisco*, while leaving the second holding (more or less) intact. It pointed out  
26 that commentators have noted that Section 1113 appears to have codified the second holding, which was the central  
27 holding of the *Bildisco* case.

28 <sup>7</sup> See e.g., *In re Delta Airlines, Inc.*, 359 B.R. 491, 509 (Bankr. S.D.N.Y. 2007) (under Section 1113, rejection  
means debtor may impose its last best and final offer because bankruptcy court has found that such proposal is  
necessary for the reorganization); *In re Maxwell Newspapers*, 981 F.2d 85, 91-92 (2d Cir. 1992) (court conditions  
order permitting rejection of CBA on agreement by debtor to keep its last offer open); *In re Northwest Airlines Corp.*,  
346 B.R. 307, 315 (Bankr. S.D.N.Y. 2006) (bankruptcy court authorized rejection of contract to mean implementation  
of debtor's last best and final offer), *aff'd*, 483 F.3d 160 (2d Cir. 2007). Some bankruptcy courts have required  
changes to the last, best and final offer before they will approve rejection. See e.g., *In re Garofalo's Finer Foods*, 117  
B.R. 363, 370 (Bankr. N.D. Ill. 1990) (bankruptcy court finds authority to require "modifications" instead of rejection  
in "the Court's discretion in balancing the equities under section 1113(c)"; *In re Condere Corp.*, 228 B.R. 615 (Bankr.  
S.D. Miss. 1998) (allowing rejection on condition that debtor implements its last best offer, as modified to include  
certain terms requested by union); *In re AMR Corp.*, 478 B.R. 599, 603 (Bankr. S.D.N.Y. 2012) (bankruptcy court  
found that debtor American Airlines had established sufficient basis for changes sought under rejection motion,

1 impose a new “contract” (which must, by definition, be bilateral), but the last, best and final offer  
2 of the debtor becomes the new terms and conditions of employment. The National Labor  
3 Relations Board, which originally opposed the *Bildisco* decision, has signed off on this position.<sup>8</sup>

4 The minority view regarding the effect of rejection is that, upon rejection, the debtor is  
5 free to impose new terms and conditions of employment at its discretion, unfettered by the prior  
6 contract or the terms and conditions in effect prior to rejection. The City may be entitled to, but  
7 does not seek, that much discretion. The City seeks only those changes that it is currently  
8 proposing to the Objecting Unions and that the City shows to this Court are necessary to enable  
9 the City to balance its budgets and provide a proper level of services to its residents.

10 The Objecting Unions may respond that the Court should not make a decision on the  
11 rejection of their contracts until the parties have exhausted the negotiating procedures required  
12 under applicable labor law. Under both the MMBA and the National Labor Relations Act, an  
13 employer generally is not entitled to implement its last, best and final offer until the parties have  
14 reached an impasse in the negotiations, as that term of art – impasse – is defined under applicable  
15 labor law cases.<sup>9</sup> However, in the *Bildisco* case, when faced with just that question, the U.S.  
16 Supreme Court emphatically rejected the notion that a finding of impasse is a precondition to  
17 rejection of a collective bargaining agreement. 465 U.S. at 526-27, 104 S.Ct. at 1196.

18  
19  
20 including a 20 percent labor cost reduction for each union, but two elements of the proposal for one union did not  
21 meet the test for rejection, and the court denied the rejection motion without prejudice to the debtor’s right to bring  
22 back a proposal that remedies the two deficiencies; the debtor filed a renewed rejection motion that addressed the two  
23 deficiencies, and the court granted the motion).

24 <sup>8</sup> See e.g., *Mile Hi-Metal Systems, Inc.*, 1997 WL 73 1480 (NLRBGC July 30, 1986) (under Section 1113, debtor  
25 may impose terms and conditions in last best and final offer).

26 <sup>9</sup> For example, under the MMBA: “After any applicable mediation and fact finding procedures have been  
27 exhausted, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing  
28 regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of  
understanding. The unilateral implementation of a public agency’s last, best, and final offer shall not deprive a  
recognized employee organization of the right each year to meet and confer on matters within the scope of  
representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the  
public agency of its annual budget, or as otherwise required by law.” California Government Code Section 3505.7.  
In this chapter 9 case, the Objecting Unions have had already had the benefit of two rounds of mediation, and the City  
will not be able to implement its last best and final offer until this Court determines, on the facts, that rejection  
satisfies each element of the *Bildisco* test. The Objecting Unions will have received the benefit of mediation and fact  
finding in this bankruptcy case, which is all they are entitled to under state law.



1 In summary, the City is not yet ready to concede defeat in its efforts to achieve a  
2 consensual resolution with the Objecting Unions. The City's proposals are not easy for the  
3 Objecting Unions to accept, to say the least, but they are absolutely necessary for the  
4 rehabilitation of the City. If the parties cannot reach agreement, by its rejection motion, the City  
5 will ask the Court to authorize implementation of the City's last, best and final offer to the  
6 Objecting Unions.

7 Dated: June 17, 2014 STRADLING YOCCA CARLSON & RAUTH, P.C.

8  
9 By: /s/ Paul R. Glassman  
10 Paul R. Glassman  
11 Fred Neufeld  
12 Attorneys for City of San Bernardino, Debtor  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

100 Wilshire Blvd., 4<sup>th</sup> Floor, Santa Monica, CA 90401.

A true and correct copy of the foregoing document entitled: CITY OF SAN BERNARDINO'S STATUS CONFERENCE REPORT FOR JUNE 19, 2014 STATUS CONFERENCE will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On June 17, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

The United States trustee will be served electronically by the court to:  
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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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Pamela Jan Zylstra on behalf of Interested Party Courtesy NEF  
zylstralaw@gmail.com

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On June 17, 2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method**

**for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on June 17, 2014, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

PRESIDING JUDGE'S COPY

Honorable Meredith A. Jury (Overnight Mail)

U.S. Bankruptcy Court

3420 Twelfth Street, Suite 325

Riverside, CA 92501-3819

Via overnight mail with Norco Delivery Tracking number: 90541-017816-V10

Service information continued on attached page

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

June 17, 2014

Christine Pesis

*/s/ Christine Pesis*

*Date*

*Printed Name*

*Signature*

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