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11
12 **UNITED STATES BANKRUPTCY COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

14 **RIVERSIDE DIVISION**

15 In re
16 City of San Bernardino, California,
17 Debtor.

CASE NO. 6:12-bk-28006 MJ

Chapter 9

18 **STATUS CONFERENCE REPORT OF**
19 **SAN BERNARDINO CITY**
20 **PROFESSIONAL FIREFIGHTERS**
21 **LOCAL 891**

22 Status Conference Date and Time:

Date: June 19, 2014

Time: 1:30 p.m.

Place: 3420 Twelfth Street Riverside, CA
92501-3819

23 Creditor, San Bernardino City Professional Firefighters Local 891 (the "SBCPF")
24 respectfully submits this Status Report in connection with: (1) mediation conducted by the
25 Honorable Judge Zive, (2) the pending Motion for Order Authorizing the City of San Bernardino
26 ("City") to Reject the Memorandum of Understanding, if any exists, between the City and the
27 SBCPF [docket no.: 438] ("Rejection Motion"), and (3) the pending Motion for Relief from the
28 Automatic Stay filed by the SBCPF [docket no.: 460] ("MFR").

1 A. City's June 19, 2014 Status Report.

2 On June 17, 2014 at 7:39 PDT, the City filed its Status Report for the status conference set
3 on June 19, 2014.¹ In its Status Report, the City contends that the "last best final" offer of the City
4 made to the SBCPF controls the terms of employment under §1113 should the Court grant the
5 Rejection Motion. While the SBCPF disputes the City's interpretation of *Bildisco* and the
6 application of §1113 to Chapter 9 cases (which section the City has previously argued is not
7 applicable to Chapter 9), the City fails to appreciate the fact that the "last best final" offer made to
8 the SBCPF that can be presented to this Court, meaning that was not made in a confidential
9 mediation, was the "last best final" offer made to the SBCPF in or about November 2011. That
10 November 2011 offer, however, had terms similar to those adjudicated illegal and vacated by the
11 state court. In short, the City cannot impose the terms of a "last best final" offer that is
12 confidential and/or illegal and the City did not make any proposal to the SBCPF prior to bringing
13 its §365 motion.

14 B. Mediation.

15 On September 5, 2013, the Court entered an order appointing the Honorable Gregg W.
16 Zive as the case Mediator in this chapter 9 case, including with respect to negotiation of a plan of
17 adjustment and other matters submitted jointly by the parties to the mediator. The mediation
18 process is governed by the following confidentiality requirement: no written or oral
19 communication made, or any document presented by any party, attorney, mediator or other
20 participant in connection with or during the mediation may be disclosed to anyone not involved in
21 the mediation; nor may any such communication or document be used for any purpose other than
22 the mediation, including in any pending or future proceeding in any court. Accordingly, the City
23 and the other parties are limited in what they can report publicly.²

24 Up to this point in time, almost all mediation efforts have been held exclusively between
25 the City and CalPERS. In February 2014, the mediator authorized the parties to report that

26 _____
27 ¹ Docket Number 1019.

28 ² See City's Status Report filed on May 7, 2014 at Page 1, lines 7-16 [docket no: 990].

1 “significant and substantial progress has been made as a result of extended and good faith
2 negotiations between the City and CalPERS; and that negotiations with other parties are still
3 required and there will be a lot of hard work to be done by those parties.”³ The City and CalPERS
4 conducted an all-day mediation session with the mediator on April 15, 2014.⁴ According to the
5 City’s Status Reports, the City believed that a critical element in the City’s negotiations with the
6 employee unions was the outcome of the negotiations with CalPERS.⁵ Clearly, the City did not
7 have any real intention to deal with the labor unions prior to reaching a deal with CalPERS, and
8 the meetings held during that time were more form over substance. Contrary to the City’s
9 comments that “[a] consensual resolution with CalPERS will change the dynamic of the
10 negotiations with the unions,”⁶ talks between the City and the SBCPF have resulted in no change.

11 The City and the SBCPF have met outside of the mediation session on four occasions,
12 including one meeting that was part of general negotiations and not covered by the mediation-
13 confidentiality agreement. In the May 23, 2014 non-confidential meeting, the City provided no
14 proposal but discussed, conceptually, their desires regarding amendment to the City’s Charter, the
15 City’s budget, and Fire Department reductions. The SBCPF made certain requests for documents
16 at the meeting. The City provided some responsive documents to the SBCPF and promised to
17 produce the remaining information within a week. The City has not provided the remaining
18 documents nor contacted the SBCPF to set up further meetings.

19 The SBCPF met with Judge Zive privately, for the second time, on May 28, 2014.
20 Proposals were exchanged, but the SBCPF is frustrated with the mediation process and believes
21 that absolutely no progress is being made with the City.

22 Contrary to the City’s comments that “[t]he chapter 9 process requires no more patience
23 from the Firefighters Union than of any other unpaid creditor,”⁷ the City is currently trying to
24

25 ³ See City’s Status Report filed on March 12, 2014 at Page 1, lines 18-22 [docket no: 948].

26 ⁴ See City’s Status Report filed on May 7, 2014 at Page 1, lines 17-23 [docket no: 990].

27 ⁵ See City’s Status Report filed on May 7, 2014 at Page 3, lines 24-26 [docket no: 990].

28 ⁶ See City’s Status Report filed on May 7, 2014 at Page 3, lines 26-27 [docket no: 990].

⁷ See City’s Status Report filed on March 12, 2014 at Page 7, lines 6-7 [docket no: 948].

1 eliminate from the City Charter those provisions that provide the salary formula for public safety
2 and that protect the very existence of the City of San Bernardino's Fire Department. The City is
3 also moving forward with (1) the closing of at least two, and as many as four, fire stations; (2) the
4 elimination of between four and six pieces of apparatus; and (3) the reduction of personnel
5 associated with these cuts. The City is looking at changing work schedules and/or contracting out
6 Fire Department services to other public and/or private entities. The City is unilaterally changing
7 policies that affect the terms and condition of employment and have begun retaliatory attacks
8 against the former President of the SBCPF, Scott Moss. While the City preaches patience to the
9 SBCPF, it continues to make unilateral decisions and take actions that directly affect members of
10 the SBCPF. Delay only benefits the City.

11 The SBCPF appreciates and respects the mediation process and all of the time devoted by
12 Judge Zive. Unfortunately, no progress is occurring between the City and the SBCPF. Further,
13 information has been shielded under the auspices of mediation confidentiality even though the
14 information is part of the City's public records. As the SBCPF indicated at the last status
15 conference, mediation may be hindering settlement progress between the SBCPF and the City.

16 C. The City's Budget.

17 On February 18, 2014, the City's Common Council passed a resolution adopting certain
18 proposed mid-year adjustments to the City's FY 2013-2014 budget. At the March 3, 2014
19 Common Council meeting, the Common Council (a) set the following dates for hearings on the
20 proposed FY 2014-2015 budget: April 28, 29 and 30, 2014; and May 14 and 29, 2014; and (b) set
21 June 2, 2014 and June 16, 2014 as budget hearing dates at which the FY 2014-15 budget could be
22 approved. The City asserts that "[t]imely action on these matters reflects the City's overall plan
23 to cut costs, add new sources of revenue, provide the mediation parties with updated financial
24 information, and further the progress of this chapter 9 case."⁸ In March 2014, Common Council
25 meetings have been tentatively set for May 21, 22, 27 and 29 (plus an additional hearing on May
26 28, if necessary) to review the City's proposed budget for the fiscal year July 1, 2014 through June

27 ⁸ See City's Status Report filed on March 12, 2104 at Page 2, lines 10-12 [docket no: 948].
28

1 30, 2015. The budget could be adopted at the City Council meetings set for on June 2 and June 16,
2 2014.

3 A review of the proposed City budget shows that, from its 2013 levels, the City Attorney's
4 budget is being increased by \$400,000, the Common Council's budget is increased by \$100,000,
5 General Government's budget is being increased by \$2,700,000, the City Manager's budget has
6 doubled (an increase of \$710,000), and Parks and Recreation's budget has increased by
7 \$2,100,000. The Fire Department's budget is being decreased by \$1,300,00 from its 2013 level
8 (and decreased by \$7,600,000 in the current projected budget) with the previously imposed
9 concessions already being included in the City's budget as continuing through June 2015.

10 As stated in a prior Status Report filed by the City, "[i]t is no secret that the City desires to
11 enter into modified collective bargaining agreements with all of its collective bargaining units that
12 will enable the City to propose a feasible plan of adjustment. Since the cost of employee
13 compensation in the years immediately prior to the City's bankruptcy filing exceeded the City's
14 available general fund resources, the City needs to be able to reduce those costs. One, but not the only
15 element of that cost reduction involves employee cost-sharing of the normal cost of the CalPERS
16 benefit. Pension plan cost-sharing is a significant element of the restructuring of the City and its
17 finances; and disputes over past and future implementation of cost sharing are best resolved in the
18 context of the plan mediation, and ultimately in the hearings on confirmation of the City's plan of
19 adjustment."⁹

20 The City also stated that "[t]he City had no choice but to quickly modify certain terms and
21 conditions of employment, as permitted under *Bildisco* and all of the chapter 9 cases that have
22 interpreted *Bildisco*, so that it could operate under the Pendency Plan's balanced budget. The City
23 did not and does not seek to take unfair advantage of any of its employees or any other
24 creditors."¹⁰

26 ⁹ See City's Status Report filed on March 12, 2014 at Page 4, lines 16-24 [docket no: 948].

27 ¹⁰ See City's Status Report filed on March 12, 2014 at Pages 5-6, lines 26-28; 1-2 [docket no:
28 948].

1 The SBCPF has recently discovered "Monthly Portfolio" summaries of the City issued by
2 the Treasurer in public and internet record searches conducted by the SBCPF. According to the
3 City's "Monthly Portfolio" summaries (none of which were disclosed prior to April 2014) since
4 June 2012, the City has been investing city funds in Federal Agency Issues-Coupons and
5 Certificates of Deposit to the tune of approximately \$16,500,000, on top of another \$23,000,000 in
6 Local Agency Investment Funds, \$9,900,000 in managed pool accounts, and another \$1,000,000
7 in miscellaneous securities, for a total of \$53,000,000 in cash and investments as of December
8 31, 2013 (and the City held \$76,000,000 in previously undisclosed investments as of July 2012).
9 Pursuant to records initially produced in Confidential Document Folder (but now moved to non-
10 confidential folders as the documents are public records), the \$53,000,000 held in investment
11 accounts has grown to \$75,000,000 as of April 30, 2014 with new City investments totaling
12 \$23,000,000 from January 2014 through April 2014 (\$6,000,000 in January 2014, \$4,000,000 in
13 February 2014, \$4,000,000 in March 2014, and \$9,000,000 in April 2014). These investments
14 were made during a fiscal year that the City claims it is operating at a deficit with a projected
15 \$22,000,000 deficit for the next fiscal year.

16 D. Motion for Relief from Automatic Stay and Motion to Reject MOU.

17 On April 4, 2013, the Court held a preliminary hearing on (i) the City's Rejection Motion,
18 and (ii) the MFR. The Court has indicated that, if it is asked to rule on the merits of the City's
19 Rejection Motion, an evidentiary hearing will be required. The SBCPF has continually the Court
20 set the Rejection Motion and MFR for evidentiary hearing, but the Court has elected to continue
21 the hearings on each.

22 After the Court ruled that it was placing the hearing on the Rejection Motion and MFR on
23 hold, the City has moved forward with the elimination of Section 186¹¹ of the City's Charter, and
24 initially began to move forward with immediate reduction of Fire Department staff, changing of
25 schedules, and closing of stations. These cuts, according to the Fire Administration memorandum,
26 _____

27 ¹¹ Section 186 provides, *inter alia*, for the maintenance of a fire department by the City and sets
28 the salary of firefighters using a formula that cannot be altered by the City.

1 include: (1) the reduction of the Fire Department from 133 personnel to 115 personnel; (2) the
2 elimination of four pieces of emergency equipment; (3) the elimination of 18 safety positions; (4)
3 the closing of two fire stations with the option of closing two more each day (based on various
4 factors, but maintaining only a minimum of 8 pieces of equipment in the City); (5) the
5 reorganization of the Fire Management staff by eliminating 1 Battalion Chief position and
6 restructuring from 6 Battalion Chief positions to 3 Battalion Chief position along with the
7 promotion of 2 Deputy Chiefs.¹²

8 As has been pointed out in past, the City has benefited from a protracted, unprecedented
9 set of working terms and conditions with the SBCPF because of its unilateral imposition of
10 working terms and conditions in January 2013. There is no downside for the City if the imposed
11 terms and conditions continue indefinitely. In fact, the City's investment accounts demonstrate it
12 has benefitted significantly from the imposed terms. For example, the City now holds
13 \$75,000,000 in its investment portfolio with new investments of \$23,000,000 made this year.
14 Even though the City is stockpiling money, it claims the imposed terms on the firefighters are
15 "necessary" and an important part of balancing it the City's budget. If the City was truly
16 experiencing a budget deficit of \$22,000,000, the City would be unable to increase its investments.
17 Nevertheless, the City has managed to invest \$23,000,000 in the last four months and over
18 \$33,000,000 since the City filed this case.

19 E. Litigation.

20 The City has stated that “[w]hether any litigation will be required to determine the scope,
21 amount and priority of the Firefighters Union claims will depend upon the success or failure of the
22 plan mediation, and what the City proposes under its plan of adjustment with respect to the
23 operation of the fire department, firefighter compensation and the claims of the Firefighters.”
24

25
26 ¹² The implementation of this was delayed because the City finally acknowledged that they had to
27 meet and confer with the SBCPF before taking such actions. It should be noted that the City has
28 had only one face-to-face meeting with the SBCPF regarding these matters, and that meeting took
place on May 23, 2014.

1 Union.¹³ The City also states that “[i]f the City and the Firefighters Union cannot reach agreement
2 through the mediation on cost sharing and the other issues raised by the Firefighters Union, the
3 issues will ultimately get resolved in the context of confirming a chapter 9 plan and claims
4 adjudication. There will be plenty of time to fight.”¹⁴ The problem is that the City is already
5 moving forward with plans to reduce the operations of the fire department, reduce the
6 compensation of firefighters and take as much action against the SBCPF as it can. As there is no
7 deadline for filing of a plan of adjustment, the City is acting without constraint as it believes it can
8 postpone any and all litigation until after a Plan of Adjustment is filed with the Court.

9 F. Meet and Confer Process under State Law.

10 Government Code §3504.5 mandates that (a) except in cases of emergency as provided in
11 this section, the governing body of a public agency, and boards and commissions designated by
12 law or by the governing body of a public agency, shall give reasonable written notice to each
13 recognized employee organization affected of any ordinance, rule, resolution, or regulation
14 directly relating to matters within the scope of representation proposed to be adopted by the
15 governing body or the designated boards and commissions and shall give the recognized employee
16 organization the opportunity to meet with the governing body or the boards and commissions.

17 Government Code § 3505 mandates that the governing body of a public agency or other
18 representatives shall meet and confer in good faith regarding wages, hours, and other terms and
19 conditions of employment with representatives of such recognized employee organizations and
20 shall consider fully such presentations as are made by the employee organization on behalf of its
21 members prior to arriving at a determination of policy or course of action.

22 This section further provides that "meet and confer in good faith" means that a public
23 agency, or such representatives as it may designate, and representatives of recognized employee
24 organizations, shall have the mutual obligation personally to meet and confer promptly upon
25 request by either party and continue for a reasonable period of time in order to exchange freely

26 _____
27 ¹³ See City’s Status Report filed on March 12, 2014 at Page 5, lines 2-6 [docket no: 948].

28 ¹⁴ See City’s Status Report filed on January 21, 2014 at Page 4, lines 14-17 [docket no: 914].

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1 information, opinions, and proposals, and to endeavor to reach agreement on matters within the
2 scope of representation prior to the adoption by the public agency of its final budget for the
3 ensuing year. The process should include adequate time for the resolution of impasses where
4 specific procedures for such resolution are contained in local rule, regulation, or ordinance, or
5 when such procedures are utilized by mutual consent.

6 If a tentative agreement is reached by the authorized representatives of the public agency
7 and a recognized employee organization or recognized employee organizations, the governing
8 body shall vote to accept or reject the tentative agreement within 30 days of the date it is first
9 considered at a duly noticed public meeting. If the governing body adopts the tentative agreement,
10 the parties shall jointly prepare a written memorandum of understanding.¹⁵ If after a reasonable
11 period of time, representatives of the public agency and the recognized employee organization fail
12 to reach agreement, the parties can implement a impasse resolution process.¹⁶ After any
13 applicable impasse procedure, a public agency may implement its last, best, and final offer (to the
14 extent the provision comply with applicable laws), but shall not implement a memorandum of
15 understanding. The unilateral implementation of a public agency's last, best, and final offer shall
16 not deprive a recognized employee organization of the right each year to meet and confer on
17 matters within the scope of representation, whether or not those matters are included in the
18 unilateral implementation, prior to the adoption by the public agency of its annual budget, or as
19 otherwise required by law.¹⁷

20 The City's Employer-Employee Relations resolution requires that City's representative
21 meet with the labor groups "during the initial stages of the preparation of the Preliminary Budget
22 for the ensuring fiscal year." After the City requests to meet and confer, the employees'
23 representative could submit a union's request for changes to wages, hours and other terms and
24 conditions of employment, but must do so no later than the last day of February.

25

26 ¹⁵ See §3505.1
27 ¹⁶ See §3501.2, §3505.4
28 ¹⁷ See §3505.7

1 The SBCPF would contend that the City, in regards to all actions taken and/or the course
2 of action currently being taken, in any forum, has failed to comply with and/or violate the
3 requirements, purpose and intent of these sections.

4 G. Conclusion.

5 The SBCPF has engaged, in good faith, in mediation to see if it would be possible to
6 achieve a consensual agreement with the City. Offers were exchanged, but, in the SBCPF's
7 opinion, without any meaningful progress. The SBCPF believes there is a stalemate and there has
8 been little to no direct progress between the parties at this time. For all of the above reasons, the
9 SBCPF respectfully requests to be released from the mediation process.

10 The SBCPF also request this Court set hearings on the Rejection Motion and the MFR and
11 set deadlines for parties to amend pleadings relating to the Rejection Motion and the MFR.

12 DATED: June 16, 2014

SulmeyerKupetz
A Professional Corporation

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14
15 By: /s/ David M. Goodrich
16 David M. Goodrich
17 Attorneys for San Bernardino City Professional
18 Firefighters Local 891
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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 333 South Hope Street, Thirty-Fifth Floor, Los Angeles, California 90071-1406.

A true and correct copy of the foregoing document entitled (*specify*): STATUS CONFERENCE REPORT OF SAN BERNARDINO CITY PROFESSIONAL FIREFIGHTERS LOCAL 891 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 (*date*) 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:

See Attached

Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (*date*) 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.

The Honorable Meredith A. Jury
U.S. Bankruptcy Court
3420 Twelfth Street, Suite 325
Riverside, CA 92501-3819

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 (*date*) _____, 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.

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

Maria R. Viramontes

/s/ Maria R. Viramontes

Date

Printed Name

Signature

ADDITIONAL SERVICE INFORMATION (if needed):

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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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