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13 **UNITED STATES BANKRUPTCY COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **RIVERSIDE DIVISION**

16 In re
17 CITY OF SAN BERNARDINO,
18 CALIFORNIA,
19 Debtor.

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

Chapter 9

**RESPONSE OF CITY OF SAN BERNARDINO
TO OBJECTIONS TO CITY'S DISCLOSURE
STATEMENT WITH RESPECT TO PLAN OF
ADJUSTMENT OF DEBTS**

Hearing:

Date and Time: October 8, 2015, at 1:30 p.m.

Place: Courtroom 301

3420 Twelfth Street

Riverside, CA 92501-3819

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1 **I. INTRODUCTION**

2 The City of San Bernardino, California commenced this chapter 9 case on August 1, 2012
3 (the "Petition Date). On September 17, 2013, the U.S. Bankruptcy Court for the Central District
4 of California, the Honorable Meredith Jury presiding (the "Court"), entered the order for relief
5 (Dkt. No. 798). On May 29, 2015, the City filed its Plan of Adjustment of Debts (the "Plan")
6 and attendant Disclosure Statement (Dkt. Nos. 1503 and 1504). The Court set September 17,
7 2015 as the deadline for filing objections to the adequacy of the Disclosure Statement (the
8 "Objections").

9 The following persons and entities filed Objections or reservations of right: Javier
10 Banuelos, Kristopher Sheridan, Melissa Kelly, Michael Wade, Michael Anthony Rey, Terrel
11 Markham, *et al.*, Attorney for J.A., *et al.*, Cedric May Sr, *et al.*, Sheryl Jackson, Albert Hamilton,
12 Miramontes Construction Company, Inc., San Bernardino City Professional Firefighters, Local
13 891 (the "SBCPF"), Ambac Assurance Corp. ("Ambac"), Erste Europäische Pfandbrief-und
14 Kommunalkreditbank AG ("ECPK," and together with Ambac, the "POB Creditors"), the Big
15 Independent Cities Excess Pool Joint Powers Authority ("BICEP") and CMB Infrastructure
16 Investment Group III, LP, CMB Infrastructure Investment Group V, LP and CMB Infrastructure
17 Investment Group VI-C, LP. The Official Committee of Retired Employees filed limited
18 comments. The Objections argue that the Disclosure Statement does not provide sufficient or
19 adequate information regarding key aspects of the Plan. Several of the Objections also argue that
20 the Plan cannot be confirmed, on a number of grounds, and ask the Court not to approve the
21 Disclosure Statement because the Plan cannot be confirmed. The City will first address the
22 Objections regarding the adequacy of the information in the Disclosure Statement, then the
23 arguments that the Plan is not confirmable.

24 The City's staff and professionals are collecting and preparing materials that will
25 substantially enhance the Disclosure Statement in a way that is responsive to reasonable requests
26 for additional information made in the Objections. That includes providing updated financial
27 projections, and an updated Long Range Financial Plan of the City of San Bernardino (which is
28 current Exhibit C to the Disclosure Statement). The City is also in discussions with several state

1 and federal governmental agencies that provided the City with comments on the Plan and
2 Disclosure Statement. The City intends to amend the Plan. The City projects that it will be able
3 to file an amended Plan and amended Disclosure Statement within 3-4 weeks after the October 8,
4 2015 Disclosure Statement hearing.

5 When the City filed this bankruptcy case, it was cash insolvent, budget insolvent and
6 service delivery insolvent. The bankruptcy enabled the City to survive the situation, but only
7 confirmation of the Plan will allow the City to (a) stabilize the delivery of adequate
8 governmental services to its residents, (b) rebuild its aging infrastructure to form the basis of real
9 economic growth for the City's residents, and (c) lower the cost of municipal services, including
10 getting control over employee compensation costs, so the City can operate on balanced budgets
11 as required under the California Constitution. These goals, along with the City's efforts to make
12 distributions to creditors, are the goals of the Plan, as articulated in the City's Recovery Plan that
13 is attached and incorporated into the Disclosure Statement, and Chapter 9 of the Bankruptcy
14 Code is intended to assist insolvent municipalities in returning to solvency so they can provide
15 adequate municipal services to their residents.

16 The City remains the poorest community for its size in California, and it has grown
17 progressively poorer over the past decades. According to the latest U.S. Census Bureau data: the
18 per capita income of City residents is \$14,879, compared to a state average of \$29,527; the
19 median household income in the City is \$38,385, compared to a state average of \$61,094; and
20 the percentage of City residents living below poverty level is 32.4%, compared to a state wide
21 average of 15.9%. The median value of owner-occupied housing units in the City is \$152,800
22 compared to a state average of \$366,400.¹ The City's communities also continue to suffer from a
23 severe crime problem (ranking among the worst for cities of its size in the state). The City has
24 no choice but to dedicate its limited resources to addressing these dire municipal problems and
25 the City's strategic goals listed above, and the Plan reflects that reality.²

26 ¹ See <http://quickfacts.census.gov/qfd/states/06/0665000.html> (comparing income and housing
27 data for the City of San Bernardino to the average for California).

28 ² The City's crime rate is double the average for the surrounding cities, and more than double the
statewide average. The City's violent crime rate is triple that of other cities in the region and the

1 **II. REQUESTS FOR ADDITIONAL DISCLOSURE**

2 **A. The Treatment of Personal Injury and Bodily Injury Claims Under the Plan**

3 Creditors pursuing personal injury and bodily injury claims against the City seek
4 additional information regarding the availability of insurance coverage to pay their claims, and
5 the insurance companies providing such insurance seek additional information regarding how the
6 insurance contracts and the insurers' rights and obligation thereunder are treated under the Plan.

7 There are 88 civil lawsuits pending in the state and federal courts against the City in
8 which the plaintiffs seek damages from the City for personal injury and bodily injury based upon
9 alleged torts of the City and its employees; 52 of the suits allege prepetition injuries and 36
10 allege post-petition injuries. Sixty percent of those pre and post-petition cases involve claims
11 against the City's police officers and other employees, and therefore implicate the City's
12 obligations to defend and indemnify.³

13 The City is self-insured for the first \$1 million of defense costs, settlements and
14 judgments per bodily injury or personal injury claim. If the amount of judgment or settlement
15 exceeds \$1 million, the City, as a member of the Big Independent Cities Excess Pool Joint
16 Powers Authority ("BICEP"), has purchased Excess Liability coverage. That excess liability
17 coverage, provided by Great American Insurance Company, Wesco Insurance Company and
18 Starr Indemnity & Liability Co., provides up to \$9 million of coverage per claim and an
19 aggregate \$26 million dollars of coverage for personal liability and bodily injury claims once the
20

21 average for the state. *See* FBI Uniform Crime Rate Report 2013 at FBI.gov, and Recovery Plan,
22 Ex. B to Disclosure Statement, at p. 19 (p. 21 of 95 of filed document).

23 ³ Under California Government Code §§ 825 and 995, the City is generally required to defend
24 and indemnify its employees in actions brought against such employees by third parties for acts
25 or omissions occurring in the scope of employment and to pay judgments against such
26 employees in the action. *See e.g. Dionne Smith-Downs v. City of Stockton*, 2012 U.S. Dist.
27 LEXIS 109181 (E.D. Cal. 2012) (City of Stockton must indemnify police officers for the amount
28 of any judgment or settlement in civil rights violations action under Cal. Gov't Code §825(a)); *In*
re City of Stockton, 484 B.R. 372, 379 (Bankr. E.D. Cal 2012) ("The City bears the financial risk
of a judgment against the individual defendants. The City, having undertaken the defense of the
City Manager and Deputy City Manager, is generally obliged to pay a judgment against them in
the civil action. Cal. Gov't Code § 825.").

1 City has satisfied its \$1 million self-insured retention (the “Insurance Policies”).⁴ The foregoing,
2 and all other references herein to the Insurance Policies, is a summary only and is qualified in its
3 entirety by the provisions of the applicable Insurance Policies.

4 The City will attach to the amended Disclosure Statement the applicable Insurance
5 Policies as well as a schedule of pending lawsuits that may be covered by such Insurance
6 Policies. The City will also modify the Plan to provide for a separate class of general unsecured
7 creditors who would be entitled under the Insurance Policies to seek payment from the insurers if
8 such creditors’ allowed claims exceed the City’s self-insured retention of \$1 million. The City
9 does not intend under the Plan to modify or impair the rights and obligations of the insurers
10 under the Insurance Policies, including that, for example, under the BICEP policy the City may
11 not settle a claim in excess of the \$1 million self-insured retention without the consent of the
12 BICEP Board of Directors.

13 Further discussion of personal injury and bodily injury claims is found at Section III.B.
14 below, “Plan Injunction re Indemnified Parties,” beginning at p. 16.

15 **B. The Settlements and New Contracts with the International Union of**
16 **Operating Engineers and the San Bernardino Police Officers Association**

17 Creditors have requested more information on the new collective bargaining agreements
18 entered into by the City. Since the filing of the Disclosure Statement, the City has reached
19 settlements regarding new collective bargaining agreements with (a) the International Union of
20 Operating Engineers (“IUOE”), which represents the City’s General Bargaining Unit, comprising
21 more than 325 City employees, and (b) the San Bernardino Police Officers Association (the
22

23 ⁴ Under the BICEP policy: (1) bodily injury means physical injury, emotional distress, sickness,
24 or disease sustained by a person, including death resulting from any of these at any time; and
25 (2) personal injury means damages caused by or arising out of one or more of the following:
26 (a) false arrest, detention or imprisonment, malicious prosecution or abuse of process;
27 (b) wrongful entry or eviction; (c) publication or utterance of material that slanders or libels a
28 person or organization or disparages a person's or organization's goods, products or services, or
infringement of copyright, title or slogan, or oral or written publication of material that violates a
person's right of privacy; (d) discrimination, other than employment practices, based upon race,
religion, nationality, national origin, color, creed, sex, sexual orientation, handicap, disability,
age or employment or violation of civil rights; and (e) assault and battery.

1 “POA”), which represents the Police Safety Bargaining Unit, comprising more than 300 city
2 employees. The terms of the new collective bargaining agreements achieve, among other things,
3 certain of the City’s goals related to the elimination of the employer paid member contribution
4 (EPMC) in respect of City payments to the California Public Employees’ Retirement System
5 (“CalPERS”), and the implementation of employee cost sharing of pension contributions.
6 Copies of the new collective bargaining agreements and City Council resolutions regarding same
7 will be attached to the amended Disclosure Statement.

8 The new collective bargaining agreements become effective upon execution, but the
9 agreements will become null and void and of no further effect if the City’s Plan is not approved
10 by the Bankruptcy Court. The new collective bargaining agreements also provide, among other
11 things, that the claims of the union and its members with respect to wages, pensions (including
12 implementation of cost sharing), other benefits and other terms and conditions of employment
13 that arose prior to the date of the confirmation of the Plan, including, without limitations, all
14 claims arising from the City’s changes to the terms and conditions of employment (collectively
15 the “Employment Related Claims”), shall be treated and paid as general unsecured claims under
16 the Plan, and the City and its officers shall be discharged from such Employment Related Claims
17 upon confirmation of the Plan; provided, however, that any claims arising under the collective
18 bargaining agreement after it is executed by the City and the union (*e.g.*, grievances) shall not be
19 discharged as long as the union complies with the terms of the collective bargaining agreement,
20 and the Court confirms the Plan.

21 **C. Savings Associated With Proposed Delivery of Fire Suppression**
22 **and Emergency Medical Services by the County Fire District**

23 On August 24, 2015, the City’s Common Council (“City Council”) authorized the City to
24 submit an application to the San Bernardino County Local Agency Formation Commission
25 (“LAFCO”) for approval of a reorganization which would provide for annexation of the City into
26 the San Bernardino County Fire Protection District (“County Fire”), and for County Fire to
27 provide fire suppression and emergency medical services (“Fire Services”) to the City’s
28 residents. Three weeks later, the San Bernardino County Board of Supervisors voted to become

1 a joint applicant with the City to LAFCO. The application to LAFCO, and the attendant draft
2 Plan for Service and a Fiscal Impact Analysis are available on the City's website at
3 <http://sanbernardinocityca.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=1574&Inline=True>.

4 The tentative effective date of the annexation is July 1, 2016. The City is also seeking
5 the consent of LAFCO for interim expansion of County Fire's geographical jurisdiction pending
6 annexation so that County Fire may begin providing Fire Services within the City in early 2016.
7 On September 16, 2015, LAFCO indicated that the required information for the application has
8 been received and that it has asked County Fire to certify the Plan for Service and Fiscal Impact
9 Analysis. The annexation proposals have been assigned case numbers LAFCO 3197 and
10 LAFCO 3198. Additional information is available at the LAFCO website.⁵

11 The Fiscal Impact Analysis ("FIA") regarding annexation prepared by Urban Futures
12 shows that operating costs beginning in Fiscal Year 2017 for County Fire will be \$27.3 million,
13 with total operations and City retained costs being \$31.6 million. Upon annexation, the FIA
14 projects that total general fund support required for Fire Services will be \$17.9 million. This
15 amount, a substantial reduction in the cost of providing Fire Services to City residents, takes into
16 account approximately \$7.8 million in parcel tax revenues that will be generated by County Fire
17 from City property owners. In contrast, the FIA estimated that the cost of the City continuing to
18 provide Fire Services in 2017 would be operating costs of \$34.2 million, total costs of \$36.3
19 million, and General Fund support of \$32.9 million. According to the report provided to the City
20 by Citygate and Associates, annexation of the City into County Fire will result in a higher level
21 of Fire Services to City.⁶

22
23
24 ⁵ The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, as amended,
25 Calif. Government Code §§ 56000 *et seq.*, contains the notice procedures and timetables for
26 resident and property owner input into the LAFCO decision-making process, including that
27 LAFCO would (a) terminate the annexation approval process if 50% or more of the City's
28 registered voters filed timely protests, or (b) place the annexation approval to a vote of the City's
residents if more than 25% but less than 50% of registered voters filed timely protests.

⁶ That report is available on the City's website at:
<http://www.ci.san-bernardino.ca.us/civicax/filebank/blobdload.aspx?blobid=19219>.

1 The City will provide an expanded and updated report on the annexation process in the
2 amended Disclosure Statement.

3 **D. Treatment of Employee Accrued Leave Claims**

4 Almost immediately after commencing the bankruptcy case, the City began restricting the
5 ability of City employees to cash-out accrued paid leave time. Under the Plan, such unused
6 leave time will be treated as a general unsecured claim. The amended Disclosure Statement will
7 provide information on the actual amounts of accrued leave time that will be discharged under
8 the Plan.

9 **E. Restricted Funds; Accounts Receivable; City Contracts**

10 Certain creditors requested more information on the City's Restricted Funds. On June 4,
11 2013, the City filed a status conference report (Docket No. 618) to which was attached various
12 financial information, including a list of all City funds, including Restricted Funds, and the cash
13 balance (including negative cash balances) of each fund as of February 26, 2013. The City is in
14 the process of closing its books for the fiscal year ending June 30, 2015, and will provide an
15 updated funds cash balance report, including for all Restricted Funds, with the amended
16 Disclosure Statement.

17 The amended Disclosure Statement will also include a current accounts receivable
18 ("A/R") report. The City has staff in its finance department dedicated to collecting A/R, but any
19 A/R greater than 90 days in age is turned over to a collection agency. In addition, the City is in
20 the process of joining a program offered by the California Statewide Community Development
21 Authority (the "CSCDA") whereby the City will assign for collection to the CSCDA certain of
22 its delinquent property tax receivables (which as of last year, amounted to approximately
23 \$2 million) in exchange for payment of the delinquencies (up to 6 years old), plus a 10%
24 premium (which the City intends to use to fund expenditures in the General Fund). Additional
25 information on this program will be provided in the amended Disclosure Statement.

26 During the development of the City's most recent budget, the City conducted an analysis
27 of the contracts it has outstanding. The City has slated for the current fiscal year an audit of its
28 continuing contracts (including analyzing whether there is duplication in any of the City's

1 current contractual relationships and whether the City might be able to renegotiate, or negotiate
2 elsewhere, a better deal). The City is currently undergoing a review of its Standard Software
3 License Subscription and Services agreement with New World Systems Corp.

4 **F. The Treatment of CalPERS Under the Plan**

5 Upon the filing of the City's bankruptcy case, the City stopped making payments to
6 CalPERS, and the principal balance owed to CalPERS at June 30, 2013 was \$13,517,724. On
7 July 1, 2013, the City began repayment of the past due balance, with interest, in the amount of
8 \$602,580 monthly; the final payment is due June 1, 2016. Under the Plan, beginning upon
9 confirmation of the Plan, the City will make five annual payments of \$400,000 each to CalPERS
10 to satisfy a penalty obligation. Seventy-five percent of the penalty payment will be credited to
11 the City's employer contributions to the pension plan. Also pursuant to the Plan, the City will
12 ratify in full the City's relationship to CalPERS, and the City will not impair or reject the City's
13 obligations to CalPERS. In all practical effect, the Plan provides for the assumption of the City's
14 contract with CalPERS.

15 **G. Maintenance of Cash Reserves**

16 It is essential that the City maintain adequate levels of fund balances to mitigate current
17 and future risks (e.g., revenue shortfalls and unanticipated expenditures) and to ensure stable tax
18 rates. Fund balance levels are a crucial consideration in long-term municipal financial planning,
19 and credit rating agencies monitor levels of a city's fund balances to evaluate a city's
20 creditworthiness.

21 Municipal finance best practices recommend the maintenance of reserves equal to at least
22 two months of expenditures, and a city's particular situation may require a level of reserves
23 significantly in excess of this recommended minimum level. Factors that may compel keeping
24 reserves in excess of two months expenditures include increased capital needs and deficits in
25 other funds,⁷ both of which are present in the City. The average reserve level for California
26 cities with populations in excess of 50,000 is 23%.

27 _____
28 ⁷ See Government Finance Officers Association, *Determining the Appropriate Level of Unrestricted Fund Balance in the General Fund*, available at www.gfoa.org.

1 The level of reserves that the City’s advisors have recommended and incorporated into
2 the City’s financial projections reflects the tension between, on the one hand, taking actions to
3 improve long term economic conditions for the City’s residents and the City’s creditworthiness,
4 and, on the other hand, the pressure from creditors who view the reserves as excessive. The City
5 is sensitive to that inevitable tension, and believes that the level of reserves it has proposed is
6 consistent with the levels of risk still facing the City.

7 **H. Questions Regarding the Baseball and Soccer Stadiums and the Golf Course**

8 The POB Creditors question why the City owns certain sports related real properties (the
9 San Manuel Stadium (a baseball stadium), the Shandin Hills Public Golf Course, and the City
10 Soccer Complex) and why the properties cannot be sold to pay claims of general unsecured
11 creditors like the POB Creditors. The first two properties are assets of the Successor Agency to
12 the former City Redevelopment Agency. In accordance with the Successor Agency’s Long
13 Range Property Management Plan submitted to the California Department of Finance (which is
14 overseeing the dissolution of all municipal redevelopment agencies), both assets are to be
15 transferred to the City as “government use” properties. The Soccer Complex is an asset of the
16 City.

17 San Manuel Stadium: The existing lease between the City and the Inland Empire 66ers
18 Baseball Club of San Bernardino, Inc. (“IE66”) has never produced more than between \$100,000
19 to \$150,000 per year in revenue for the City. Over the past three years, the City has seen
20 virtually no revenue from the lease because of (i) cumulative deferred maintenance in the
21 stadium that is an obligation of the City, but which IE66 has paid for, and (ii) the dissolution of
22 the City’s redevelopment agency (the primary source of funding for stadium maintenance) that
23 shifted more maintenance obligations to IE66. There are many studies and statistics
24 demonstrating that municipally-owned or built minor league stadiums generally do not generate
25 “net revenue” for their host cities; and in-fact most require on ongoing subsidy for maintenance,
26 repair, and replacement costs. Cities decide to bear the cost of a municipal stadium based on,
27 among other things: (a) studies that indicate there is an overall economic benefit to the
28 community and businesses from a municipal stadium and minor league franchise; and (b) the

1 quality of life enhancement to the community from a stadium and minor league sports franchise
2 that many cities believe is worth the cost of the subsidy.

3 The lease on the San Manuel Stadium will be expiring in the near future, and the City and
4 IE66 will be negotiating a renewal of that lease without the benefit of redevelopment agency
5 funding. The City's goal will be to internalize all stadium costs within the lease, thereby
6 minimizing or eliminating any public contribution to the stadium costs. Therefore, it is not
7 realistic to expect that the stadium can generate net revenue for the City. The City is open to all
8 ideas that would result in net revenue for the City without putting at-risk the stadium going dark
9 and becoming another blighting and negative influence on the local economy.

10 City Soccer Complex. The complex has generated annual positive cash flow over the last
11 number of years (roughly \$100,000 to \$250,000 annually) that has often been used by the City
12 for other municipal purposes. However, the Complex requires substantial repair. The City
13 recently issued a request for proposals to privatize the management of the soccer complex, in the
14 hopes of saving the soccer complex and its economic benefit to the community. Much like the
15 San Manuel Stadium, the goal of the City in negotiating a management/operating agreement is to
16 largely internalize the costs of the rehabilitation and revitalization of the soccer complex within
17 the lease and avoid any significant public contribution. Realistically, revenues from the soccer
18 complex will need to be funneled back into desperately needed repair and replacement projects
19 for the foreseeable future. The total cost of the rehabilitating the complex over the next 3 to 4
20 years may also require a private capital contribution that would be repaid from future revenues.
21 The City's goal is to return the complex to a healthy and competitive condition and to ensure it is
22 maintained at that level, so as to continue reaping the general economic benefits that flow from
23 the thousands of club soccer teams that come to the facility annually. However, it is difficult to
24 predict when the soccer complex would produce positive cash flow for the City.

25 Shandin Hills Public Golf Course. This asset of the Successor Agency had been
26 producing around \$250,000 to \$300,000 annually in lease revenue for the former redevelopment
27 agency, and the property is slated to be transferred to the City. However, because of significant
28 deferred maintenance, competition from other local golf courses, and the cost of providing water

1 to the facility, the property may not yield comparable cash flow in the future. More information
2 on the golf course and the two stadiums will be provided in the amended Disclosure Statement.

3 **I. Other City Owned Properties**

4 The City will attach to the amended Disclosure Statement lists of Lists of City-owned and
5 Successor Agency-owned properties. Many of these properties are blighted and have no equity
6 value. Moreover, it is well settled that a chapter 9 debtor cannot be compelled to sell assets. *See*
7 *Silver Sage Partners, Ltd. v. City of Desert Hot Springs (In re City of Desert Hot Springs)*, 339
8 F.3d 782, 789 (9th Cir. 2003) (“Chapter 9 makes no provision for conversion of the case to
9 another chapter or for an involuntary liquidation of any of the debtor's assets.”), quoting *In re*
10 *Richmond Sch. Dist.*, 133 B.R. 221, 225 (Bankr. N.D. Cal. 1991); *Newhouse v. Corcoran*
11 *Irrigation District*, 114 F.2d 690, 690-91 (9th Cir. 1940) (“The principle of ordinary or private
12 bankruptcy that the assets of the bankrupt, including his property, must be effectively applied to
13 the debts, is sought to be applied to the situation before us. The bankruptcy of a public entity,
14 however, is very different from that of a private person or concern.”). No court has required a
15 chapter 9 debtor to sell assets for any purpose, including to satisfy the requirements for
16 confirmation of a chapter 9 plan.

17 As the City explained in the Disclosure Statement at pages 45-46, once the Successor
18 Agency’s Long Range Property Management Plan is approved by the California Dept. of
19 Finance, many of the Successor Agency’s properties can be marketed and sold, and the net sale
20 proceeds will be distributed to various taxing agencies, including the City. The City is currently
21 projected to receive a total of \$3.9 million from that process, which would be payable to the City
22 over a five year period.

23 **J. Street and Road Repairs**

24 As discussed in the Recovery Plan (Ex. B to the Disclosure Statement, pp. 31-32 (pp. 34-
25 35 of 95 of the filed document), a survey prepared for the City in 2008 estimated that it would
26 cost \$88.5 million to repair the City’s streets and roadways at that time. The detail of the survey
27 showed the following necessary repairs:

ARTERIAL ROADWAYS CITY-WIDE

<u>Maintenance Category</u>	<u>Cost</u>
Routine Maintenance (Crack Seal, Patching, etc.)	\$ 1,120,263.36
Preventative Maintenance (Slurry Seal, Scrub Seal, etc.)	\$ 2,326,545.87
Rehabilitation (Mill & Cap, Scrub Seal & Cap, ARAM IV, etc.)	\$16,799,375.80
Reconstruction (Full Depth Reclamation, Cold-In-Place, R&R)	\$10,752,796.69
 Total	 \$30,998,981.72

LOCAL and COLLECTOR ROADWAYS CITY-WIDE

<u>Maintenance Category</u>	<u>Cost</u>
Routine Maintenance (Crack Seal, Patching, etc.)	\$ 1,383,381.33
Preventative Maintenance (Slurry Seal, Scrub Seal, etc.)	\$12,601,295.88
Rehabilitation (Mill & Cap, Scrub Seal & Cap, ARAM IV, etc.)	\$23,794,417.86
Reconstruction (Full Depth Reclamation, Cold-In-Place, R&R)	\$19,715,327.98
 Total	 \$57,494,423.05

Grand Total **\$88,493,404.77**

The 2008 survey also calculated the cost of repairing the City's streets and roadways if the City continued to defer making the repairs for five years. The detail is below and shows that the cost of the repairs, by 2013, would have been \$150 million.

ALL CITY STREETS WITH 5-YEAR DEFERRAL

<u>Maintenance Category</u>	<u>Cost</u>
Routine Maintenance (Crack Seal, Patching, etc.)	\$ 1,739,623.00
Preventative Maintenance (Slurry Seal, Scrub Seal, etc.)	\$18,845,920.00
Rehabilitation (Mill & Cap, Scrub Seal & Cap, ARAM IV, etc.)	\$60,797,309.86
Reconstruction (Full Depth Reclamation, Cold-In-Place, R&R)	\$68,688,320.07
 Total	 <u>\$150,071,172.93</u>

1 As explained in the Recovery Plan,
2 Due to the continued deferral of repairs and maintenance and increased deterioration
3 since 2008 and minimal investment by the City in maintaining the street system, street
4 system maintenance and repair costs have likely increased to an estimated \$150 million
5 (in 2008 dollars). Based on the construction cost increases tracked by Engineering News
6 Records, estimated costs in 2015 of repairing the City's streets are now likely to be
20.13% more (or approximately \$180,300,000).

7 Recovery Plan, p. 32, (p. 34 of 95 of filed document). Thus, the City needs to budget
8 \$180 million in street and road repairs for the near term. The City will attach the street repair
9 report to the amended Disclosure Statement. The report shows which streets and roadways
10 needed repair, the street address, square yardage of the contemplated repair, the type of repair
11 and the project cost.

12 The necessary road and street repairs substantially exceed the funds available under
13 traditional sources (State Gas Tax and Measure I Funds). Federal funding is typically not
14 available for capital maintenance, as most monies are earmarked for mobility or air quality
15 improvements (Federal Congestion Mitigation and Air Quality (CMAQ) Funds for
16 example). Federal funds from the American Recovery and Reinvestment Act were one-time
17 funds used in 2013-14 by the City to repair bridges which were on the verge of falling
18 down. The State of California has one program that may provide funding through the State
19 Transportation Improvement Program (STIP). In order to be eligible for STIP funds, local
20 projects must be included in a Regional Transportation Improvement Plan (RTIP), but RTIP
21 typically funds transportation improvements, not street and road maintenance. The City will
22 include in the amended Disclosure Statement projections of State Gas Tax and Measure I
23 revenues, for the next 20 years; the remainder of the capital improvements would have to be
24 General Fund expenses.

25 **K. Efforts to Cut Costs of Operations, Raise Revenues**
26 **and Improve City Services; Charter Reform**

27 In addition to the substantial cost savings and improved services to City residents that the
28 City projects from annexation into County Fire, efficiency improvements including contracting

1 out and alternative service delivery is being pursued across other City operations, consistent with
2 best practices observed in other municipalities. The City is looking at solid waste collection,
3 business licensing, fleet maintenance, custodial maintenance, graffiti abatement, and other areas.
4 The City has received proposals for solid waste services pursuant to a request for proposals
5 issued by the City, and it is anticipated that recommendations will be provided to the Common
6 Council in the next 30 days. The solid waste contract will also include provision for street
7 sweeping and some other public works functions.

8 The Parks and Recreation Department is in the process of finalizing recommendations for
9 contracting for services in connection with the soccer complex and recommendations to the City
10 Council are anticipated in November. A formal organizational assessment is underway for
11 corporate support functions and this will lead to improvement recommendations encompassing
12 business licensing, finance, human resources and information technology.

13 The City's Recovery Plan evaluated more than a dozen new revenue sources. The
14 Recovery Plan contemplates implementation of approximately seven new fee and tax
15 adjustments. The City has already implemented revisions to the water and sewer utilities
16 franchise fee structure, and is well along with the solid waste collection franchise fee. The City's
17 application to LAFCO for approval of annexation into County Fire contemplate a \$143 per year
18 parcel tax to fund Fire Services, which is expected to generate approximately \$7.8 million per
19 year.

20 Currently the City is focusing on revenue measures which can be administratively
21 approved or approved through the LAFCO process. Other revenue measures require voter
22 approval. In light of the very low income levels among the City's residents, the City faces
23 significant hurdles in pursuing voter approved tax measures, at least until the delivery of basic
24 municipal services can be stabilized and improved.

25 The City's Common Council appointed a Charter Committee for the purposes of
26 reviewing the existing Charter and recommending changes, if any, to be placed on the November
27 2016 ballot. This Charter Committee consists of nine members: Casey Dailey, Dennis Baxter,
28 Gary Walbourne, Rabbi Hillel Cohn, Michael Craft, Hardy Brown, Phil Savage, Tom Pierce and

1 Gloria Marcias Harrison. At the September 21, 2015 Common Council session, the Charter
2 Committee provided an update to the Common Council on its efforts. The Charter Committee
3 reported that its focus is on “best practices” forms of government and the assessment of those
4 best practices against the City’s current Charter. The Charter Committee expects to present
5 recommendations on Charter changes to the Mayor and Common Council by April or May of
6 2016. The Mayor and Common Council will then decide whether to place any Charter changes
7 on a ballot measure on or before August 1, 2016, to get such measure on the ballot for the
8 November 8, 2016 election.

9 **III. OBJECTIONS THAT THE PLAN IS NOT CONFIRMABLE**

10 Some of the Objections argue that the Court should not approve the Disclosure Statement
11 because the underlying Plan is not confirmable. The Objections raise traditional legal objections
12 to confirmation of the Plan, arguing that the Plan has been filed in bad faith because it does not
13 pay creditors enough, the Plan discriminates unfairly against the POB Creditors because the Plan
14 treats CalPERS better than it treats the POB Creditors, the Plan improperly discharges claims
15 against the Indemnified Parties, and the scope of Administrative Claims under the Plan is
16 different from the way administrative expense claims are treated in chapter 11 cases. These
17 matters will be addressed in the context of plan confirmation. The Plan provisions on these
18 issues fall well within the four corners of applicable bankruptcy law, as briefly described below.
19 Solicitation and voting on the amended Plan and amended Disclosure Statement should not be
20 held up on these plan confirmation issues.

21 **A. Administrative Claims**

22 Section 503 of the Bankruptcy Code, entitled “Allowance of administrative claims,”
23 applies in chapter 9 cases. Section 503(b)(1)(A) treats as an administrative claim “the actual,
24 necessary costs and expenses of preserving the estate.” However, chapter 9 does not incorporate
25 section 541 of the Bankruptcy Code, which provides for the creation of a bankruptcy “estate.”
26 Therefore, there is no estate in chapter 9. *In re Valley Health Sys.*, 429 B.R. 692, 714 (Bankr.
27 C.D. Cal. 2010); *In re City of Vallejo*, 403 B.R. 72, 78 n.2 (Bankr. E.D. Cal. 2009) (“In a chapter
28 9 case there is no estate.”). Commentators agree that there is no estate in chapter 9. Collier on

1 Bankruptcy, ¶ 901.04[13][a] (16th ed. 2015) (“Section 503(b)(1) should not be read to include the
2 general operating expenses of a municipality during the period that the chapter 9 case is pending.
3 Indeed, as there is no estate created in a chapter 9 case, there can be no necessary costs and
4 expenses of preserving the estate.”); 5 Norton Bankruptcy Law and Practice § 90:3 (3d ed. 2015)
5 (in contrast to chapter 11, no estate of the debtor is created under chapter 9).

6 As there is no estate in chapter 9, there can be no claims allowed with administrative
7 expense priority for the costs and expenses of preserving the estate. *In re New York City Off-*
8 *Track Betting Corp.*, 434 B.R. 131, 142 (Bankr. S.D.N.Y. 2010). Under the Plan, claims of
9 general unsecured creditors that arose post-petition will receive the same treatment as general
10 unsecured claims that arose prepetition.

11 **B. Plan Injunction re Indemnified Parties**

12 In exchange for the distributions under the Plan, the Plan enjoins the prosecution of
13 claims against the “Indemnified Parties,” who are defined in the Plan as “the current and former
14 officers and employees of the City who are entitled to Indemnification.” Plan, § I.B.55.
15 “Indemnification” is defined as the “rights of indemnity . . . of current and former officers and
16 employees of the City . . . in each case arising out of an act or omission occurring within the
17 scope of such officer’s or employee’s employment as an employee of the City.” Plan, § I.B.56.

18 The Objections argue that the Disclosure Statement is inadequate because the City does
19 not explain why the City seeks to relieve employees and officers from liability on claims that
20 occur within the scope of their employment. As courts in this Circuit have recognized, claims
21 against officers and employees acting within the scope of their employment are brought against
22 employees not to recover from the officers and employees (who are often judgment proof or
23 close), but to access the City’s assets via its obligation to indemnify the officers and employees.
24 *See e.g. In re City of Stockton*, 484 B.R. 372, 376 (Bankr. E.D. Cal. 2012) (discussing the
25 “strategy of suing a sovereign by falsely pretending to sue an officer”). While the officer or
26 employee may be a necessary party, for purportedly having committed the alleged harm, the real
27 party in interest expected to satisfy the judgment, if any, is the City.

1 The terms of the Plan simply recognize and maintain the *status quo*. Under the Plan, the
2 plaintiffs will look to the City to satisfy their judgments, not to the individual officers or
3 employees. There is no justifiable reason for this process to be disturbed as a result of the City's
4 chapter 9 filing. Exposing officers and employees to liability for harms committed while at work
5 would exposes officers and employees to often ruinous liability simply for doing their jobs.

6 Courts across the country have recognized that third-party releases are appropriate under
7 certain circumstances. *See e.g., Securities and Exchange Commission v. Drexel Burnham*
8 *Lambert Group, Inc., (In re Drexel Burnham Lambert Group, Inc.)*, 960 F.2d 285, 293 (2d Cir.
9 1992); *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 93 (2d Cir. 1988); *Deutsche Bank*
10 *AG, London Branch v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*,
11 416 F.3d 136 (2d Cir. 2005); *Gilman v. Cont'l Airlines (In re Cont'l Airlines)*, 203 F.3d 203, 213
12 (3d Cir. 2000); *Menard-Sanford v. Mabey (In re A.H. Robins Co.)*, 880 F.2d 694, 701-02 (4th
13 Cir. 1989); *Nat'l Heritage Found., Inc. v. Highbourne Found.*, 760 F.3d 344, 348-50 (4th Cir.
14 2014); *In re Dow Corning Corp.*, 280 F.3d 648, 657-58 (6th Cir. 2002); *In re Airadign*
15 *Commc'ns, Inc.*, 519 F.3d 640, 656 (7th Cir. 2008); *In re Seaside Eng'g & Surveying, Inc.*, 780
16 F.3d 1070, 1078 (11th Cir. 2015). While the formulation may be different from circuit to circuit
17 and case to case, fundamentally courts look to circumstances where an identity of interest
18 between the debtor and third-party is so strong that to permit claims against the third-party would
19 significantly undermine the debtor's reorganization. The circumstances of this case amply
20 demonstrate a situation where a limited third party release is appropriate. The City is obligated
21 by statute to indemnify its employees and officers for acts committed within the scope of
22 employment. If the plaintiffs are permitted to pursue claims against the officers and employees,
23 the City will be forced to pay such claims one hundred cents on the dollar, which the City cannot
24 afford to do. The limited third-party injunction and release provisions of Article XI of the Plan
25 are necessary and appropriate to preserve the benefit of the discharge for the City.

26 While a minority of circuit courts, including the Ninth Circuit (*see e.g., In re American*
27 *Hardwoods, Inc.*, 885 F.2d 621, 626 (9th Cir. 1989); *Underhill v. Royal*, 769 F.2d 1426, 1432
28 (9th Cir. 1985) have expressed reluctance to approve third-party releases and injunctions on the

1 circumstances of the cases then before the court, such reluctance is not a complete bar here. The
2 holdings in those cases are based upon the courts' application of Bankruptcy Code Section
3 524(e), which provides that "discharge of a debt of the debtor does not affect the liability of any
4 other entity on, or the property of any other entity for, such debt." However, pursuant to
5 Bankruptcy Code 901, Section 524(e) does not apply in chapter 9 cases. In contrast, Section
6 922(a) – expanding the scope of the automatic stay to apply to claims against officers and
7 inhabitants of the debtor – shows that the statutory treatment of such claims against third parties
8 is different in chapter 9 than it is in chapter 11. The chapter 11 cases on plan releases of third
9 parties may not apply in chapter 9 cases.

10 The circumstances under which a third-party injunction is necessary and appropriate, fair
11 and equitable and proposed in good-faith are intensely factual and thus appropriate for
12 determination after the presentation of evidence at trial in connection with confirmation of the
13 Plan. The amended Disclosure Statement will contain substantial additional information on the
14 City's insurance coverage that may be available to pay bodily injury and personal injury claims,
15 and the City will attach a schedule of pending suits that may be covered by such insurance.

16 **C. Unfair Discrimination**

17 The POB Creditors lament the fact that they are treated as general unsecured creditors
18 under the Plan, and object that they are not treated the same as CalPERS. The POB Creditors
19 argue that (a) the treatment of CalPERS under the Plan as unimpaired is conclusive evidence that
20 the Plan has been filed in bad faith, and (b) the different treatment of the claims of the POB
21 Creditors and CalPERS evidences unfair discrimination. The City explained in its Recovery
22 Plan why it decided not to impair its contract with CalPERS and to cure defaults. The City made
23 an economic decision, weighing the certain benefits and potential detriments, and then only
24 made that decision after six months of hands on mediation by Judge Zive. The City's reasoning
25 is well within the four corners of the business judgment rule applicable to decisions to assume
26 contracts under Bankruptcy Code Section 365. *See Agarwal v. Pomona Valley Med. Group, Inc.*
27 *(In re Pomona Valley Medical Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (bankruptcy
28 courts apply the "business judgment rule" to evaluate a debtor's assumption or rejection of an

1 executory contract);⁸ *Orion Pictures Corp. v. Showtime Networks (In re Orion Pictures Corp.)*, 4
2 F.3d 1095, 1099 (2d Cir. 1993) (same). The City's decision would meet any stricter standard
3 given the practical realities facing the City as a large municipal employer in California.

4 The City's decision to assume the CalPERS contract was validated: (a) when the City
5 reached agreement with the Official Committee of Retired Employees on the substantially
6 reduced scope of retiree healthcare coverage going forward; and (b) when the City reached
7 settlements for new collective bargaining agreements with the POA and the IUOE (the unions
8 representing the two large bargaining units), which settlements included shifting a larger share of
9 pension costs to the employees. These settlements were reached only because the City had
10 assumed the CalPERS contract.

11 The POB Creditors and CalPERS are not in the same class under the Plan, and their legal
12 rights are not *parris passu* because the City has the right to assume executory contracts (*see*
13 Bankruptcy Code Section 365(a)), including the CalPERS contract, while the City is prohibited
14 by law from assuming the financial accommodations contracts that form the basis of the POB
15 Creditors' claims (*see* Bankruptcy Code Section 365(c)(2)). Therefore, assuming that the debtor
16 seeks confirmation of the Plan under the cramdown standards of Bankruptcy Code Section
17 1129(b)(1), the unfair discrimination tests of Section 1129(b)(1) would not apply.

18 Even if, for the sake of argument, the unfair discrimination tests of Section 1129(b)(1)
19 applied, the Plan could still be confirmed. By its terms, Section 1129(b)(1) "prohibits only
20 unfair discrimination, not all discrimination." *In re Aztec Co.*, 107 B.R. 585, 588-89 (Bankr.
21 M.D. Tenn. 1989). It is "necessarily inherent in the term 'unfair discrimination' ... that there may
22 be 'fair' discrimination in the treatment of classes of creditors." *In re Simmons*, 288 B.R. 737,
23 747-48 (Bankr. N.D. Tex. 2003). By making fairness the touchstone of the legal standard,
24 Congress eschewed any rigid mechanical test and instead made clear that courts should apply a
25

26 ⁸ To defeat the business judgment rule applicable to the decision to assume an executory
27 contract, an objector must show that the decision is "so manifestly unreasonable that it could not
28 be based on sound business judgment, but only on bad faith, or whim, or caprice." *In re Pomona
Valley Med. Grp., Inc.*, 476 F.3d at 669-70, 70 quoting *Lubrizol Enter. v. Richmond Metal
Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985).

1 flexible standard that takes all relevant circumstances into account. *See Brinkley v. Chase*
2 *Manhattan Mortg. & Realty Trust (In re LeBlanc)*, 622 F.2d 872, 879 (5th Cir. 1980) (“[a]
3 bankruptcy court can permit discrimination when the facts of the case justify it.”). The precise
4 justification may vary from case to case; there is great discretion left to the bankruptcy court to
5 determine whether the discrimination is fair. *In re Crawford*, 324 F.3d 539, 542 (7th Cir. 2003).
6 The fairness inquiry is properly “committed to [the court's] informed discretion and should be
7 decided, case by case, based upon competent evidence and cogent argument as to what is fair and
8 reasonable” in light of the purposes of the relevant law. *In re Stella*, 2006 Bankr. LEXIS 1980,
9 *4 (Bankr. D. Idaho June 28, 2006).

10 “[U]nlike the other Chapters [of the Bankruptcy Code], Chapter 9 does not attempt to
11 balance the rights of the debtor and its creditors, but rather, to meet the special needs of a
12 municipal debtor.” *In re Richmond Unified Sch. Dist.*, 133 B.R. 221, 225 (Bankr. N.D. Cal.
13 1991). Chapter 9 is designed to assist municipalities in providing vital government services by
14 “providing the debtor with an array of bankruptcy powers to enable it to achieve financial
15 rehabilitation with very few, if any, corresponding limitations and duties of the type to which a
16 Chapter 11 debtor is subject.” *Id.* at 224. Accordingly, courts assessing plans of adjustment in
17 chapter 9 have emphasized the unique need to consider the general social welfare when
18 addressing issues of plan confirmation. *See e.g., In re Corcoran Hosp. Dist.*, 233 B.R. 449, 454
19 (Bankr. E.D. Cal. 1999) (describing the area's economic woes and noting that “[t]he hospital is
20 very important to the community of Corcoran” and that it was “an essential element to the
21 survival of Corcoran as a community”); *In re Barnwell Cnty. Hosp.*, 471 B.R. 849, 869 (Bankr.
22 D. S.C. 2012) (“[O]f particular importance to the Court is that the [p]lan preserves the
23 availability of healthcare services to citizens and patients in the [c]ounty”). Thus, standards
24 developed in chapter 11 cases may not be applied mechanically to the City’s Plan, but should be
25 adapted to fit the special purposes of chapter 9 and the circumstances of the City’s financial
26 crisis. That will be the City’s burden of persuasion – whether any discrimination under the Plan
27 is fair. Here, however, as briefly discussed above and as will be further explained in the
28 confirmation proceedings, the claims of CalPERS and the POB Creditors are not entitled to equal

1 treatment under the Bankruptcy Code, and the treatment of the POB Creditors' claims cannot be
2 the basis of an unfair discrimination objection to the Plan.

3 **D. Good Faith**

4 The City is working on updated financial projections and will attach to the amended
5 Disclosure Statement an updated Long Range Financial Plan. Although the City has chosen not
6 to impair its obligations under the CalPERS contract, the City has substantially impaired the
7 benefits it previously provided to retirees. The City has already reduced the amount of
8 healthcare benefits it provides retirees and those reductions will remain in effect under the Plan
9 and apply to current City employees that retire in the future. The amount of those reductions is
10 in the tens of millions of dollars. The City will add a section to the amended Disclosure
11 Statement that discusses how much in retiree healthcare claims is being discharged, and how that
12 number is arrived at.

13 The City has constitutional obligations to its residents to provide a decent level of
14 municipal services, and that requires upgrading the level of services, as the City is attempting to
15 do with Fire Services and by providing monies to fix streets, roads and street lights. The City's
16 residents are entitled to a vigorous effort at economic recovery and the City's physical
17 infrastructure is job one. The City has an obligation to pay its creditors, but the Bankruptcy
18 Code allows the City to substantially impair those debt obligations. The City clearly is engaged
19 in a balancing act, but it is most assuredly proceeding in good faith to try and accommodate in
20 some equitable manner every creditor constituency.

21 EEPK cites *Fano v. Newport Heights Irrigation District*, 114 F.2d 563 (9th Cir. 1940)
22 ("*Fano*") for the proposition that a chapter 9 plan that paid bondholders 62.5% on their claims
23 was unjust because the debtor should have raised taxes to meet its obligations. *Fano* has no
24 application to the City's situation. In *Fano*, an irrigation district was formed in Orange County
25 in 1918 ("District") and it built an irrigation system using the proceeds of \$160,000 in 6% bonds
26 it issued. In 1937, the District filed a Chapter IX case and alleged that as a result of the Great
27 Depression, local farmers could not pay their taxes and the District did not have the funds to pay
28 the bondholders in full. The District proposed a Chapter IX plan that paid the bondholders

1 62.5% of their claims. On the facts, the Ninth Circuit determined that the District only owed the
2 bondholders \$26,000 in accrued unpaid interest and that, based upon the funds the District held
3 in reserve, the District was only short \$15,000. The Ninth Circuit emphasized that even that
4 shortfall could have been paid, had the District not built a shiny new office building with the tax
5 revenues the District had collected – “the expenditure was top-heavy and extravagant for the
6 period and unquestionably influenced the suspension of interest payments.” 114 F.2d at 565.
7 “Thus we see, it was not the disability of the District to support itself, but the payment for heavy
8 betterments practically upon a cash basis that brought about the embarrassment.” *Id.* *Fano* is
9 not relevant to the City’s circumstances because the City’s insolvency is not the result of wasting
10 money on shiny new buildings and top-heavy infrastructure improvements. The City’s situation
11 is exactly the opposite – the City has not had the funds to maintain its economic infrastructure,
12 and the City’s streets, street lights and buildings are in dire need of repair. Without this critical
13 investment in infrastructure, the City will never attract new businesses and rebuild.

14 Another Ninth Circuit Chapter IX irrigation district case from the same time period as
15 *Fano* – *Newhouse v. Corcoran Irr. Dist.*, 114 F.2d 690 (9th Cir. 1940) (“*Newhouse*”) – is more
16 relevant. In *Newhouse*, the district court approved the debtor’s Chapter IX plan for composition
17 of bonded indebtedness, rejecting arguments that the debtor should raise taxes rather than impair
18 the bondholders.

19 Here, too, we must avoid replacing reality by fancy. It may be true that the directors
20 could have increased the tolls in sufficient amount to cover the additional money. But
21 there is a limit beyond which the taxing power of a taxing agency cannot go, even in the
22 absence of legal limitations. And that is the ability of the taxpayer or toll payer to pay.
23 And so . . . we must be guided by the determination of its officers, as explained by the
24 secretary of the district at the trial, that, in their opinion, the taxable limit had been
reached.

25 *In re Corcoran Irr. Dist.*, 27 F. Supp. 322, 326-27 (S.D. Cal. 1939). The Ninth Circuit affirmed,
26 and rejected the bondholders other argument that the debtor’s assets should be applied to pay the
27 bondholders, stating:

1 Throughout appellants' briefs the principle of ordinary or private bankruptcy that the
2 assets of the bankrupt, including his property, must be effectively applied to the debts, is
3 sought to be applied to the situation before us. The bankruptcy of a public entity,
4 however, is very different from that of a private person or concern. The operative assets
5 of an irrigation district and the value of the land of the District, of course, have their
6 evidentiary value as to the amount of money the District can reasonably raise to meet its
7 indebtedness. These elements of value are too affected by the incumbrances upon the
8 land, which in this case appear to be very considerable. But such assets and such
9 property within the District cannot be disposed of as in the ordinary bankruptcy
10 proceeding for the benefit of the debtor.

11 *Newhouse*, 114 F.2d at 690-91.

12 Another chapter 9 case, *In re Corcoran Hosp. Dist.*, 233 B.R. 449 (Bankr. E.D. Cal.
13 1999), also rejected the notion that a chapter 9 debtor must raise taxes as part of a chapter 9 plan.
14 The bankruptcy court noted that unemployment in the area covered by the hospital district was
15 17%, the median per capita income in the area was 50% of the state's median per capita income,
16 the city of Corcoran was the 5th poorest in the state, and the witnesses at the confirmation (the
17 city manager of Corcoran and the CEO and CFO of the hospital district) testified that it was
18 unlikely taxes could be raised. The court also found that the hospital was very important to the
19 community of Corcoran. 223 B.R. at 454. On the necessity of raising taxes, relying on
20 *Newhouse, supra*, the court held that there was nothing in the Bankruptcy Code that required
21 raising taxes to confirm a chapter 9 plan, and it would not impose that requirement on the debtor
22 hospital district. *Id.* at 461.

23 **IV. OTHER ISSUES RAISED IN THE OBJECTIONS**

24 Ambac's contention that the City has failed to provide adequate informal and formal
25 discovery is incorrect. At the request of EEPK and Ambac, EEPK's and Ambac's financial
26 advisors met with the City's financial advisors on several separate occasions over the past few
27 months and each meeting was extensive. In response to informal and formal document requests,
28 the City has produced approximately 4,435 pages of documents since June 2015. Ambac's
contention that the City provided very few documents prior to the July 29, 2015 status
conference is not true.

1 Ambac’s recitation of the informal and formal discovery that has taken place since
2 beginning in June 2015 is inaccurate. The initial informal discovery requests were verbal,
3 disorganized and scattered, but the City nonetheless was responsive. Subsequently, EEPK and
4 Ambac deluged the City with discovery requests many of which were overly broad and
5 irrelevant. In fact, EEPK and Ambac recently served yet more document requests bringing the
6 total number of document requests to over 100, not including the numerous sub-parts.

7 In addition, following the July 29, 2015 status conference, Ambac did not serve formal
8 document requests on the City. Ambac asserts that it and EEPK served 83 formal documents
9 request on the City on August 4, 2015 (the “Document Requests”). The Document Requests
10 were never served on counsel for the City), and were first received by counsel for the City a
11 month later, on September 4, 2015. After counsel for Ambac provided the name of the person
12 allegedly served with the Document Requests, it was clear that Milbank’s process server
13 delivered the Document Requests to a person who works at Guggenheim Partners, a tenant of the
14 building where counsel for the City is located. The City, EEPK and Ambac did not realize that
15 the City never received the Document Requests until September 4, 2015. Ambac’s rendition of
16 the service issue is misleading.

17 On September 8, 2015, the parties met and conferred over the service issue. The City’s
18 counsel agreed to provide a written response to the Document Requests on September 29, 2015,
19 even though that date is less than thirty (30) days after the City first received the Document
20 Requests on September 4, 2015. On September 29, 2015, the City served a written response to
21 the Document Requests.

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1 **V. CONCLUSION**

2 The City proposes to file an amended Plan and amended Disclosure Statement in about
3 3-4 weeks after the Disclosure Statement hearing. As discussed herein, the amended Disclosure
4 Statement will provide more information to address the questions raised in the Objections.

5

6 Dated: October 1, 2015

STRADLING YOCCA CARLSON & RAUTH, P.C.

7

By: /s/ Paul Glassman

8

Paul Glassman

Fred Neufeld

9

Attorneys for the City of San Bernardino, California

10

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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., 4th Floor, Santa Monica, CA 90401.

A true and correct copy of the foregoing document entitled RESPONSE OF CITY OF SAN BERNARDINO TO OBJECTIONS TO CITY'S DISCLOSURE STATEMENT WITH RESPECT TO PLAN OF ADJUSTMENT OF DEBTS 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 October 1, 2015, 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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Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On October 1, 2015, 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 October 1, 2015, 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.

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

PRESIDING JUDGE'S COPY

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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.

October 1, 2015

Date

Christine Pesis

Printed Name

/s/ Christine Pesis

Signature