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<p>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION</p>	
<p>In re: CITY OF SAN BERNARDINO, CALIFORNIA</p> <p style="text-align: right;">Debtor(s)</p>	<p>CASE NO.: 6:12-28006-MJ CHAPTER: 9</p> <p>NOTICE OF LODGMENT OF ORDER IN BANKRUPTCY CASE RE: <i>(title of motion¹):</i> THIRD AMENDED PLAN FOR THE ADJUSTMENT OF DEBTS OF THE CITY OF SAN BERNARDINO, CALIFORNIA (JULY 29, 2016), AS MODIFIED</p>

PLEASE TAKE NOTE that the order titled ORDER CONFIRMING THIRD AMENDED PLAN FOR THE ADJUSTMENT OF DEBTS OF THE CITY OF SAN BERNARDINO, CALIFORNIA (JULY 29, 2016), AS MODIFIED; FINDINGS OF FACT AND CONCLUSIONS OF LAW IN RESPECT THEREOF was lodged on *(date)* 01/03/2017 and is attached. This order relates to the motion which is docket number 1880.

¹ Please abbreviate if title cannot fit into text field.

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

17 In re
18 CITY OF SAN BERNARDINO,
19 CALIFORNIA,

20 Debtor.

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

Chapter 9

**ORDER CONFIRMING THIRD
AMENDED PLAN FOR THE
ADJUSTMENT OF DEBTS OF THE CITY
OF SAN BERNARDINO, CALIFORNIA
(JULY 29, 2016), AS MODIFIED;
FINDINGS OF FACT AND CONCLUSIONS
OF LAW IN RESPECT THEREOF**

1 1. On July 29, 2016, the City of San Bernardino, California (“City”) filed with this U.S.
2 Bankruptcy Court (the “Court”) the City’s *Third Amended Plan for the Adjustment of Debts of the City*
3 *of San Bernardino, California (July 29, 2016)* (the “Plan”), the *Third Amended Disclosure Statement*
4 with respect to the Plan (the “Disclosure Statement”), an Appendix of Exhibits, a notice of the materials
5 distributed to all known creditors in connection with voting on the Plan and the hearing on confirmation
6 of the Plan, and related documents [Dkt. Nos. 1880 through 1885] (the “Solicitation Materials”), and
7 began solicitation of acceptances of the Plan. Prior to that date, on July 7, 2016, the Court entered its
8 order approving the Disclosure Statement and setting certain deadlines and procedures for voting to
9 accept or reject the Plan and filing objections to confirmation of the Plan [Dkt. No. 1874] (the
10 “Disclosure Statement Order”).

11 2. On September 30, 2016, the City filed and served its Memorandum of Law in Support of
12 the Plan (the “Memorandum”) and related pleadings, a Notice of Plan Modifications, the Declaration of
13 Catherine Nownes-Whitaker (the “Ballot Tabulation”) and the Declarations of John E. Bartel, Jarrod
14 Burguan, Michael Busch, Kenneth Dieker, Georgeann Hanna, Mark Scott, Justin McCrary [Dkt. Nos.
15 1981-1992], and shortly thereafter a supplemental declaration from Justin McCrary [Dkt. Nos. 1997 and
16 1998] (the “Declarations”). The Ballot Tabulation reported that all classes of impaired claims voted to
17 accept the Plan. With respect to Class 13 of the Plan, the impaired class of General Unsecured Claims,¹
18 983 creditors holding \$154 million in claims voted to accept the Plan, and 43 creditors holding \$2.8
19 million in claims voted to reject the Plan. Class 13, which is receiving a 1% distribution on allowed
20 claims, voted to accept the Plan by more than 95% of votes cast and more than 98% in dollar amount of
21 such claims.

22 3. The hearings on confirmation of the Plan commenced on October 14, 2016, at 10:00 a.m.
23 and continued on November 15 and December 6, 2016 (the three hearings, the “Confirmation Hearing”).

24
25 ¹ All capitalized terms used but not defined herein are used as defined in the Plan or Disclosure
26 Statement. Any term used in the Plan or this Confirmation Order that is not defined in the Plan,
27 Disclosure Statement or this Confirmation Order but that is used in the Bankruptcy Code or the
28 Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the
Bankruptcy Rules. To the extent of any conflict or inconsistency between the terms of the Plan and this
Confirmation Order, the Confirmation Order shall govern. Any ambiguity in the Plan shall be resolved
by reference to this Confirmation Order to the fullest extent possible.

1 At the Confirmation Hearing, only four creditors holding unliquidated Litigation Claims maintained
2 objections to confirmation of the Plan – William Schmart, Paul Triplett, Rovinski Renter and Javier
3 Banuelos (the “Objections”), all other objections having been resolved or withdrawn. At the
4 Confirmation Hearing, the Court admitted the Ballot Tabulation and Declarations into evidence,
5 including the reports and other exhibits attached to such Declarations, without objection by any creditor
6 or other party in interest. Based upon the Declarations, the legal authority set forth in the Memorandum,
7 the record of the Confirmation Hearing and this Confirmation Order, all objections to confirmation of
8 the Plan, including the Objections, that have not been consensually resolved, are overruled on the merits
9 pursuant to this order (this “Confirmation Order”).²

10 4. The Court having reviewed the Plan, the Disclosure Statement, the Disclosure Statement
11 Order, the Appendix of Exhibits, the Ballot Tabulation, the Declarations and the reports and other
12 exhibits attached to such Declarations, the Objections, the Memorandum, and the other papers before the
13 Court in connection with the confirmation of the Plan; having heard the statements of counsel in support
14 of and in opposition to confirmation of the Plan at the Confirmation Hearing as reflected in the record at
15 the Confirmation Hearing; having considered all evidence admitted at the Confirmation Hearing; having
16 taken judicial notice of the papers and pleadings on file in the Bankruptcy Case³; and after due
17 deliberation and having determined that (i) notice of the Confirmation Hearing and the opportunity of
18 any party in interest to object to confirmation of the Plan were adequate and appropriate in accordance
19 with Federal Rules of Bankruptcy Procedure (“Bankruptcy Rule(s)”) 2002 and 3016 through 3020 and
20 the Disclosure Statement Order, as to all entities to be affected by the Plan and the injunctions provided
21 for therein, and (ii) the legal and factual bases set forth in the Memorandum and at the Confirmation
22

23 ² In addition to overruling the Objections on the merits, the Banuelos Objection is separately overruled
24 because it was filed 39 days after the Court-established deadline for filing objections to confirmation of
25 the Plan, and the Renter Objection is separately overruled because it was filed as a joinder to an
26 objection to confirmation that was subsequently withdrawn. *See* Bankruptcy Rule 3020(b)(1) (“An
objection to confirmation of the plan shall be filed . . . within a time fixed by the court.”).

27 ³ The Court takes judicial notice of the docket of the Bankruptcy Case maintained by the Clerk of the
28 Court, including, without limitation, all pleadings and other documents filed, all orders entered, and all
evidence and argument made, proffered or adduced at the hearings held before the Court during the
pendency of the Bankruptcy Case. *See* Federal Rule of Evidence 201(c).

1 Hearing and as set forth in this Confirmation Order establish just cause for the relief granted herein, the
2 Court hereby makes the following Findings of Fact and Conclusions of Law:

3 **IT IS HEREBY FOUND AND DETERMINED THAT:**

4 5. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157 and 1334). This
5 Court has jurisdiction over the Bankruptcy Case pursuant to 28 U.S.C. §§ 157 and 1334. Venue is
6 proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core
7 proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and this Court has exclusive jurisdiction to determine
8 whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be
9 confirmed, and to enter a final order with respect thereto. The City is a proper debtor under Section⁴
10 109 and the proper proponent of the Plan under Section 941. The City filed the Plan by the deadline set
11 by the Court.

12 6. Modifications of the Plan.

13 6.1. On September 30, 2016, the City filed and served certain Plan modifications (Dkt.
14 No. 1992, the “First Modifications”). Only one party in interest, the Big Independent Cities Excess Pool
15 Joint Powers Authority (“BICEP”), filed an objection to the First Modifications, and on November 10,
16 2016, the City proposed additional Plan modifications to address BICEP’s concerns (Dkt. No. 2049 at
17 17:9-11 and 18:9-21, the “Second Modifications”). The Second Modifications became part of the
18 settlement between BICEP and the City (Dkt. 2096, 3:7-20), which settlement will be approved pursuant
19 to this Confirmation Order. The Court also requested that the City clarify Article VII.D. of the Plan with
20 respect to indemnification of employees. The City modified the Plan by revising the language in Article
21 VII.D. of the Plan, which had provided, “In addition, following the Effective Date, the City will
22 continue to provide Indemnification in accordance with the City’s pre-petition practices (as revised from
23 time to time). The City reserves the right to provide or deny requests or demands for Indemnification in
24 accordance with its practices,” to provide, “The City shall indemnify the past and present officers and
25 employees of the City with respect to claims against such officers and employees that arose prior to the
26 Confirmation Date in accordance with the City’s pre-petition practices and state law, and the City shall

27 _____
28 ⁴ Unless otherwise indicated, all “Section” references are to title 11 of the U.S. Code, the Bankruptcy Code.

1 continue to provide such indemnification with respect to claims against officers and employees that arise
2 after the Confirmation Date.” (the “Third Modification”).

3 6.2. The First, Second and Third Modifications are hereinafter referred to as the “Plan
4 Modifications.” The City asserted that the Plan Modifications benefit creditors, and the Court finds that
5 the Plan Modifications do not materially adversely affect or change the treatment of any holders of
6 claims who have not accepted such Plan Modifications. Accordingly, pursuant to Section 942 and
7 Bankruptcy Rule 3019, the Plan Modifications do not require additional disclosure under Section 1125
8 or re-solicitation of acceptances or rejections under Section 1126, nor do the Plan Modifications require
9 that holders of claims be afforded an opportunity to change previously cast acceptances or rejections of
10 the Plan. Disclosure of the Plan Modifications in the filings and service on September 30 and November
11 10, 2016 and in the record at the Confirmation Hearing constitutes due and sufficient notice thereof
12 under the circumstances of the Bankruptcy Case. Accordingly, all references to the Plan herein shall
13 mean the Plan as modified by the Plan Modifications, and all votes cast with respect to the Plan prior to
14 the filing of the Plan Modifications shall continue to be binding and shall apply with respect to the Plan
15 as modified by the Plan Modifications. A redline showing the Plan filed on July 29, 2016 as modified
16 by the Plan Modifications was filed by the City on January 3, 2017. The Plan attached hereto as Exhibit
17 A incorporates the Plan Modifications and is the Plan confirmed by this Confirmation Order.

18 7. Transmittal and Mailing of Materials; Notice. The Solicitation Materials were
19 transmitted and served upon all interested parties in compliance with the Disclosure Statement Order
20 and in compliance with the Bankruptcy Rules, and such transmittal and service was adequate and
21 sufficient. *See Notice of Materials Distributed to Creditors in Connection with the Hearing on*
22 *Confirmation of the City’s Chapter 9 Plan of Adjustment of Debts* [Dkt. No. 1883]. Notice of the
23 Confirmation Hearing and all deadlines in the Disclosure Statement Order was given in compliance with
24 the Bankruptcy Rules and the Disclosure Statement Order and was good and sufficient notice in
25 accordance with Bankruptcy Rules 2002 and 3020, and no other or further notice is or was required.
26 Votes for acceptance or rejection of the Plan were solicited in good faith, after transmittal of the
27 Disclosure Statement containing adequate information, and otherwise in compliance with Bankruptcy
28 Code sections 1125 and 1126 and Bankruptcy Rules 3016 through 3020.

1 8. Impaired Classes Voting to Accept the Plan. As evidenced by the Ballot Tabulation, all
2 impaired Classes of Claims, meaning Classes 1, 2, 5, 6, 9, 12, 13 and 14 (and Classes 10 and 11 that are
3 incorporated into Class 13), voted to accept the Plan pursuant to the requirements of Sections 1124 and
4 1126. Thus, at least one impaired class of Claims has voted to accept the Plan.

5 9. Classes Deemed To Accept the Plan. Classes 3, 4, 7 and 8 are not impaired under the
6 Plan and are deemed to have accepted the Plan pursuant to Section 1126(f).

7 10. No Cramdown Required. Since all Classes of Claims either voted to accept the Plan or
8 are deemed to accept the Plan, Section 1129(b) does not apply and the Court is not required to consider
9 the cramdown requirements of Section 1129(b) as to any Class of Claims (as there are no dissenting
10 Classes).

11 11. Plan Compliance With Section 941. Section 941 requires that the Debtor file a plan of
12 adjustment with the petition for relief, or by any deadline for doing so set by the Court. The City
13 complied with each of the Court's deadlines related to filing of the Plan, including timely filing the Plan
14 that creditors voted on. Thus, the Plan satisfies Section 941.

15 12. Plan Compliance With Section 943(b)(1). The Plan complies with the provisions of the
16 Bankruptcy Code made applicable to chapter 9.

17 12.1. Classification and Treatment of Claims (11 U.S.C. §§ 1122, 1123(a)(1) - (4)).

18 12.1.1. In accordance with Section 1122(a), Article III of the Plan classifies
19 each Claim against the City into a Class containing only substantially similar Claims. The legal rights
20 under applicable law of each holder of Claims within each Class under the Plan are substantially similar
21 in nature and character to the legal rights of all other holders of Claims within such Class. No Claims
22 were separately classified under the Plan to gerrymander favorable votes with respect to the Plan. In
23 accordance with Section 1122(b), convenience claims are separately classified in Class 14 under the
24 Plan solely for the purpose of administrative convenience. In accordance with Section 1123(a)(1),
25 Article III of the Plan properly classifies all Claims that require classification. Valid factual and legal
26 reasons exist for the separate classification of (a) certain secured Claims from other secured Claims and
27 (b) certain unsecured Claims from other unsecured Claims. In accordance with Section 1123(a)(2),
28 Article IV of the Plan properly identifies and describes each Class of Claims that is not impaired under

1 the Plan. In accordance with Section 1123(a)(3), Article IV of the Plan properly identifies and describes
2 the treatment of each Class of Claims that is impaired under the Plan. In accordance with Section
3 1123(a)(4), the Plan provides the same treatment for each Claim of a particular Class.

4 12.1.2. Class 8 is comprised of the claims of CalPERS. After a successful
5 mediation led by Judge Zive, the City entered into a settlement with CalPERS that resolved a number of
6 complex and disputed statutory and contractual claims of CalPERS. Good business, economic and
7 public policy reasons supported the City's entering into the settlement with CalPERS, including that the
8 City is unable to hire and maintain a sustainable workforce at this time without continuing to provide
9 CalPERS pension benefits to its employees. In order to treat CalPERS' claims pursuant to the
10 settlement, the City separately classified the claims. Therefore, the City had legitimate economic
11 reasons for separately classifying CalPERS' claims. Not a single confirmation objection was filed to (i)
12 the City's settlement with CalPERS, (ii) the separate classification of CalPERS' claims or (iii) the
13 treatment of CalPERS' claims under the Plan.

14 12.1.3. Class 12 is comprised of the claims of the POB Creditors (which defined
15 term, as used herein and in the Plan, the Disclosure Statement and related documents, shall include, for
16 the avoidance of doubt, Ambac Assurance Corporation), who held claims of approximately \$51 million
17 based upon the POBs. Although the City argued that the POB Creditors hold general unsecured claims,
18 that position was disputed by the POB Creditors who argued that under California law they were entitled
19 to payment on their claims with the same priority as the payments the City makes to CalPERS. The
20 Court entered an order dismissing the POB Creditors' complaint for declaratory relief on the matter, but
21 the POB Creditors took an appeal to the Bankruptcy Appellate Panel for the Ninth Circuit (the
22 "B.A.P."), which appeal is still pending at the B.A.P. The treatment of the POB Creditors under the
23 Plan, paying them approximately 40 cents on the dollar over a 30 year term, reflects the City's decision
24 to settle rather than litigate with the POB Creditors. Settlements and compromises are "a normal part of
25 the process of reorganization." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v.*
26 *Anderson*, 390 U.S. 414, 424, 88 S. Ct. 1157, 1163 (1968) (quoting *Case v. Los Angeles Lumber Prods.*
27 *Co.*, 308 U.S. 106, 130 (1939)). In evaluating whether a proposed agreement is fair and equitable,
28 courts in the Ninth Circuit generally consider four factors: (a) the probability of success in the litigation;

1 (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the
2 litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the
3 interest of the creditors and a proper deference to their reasonable views. *Arden v. Motel Partners (In re*
4 *Arden)*, 176 F.3d 1226, 1228 (9th Cir. 1999); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988); *Martin*
5 *v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). Given the unique litigation risk
6 – the complexity of the litigation, the procedural posture and the potential impact a reversal on appeal
7 could have on the feasibility of the Plan – and the fact that the City believed that settlement would assist
8 the City in obtaining necessary public financing in the capital markets in the future, the City was well
9 within its discretion to settle. Moreover, no creditor or other party filed an objection to the separate
10 classification and treatment of the POB Creditors. There is no evidence that the City classified the POB
11 Creditor claims separately for the purpose of gerrymandering the vote. As the vote tabulation shows,
12 even without Class 12, several other classes of impaired creditors voted to accept the Plan, so Class 12
13 was not separately classified to create an impaired consenting class.

14 12.1.4. Thus, the City was well within its discretion to separately classify and
15 treat the claims of CalPERS and the POB Creditors, and did so for good business and economic reasons.
16 The Court finds that the CalPERS Claims and POB Claims are validly classified separately from other
17 claims because they have a different legal character, and there are good business reasons to do so.

18 12.1.5. Under the Plan, Litigation Claims are included in Class 13, the class of
19 General Unsecured Claims that receives a 1% distribution on the allowed amount of the claim. One or
20 more of the Objections to confirmation of the Plan argued that the Litigation Claims should have been
21 separately classified and not included in Class 13 and should have received better treatment than other
22 General Unsecured Claims. However, the Litigation Claims are substantially similar to the other claims
23 in Class 13 and classifying them in the same class with the other General Unsecured Claims is a
24 legitimate exercise of the City’s discretion in structuring its Plan.⁵ Substantially similar claims are those

25 ⁵ See *Steelcase Inc. v. Johnston (In re Johnston)*, 21 F.3d 323, 327-28 (9th Cir. 1993) (proponent of
26 plan has wide latitude in determining whether similar claims should be separately classified); *Franklin*
27 *High Yield Tax-Free Income Fund et al. v. City of Stockton, California (In re City of Stockton,*
28 *California)*, 542 B.R. 261, 280 (B.A.P. 9th Cir. 2015) (“Generally, § 1122 allows plan proponents broad
discretion to classify claims and interests according to the particular facts and circumstances of each
case.”).

1 that “share common priority and rights against the debtor’s estate.” *In re Greystone III Joint Venture*,
2 995 F.2d 1274, 1278 (5th Cir. 1991). “Unsecured claims will, generally speaking, comprise one class
3 . . . because they are claimants of equal legal rank entitled to share pro rata in values remaining after
4 payment of secured and priority claims.” *FGH Realty Corp. v. Newark Airport/Hotel Ltd. P’ship*, 155
5 B.R. 93, 99 (D. N.J. 1993). Numerous courts have held that litigation claims against a debtor have the
6 same rights under state law as unsecured notes, unsecured claims for goods and services, and unsecured
7 contract claims, and all such claims should generally be placed in a single class. *See e.g., In re*
8 *Frascella Enterprises, Inc.*, 360 B.R. 435, 443 (Bankr. E.D. Pa. 2007) (“Unsecured claims, whether
9 trade, tort, unsecured notes, or deficiency claims of secured creditors, are generally included in a single
10 class because they are of equal rank entitled to share pro rata in values remaining after payment of
11 secured and priority claims.”) (quoting *In re 266 Washington Assoc.*, 141 B.R. 275, 282 (Bankr.
12 E.D.N.Y. 1992)); *see also Norton Bankruptcy Law and Practice*, § 60.5 (“Unsecured claims will,
13 generally speaking, comprise one class, whether trade, tort, publicly held debt or a deficiency of a
14 secured creditor.”). Under applicable non-bankruptcy law, the holders of Litigation Claims have no
15 greater right, interest or priority of payment on their claims against the City than the unpaid providers of
16 goods and services, or contract counterparties with breach claims against the City. Therefore, the
17 Litigation Claims are substantially similar to the other claims in Class 13, and the City was authorized
18 under Section 1122(a) to classify all those unsecured claims in a single class.

19 12.1.6. A related classification objection made in one or more of the Objections
20 was that certain of the Litigation Claims are civil rights claims arising under 42 U.S.C. § 1983
21 (“§ 1983”), and such claims should not be discharged or impaired in bankruptcy proceedings. But civil
22 rights claims may be impaired in bankruptcy proceedings, and are dischargeable, just like other claims
23 against a debtor. “Congress has restructured the bankruptcy act several times and has never sought to
24 restrain cities from using bankruptcy as a tool to restructure debts incurred by civil rights judgments.”
25 *Silver Sage Partners, Ltd. v. City of Desert Hot Springs (In re City of Desert Hot Springs)*, 339 F.3d
26 782, 791 (2003), *cert. denied*, 540 U.S. 1110, 124 S. Ct. 1076 (2004); *see also O’Loghlin v. County of*
27 *Orange*, 229 F.3d 871, 874 (9th Cir. 2000) (holding that discharge provision of Section 944(b) barred
28 any post-confirmation prosecution of claims arising under the Americans with Disability Act (“ADA”))

1 that arose prior to the entry of the confirmation order in the chapter 9 case of Orange County, including
2 both pre-petition and post-petition claims, as long the claims are based upon pre-confirmation violations
3 of the ADA). Similarly, in *Ortiz v County of Orange*, 1998 U.S. App. LEXIS 16486 (9th Cir. 1998), the
4 Ninth Circuit held that a civil rights plaintiff's prepetition § 1983 claims against Orange County and
5 three County officials were discharged by the operation of Section 944(b) and confirmation of Orange
6 County's chapter 9 plan. "The confirmation of the County's plan thus erases the County's liability for
7 damages on Ortiz's § 1983 claims." *Id.*⁶ Under these precedents, § 1983 and other civil rights claims
8 against the City and the City's police officers in their official capacity are discharged under Section
9 944(b).

10 12.1.7. The question of whether claims arising under § 1983 can be discharged
11 was also addressed in the recent Detroit chapter 9 case. Under the Detroit chapter 9 plan, § 1983 claims
12 were treated as general unsecured claims and received notes with an estimated recovery value of 10-13
13 cents on the dollar.⁷ Holders of § 1983 claims objected to confirmation and argued that treatment of
14 their claims as unsecured claims violated their Fourteenth Amendment right to receive compensation for
15 the violations of their constitutional rights,⁸ which claims they argued cannot be impaired under a

16 _____
17 ⁶ See also, *V.W. ex rel. Barber v. City of Vallejo (In re City of Vallejo)*, 2013 U.S. Dist. LEXIS 109145
18 (E.D. Cal. 2013) (holding that § 1983 claims against City of Vallejo and its chief of police in his official
19 capacity that arose after commencement of the chapter 9 case and before confirmation of the plan are
20 discharged under Section 944(b) and barred from further prosecution); *Johnson v. Hoagland*, 32 Fed.
21 Appx. 22, 23 (3d Cir. 2002) (pre-confirmation date § 1983 claim against police officer discharged when
22 police officer obtained a chapter 7 discharge).

20 ⁷ See *Eighth Amended Plan for Adjustment of Debts of the City of Detroit* at 51, *In re City of Detroit*,
21 *Mich.*, (Bankr. E.D. Mich.), Case No. 13-53846, Dkt. No. 8045; see also *In re City of Detroit*,
22 *Michigan*, 524 B.R. 147, 262 (Bankr. E.D. Mich. 2014) (referring to Detroit's Fourth Amended
Disclosure Statement, Dkt. No. 4391, at 41).

23 ⁸ The Fourteenth Amendment does not itself provide any right of action for constitutional violations but
24 instead assigns that task to Congress, which has the "power to enforce, by appropriate legislation, the
25 provisions of" the Fourteenth Amendment. U.S. Const. amend. XIV, § 5. In § 1983, Congress created a
26 cause of action for individuals who suffer violations of their federal constitutional rights committed
27 under color of state law. § 1983 imposes "a species of tort liability," and creates a right to money
28 damages for those who are the victims of constitutional violations perpetrated under color of state law.
City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 709 (1999) (quoting *Heck v.*
Humphrey, 512 U.S.477, 483 (1994)). § 1983 claims are statutory tort claims, not constitutional claims
because the damages remedy in § 1983 exists only by legislative grace and not constitutional
requirement.

1 bankruptcy plan.⁹ In support of its treatment of the § 1983 claims as unsecured claims and
2 dischargeable, Detroit argued that (a) the claims fell squarely within the definition of claim under
3 Bankruptcy Code Section 101(5), (b) had Congress intended to carve out such claims from
4 dischargeability in chapter 9 cases it could have done so, and (c) instead, § 1983 claims are not included
5 in applicable exceptions to discharge.¹⁰ Accordingly, Detroit argued that Congress did not intend that
6 § 1983 claims be deemed non-dischargeable.

7 12.1.8. U.S. Bankruptcy Judge Rhodes certified to the U.S. Attorney General
8 that the constitutionality of chapter 9 was called into question by the § 1983 claimants, and the Attorney
9 General filed a brief. The Attorney General agreed with Detroit that the damages remedy set forth in
10 § 1983 exists by legislative grace and is not a constitutional requirement. The Attorney General
11 concluded that “[b]ecause section 1983 creates a damages remedy and not substantive rights and
12 because that remedy arises from congressional enactment and not constitutional mandate, the United
13 States submits that the Plan’s treatment of the section 1983 claims does not raise an issue arising under
14 the Fourteenth Amendment.” *See United States of America’s Brief in Response to Order of Certification*
15 *Pursuant to 28 U.S.C. § 2403(a)*, Detroit Docket No. 6664. Judge Rhodes agreed. *See In re City of*
16 *Detroit, Michigan*, 524 B.R. 147, 262-65 (Bankr. E.D. Mich. 2014) (impairing and discharging the
17 § 1983 claims against the City of Detroit does not violate the Fourteenth Amendment), *appeal dismissed*
18 *as moot*, 2015 U.S. Dist. LEXIS 134477, *16 (E.D. Mich. September 29, 2015).

19 12.1.9. In sum, the Ninth Circuit has held that prepetition and post-petition civil
20 rights claims in general, and § 1983 claims specifically, are dischargeable claims in a chapter 9 case, the
21 U.S. Department of Justice agrees, as did the bankruptcy court in the largest chapter 9 bankruptcy in
22 U.S. history, and the U.S. District Court in the Detroit case dismissed the appeal from the order
23 confirming the Detroit chapter 9 plan. The Objection that civil rights claims must be or should be
24 separately classified and treated better than other General Unsecured Claims is not supported by any
25 precedent or convincing argument and is overruled.

26 _____
27 ⁹ *See Objection of Creditors Deborah Ryan, et al.*, Detroit Dkt. No. 4099; *Brief in Concurrence of*
Creditors Dwayne Proviencence, et al., Detroit Dkt. No. 5693.

28 ¹⁰ *See Debtor’s Supplemental Brief On Legal Issues*, Detroit Docket No. 5707.

1 12.1.10. Therefore, the Plan complies with the requirements of Sections 1122,
2 1123(a)(1), 1123(a)(2), 1123(a)(3) and 1123(a)(4).

3 12.1.11. Even if, *arguendo*, the Plan had classified Litigation Claims as a
4 separate class, and assuming that such a hypothetical class had voted to reject the Plan, the Plan would
5 still satisfy the cramdown requirements of Section 1129(b) with respect to such hypothetical dissenting
6 class of Litigation Claims. Section 1129(b) authorizes the Court to confirm the Plan even if not all
7 impaired classes have accepted the Plan, provided that the Plan has been accepted by at least one
8 impaired class and that “the plan does not discriminate unfairly, and is fair and equitable, with respect to
9 each class of claims or interests that is impaired under, and has not accepted, the plan.” 11 U.S.C. §
10 1129(b)(1). Here, impaired classes 1, 2, 5, 6, 9, 12, 13 (inclusive of Classes 10 and 11 incorporated
11 therein) and 14 voted to accept the Plan, therefore the Plan has been accepted by at least one impaired
12 class. Section 1129(b)(2)(B) of the Bankruptcy Code (the codification of the so-called “absolute priority
13 rule”) provides that, for a plan to be fair and equitable, unsecured creditors may receive less than the
14 value of their claims as of the effective date of a plan only if no class of junior claims or interests
15 receives any distribution on account of their claims or interests. 11 U.S.C. § 1129(b)(2)(B). Application
16 of the absolute priority rule to unsecured creditors of a municipal debtor generally is not possible
17 because, in chapter 9, there can be no junior class of equity interests, the class most commonly
18 prevented from receiving or retaining property by the application of the absolute priority rule. *See In re*
19 *Corcoran Hosp. Dist.*, 233 B.R. 449, 458 (Bankr. E.D. Cal. 1999) (holding that the proposed chapter 9
20 plan did not implicate the absolute priority rule because there were no holders of equity interests in the
21 debtor hospital). Rather, the requirement that a plan be fair and equitable as to unsecured creditors of a
22 municipal debtor is satisfied where creditors receive “all that they can reasonably expect in the
23 circumstances.” *See Lorber v. Vista Irr. Dist.*, 127 F.2d 628, 639 (9th Cir. 1942) (collecting cases), *cert.*
24 *denied* 323 U.S. 784, 65 S. Ct. 270 (1944); *see also West Coast Life Ins. Co. v. Merced Irr. Dist.*, 114
25 F.2d 654, 679 (9th Cir. 1940) (affirming confirmation of plan under municipal debtor provisions of
26 Bankruptcy Act of 1898 when the plan payments were “all that could reasonably be expected in all the
27 existing circumstances”). In determining what can reasonably be expected under the circumstances, it is
28 not necessary that all taxes collected go to pay creditors, because the municipality must retain adequate

1 funding to continue operations. *Lorber*, 127 F.2d at 639, *Corcoran*, 233 B.R. at 459; *Collier on*
2 *Bankruptcy*, ¶ 943.03[1][f][B], Alan N. Resnick & Henry J. Sommer, 16th ed. (further references to this
3 source are cited as “*Collier*”).

4 12.1.12. Here, the City is proposing to pay creditors what the circumstances
5 allow, which is all that can reasonably be expected. The City’s financial crisis forced the City to
6 severely cut municipal services, which process continued during the chapter 9 case. As demonstrated in
7 the Busch Decl. and described in the Plan, the City does not now have, and is not projected to have, the
8 financial resources to fully fund its infrastructure repairs and necessary rebuilding of police and other
9 municipal services, let alone pay anything more on general unsecured claims than 1%. The amount of
10 the City’s deferral of spending on basic municipal infrastructure has been dramatic: \$180 million
11 deferred for street repairs, \$130 million deferred for facility repairs and improvements, the failure to
12 inspect 80% of the sewer system. Even after paying only 1% on Class 13 General Unsecured Claims,
13 those and other basics of municipal services will not be fully funded during the course of the City’s 20-
14 year Financial Model; indeed some may not be funded at even 50% of what is required. *See* Busch
15 Decl. at ¶¶21-26; Scott Decl. at ¶9; and discussion in the City’s Disclosure Statement of the extensive
16 deferrals. Even that limited funding, to keep the City moving towards service solvency, is based upon
17 the Financial Model’s assumption that the City can discharge its \$209.3 million of unsecured debt based
18 upon a 1% distribution on allowed claims. *See* Busch Decl. at ¶14; Scott Decl. at ¶9.

19 12.1.13. Under the Plan, approximately \$209.3 million in General Unsecured
20 Claims will receive a distribution of 1% on the Allowed Claims, comprised of approximately:
21 \$46.7 million of liquidated retiree claims; \$129.8 million of liquidated Consenting Union Claims;
22 \$22.8 million of estimated Litigation Claims; and \$10 million of additional unsecured claims. If the
23 City is required to pay more on general unsecured claims, it will have nothing left to fund its
24 rehabilitation and service stabilization. If the City cannot provide adequate services, especially police
25 services, it will not be able to attract new economic activity. If the City cannot dedicate its resources to
26 rehabilitation, it will continue a cycle of decline that led to the chapter 9 case in the first place.
27 Therefore, the City’s proposed 1% distribution to general unsecured creditors is all that can reasonably
28 be expected under the existing circumstances. The 1% distribution would apply to the Litigation Claims

1 whether they are included in Class 13 or separately classified. Thus, there is no benefit to separate
2 classification of the Litigation Claims; they would still only get 1%, because the unrefuted evidence
3 shows that 1% is all that the City has available to pay them. Therefore, the Plan is fair and equitable
4 under Section 1129(b) as to Litigation Claims and all other claims.

5 12.1.14. The Plan is also fair and equitable in the nonbankruptcy sense because
6 it treats substantially all unsecured claims, including Litigation Claims, equally – holders of Litigation
7 Claims against Indemnified Parties are treated the same as holders of comparable Litigation Claims
8 against the City. That Plan feature avoids a potential scenario where a § 1983 claim against one of the
9 City’s police officers could get paid 100%, while a comparable § 1983 claim against the City, even on
10 the same facts, would receive only a 1% distribution.

11 12.1.15. The Plan also does not discriminate unfairly with respect to holders of
12 Litigation Claims. The estimated \$23 million of Litigation Claims are receiving the very same treatment
13 as the other \$186 million in General Unsecured Claims that are in Class 13. All holders of General
14 Unsecured Claimants – retirees, employees, trade creditors and holders of Litigation Claims – are
15 sharing the pain, equally. Accordingly the Court finds and concludes that the Plan is fair and equitable
16 and does not discriminate unfairly with respect to any hypothetical separate class of Litigation Claims
17 and satisfies the cramdown requirements of Section 1129(b) with respect to such hypothetical class of
18 Litigation Claims and all other claims.

19 12.2. Adequate Means to Implement the Plan (11 U.S.C. § 1123(a)(5)). In accordance
20 with Section 1123(a)(5), Article VII of the Plan provides adequate means for its implementation,
21 including that the City will continue to collect sales tax revenues, real property tax revenues, user utility
22 taxes, and other taxes, fees, and revenues following the Effective Date. *See* Plan at Article VII; *see also*
23 Disclosure Statement at Article V.C. (discussing revenue enhancement measures, regionalization or
24 outsourcing of City services, the City’s Police Resources Plan, street and road repair, seismic retrofits
25 and Charter reform). These revenues will enable the City to maintain and fund municipal services,
26 including fire and police protection, as well as to satisfy the City’s obligations to its creditors as
27 restructured pursuant to the Plan. The City’s financial advisors prepared a detailed long-term financial
28 plan (the “Financial Model”) which projects that, with the savings from the adjustment of debts under

1 the Plan, the City will achieve a balanced and sustainable budget for the foreseeable future. *See*
2 Disclosure Statement at Article VI.D.; *see also* Busch Declaration at ¶14.

3 12.3. Permitted Plan Provisions (11U.S.C. § 1123(b)). In accordance with Section
4 1123(b)(1), Article IV of the Plan impairs or leaves unimpaired, as the case may be, each Class of
5 Claims. In accordance with Section 1123(b)(2), Article VI of the Plan provides for the assumption,
6 assumption and assignment, or rejection of the Executory Contracts or Unexpired Leases of the City that
7 have not been previously assumed, assumed and assigned, or rejected pursuant to section 365 of the
8 Bankruptcy Code and orders of the Court. In accordance with Section 1123(b)(3), Article VIII of the
9 Plan provides that the City shall retain all of its claims, causes of action, rights of recovery, rights of
10 offset, recoupment rights to refunds, and similar rights. In accordance with Section 1123(b)(5), Article
11 IV of the Plan modifies or leaves unaffected, as the case may be, the rights of holders of Claims in each
12 Class. In accordance with Section 1123(b)(6), the Plan includes additional appropriate provisions that
13 are not inconsistent with applicable provisions of the Bankruptcy Code, including the provisions of
14 Articles IX (Distributions), X (Disputed Claims), XI (Effect of Confirmation), XII (Retention of
15 Jurisdiction), XIII (Conditions Precedent) and XIV (Miscellaneous Provisions).

16 12.4. Disclosure, Solicitation & Acceptance (11 U.S.C. §§ 1125, 1126 and 1129(a)(2)).

17 12.4.1. In accordance with Section 1129(a)(2), the City has complied with the
18 applicable provisions of the Bankruptcy Code. The legislative history to Section 1129(a)(2) reveals that
19 the purpose of this requirement is to incorporate the provisions of Sections 1125 and 1126 regarding
20 disclosure and plan solicitation. *See* H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989 (1978).
21 The City has complied with the requirements of Sections 1125 and 1126. Specifically, in the Disclosure
22 Statement Order, the Court ruled that the Disclosure Statement satisfied the requirements of section
23 1125(b). Dkt. No. 1874 at ¶4. On July 29, 2016, the City served by mail the following Solicitation
24 Materials on all parties entitled to vote on the Plan: (a) a cover letter; (b) a CD that contained the Plan,
25 the Disclosure Statement, the Appendix of Exhibits, the Disclosure Statement Order and the Notice of
26 Voting Procedures (the “CD”); (c) the “Notice of: (1) October 14, 2016 Hearing to Consider
27 Confirmation of ‘Third Amended Plan for the Adjustment of Debts of the City of San Bernardino,
28 California (July 29, 2016)’; (2) September 2, 2016 Deadline for Filing Objections to Confirmation of the

1 Third Amended Plan; (3) Other Deadlines; and (4) Effect of Confirmation of the Plan (the
2 “Confirmation Hearing Notice”); (d) a Ballot and a preaddressed return envelope (postage prepaid), and
3 (e) for some voters, one of the following notices: a letter from the Official Retiree Committee to holders
4 of Retiree Health Benefit Claims; a notice to the holders of 1996 Refunding Bonds and 1999 Refunding
5 Certificates of Participation; or a notice to holders of Litigation Claims regarding certain insurance
6 coverage issues (the “Notice to Holders of Litigation Claims”).

7 12.4.2. The Solicitation Materials were sent to all eligible voters deemed to be
8 holders of allowed claims for voting purposes. Under the Voting Procedures, that meant all creditors
9 whose claims were listed in the City’s schedules as not disputed, contingent or unliquidated, or who
10 filed proofs of claim. Thus, the City complied with the requirements of Sections 1125 and 1126. Also
11 on July 29, 2016, the City sent copies of the CD and the Confirmation Hearing Notice to all known
12 creditors of the City and all other parties in interest that had requested notice. This mailing to all known
13 creditors also included, for holders of Litigation Claims, the Notice to Holders of Litigation Claims. *See*
14 *generally* Notice of Materials Distributed to Creditors in Connection With the Hearing on Confirmation
15 of the City’s Chapter 9 Plan of Adjustment of Debts (Dkt. No. 1883), filed on July 29, 2016; *see also*
16 *Ballot Tabulation* at ¶8. The City also published the Confirmation Hearing Notice in two local
17 newspapers, the San Bernardino County Sun and the Riverside Press Enterprise.

18 12.4.3. Service of the Solicitation Materials satisfied the requirements of:

19 12.4.3.1. Bankruptcy Rules 2002 and 3016, including that the Plan at
20 Article XI, and the Disclosure Statement at Article VI.G., describe in specific and conspicuous language
21 (bold, italic, or underlined text) all acts to be enjoined by, and identify the entities that would be subject
22 to, the third party injunction provisions of Article XI of the Plan (the “Plan Injunction”). Article VI.G.7.
23 of the Disclosure Statement also describes the City’s reasons for the necessity of the Plan Injunction.

24 12.4.3.2. Bankruptcy Rule 3017, including that the Court set
25 deadlines for accepting or rejecting the Plan and filing objections to the Plan, and such deadlines were
26 prominently displayed in the Solicitation Materials, that the Solicitation Materials included all
27 documents required to be distributed to creditors in connection with a plan confirmation hearing, and
28

1 that creditors received the Solicitation Materials with at least 28 days notice for filing objections as
2 required by Bankruptcy Rule 3017(f) with respect to the Plan Injunction.

3 12.4.3.3. Bankruptcy Rule 3018, because the Solicitation Materials
4 were distributed to all creditors eligible to vote on the Plan and in accordance with the specific
5 requirements of the Disclosure Statement Order, using forms of ballots approved by the Court in the
6 Disclosure Statement Order.

7 12.4.3.4. Bankruptcy Rule 3019, because the City gave adequate
8 notice of the Plan Modifications, no creditor except BICEP objected to the Plan Modifications, and
9 BICEP's objections were consensually resolved (*see* Dkt. No. 2096), and the Court has determined that
10 the Plan Modifications do not adversely change the treatment of any claim.

11 12.4.3.5. Bankruptcy Rule 3020, because the Court scheduled the
12 Confirmation Hearing and set a deadline for filing objections to confirmation of the Plan, and adequate
13 notice thereof was given to all known creditors of the City, including adequate notice of the terms of the
14 Plan Injunction, as required in Bankruptcy Rules 2002, 3016 and 3017; the Court is entering this
15 Confirmation Order after the conclusion of the Confirmation Hearing; and this Confirmation Order
16 describes in specific detail the terms of the Plan Injunction and all acts to be enjoined pursuant to the
17 Plan Injunction, and identifies the entities subject to the Plan Injunction.

18 12.4.3.6. Thus, the City complied with all of the requirements of
19 Section 1129(a)(2).

20 12.5. Plan Proposed in Good Faith and Not by Any Means Prohibited by Law
21 (11 U.S.C. § 1129(a)(3)).

22 12.5.1. Section 1129(a)(3) requires that a plan be proposed in good faith and not
23 by any means forbidden by law. The determination of what constitutes good faith is based upon the
24 totality of the circumstances in a particular case, and is a very fact-dependent exercise. *Franklin High*
25 *Yield Tax-Free Income Fund et al. v. City of Stockton, California (In re City of Stockton, California)*,
26 542 B.R. 261, 228-79 (B.A.P. 9th Cir. 2015). "In order to satisfy the statutory requirement of good
27 faith, a plan must be intended to achieve a result consistent with the objectives of the Bankruptcy Code."
28 *In re Corey*, 892 F.2d 829, 835 (9th Cir. 1989) (citing *Stolrow v. Stolrow's, Inc. (In re Stolrow's, Inc.)*,

1 84 Bankr. 167, 172 (Bankr. 9th Cir. 1988) and *Jorgensen v. Federal Land Bank of Spokane (In re*
2 *Jorgensen)*, 66 Bankr. 104, 108-09 (Bankr. 9th Cir. 1986)). The principal purpose of chapter 9 “is to
3 allow an insolvent municipality to restructure its debts in order to continue to provide public services.”
4 *In re Mount Carbon Metro. Dist.*, 242 B.R. 18, 41 (Bankr. D. Colo. 1999). An overarching goal of
5 chapter 9 is to relieve the municipality’s residents from the effects of further declining services caused
6 by the enormity of the claims pending against a city, by restructuring that debt. *Collier* ¶ 943.03[7][a].

7 12.5.2. Based on the record of this Bankruptcy Case, the City has demonstrated
8 that its primary objective in proposing the Plan is to restructure its debts and continue providing services
9 to its residents, and the Plan achieves precisely that result. The City has remained open and honest at all
10 stages of the Bankruptcy Case regarding its motivations for structuring the Plan, particularly the need to
11 improve the level of municipal services delivered to its residents generally (and in particular to rebuild
12 the San Bernardino Police Dept.) within a reasonable period of time, and the consequent inability of the
13 City to fund significant recoveries for creditors.

14 12.5.3. The Plan satisfies the good faith standard. Ever since the City filed its
15 petition for relief under chapter 9, the City’s actions have demonstrated good faith. In its opinion
16 decreeing that the City was eligible for relief under chapter 9, after a comprehensive review of the facts,
17 the Court determined that the City commenced its chapter 9 case with the desire to restructure debt and
18 effect a plan of adjustment, and the “steps taken after the petition date show that the City began
19 implementation of the steps necessary to restructure its debt.” *In re City of San Bernardino*, 499 B.R.
20 776, 787-88 (Bankr. C.D. Cal. 2013). The Court added: “The City’s financial problems fall within the
21 situations contemplated by chapter 9. Here, the City cannot achieve a balanced budget unless it is
22 allowed to reorganize its debt. The City cannot keep current with its mounting obligations because it is
23 insolvent. The City’s filing is consistent with the purposes of chapter 9, which is to give a debtor a
24 ‘breathing spell’ so that it may establish a plan of adjustment.” *Id.* at 790. Ever since the Court gave the
25 City that breathing spell, the City’s management team and its outside professionals have devoted
26 thousands of hours to negotiating with the City’s creditors, largely facilitated by Judge Zive’s mediation
27 efforts, to reach settlements with the creditor constituencies. Those settlements have been entered into
28 with CalPERS, the Official Retiree Committee, the holders of the PARS Claims, the SBPOA (the police

1 officers union), the SBCPF (the firefighters union), all other City employee unions, the holders of the
2 1996 Refunding Bond Claims and the 1999 Refunding Certificates of Participation Claims, the POB
3 Creditors, and all secured creditors of the City.¹¹ The success of those settlements is evidenced by the
4 fact that all impaired classes of creditors voted to accept the Plan, by wide margins. Even Class 13 – the
5 class receiving a 1% distribution – voted to accept the Plan, with more than 95% in dollar amount and
6 number of votes cast voting to accept the Plan. The City’s almost completely successful effort to
7 replace confrontation with consensus provides ample evidence for this Court to conclude that the Plan
8 was proposed with honesty and good intentions, and in good faith. The Plan, the Plan Injunction and the
9 treatment of claims are, and the process pursuant to which the City has sought confirmation of the Plan
10 has been, fundamentally fair to the City’s creditors.

11 12.5.4. The unrefuted evidence shows that the City is not able to pay more than
12 1% on its more that \$209 million in unsecured claims, without placing in jeopardy the feasibility of the
13 Plan and the City’s return to service solvency. The City has also submitted unrefuted evidence that it
14 must dedicate much of its limited resources to its Police Resources Plan. The City is a high crime area,
15 yet most of the City’s fleet of police vehicles are beyond their scheduled service life, much of the Police
16 Department’s technology is severely out of date, and the Police Department is severely understaffed due
17 to the City’s financial crisis. Investing in police safety is properly a critical part of the Plan and a key to
18 economic growth. The City’s proposal to use its limited income for upgrading the safety of the City’s
19 communities reflects the good faith of the City. So too, that the City has proposed to treat substantially
20 all unsecured creditors equally in terms of the 1% distribution, and that substantially all creditors are
21 consenting (not having objected) to “share the pain” equally, also is evidence that this Plan has been
22 proposed in good faith.

23 12.5.5. Thus, the City has satisfied the good faith requirement of Section
24 1129(a)(3).

25
26
27 ¹¹ See *Franklin High Yield Tax-Free Income Fund et al. v. City of Stockton, California (In re City of*
28 *Stockton, California)*, 542 B.R. 261 (B.A.P. 9th Cir. 2015) (“At the outset the record reflects that the
Plan was the product of extended negotiations . . . resulting in multiple collective bargaining agreements
and settlements with creditor constituencies.”).

1 12.5.6. The Plan also has not been proposed by any means forbidden by law.
2 As provided in Article VII.A. of the Plan, the City will implement the Plan by continuing to operate
3 pursuant to its Charter, the California Constitution, and applicable state and federal laws.

4 12.5.7. One of the Objections to confirmation of the Plan argued that the Plan
5 Injunction contravenes the Anti-Injunction Act. The Anti-Injunction Act provides that “[a] court of the
6 United States may not grant an injunction to stay proceedings in a State court except as expressly
7 authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its
8 judgments.” 28 U.S.C. § 2283. The Anti-Injunction Act prohibits courts of the United States¹² from
9 enjoining state court proceedings except in three situations: (i) if expressly authorized by an Act of
10 Congress, or (ii) where necessary in aid of its jurisdiction or (iii) to protect or effectuate its judgments.

11 12.5.8. Section 105(a) is an expressly authorized exception to the Anti-
12 Injunction Act, and Section 105(a) authorizes the Bankruptcy Court to stay proceedings in state courts.
13 *Si Yeon Park v. State Street Bank & Trust Co. (In re Si Yeon Park)*, 198 B.R. 956, 967 (Bankr. C.D. Cal.
14 1996). The basic purpose of Section 105(a) is to enable the bankruptcy court to do whatever is necessary
15 to aid its jurisdiction, i.e., anything arising in or relating to a bankruptcy case. *Id.*; *see also, Parker v.*
16 *Goodman (In re Parker)*, 499 F.3d 616, 627 (6th Cir. 2007) (“Courts have widely affirmed that the
17 expressly authorized exception to the Anti-Injunction Act includes injunctions authorized under the
18 bankruptcy laws. Section 105 includes the authority to enjoin litigants from pursuing actions pending in
19 other courts that threaten the integrity of a bankrupt’s estate. . . . [Section 105] provides an ‘expressly
20 authorized’ exception to the Anti-Injunction Act.”); *Alard v. Weitzman (In re DeLorean Motor Co.)*, 991
21 F.2d 1236, 1242 (6th Cir. 1993) (“Section 105(a) contemplates injunctive relief in precisely those
22 instances where parties are pursuing actions pending in other courts that threaten the integrity of a
23 _____

24 ¹² Courts have held that the bankruptcy courts are not “courts of the United States” and thus the Anti-
25 Injunction Act does not apply in bankruptcy court. *See In re G.S.F. Corp.*, 938 F.2d 1467, 1477 (1st Cir.
26 1991); *see also In re Perroton*, 958 F.2d 889 (9th Cir. 1992) (bankruptcy court not “court of the United
27 States” for purposes of 28 U.S.C. § 1915 and thus not authorized to waive filing fees). In *G.S.F.*, the
28 First Circuit held that, “[b]y its terms, the Anti-Injunction Act does not govern bankruptcy courts. Its
provisions restrict only the ‘courts of the United States’ defined as including ‘the Supreme Court of the
United States, courts of appeals, district courts constituted by chapter 5 of this title including the Court
of International Trade and any court created by Act of Congress the judges of which are entitled to hold
office during good behavior.” *Id.* (quoting 28 U.S.C. § 451).

1 bankrupt's estate." (internal quotation marks omitted); *Unencumbered Assets Trust v. Hampton-Stein*
2 (*In re Nat'l Century Fin. Enters.*), 407 B.R. 895, 900 (Bankr. S.D. Oh. 2009) (Anti-Injunction Act does
3 not prevent court from enjoining state court action). The Bankruptcy Appellate Panel for the Ninth
4 Circuit summed it up this way:

5 The legislative history of § 105(a) clearly indicates that this provision was intended to be a
6 statutory exception to the Anti-Injunction Act, 28 U.S.C. 2283, which provides that "a
7 court of the United States may not grant an injunction to stay proceedings in a State court
8 *except as expressly authorized by Act of Congress*, or where necessary in aid of its
9 jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283 (1994) (emphasis
10 added). See H.R. Rep. No. 95-959, 95th Cong., 1st Sess., at 316-17 (1977), *reprinted in*,
1978 *U.S.C.C.A.N.* 5787, 5815 (stating that § 105 is "an authorization, as required under
28 USC 2283, for a court of the United States to stay the action of a State court"); S. Rep.
No. 989, 95th Cong., 2d Sess., at 29 (1978) (same).

11 *Huse v. Huse-Sporsem (In re Birting Fisheries, Inc.)*, 300 B.R. 489, 497 n.7 (B.A.P. 9th Cir. 2003).

12 Therefore, the Anti-Injunction Act does not apply to prohibit the Plan Injunction.

13 12.5.9. Another Objection to confirmation of the Plan, citing the U.S. Supreme
14 Court's decision in *Law v. Siegel*, 134 S. Ct. 1188 (2014), argued that the Plan violates Bankruptcy
15 Code Section 524(e) and circumvents the statutory scheme of 42 U.S.C. § 1983. *Law v. Siegel* held that
16 a bankruptcy court has statutory authority under Section 105(a) to issue any order, process, or judgment
17 that is necessary or appropriate to carry out the provisions of the Bankruptcy Code, except when doing
18 so overrides explicit mandates of other sections of the Bankruptcy Code. 134 S. Ct. at 1194.¹³ Here, the
19 Plan does not violate Section 524(e) because Section 524(e) does not apply in chapter 9. See Sections
20 103)(f) and 901 (delineating which sections of the Bankruptcy Code apply in chapter 9, and expressly

21 _____
22 ¹³ Courts have rejected attempts to expand *Law v. Siegel* beyond the holding that Section 105(a) cannot
23 contravene explicit provisions of the Bankruptcy Code. See e.g., *Clark's Crystal Springs Ranch, LLC v.*
24 *Gugino (In re Clark)*, 548 B.R. 246, 252-53 (B.A.P. 9th Cir. 2016) (holding that *Law v. Siegel* does not
25 prevent Section 105(a) substantive consolidation order); *Redmond v. Jenkins (In re Alternate Fuels,*
26 *Inc.)*, 789 F.3d 1139, 1149 (10th Cir. 2015) (holding *Law v. Siegel* does not prevent a court from
27 recharacterizing debt as equity because "*Law* held simply that a court may not employ § 105(a) to
28 override other explicit mandates in the Bankruptcy Code."); *Official Comm. of Unsecured Creditors of*
SGK Ventures, LLC v. NewKey Group, LLC (In re SGK Ventures, LLC), 521 B.R. 842, 848-49 (Bankr.
N.D. Ill. 2014) (ruling that *Law v. Siegel* does not limit trustee derivative standing, because "[t]here is no
provision of the Bankruptcy Code prohibiting a grant of derivative trustee standing, and so *Law* has no
bearing here."); *In re Sunland, Inc.*, 2014 Bankr. LEXIS 5000, at *14 (Bankr. D.N.M. Dec. 11, 2014)
(*Law v. Siegel* does not prevent bankruptcy court from issuing a channeling injunction).

1 excluding 524(e)); *Deocampo v. Potts*, 836 F.3d 1134, 1143 (9th Cir. 2016) (“Chapter 9, unlike
2 Chapter 11, does not incorporate Section 524(e)”). The Plan also does not circumvents the statutory
3 scheme of 42 U.S.C. § 1983 because § 1983 claims are dischargeable in bankruptcy cases, including in
4 chapter 9 cases (*see* findings and conclusions at ¶¶ 12.1.6 through 12.19, *supra*), just as claims arising
5 under other federal statutory schemes may be impaired and discharged under bankruptcy plans (*e.g.*,
6 certain environmental, collective bargaining agreement and tax claims). Accordingly, the Objection to
7 confirmation of the Plan based upon *Law v. Siegel* is overruled.

8 12.5.10. Accordingly, the Plan has been proposed in good faith and not by
9 means forbidden by law and the City has satisfied the requirements of Section 1129(a)(3).

10 12.6. Regulatory Approval of Rate Changes (11 U.S.C. § 1129(a)(6)). The City is not
11 subject to any governmental rate-setting commission, and section 1129(a)(6) is therefore not applicable.
12 Nevertheless, it is worth noting that the Article XII.B.4. of the Plan provides that it shall be a condition
13 to the occurrence of the Effective Date of the Plan that “[t]he City shall have received any and all
14 authorizations, consents, regulatory approvals, rulings, no-action letters, opinions, and documents that
15 are necessary to implement this Plan and that are required by law, regulation or order.”

16 12.7. Acceptance of Plan by all Impaired Classes of Claims (11 U.S.C. § 1129(a)(8)).
17 Classes 3, 4, 7 and 8 are unimpaired under the Plan. Therefore, these classes are deemed to have
18 accepted the Plan. 11 U.S.C. § 1126(f). Classes 1, 2, 5, 6, 9, 12, 13 and 14 (and Classes 10 and 11 that
19 are incorporated into Class 13) are impaired under the Plan and entitled to vote. The Ballot Tabulation
20 shows that each such impaired class voted overwhelmingly to accept the Plan. Thus, the Plan complies
21 with the requirement set forth in section 1129(a)(8).

22 12.8. Acceptance of Plan by at Least One Impaired Class of Claims (11 U.S.C. §
23 1129(a)(10)). Section 1129(a)(10) requires that at least one class of claims that is impaired under the
24 Plan accept the Plan, determined without including acceptances of the Plan by any insider. Each of
25 impaired classes 1, 2, 5, 6, 9, 12, 13 and 14 voted to accept the Plan. Thus, the Plan satisfies Section
26 1129(a)(10).

27 13. Plan Compliance With Section 943(b)(2). Section 943(b)(2) requires that the Plan
28 comply with the plan confirmation requirements expressly provided in chapter 9. As discussed above,

1 the Plan complies with the requirements of Section 941 and 942. The Plan's compliance with the
2 remaining requirements of Section 943 is discussed below.

3 14. Disclosure and Reasonableness of Amounts to be Paid by the City for Services or
4 Expenses in the Case or Incident to the Plan (11 U.S.C. § 943(b)(3)). The City represented that it has
5 been paying its professionals and those of the Official Retiree Committee in the ordinary course, and
6 that there are no outstanding unpaid costs and expenses that fall within the ambit of Section 943(b)(3).
7 Therefore, the City has complied with the requirements of Section 943(b)(3).

8 15. Plan Compliance With Section 943(b)(4).

9 15.1. Section 943(b)(4) prevents confirmation of a plan of adjustment that requires the
10 debtor to take any action prohibited by law. This section is intended to prevent chapter 9 debtors from
11 using chapter 9 cases for the purpose of circumventing compliance with state law after confirmation.
12 *See In re Sanitary & Improvement Dist. No. 7*, 98 B.R. 970 (Bankr. D. Neb. 1989); *Collier* ¶ 943.03[4].
13 The Plan provides that the City will comply with all laws, regulations, and ordinances following
14 confirmation, and nothing in the Plan proposes an action in violation of existing applicable laws. For
15 example, (1) the Plan makes clear that funds restricted to certain uses by applicable non-bankruptcy law
16 would not and cannot be used to pay General Fund obligations; (2) the Plan provides that the City will
17 comply with all laws and regulations applicable to its obligations to CalPERS; and (3) the Plan provides
18 that the City will continue to cooperate with the County in implementing the annexation of the City into
19 the County Fire District in accordance with the annexation approval requirements of the Local Agency
20 Formation Commission for San Bernardino County.

21 15.2. The City also is not using the Plan to shirk its statutory obligations under
22 Government Code §§ 825, 825.2, 995 and 996.4 to indemnify City employees for judgments and costs
23 of defense of such employees incurred in lawsuits based upon pre-Confirmation Date acts or omissions
24 of such employees that arose within the scope of their employment (indeed, the Plan was modified to
25 expressly so provide, *see* discussion of Plan Modifications, *supra*; *see also* discussion of City's statutory
26 indemnification obligations *infra*). Therefore, the Plan complies with the requirement of Section
27 943(b)(4).

1 16. Payment of Administrative Claims (11 U.S.C. § 943(b)(5)).

2 16.1. The Plan satisfies the requirements of Section 943(b)(5) because the Plan
3 expressly provides for the cash payment, in full, of Allowed Administrative Claims, including
4 administrative expenses allowed under section 503(b) of the Bankruptcy Code, either (1) on the
5 Effective Date or as soon as reasonably practicable thereafter or (2) if the Administrative Claim is not
6 Allowed as of the Effective Date, 30 days after the date on which such Administrative Claim becomes
7 an Allowed Claim. The Plan provides at Articles I.B.16. and II.A, and the City argued in the
8 Memorandum at Section III(B)(3), that Administrative Claims in this Bankruptcy Case means the costs
9 or expenses of administration of the Bankruptcy Case, and are limited to claims arising under Section
10 503(b)(3)(D) and (F), and 503(b)(4) and (b)(5), which are claims for: making a substantial contribution
11 in the chapter 9 case, expenses of official committee members incurred in the performance of their
12 duties, and reasonable compensation for attorneys or accountants working for parties making a
13 substantial contribution to the chapter 9 case.¹⁴ If such claims are allowed, they will be paid under the
14 Plan as Administrative Expenses. Otherwise, all other post-petition claims against the City are classified
15 as Other Post-petition Claims, which are included in Class 13 General Unsecured Claims and receive the
16 treatment afforded Class 13 Claims, including claims that creditors may assert are post-petition claims
17 under Section 503(b)(1)(A), *i.e.*, the “actual, necessary costs and expenses of preserving the estate.”

18 16.2. The Plan’s treatment of claims asserted under Section 503(b)(1)(A) as Class 13
19 Other Post-petition Claims, rather than as expenses entitled to administrative claim priority, is based
20 upon the City’s position that there are no Section 503(b)(1)(A) claims in a chapter 9 case because there
21 is no estate in a chapter 9 case. *See e.g., Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.)*, 371 B.R.
22 412, 419 n.4 (B.A.P. 9th Cir. 2007); *In re City of Vallejo*, 403 B.R. 72, 78, n.2 (Bankr. E.D. Cal. 2009);
23 *In re Jefferson County, Ala.*, 484 B.R. 427, 460-61 (Bankr. N.D. Ala. 2012). There can be no
24 “necessary costs and expenses of preserving the estate” in a case where no estate exists. *In re New York*
25 *City Off-Track Betting Corp.*, 434 B.R. 131, 142 (Bankr. S.D.N.Y. 2010). Statutes allowing
26

27 ¹⁴ The City acknowledged in the Memorandum that claims arising under Sections 503(b)(7), (8) and (9)
28 may be allowable administrative expenses in this chapter 9 case but the City stated there are no such
claims pending against the City.

1 administrative priorities in bankruptcy “must be tightly construed.” *Howard Delivery Serv. v. Zurich*
2 *Am. Ins. Co.*, 547 U.S. 651, 667, 126 S. Ct. 2105, 2116 (2006). “[I]f one claimant is to be preferred over
3 others, the purpose should be clear from the statute.” *Id.* “We take into account, as well, the
4 complementary principle that preferential treatment of a class of creditors is in order only when clearly
5 authorized by Congress. *Id.* at 655. Administrative expenses are narrowly construed in chapter 9 cases.
6 *In re Orange County*, 179 B.R. 195, 201 (Bankr. C.D. Cal. 1995). None of the Objections refuted the
7 City’s argument.

8 16.3. The scope of administrative claims in chapter 9 cases was the subject of disputes
9 in earlier stages of the Bankruptcy Case, but those disputes were all resolved without the Court having to
10 address the proper treatment of Section 503(b)(1)(A) claims in chapter 9. The Court is again not called
11 upon to resolve the dispute because there is none. No creditor filed an objection to the Plan’s exclusion
12 of Section 503(b)(1)(A) claims from Administrative Claim classification and treatment. Under those
13 circumstances, the Court finds that the Plan complies with the requirements of Section 943(b)(5).

14 17. Regulatory or Electoral Approvals (11 U.S.C. § 943(b)(6)). Section 943(b)(6) requires
15 that any regulatory or electoral approval necessary under applicable non-bankruptcy law in order to
16 carry out any provision of the plan has been obtained, or such provision is expressly conditioned on such
17 approval. Article XIII.B.4. of the Plan expressly provides that a condition precedent to the Effective
18 Date is that the “City shall have received any and all authorizations, consents, regulatory approvals,
19 rulings, no-action letters, opinions, and documents that are necessary to implement this Plan and that are
20 required by law, regulation or order.” The City needed and obtained the agreement of the County and
21 the approval of LAFCO for the annexation of the City into the County Fire District. No other regulatory
22 or electoral approvals are required to carry out the provisions of the Plan. Thus, the Plan satisfies the
23 requirements of Section 943(b)(6).

24 18. Best Interests of Creditors; Feasibility of Plan (11 U.S.C. § 943(b)(7)).

25 18.1. Best Interests of Creditors.

26 18.1.1. Unlike the best interests test under chapter 11, where the plan proponent
27 is obligated to show that each objecting creditor will receive under the plan at least as much as the
28 creditor would receive in a chapter 7 liquidation, no such comparison is available in chapter 9 because

1 municipalities cannot be liquidated. Therefore, the best interests test in chapter 9 compares what
2 creditors as a group receive under the plan, compared to what each creditor individually could achieve if
3 the Bankruptcy Case were dismissed. As the Ninth Circuit B.A.P. has explained it: “By their terms, the
4 ‘best interests’ tests in chapters 9 and 11 are different, and only in chapter 11 is particular consideration
5 of the best interests of individual creditors specified. By its terms, the ‘best interests’ test in chapter 9 is
6 collective rather than individualized, and that interpretation is supported by the very context of chapter
7 9.” *Franklin High Yield Tax-Free Income Fund et al. v. City of Stockton, California (In re City of*
8 *Stockton, California)*, 542 B.R. 261, 283 (B.A.P. 9th Cir. 2015). The B.A.P. added: “We conclude that
9 the ‘best interests’ test in chapter 9 considers the collective interests of all concerned creditors in a
10 municipal plan of adjustment rather than focusing on the claims of individual creditors.” *Id.* at 286.

11 18.1.2. In determining if the Plan is in the collective best interests of all
12 creditors, a court is required to determine whether or not the plan as proposed is better than the
13 alternatives. *See In re Sanitary & Improvement Dist., No. 7*, 98 B.R. 970, 974 (Bankr. D. Neb. 1989).
14 Since liquidation of a municipality is not contemplated under chapter 9, and dismissal of a chapter 9
15 case is the only real alternative to confirmation of a plan, a court is required to determine whether the
16 chapter 9 plan is a better alternative for creditors than dismissal of the case. *Cnty. of Orange v. Merrill*
17 *Lynch & Co. (In re Cnty. of Orange)*, 191 B.R. 1005, 1020 (Bankr. C.D. Cal. 1996); *Collier* ¶ 943.03[7].

18 18.1.3. The Plan is in the best interests of creditors. The Plan provides the
19 City’s creditor body, as a whole, with a better alternative than dismissal of the Bankruptcy Case and all
20 that creditors can reasonably expect under the circumstances.¹⁵ Since liquidation is not an alternative,
21 the only alternative to confirmation of the Plan is dismissal of the case altogether, leaving creditors to
22 race to the state and federal courts. The result would be chaos because the creditors, of which there are
23 thousands, would be required to fend for themselves in a mad scramble to litigate their claims in the
24 state and federal courts. As the U.S. Supreme Court held in the chapter 9 case of *Faitoute Iron & Steel*

25 ¹⁵ *See, e.g., West Coast Life Ins. Co. v. Merced Irr. Dist.*, 114 F.2d 654, 679 (9th Cir. 1940) (affirming
26 confirmation of plan under municipal debtor provisions of Bankruptcy Act of 1898 when the plan
27 payments were “all that could reasonably be expected in all the existing circumstances”); *Lorber v. Vista*
28 *Irr. Dist.*, 127 F.2d 628, 639 (9th Cir. 1942) (the test for the fairness of a chapter 9 plan is whether the
creditors receive all that they can reasonably expect in the circumstances), *cert. denied* 323 U.S. 784, 65
S. Ct. 270 (1944).

1 *Co. v. City of Asbury Park*, 316 U.S. 502, 510, 62 S. Ct. 1129, 1134 (1942), this “policy of every man
2 for himself is destructive of the potential resources upon which rests the taxing power which in actual
3 fact constitutes the security for unsecured obligations outstanding to a city.” The race to the courthouse
4 is certainly not a viable alternative. “The experience of the two modern periods of municipal defaults,
5 after the depressions of ‘73 and ‘93, shows that the right to enforce claims against the city through
6 mandamus is the empty right to litigate.” *Id.*, 316 U.S. at 510, 62 S. Ct. at 1133.

7 18.1.4. In the City’s case, dismissal would result in the City being flooded with
8 litigation from creditors with whom the City has achieved settlement agreements that are tied to
9 confirmation of the Plan; settlements with: secured bondholders and other secured creditors, the POB
10 Creditors, the PARS claimants, the SBCPF, SBPOA and the other employee unions, the Official Retiree
11 Committee and CalPERS. Massive litigation costs would burden the City, its creditors, and all parties in
12 interest, although creditors financially equipped to pursue litigation most quickly (and thus win “the race
13 to the courthouse”) would benefit disproportionately. But even the swiftest of creditors would likely
14 find its ability to collect on a judgment stymied by the inability of the City to pay such judgments
15 without violating provisions of the California Constitution that restrict payment of General Fund
16 obligations with Restricted Funds. In short, dismissal of the chapter 9 case would result in chaos, with
17 few if any creditors emerging safely from the blizzard of inevitable litigation. The City, its residents and
18 its creditors cannot afford to be left in such a circumstance. Confirmation of the Plan is in the best
19 collective interests of the City’s creditors. All creditors are better off under the Plan, even with the 1%
20 distribution, than they would be in the chaos that could ensue upon dismissal of the chapter 9 case.

21 18.1.5. Earlier in the Bankruptcy Case in connection with the approval of the
22 Disclosure Statement, a creditor argued the City should liquidate assets to pay claims. However, as the
23 City demonstrated in the course of the proceedings on the adequacy of the Disclosure Statement,
24 substantially all of the City’s public use properties are either vital to the operation of the City (*e.g.*, the
25 police headquarters building) or have such distressed value that they have little financial value to
26 creditors other than as public use facilities. The same is true for City owned equipment. *See generally*
27 Article IV.B. of the Disclosure Statement, “City Assets,” and the documents in the Appendix of Exhibits
28

1 referred to in Article IV.B. The City has demonstrated that the sale of City assets would not materially
2 increase the funds available to pay creditor claims.

3 18.1.6. Even if, hypothetically, a sale of public use facilities like libraries, parks,
4 youth centers and sports facilities would generate some financial value, such sale would reduce the
5 provision of vital public services to the City's residents, particularly to the City's poorest residents who
6 cannot afford alternative private sector for-profit facilities. The City is entitled to make the political and
7 governmental decisions to retain such public facilities, as it is well accepted that a chapter 9 debtor
8 cannot be compelled to liquidate assets. *See Silver Sage Partners, Ltd. v. City of Desert Hot Springs (In*
9 *re City of Desert Hot Springs)*, 339 F.3d 782, 789 (9th Cir. 2003) (Chapter 9 makes no provision for
10 conversion of the case to another chapter or for an involuntary liquidation of any of the debtor's assets);
11 *Newhouse v. Corcoran Irr. Dist.*, 114 F.2d 690, 691 (9th Cir. 1940) (chapter 9 debtor's property cannot
12 be disposed of as in an ordinary business bankruptcy proceeding); *Lorber v. Vista Irr. Dist.*, 127 F.2d
13 628, 637 (9th Cir. 1942) (same).

14 18.1.7. The Plan satisfies the best interests test because confirmation of the Plan
15 is a better result for creditors than dismissal of the Bankruptcy Case, asset sales are not a viable or legal
16 option, and the Plan is fair and equitable in the non-bankruptcy sense because creditors are receiving all
17 that they can reasonably expect in the circumstances.

18 18.2. Feasibility of the Plan.

19 18.2.1. A chapter 9 plan is feasible if it shows that the debtor can make the
20 payments promised under the plan and maintain post-confirmation operations. *Collier* ¶ 943.03[7][b].
21 For the Court to find that the City's Plan is feasible, the City need not prove that success is guaranteed;
22 rather, it must establish that the assumptions and projections underlying the Plan are reasonable and that,
23 as a result the Plan is more likely than not to succeed. *See e.g. Prime Healthcare Mgmt., Inc. v. Valley*
24 *Health Sys. (In re Valley Health Sys.)*, 429 B.R. 692, 711 (Bankr. C.D. Cal. 2010) (chapter 9 plan is
25 feasible if "it offers a reasonable prospect of success and is workable"). To prove that the Plan is
26 feasible, the City must show that the City will be able to both maintain municipal services at the level it
27 deems necessary to the continued viability of the City, and make the payments set forth in the Plan. *See,*
28 *Mount Carbon*, 242 B.R. at 34-35; *In re Corcoran Hosp. Dist.*, 233 B.R. 449, 453-54 (Bankr. E.D. Cal.

1 1999) (finding that chapter 9 plan was feasible based on reliable testimony that the debtor would be able
2 to make the payments provided under the plan and that the plan was based on reasonable projections of
3 future income and expenses); *In re Connector 2000 Ass'n*, 447 B.R. 752, 765-66 (Bankr. D.S.C. 2011)
4 (chapter 9 plan was feasible based on reasonable projections regarding debtor's ability to make
5 payments under the plan).

6 18.2.2. The Plan is feasible because it is more likely than not that the City will
7 be able to (a) make all payments contemplated by the Plan without a significant probability of default
8 and (b) sustainably provide adequate municipal services to its residents. Therefore, the City has
9 demonstrated a reasonable prospect that the City will successfully implement the Plan. The City's
10 Financial Model, which is attached to the Declaration of Michael Busch, projects, over a 20-year post-
11 Confirmation Date period, revenues and expenditures, anticipated cost savings and future revenue
12 enhancement actions necessary for the City to remain cash and budget solvent while providing an
13 adequate level of basic services to the City's residents. It also budgets funds for road and street
14 maintenance and repair, building upgrades, parks, libraries, community centers, the Police Resources
15 Master Plan and other essential services which have been neglected for a long time due to the lack of
16 funds. *See* Busch Declaration at ¶7.

17 18.2.3. According to Mr. Busch, the City must restructure its debts through the
18 Plan in order to continue as a viable municipality and provide basic essential services to the City's
19 residents. Without restructuring its debts through the Plan, the City will operate at a deficit within a few
20 years after exiting bankruptcy. *Id.* at ¶8. With the adjustment of debts proposed under the Plan, the City
21 will emerge from bankruptcy protection as a viable municipal service provider for its residents *Id.* at
22 ¶14. The Busch testimony was uncontroverted by any creditor in the case, including those creditors like
23 the bondholders that had engaged nationally-known financial advisory firms to review the City's
24 finances and financial wherewithal. The projections in the Financial Model are reasonable and
25 appropriate regarding the ability of the City generate the monies necessary to fund the Plan and provide
26 basic essential services to its residents. Therefore, the Plan is feasible for the purposes of Section
27 943(b)(7).

1 19. Article XI of the Plan; the Plan Injunction. Other than with respect to the terms of the
2 Plan Injunction (separately discussed below), the discharge, release, injunction, stay and settlement
3 provisions of Articles XI.A., XI.B, XI.C., XI.D. and XI.F. are standard plan provisions and no creditor
4 or other party in interest objected to the terms of such provisions. The exculpation provision of Article
5 XI.E of the Plan complies with applicable law and is appropriate. Such provision contains a carve-out
6 for gross negligence and willful misconduct and is limited to claims arising out of the City's
7 restructuring efforts and the Bankruptcy Case. In addition, the Plan's exculpation provision extends only
8 to parties who either have settled with the City or have actively participated in the City's restructuring
9 activities. No creditor or other party in interest objected to the exculpation provisions of Article XI.E.

10 19.1. City's Statutory Obligation to Pay the Judgments Against its Employees

11 19.1.1. The Plan Injunction arises from the City's state law obligations under
12 California Government Code §§ 825, 970, 995 and 996 to indemnify its employees for judgments
13 against the employees based upon employee acts or omissions arising within the scope of employment,
14 and which act or omission was not due to actual malice, actual fraud or corruption (acts or omissions
15 outside the scope of employment, or due to actual malice, actual fraud or corruption, are referred to as
16 the "Exceptions"). Thus, subject to the Exceptions, the City is obligated to pay the debts created by
17 entry of judgments against its employees. Pursuant to Government Code § 970.2, a court may issue a
18 writ of mandate to compel the City to pay a judgment against one of its employees based on acts or
19 omissions within the scope of employment. The statutory scheme imposes this duty on the City to
20 ensure the "the zealous execution of official duties by public employees." *Johnson v. California*, 69
21 Cal. 2d 782, 792 (1968).

22 19.1.2. The City's obligation to indemnify typically arises in two circumstances.
23 The first and most common circumstance is where the City assumes the defense of the employee at an
24 initial stage of the lawsuit, well before a judgment is issued. Government Code § 995 requires the City
25 to assume the defense unless one of the Exceptions applies, and Government Code § 825 requires that
26 the City pay any ensuing judgment entered in favor of a third party plaintiff. *See L.A. Police Protective*
27 *League v. City of L.A.*, 27 Cal. App. 4th 168, 174-76 (Cal. App. 1994). The second more unusual
28 circumstance is where the City refuses to assume the defense (presumably because the City believes an

1 Exception applies), a judgment is subsequently entered against the employee, and it is judicially
2 determined that none of the Exceptions apply. In that second fact pattern, Government Code §§ 825.2
3 and 996.4 require that the City pay the judgment and all of the employee's defense costs, and
4 Government Code § 970.2 provides that a writ of mandate is an appropriate remedy to compel the City
5 to pay. *See Pelayo v. City of Downey*, 570 F. Supp. 2d 1183, 1195 (C.D. Cal. 2008); *Farmers Ins. Grp.*
6 *v. Cty. of Santa Clara*, 11 Cal. 4th 992, 1002 (1995); *Rivas v. City of Kerman*, 10 Cal. App. 4th 1110,
7 1116 (Cal. App. 1992); *see generally DeGrassi v. City of Glendora*, 207 F.3d 636 (9th Cir. 2000)
8 (explaining the operation of the applicable Government Code provisions on municipal employee
9 indemnification). Municipal employee indemnity provisions of the Government Code also apply to
10 claims against police officers arising under 42 U.S.C. § 1983. *Williams v. Horvath*, 16 Cal. 3d 834, 845
11 (1976).

12 19.1.3. The State of California has long recognized that indemnification of
13 police officers, in particular, is a public good.

14 The reason for the [police officer indemnification] rule is: The duties of policemen are
15 performed for the benefit of the public, and the public is directly concerned in preserving
16 and protecting these officers from the hazard of death or bodily injuries to which the
17 performance of their official duties expose them. Aside from any considerations purely
18 personal to the officer, it is for the public good that these officers, as instruments through
19 which the city performs its functions, shall be shielded from the personal hazards [of
20 litigation] which attend the discharge of their official duties. With such protection afforded,
the public can expect that its laws will be zealously enforced without any hesitation
occasioned by considerations of possible personal involvement in defending resulting
litigation.

21 *Sinclair v. Arnebergh*, 224 Cal. App. 2d 595, 599 (1964) (internal citations omitted); *see also Monell v.*
22 *Dep't of Soc. Servs.*, 436 U.S. 658, 713, 98 S.Ct. 2018, n.9 (1978) (Powell, J., concurring) (the policy of
23 municipalities to indemnify officials sued for conduct within the scope of their authority "furthers the
24 important interest of attracting and retaining competent officers, board members, and employees.").

25 19.1.4. The indemnification of municipal employees, and particularly police
26 officers, plays an important role in the efficient and effective functioning of the City and its departments
27 and agencies, including the Police Department. *See* Burguan Declaration at ¶14, Scott Declaration at ¶8,
28 McCrary Declaration at ¶7, and Supplemental McCrary Declaration at ¶18. The City's Chief of Police,

1 Jarrod Burguan, testified that if the City was at risk of being unable to indemnify police officers in full
2 for liability against lawsuits alleging harms committed during the performance of their job duties as
3 officers, and the officers were thus exposed to personal liability and potential financial ruin, the City
4 would not be able to hire new police officers, many police officers would leave for more financially
5 stable municipalities or federal, state or county law enforcement agencies, and the crime rate in the City
6 would increase. Burguan Declaration at ¶14. Indeed, the City's Police Department has already been hit
7 hard by the opportunities for qualified candidates to serve in other agencies with more financial stability
8 and better equipment. Impairing the City's indemnification obligations to the officers would pose
9 severe challenges to retention of existing officers and recruitment of new and lateral officers. Burguan
10 Declaration at ¶14; McCrary Declaration at ¶7; Exhibit 1 to McCrary Declaration, ¶18.

11 19.1.5. Despite the clear state law statutory obligation to indemnify officers and
12 the practical necessity of indemnifying officers to ensure officer morale and retention, *id.*, the unrefuted
13 evidence shows that the City does not and will not have the funds necessary to both pay the judgments
14 against the City's employees and invest in the Police Resources Plan, among other things. *See* Busch
15 Declaration at ¶¶ 14-15. To ensure the efficient and effective functioning of the City and its
16 departments, and in particular the City Police Department, the Plan provides for payment of judgments
17 against the City, and payment of judgments against the Indemnified Parties that the City is required
18 under state law to pay, in the same manner, *i.e.*, as Class 13 Claims that receive a 1% payment on the
19 allowed claim. The Plan Injunction – which allows holders of Litigation Claims against the Indemnified
20 Parties to liquidate their claims to judgment in the state and federal courts, but enjoins collection of any
21 such judgment against the Indemnified Parties' personal assets – is the tool that allows the City to
22 implement its Plan.

23 19.1.6. Without the relief provided by the Plan Injunction, the City would not
24 have the funds to both pay creditors pursuant to the Plan and effect the necessary revitalization of
25 municipal services for its residents. The City has demonstrated that it has the funds to implement the
26 1% distribution to creditors, and no evidence has been presented by anyone that there is more money
27 available to pay a higher distribution, including to holders of Litigation Claims that may obtain
28 judgments against the Indemnified Parties.

1 19.2. The Plan Injunction is Necessary and Appropriate to Carry Out the Terms of the
2 Plan. The Court finds and concludes that it has the jurisdiction under 28 U.S.C. § 1334(b) and authority
3 under 11 U.S.C. §§ 105(a) (court may issue any order necessary or appropriate to carry out the
4 provisions of title 11) and 1123(b)(6) (plan may include any appropriate provision not inconsistent with
5 the applicable provisions of title 11) to approve the Plan Injunction, and the Plan Injunction is necessary
6 to carry out the terms of the Plan and is appropriate in the circumstances of the Bankruptcy Case.

7 19.2.1. Jurisdiction

8 19.2.1.1. This Court has jurisdiction to approve a chapter 9 plan that
9 addresses the claims against the Indemnified Parties. 28 U.S.C. § 1334(b) grants jurisdiction over all
10 civil proceedings arising under title 11, or arising in or related to cases under title 11. “Proceedings
11 related to the bankruptcy include . . . suits between third parties which have an effect on the
12 bankruptcy.” *Celotex Corp. v. Edwards*, 514 U.S. 300, 307, 115 S. Ct. 1493, 1498-99 (1995). In the
13 Ninth Circuit, bankruptcy court “related to” jurisdiction exists over enforcement of a judgment against a
14 non-debtor that could conceivably have an effect on the administration of the debtor’s bankruptcy. *In re*
15 *American Hardwoods, Inc.*, 885 F.2d 621, 623 (9th Cir. 1989) (explaining that a bankruptcy court has
16 subject matter jurisdiction to permanently enjoin a creditor from enforcing a state court judgment against
17 non-debtor guarantors because the enforcement of the state court judgment could conceivably affect the
18 administration of the debtor’s plan). The ability of holders of Litigation Claims to enforce their claims
19 against City employees (the Indemnified Parties) that have indemnification rights against the City will
20 certainly have a material effect on the City and its assets, its payment obligations under the Plan and the
21 City’s ability to devote post-confirmation assets to the revitalization of municipal services.

22 19.2.1.2. Here, the combined effect of California Government Code
23 §§ 825, 825.2, 995 and 996.4 is that the City must pay a judgment against its employees as long as none
24 of the Exceptions apply. The judgment is a debt of the City, enforceable by writ of mandate. *See*
25 *Government Code § 970.2*. “The general rule is that relief sought nominally against an officer [of a
26 public entity] is in fact against the sovereign if the decree would operate against the latter.” *Hawaii v.*
27 *Gordon*, 373 U.S. 57, 58, 83 S. Ct. 1052, 1053 (1963). Similarly, the “general rule is that a suit is
28 against the sovereign ‘if the judgment sought would expend itself on the public treasury or domain, or

1 interfere with the public administration,’ or if the effect of the judgment would be to ‘restrain the
2 Government from acting, or to compel it to act.’” *Dugan v. Rank*, 372 U.S. 609, 620, 83 S. Ct. 999, 1006
3 (1963) (internal citations omitted). Under *Hawaii v. Gordon* and *Dugan v. Rank*, the City’s statutory
4 Government Code § 825 obligation to pay the judgment makes the judgment a claim on the City’s
5 treasury, and certainly a “related to” claim under 28 U.S.C. § 1334. Therefore, the Court has
6 jurisdiction over such claims against the Indemnified Parties, and any objections that the Court lacks
7 jurisdiction are overruled.

8 19.2.2. Authority for the Plan Injunction

9 19.2.2.1. Section 105(a) provides that the Court may issue any order
10 that is necessary or appropriate to carry out the provisions of title 11. 11 U.S.C. § 105(a). The Ninth
11 Circuit has previously declined to approve third-party injunctions in chapter 11 cases on the basis that
12 Section 524(e) limits the court’s equitable power under section 105 to order the discharge of the
13 liabilities of nondebtors. *In re American Hardwoods, Inc.*, 885 F.2d 621, 626 (9th Cir. 1989). Section
14 524(e), however, is inapplicable in chapter 9 cases, and thus the holdings of *American Hardwoods* and
15 its progeny do not control the outcome here. *See* 11 U.S.C. § 901(a) (not including Section 524(e) in
16 chapter 9); *Deocampo v. Potts*, 836 F.3d 1134, 1143 (9th Cir. 2016) (“Chapter 9, unlike Chapter 11,
17 does not incorporate Section 524(e). . . As such, the rationale relied upon by *Lowenschuss* [that, in a
18 Chapter 11 proceeding, § 524(e) precludes bankruptcy courts from discharging the liabilities of non-
19 debtors] does not apply in Chapter 9 proceedings.”); *see also In re Connector 2000 Ass’n*, 447 B.R. 752,
20 767 (Bankr. D. S.C. 2011) (chapter 9 plan approved that contained third party releases and injunctions).

21 19.2.2.2. The circumstance under which a municipal debtor may
22 include a third-party release and injunction in its plan of adjustment is an evolving field of the law and a
23 matter of first impression in the Ninth Circuit. In the two recent municipal insolvencies of large
24 California cities, Vallejo and Stockton, this relief was not sought. In the Detroit chapter 9 case, Judge
25 Rhodes held that Section 524(e) is not a bar to a third-party release or injunction in a chapter 9 case, but
26 the proponent still must show that the injunction is necessary or appropriate under section 105(a).

27 A bankruptcy court’s power to order a third party release is based on its power to reorder
28 creditor-debtor relations needed to achieve a successful reorganization . . . [and] the release

1 [must be] essential to reorganization [because] the reorganization hinges on the debtor
2 being free from indirect suits against parties who would have indemnity or contribution
claims against the debtor.”

3 *In re City of Detroit, Michigan*, 524 B.R. 147, 266 (Bankr. E.D. Mich. 2014) (citations omitted). Judge
4 Rhodes explained that to gain approval of such a release, the debtor-city must show that the release of
5 officers is “necessary to the [c]ity’s efficient and effective functioning, to its revitalization, or the
6 success of the plan.” *Id.* The record of the Detroit chapter 9 case was devoid of any evidence
7 substantiating the need, and the debtor’s requested third party release was not approved. *Id.* at 297.

8 19.2.2.3. So too in the City of Vallejo chapter 9 case. *See Deocampo*
9 *v. Potts*, 836 F.3d 1134 (9th Cir. 2016). In *Deocampo*, after confirmation of its plan of adjustment, the
10 City of Vallejo, defending its officers in a district court action, attempted to shoehorn a third party
11 release/injunction into its confirmed plan by arguing that the plan discharged claims against the officers
12 along with claims against the city. The Ninth Circuit recognized that a third-party injunction is not
13 precluded by the existing jurisprudence in the Ninth Circuit because 524(e) does not apply in chapter 9,
14 but found on the facts that the Vallejo plan did not discharge or enjoin claims against the officers. The
15 *Deocampo* court recognized that where an injunction is permissible, it at a minimum must be express
16 and be supported by “specific factual findings.” *Id.* at 1144; *see also* Federal Rule of Bankruptcy
17 Procedure 3016 (“If a plan provides for an injunction against conduct not otherwise enjoined under the
18 Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic,
19 or underlined text) all acts to be enjoined and identify the entities that would be subject to the
20 injunction.”). The Vallejo plan did not expressly provide for such an injunction. *Id.* at 1144 - 45. There
21 was no mention of an injunction of third-party claims. *Id.* Moreover, because the plan did not provide
22 for an injunction there were no specific factual findings that such an injunction was necessary or
23 appropriate to the plan of adjustment. *Id.* Finally, as noted by the *Detroit* court, the proponent of a third
24 party injunction must show “that the additional protection of a third-party release is necessary to the
25 City’s efficient and effective functioning, to its revitalization, or to the success of its plan,” *Id.* at 1144
26 n.14. The Vallejo confirmation order did not include a judicial finding that the third-party discharge or
27 adjustment was an integral part of the reorganization. *Id.* at 1145.

1 19.2.2.4. Applying the considerations identified by the *Deocampo*
2 court, an injunction may be permissible if (i) the injunction is express; (ii) the injunction is an integral
3 part of the reorganization; and (iii) the injunction is supported by specific factual findings regarding the
4 necessity of the injunction to the City's efficient and effective functioning, to its revitalization, or to the
5 success of the plan. In this case, the injunction is necessary because the City cannot afford to pay the
6 judgments of the plaintiffs against the Indemnified Parties and, absent the injunction, the City would be
7 unable to provide municipal services in accordance with the annual budgets contemplated in the City's
8 Financial Model, including not being able to implement Police Resources Plan or make the payments
9 required by the Plan.

10 19.2.3. Necessity for and Propriety of the Plan Injunction.

11 19.2.3.1. The first factor is satisfied because the Plan Injunction was
12 expressly set forth in the Plan, the Disclosure Statement and the applicable notices as required by the
13 Federal Rules of Bankruptcy Procedure applicable to third-party injunctions. FRBP 3016(c) provides
14 that "[i]f a plan provides for an injunction against conduct not otherwise enjoined under the Code, the
15 plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or
16 underlined text) all acts to be enjoined and specify the entities that would be subject to the injunction."
17 Federal Rule of Bankruptcy Procedure 3016(c). The City satisfied this rule because the Plan Injunction,
18 set forth in section XI.C of the Plan was printed in bold-faced type and specified the acts to be enjoined
19 and the entities that would be subject to the injunction.

20 19.2.3.2. In addition, Federal Rule of Bankruptcy Procedure
21 2002(c)(3), entitled "Notice of Hearing on Confirmation when Plan Provides for an Injunction,"
22 provides: "If a plan provides for an injunction against conduct not otherwise enjoined under the Code,
23 the notice required under Rule 2002(b)(2) shall: (A) include in conspicuous language (bold, italic or
24 underlined text) a statement that the plan proposes an injunction; (B) describe briefly the nature of the
25 injunction; and (C) identify the entities that would be subject to the injunction." As reflected in the
26 Confirmation Hearing Notice, the City satisfied the requirements of Rule 2002(c)(3). The Confirmation
27 Hearing Notice includes in bold text a statement that the Plan includes an injunction and describes that
28 injunction. In addition the entities that are subject to the injunction are identified. Accordingly, the City

1 complied with the requirements of the Federal Rules of Bankruptcy Procedure. *Cf. Deocampo*, 836 F.3d
2 at 1144 - 1146 (Vallejo's chapter 9 plan did not contain any express third party injunction, and no notice
3 of a third party injunction was provided). By contrast with *Deocampo*, the City complied with the
4 detailed requirements of the Federal Rules of Bankruptcy Procedure, and gave notice to all creditors and
5 published notice so that any potentially affected creditors would have notice and the opportunity to be
6 heard. The Plan and notices related to the Plan complied with the Federal Rules of Bankruptcy
7 Procedure with regard to plan injunctions. There is no question that the City made the Plan Injunction a
8 linchpin of the Plan and the effect of the Plan Injunction was highly publicized. Accordingly, this first
9 factor is satisfied.

10 19.2.3.3. The second and third factors – that the injunction is integral
11 to this reorganization and its success, necessary for the revitalization of the City and its efficient and
12 effective functioning, and demonstrated by the record before the Court – are also satisfied. The
13 circumstances surrounding the City's slide into insolvency are described in the prior opinions of this
14 Court in this Bankruptcy Case. *See In re City of San Bernardino, California*, 499 B.R. 776, 778-79
15 (Bankr. C.D. Cal. 2013) (the "*Eligibility Opinion*"); *In re City of San Bernardino, California*, Case No.
16 12-28006, 2014 Bankr. LEXIS 5322, *6-13 (Bankr. C.D. Cal. 2014). In summary, the Great Recession
17 and the burst of the housing bubble in 2007 negatively affected the City of San Bernardino like many
18 other cities in California and the entire country. The drop in housing prices and increase in foreclosures
19 of single family residences resulted in significantly lower property tax revenues, a prime source of
20 revenue for California cities. The City was particularly hard hit by these phenomena because, due to the
21 cheaper housing and available financing, an influx of people moved to the Inland Empire during the
22 boom, and the consequent bust led to unprecedented foreclosures – one of the highest rates in the
23 country. Along with the foreclosures came substantial unemployment, as much of the population had
24 been employed in the housing industry, from construction workers to realtors to mortgage brokers,
25 resulting in a significant drop in household income. This decline led to less consumer sales and
26 consequently smaller sales tax revenues, another major component of the City's revenues. *Eligibility*
27 *Opinion*, 499 B.R. at 778-79.

1 19.2.3.4. The City's unemployment rate was 16.9% as of June 2012,
2 more than double the national rate of 8.2%. The City was impacted not only on the revenue side but also
3 by escalating expenses. The influx of population created a greater demand for public services, from
4 public safety (police and fire) to more mundane matters such as street repair and infrastructure
5 maintenance. As the economy worsened and revenues decreased, the City took some stop gap measures
6 to try to stop the bleeding. It implemented a hiring freeze and down-sized departments, reducing the
7 workforce by 20%. It negotiated and imposed concessions on its unions, saving about \$10 million per
8 year. It exhausted its general fund reserves and sold excess assets to provide cash to fund ongoing
9 operations. *Id.*

10 19.2.3.5. In May 2012, the then new Director of Finance, Jason
11 Simpson, began analyzing the City's financial condition, while attempting to formulate a budget for
12 2012-13. In doing so, Simpson determined that the budget projection for 2012-13 resulted in a
13 \$45.9 million cash deficit with no general fund reserves; the cash balances for the prior two fiscal years
14 had been overstated; the beginning cash deficit for the next fiscal year was over \$18.2 million; and the
15 City did not have enough unrestricted cash or reserves to pay its current financial obligations, those
16 obligations to become due beginning in July 2012, and continuing indefinitely. *Eligibility Opinion*, 499
17 B.R. at 780; *see also San Bernardino City Professional Firefighters Local 891 v. City of San*
18 *Bernardino, California (In re City of San Bernardino, California)*, 530 B.R. 474, 477 (C.D. Cal. 2015)
19 ("The City's financial situation deteriorated quickly in the summer of 2012. The City ran out of cash to
20 pay its creditors and employees, and had a projected budget deficit of \$45.8 million. Personnel costs
21 alone were projected to exceed all of the City's General Fund revenue.").

22 19.2.3.6. During the pendency of this Bankruptcy Case, as described
23 above, the City dramatically reduced expenses and worked diligently to increase revenues. Yet, if the
24 City were to move forward without restructuring its debts through the Plan, the City would still operate
25 at a deficit of nearly \$4 million beginning in fiscal year 2018-19, and this operating deficit would
26 increase each year to a peak of a deficit of nearly \$20.5 million in fiscal year 2025-26. Busch
27 Declaration at ¶8. Thus the City must restructure its debts through the Plan in order to continue as a
28 viable municipality and provide basic essential services to the City's residents. *Id.* at ¶14. By contrast,

1 with the restructuring and fiscal and service stabilization components to the Financial Model, the City
2 will be a viable municipal service provider for its residents. *Id.* The record before the Court
3 demonstrates that the City must allocate its very limited resources to the provision of municipal services
4 to its residents and the rehabilitation of the City's vital infrastructure. Even given the 1% payment of
5 claims under the Plan, including on Litigation Claims against the City and the Indemnified Parties, the
6 City cannot afford to fully fund the City's critical needs. Busch Declaration at ¶21, Scott Declaration at
7 ¶9.

8 19.2.3.7. Public safety is a major concern of the City. *See*
9 Declaration of Andrea M. Travis-Miller [Dkt. No. 126], at ¶15. The City's high violent crime rates top
10 state and national averages. Burguan Declaration at ¶7. In 2015, the City, led by Police Chief Burguan,
11 prepared the Police Services Five Year Resources Plan ("Police Resources Plan"), which was approved
12 at a regularly noticed public meeting of the Mayor and Common Council on November 16, 2015.
13 Burguan Declaration at ¶5 and Exhibit 1 thereto. The Police Resources Plan as proposed and adopted by
14 the Mayor and Common Council requires additional funds of \$56.5 million over five years to
15 implement. *Id.*

16 19.2.3.8. During the bankruptcy case, crime further increased in the
17 City. As of June 2016, there have been significant increases in violent crimes over 2015 such as criminal
18 homicide (a 100% increase), forcible rape (a 15.56% increase) and aggravated assault (a 17.96%
19 increase). There were 50 homicides in San Bernardino in 2016 as of September 27, which is more than
20 the total number of homicides for all of 2015. The City has a significantly higher homicide rate this year
21 per 100,000 residents than Chicago or Oakland. Burguan Declaration at ¶ 8.

22 19.2.3.9. Under the current Financial Model, only approximately 15%
23 of the funds needed are allocated for infrastructure repair and maintenance, and the City can afford just
24 40% of what is necessary to fund the critical needs identified in the Police Resources Plan. Scott
25 Declaration at ¶9. That 40% allocation is sufficient for the City to provide basic essential services to its
26 residents, but the City will not be able to afford much beyond those basic services and the City's critical
27 needs for funding for police services will not be fully addressed for the foreseeable future. If the City is
28 required to pay more than 1% under the Plan, the City would be required to further reduce funding for

1 the Police Resources Plan and infrastructure repair and maintenance. *Id.* Mr. Scott testified, consistent
2 with Mr. McCrary's expert testimony, that decreasing funding for the Police Resources Plan would
3 result in an increase in violent crime, less services to City residents, even greater challenges to attracting
4 businesses, and the impairment of economic growth and investment in the City. *Id.* Under those
5 circumstances, and given the realities of the City's indemnification obligations, it is necessary and
6 appropriate to enjoin the holders of Litigation Claims against Indemnified Parties from recovering from
7 City employees personally for harms that occurred within the scope of employment.

8 19.2.3.10. In addition, the City's police officers and other employees
9 contributed substantial consideration to the adjustment of debts under the Plan. The City's police
10 officers and other employees agreed to the City's modified terms and conditions of employment under
11 their new collective bargaining agreements, and as part of that process agreed to a 1% distribution on
12 their claims, which claims the parties have valued at \$130 million. The police officers alone agreed to a
13 1% distribution on their claims valued by the parties at \$74 million, principally claims for reduction of
14 pension and retiree health benefits. The employees had credible arguments under state law regarding the
15 legality of the modifications of the benefits, the litigation of which would certainly have dramatically
16 disrupted the City's momentum to a substantially consensual plan. Moreover, had the police officers
17 prevailed in any such litigation, the resulting inability of the City to impair up to \$130 million of claims
18 would have stopped the City's reorganization dead in its tracks. The police officers and other City
19 employees made a substantial financial contribution to the reorganization.

20 19.2.3.11. The police officers also make a contribution to the City's
21 reorganization by putting their lives on the line to keep the City's residents safe and secure, knowing
22 that the performance of their job duties could inevitably lead to both injury and litigation at some point
23 in their careers. *See e.g.*, the declarations of former police officers Brian Cartony (Dkt. No. 1995-1) at
24 ¶ 3 ("shot in the lower back by a suspect in the course of a homicide"), Daniel Keil (Dkt. No. 1995-2) at
25 ¶ 4-5 ("multiple physical altercations with suspects," "run over by a vehicle," "head injuries from being
26 knocked into walls and floors," and "neck injuries, back injuries and blowing out both knees" in
27 incidents with suspects), and John Montecino (Dkt. No. 1995-4) at ¶ 4 ("shot at on multiple, separate
28

1 occasions in the line of duty”). The City’s police officers as a group are making a substantial
2 contribution to the Plan and the City’s revitalization by virtue of their continued service to the City.

3 19.2.3.12. Another factor in favor of approving the Plan Injunction is
4 that the Plan Injunction is narrowly tailored. First, at the request of certain holders of Litigation Claims,
5 the City revised the Plan Injunction to clarify that claims against Indemnified Parties can be litigated and
6 can proceed to judgment. Only collection of those judgments will be enjoined, and only to the extent of
7 the City’s indemnification obligation. The plaintiffs will still be able to recover from any available
8 insurance. If not satisfied with applicable insurance, claims against employees that are indemnified by
9 the City (the Indemnified Parties) will be satisfied as General Unsecured Class 13 Claims under the
10 Plan. The Plan Injunction is narrowly tailored to achieve the specific purposes of the Plan, namely that
11 the City can operate after the Confirmation Date in accordance with the Financial Model and provide
12 basic municipal service to its residents.

13 19.2.3.13. A final factor that the Court weighed in favor of approving
14 the Plan Injunction was the settlement achieved by the City and BICEP (see Dkt. No. 2096), which
15 settlement kept in place the excess liability coverage provided for in the BICEP Agreements even
16 though the City will pay the self-insured retention (“SIR”) in accordance with the treatment of Class 13
17 claims under the Plan. Thus, for the Litigation Claims allowed in an amount in excess of the \$1 million
18 SIR under the BICEP Agreements, the City will utilize the coverage available under the BICEP
19 Agreements to pay the portion of the claim in excess of \$1 million.

20 20. Burden of Proof. The City has met its burden of proving by a preponderance of the
21 evidence on the elements of Section 943(b) and the other Sections of the Bankruptcy Code made
22 applicable to confirmation of the Plan by Sections 103)(f) and 901, including Sections 1122 through
23 1142, and 1145.

24 **ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:**

25 21. Confirmation of Plan.

26 21.1. The Plan and each of its provisions (whether or not specifically approved herein)
27 are CONFIRMED in each and every respect, pursuant to section 943 of the Bankruptcy Code. Failure
28 specifically to include or reference particular sections or provisions of the Plan or any related agreement

1 in this Confirmation Order shall not diminish or impair the effectiveness of such sections or provisions,
2 it being the intent of the Court that the Plan be confirmed and such related agreements be approved in
3 their entirety. The Effective Date of the Plan shall occur on the date determined by the City when the
4 conditions set forth in Section XIII.B of the Plan have been satisfied or, if applicable, have been waived
5 in accordance with Section XIII.C of the Plan.

6 21.2. Any objections or responses to, or reservations of right regarding confirmation of
7 the Plan that (a) have not been withdrawn, waived or settled prior to the entry of this Confirmation
8 Order or (b) are not cured by the relief granted herein are hereby OVERRULED in their entirety and on
9 the merits, and all withdrawn objections or responses are hereby deemed withdrawn with prejudice. All
10 creditors that failed to file objections to confirmation of the Plan are hereby deemed to have waived any
11 objections to the terms of the Plan, confirmation of the Plan, and the terms of this Confirmation Order.

12 22. Confirmation Order Binding on All Parties. In accordance with Section 944(a) and
13 notwithstanding any otherwise applicable law, upon the occurrence of the Effective Date, the terms of
14 the Plan and this Confirmation Order shall be binding upon: (a) the City; (b) any and all holders of
15 Claims, including holders of Litigation Claims against the City or the Indemnified Parties, irrespective
16 of whether (i) any such Claim is impaired under the Plan, (ii) proof of any such Claim has been filed or
17 deemed filed under section 501 of the Bankruptcy Code, (iii) any such Claim is allowed under section
18 502 of the Bankruptcy Code or (iv) the holders of such Claims accepted, rejected or are deemed to have
19 accepted or rejected the Plan; (c) any and all non-debtor parties to executory contracts or unexpired
20 leases with the City; (d) any party to any settlement with the City; and (g) the respective heirs,
21 executors, administrators, trustees, affiliates, officers, directors, agents, representatives, attorneys,
22 beneficiaries, guardians, successors or assigns of any of the foregoing.

23 23. Discharge of Claims. Except as specifically provided otherwise in the Plan, this
24 Confirmation Order or any document or instrument evidencing or implementing any settlement
25 approved hereby, as of the Effective Date, pursuant to Sections 524(a)(1), 524(a)(2) and 944(b), all
26 debts of the City shall be, and hereby are, discharged, and such discharge will void any judgment
27 obtained against the City at any time, to the extent that such judgment relates to a discharged debt;

1 *provided that* such discharge shall not apply to debts held by an entity that, before the Confirmation
2 Date, had neither notice nor actual knowledge of the Bankruptcy Case.

3 24. Approval And Effectiveness of Plan Article XI Provisions; Including The Plan Injunction

4 24.1. The Provisions of Article XI. of the Plan, including the Plan Injunction, are
5 approved in all respects, are incorporated herein in their entirety, are so ordered and shall be
6 immediately effective on the Effective Date of the Plan without further order or action on the part of the
7 Court, the City, the Indemnified Parties or any holder of a Litigation Claim.

8 24.2. Pursuant to the Plan Injunction, all entities holding, claims, judgments or rights to
9 remedies against past or present employees or officers of the City entitled to Indemnification¹⁶ from the
10 City (the Indemnified Parties¹⁷) based upon acts or omissions that occurred or arose prior to the
11 Confirmation Date are hereby enjoined from enforcing such claims, judgments or remedies in any
12 manner against the person or assets of the Indemnified Parties, except that the Plan Injunction shall not
13 prevent the holders of judgments or remedies from seeking recourse against available insurance
14 coverage. The Plan Injunction applies to all pre-Confirmation Date claims against the Indemnified
15 Parties, whether or not a lawsuit based upon such claim has been filed or will be filed, and whether a
16 lawsuit is filed prior to or after the Confirmation Date. Therefore, holders of Litigation Claims¹⁸ against
17 Indemnified Parties: (a) shall be entitled to payment of any such allowed claims pursuant to the terms of
18

19 ¹⁶ “Indemnification,” as defined in the Plan, means rights of indemnity, defense, reimbursement, and
20 advancement of fees and expenses of current and former officers and employees of the City with respect
21 to any claims or lawsuits brought against such officers and employees by third parties, in each case
22 arising out of an act or omission occurring within the scope of such officer’s or employee’s employment
23 as an employee of the City.

24 ¹⁷ “Indemnified Parties,” as defined in the Plan, means the current and former officers and employees of
25 the City who are entitled to Indemnification.

26 ¹⁸ Litigation Claims, as defined in the Plan, means (a) those lawsuits against the City that are still
27 pending as of the Confirmation Date, including those listed in Exhibit 6 to the Appendix [of Exhibits to
28 Plan]; (b) those lawsuits against the City that are filed on or after the Confirmation Date based on acts,
claims or omissions that occurred or arose prior to the Confirmation Date; and (c) those lawsuits against
any of the Indemnified Parties, whether filed prior to the Confirmation Date or on or after the
Confirmation Date based on acts, claims or omissions that occurred or arose prior to the Confirmation
Date, as to which lawsuits the City has assumed or will assume the defense thereof and became or
becomes obligated to pay any judgment arising therefrom pursuant to Cal. Government Code §§ 825,
970, 995 and 996 and any other applicable law or rule.

1 the Plan as Class 13 Claims that are receiving a 1% distribution on the amount of the allowed claim;
2 (b) may also recover from available insurance; but (c) may not enforce any claims, judgments or
3 remedies arising from their Litigation Claims against the person or assets of the Indemnified Parties.

4 24.3. Attached to this Confirmation Order as Exhibit B is a schedule prepared by the
5 City of: (a) lawsuits pending against the City in which pre-Confirmation Date claims against
6 Indemnified Parties are asserted; and (b) pre-Confirmation Date claims asserted against Indemnified
7 Parties as to which the City has received notice but that no lawsuit has yet been filed. All persons and
8 entities asserting the pre-Confirmation Date claims referenced in Exhibit B are subject to the Plan
9 Injunction with respect to such Pre-Confirmation Date claims. All other persons and entities not
10 identified on Exhibit B but who have or will assert pre-Confirmation Date claims against Indemnified
11 Parties are also subject to the Plan Injunction with respect to such Pre-Confirmation Date claims. The
12 inclusion of a person or entity on Exhibit B is not and shall not be deemed an admission by the City that
13 such party has a claim against the City or an Indemnified Party, nor shall the omission of a person or
14 entity from Exhibit B constitute a waiver of the Plan Injunction or prejudice the City in any way.

15 24.4. Approval of ADR Procedures; Continuation of Stay for Purposes of ADR and
16 Claims Allowance Procedures.

17 24.4.1. The ADR Procedures are approved, incorporated into this Confirmation
18 Order by this reference and made a part hereof, and shall be enforceable in this Court and any other
19 court of applicable jurisdiction. All holders of claims against the City or the Indemnified Parties are
20 directed to participate in the ADR Procedures prior to pursuing allowance of their claims in this Court or
21 liquidation of their claims in any other court. The City shall have until the later of (x) 180 days after the
22 Effective Date or (y) 180 days after the City receives written notice of a Pre-Confirmation Date claim
23 against the City or an Indemnified Party to give notice to the claimant that the City intends to try and
24 resolve the claim pursuant to the ADR Procedures. The Court shall retain jurisdiction to resolve disputes
25 arising in implementation of the ADR Procedures, and to fill in any gaps in the ADR Procedures as
26 circumstances require.

27 24.4.2. All injunctions or stays provided for in the Bankruptcy Case pursuant to
28 Bankruptcy Code Sections 105, 362, or 922, or otherwise, and in existence immediately prior to the

1 Confirmation Date, shall remain in full force and effect until the Effective Date, and shall continue in
2 full force and effect after the Effective Date, together with the injunction provisions of Article XI of the
3 Plan, for the purpose of resolving claims, including Litigation Claims, through the ADR Procedures,
4 judicial determination of the City's liability (or lack thereof) on any Pre-Confirmation Date claim and
5 the allowance or disallowance thereof.

6 24.4.3. If a claim cannot be resolved through the ADR Procedures, then any
7 right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal
8 injury or wrongful death tort claim is preserved. *See* 28 U.S.C. §§ 157(b)(5) and 1411; *see also Sigma*
9 *Micro Corp. v. Healthcentral.com (In re Healthcentral.com)*, 504 F.3d 775, 787 (9th Cir. 2007) (“A
10 Seventh Amendment jury trial right does not mean the bankruptcy court must instantly give up
11 jurisdiction and that the case must be transferred to the district court. Instead, the bankruptcy court is
12 permitted to retain jurisdiction over the action for pre-trial matters. Allowing the bankruptcy court to
13 retain jurisdiction over pre-trial matters does not abridge a party's Seventh Amendment right to a jury
14 trial.”).

15 25. Survival of Indemnification Obligations. In accordance with the operation of the Plan
16 Injunction, nothing in this Confirmation Order or the Plan discharges the obligations of the City,
17 pursuant to its past practices and applicable law, to indemnify its officers and employees for any pre-
18 Confirmation Date acts or omissions in the scope of their employment by the City.

19 26. Executory Contracts and Unexpired Leases. Assumption of the contracts and leases
20 listed in the List of Assumed Executory Contracts and Unexpired Leases filed with the Court, as
21 modified from time to time, is hereby approved. Assumption and assignment of the contracts and leases
22 listed in the List of Assumed and Assigned Executory Contracts and Unexpired Leases filed with the
23 Court, as modified from time to time, is hereby approved. Rejection of the contracts and leases listed in
24 the List of Rejected Executory Contracts and Unexpired Leases filed with the Court, as modified from
25 time to time, is hereby approved, and all other executory contracts and unexpired leases that are not
26 assumed or assumed and assigned are hereby rejected. Any time within 180 days after the Effective
27 Date, the City may file a motion to add or remove contracts or leases to or from the List of Assumed
28 Executory Contracts and Unexpired Leases, List of Assumed and Assigned Executory Contracts and

1 Unexpired Leases and List of Rejected Executory Contracts and Unexpired Leases, or otherwise modify
2 any decision to assume, assign or reject any executory contract or unexpired lease, upon notice to the
3 counterparty.

4 27. Plan Implementation. In accordance with Section 1142, without the necessity of further
5 action by the Court, the City is authorized to take any and all actions necessary or appropriate to
6 implement, effectuate and consummate the Plan, this Confirmation Order and the transactions
7 contemplated thereby or hereby.

8 28. Binding Effect of Prior Orders. Effective as of the Confirmation Date, but subject to the
9 occurrence of the Effective Date and subject to the terms of the Plan and this Confirmation Order, all
10 prior orders entered in the Bankruptcy Case and all documents and agreements executed by the City as
11 authorized and directed thereunder shall be binding upon and shall inure to the benefit of the City and
12 any other parties expressly subject thereto.

13 29. Final Order; Waiver of Stay. This Confirmation Order is a final order, and the period in
14 which an appeal must be filed shall commence immediately upon the entry hereof. The stay of this
15 Confirmation Order otherwise imposed by Bankruptcy Rule 3020(e) is hereby waived as of the date
16 hereof.

17 30. Reversal. If any or all of the provisions of this Confirmation Order are hereafter
18 reversed, modified or vacated by subsequent order of this Court or any other federal appellate court with
19 appropriate jurisdiction, such reversal, modification or vacatur shall not affect the validity of the acts or
20 obligations incurred or undertaken under or in connection with the Plan prior to the City's receipt of
21 written notice of such order. Notwithstanding any such reversal, modification or vacatur of this
22 Confirmation Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on,
23 this Confirmation Order prior to the effective date of such reversal, modification or vacatur shall be
24 governed in all respects by the provisions of this Confirmation Order and the Plan and all related
25 documents or any amendments or modifications thereto.

1 31. Miscellaneous Provisions.

2 31.1. Additional Non-Material Modifications. The City is hereby authorized to make
3 non-material modifications or amendments to the Plan at any time prior to the substantial consummation
4 of the Plan, without further order of the Court.

5 31.2. Kohl's. Nothing in the Plan or this Confirmation Order shall effect a discharge or
6 waiver of the Claims of Kohl's Department Stores, Inc. ("Kohl's") for refunds on account of taxes paid
7 to the City after the Petition Date (the "Tax Refund Claims"), which are subject to a tolling agreement
8 between the City and Kohl's dated August 7, 2014, the Amended Tolling Agreement dated August 7,
9 2015, and the Second Amended Tolling Agreement dated as of July 30, 2016 (collectively, the "Tolling
10 Agreement"). The Tolling Agreement shall remain in effect, and all of Kohl's and the City's rights,
11 claims and defense in connection with the Tax Refund Claims are hereby preserved.

12 31.3. Class 14 Elections Made in Error to Detriment of Claimants. Notwithstanding
13 anything to the contrary in the Plan or any applicable Ballot, any Retiree holding an Allowed Retiree
14 Health Benefit Claim of more than \$10,000.00, who elected on their Ballot to have their Retiree Health
15 Benefit Claim treated as a Convenience Class Claim (Class 14), shall be deemed not to have made such
16 election. Each Retiree Health Benefit Claim of more than \$10,000.00 shall be treated as a Class 13
17 General Unsecured Claim.

18 31.4. Certain Settlements.

19 31.4.1. The "Stipulation Between City of San Bernardino and BICEP Resolving
20 BICEP's Motion to Compel Assumption or Rejection of the BICEP Agreements and BICEP's Objection
21 to Confirmation of City's Third Amended Plan," filed on December 2, 2016 (Dkt. No. 2096, the
22 "BICEP Stipulation"), is hereby approved, incorporated herein as part of this Order and made a part of
23 the Plan, and the Court shall retain jurisdiction to resolve all disputes between the City and BICEP in
24 any way related to pre-Confirmation Date claims against the City or the Indemnified Parties (including
25 utilizing the "mediation first" provisions of the BICEP Stipulation). The City's assumption of the
26 BICEP Agreements is also approved.

27 31.4.2. Notwithstanding anything to the contrary in the Plan or this
28 Confirmation Order, the City's obligations under the SBCPF Settlement Agreement may not be

1 discharged pursuant to the claims discharge provisions of the Plan or Bankruptcy Code, and the
2 SBCPF's right to enforce the SBCPF Settlement Agreement in this Court shall not be enjoined. For the
3 avoidance of doubt, as set forth in the Plan, the SBCPF Settlement Agreement shall not be rejected.

4 31.4.3. The POB Settlement Agreement (i) was duly authorized, executed and
5 delivered by the City, (ii) the obligations of the City under such agreement are valid and binding
6 obligations of the City, enforceable in accordance with its terms, and (iii) is hereby approved. The City
7 is authorized to enter into, execute and deliver any further documents the City reasonably deems
8 necessary to implement the Settlement Agreement (the "Additional Documents"). Upon entry of the
9 Confirmation Order and execution and delivery by the parties of the Additional Documents, (a) such
10 Additional Documents shall be deemed duly authorized, executed and delivered by the parties,
11 incorporated herein by reference and made an Order of this Court as though fully set forth herein, and
12 (b) the obligations of the parties under such Additional Documents shall be valid and binding
13 obligations of the parties and enforceable in accordance with their respective terms.

14 31.4.4. The Plan and this Confirmation Order shall not impair or modify in any
15 way SANBAG's rights under the SANBAG Agreement (including without limitation SANBAG's power
16 to withhold Measure I funds).

17 31.4.5. The City's settlements with the Consenting Unions, including the
18 attendant memorandums of understanding and each Agreement Regarding Class 13 General Unsecured
19 Claim between the City and the respective Consenting Union are hereby approved (including the
20 stipulated amounts of Class 13 General Unsecured Claims) and shall govern the distributions to current
21 and former employees of the City represented by such Consenting Unions.

22 31.5. 1996 Refunding Bonds and 1999 Refunding Certificates of Participation.

23 31.5.1. The holders of the 1996 Refunding Bonds and 1999 Refunding
24 Certificates of Participation (the "Insured Bonds") have received appropriate notice of: (i) the
25 solicitation of the Plan, (ii) the confirmation hearing, (iii) National's position as the deemed holder of
26 the claims of the Insured Bonds, and the fact that National was entitled to vote to accept or reject the
27 Plan as such, (iv) the fact that the holders of the Insured Bonds were not entitled to vote to accept or
28 reject the Plan, (v) the deadline for voting on the Plan, (vi) the deadline for objecting to confirmation of

1 the Plan, and (vii) the exculpation provisions set forth in Section XI.E. of the Plan. No holder of an
2 Insured Bond filed an objection to the Plan, either on a formal or informal basis, nor submitted a vote in
3 relation to the Plan. Each holder of an Insured Bond is therefore bound by the terms and provisions of
4 the Plan, including but not limited to Section XI.E. of the Plan.

5 31.5.2. The Plan and each of the Plan Documents and ancillary agreements and
6 undertakings necessary to effectuate the Plan (including, without limitation, the 1999 Refunding
7 Certificates of Participation Amendment and the 1996 Refunding Bonds Amendment) were developed
8 and negotiated in good faith and at arms'-length among representatives of the City, National, the 1999
9 Refunding Certificates of Participation Trustee and the 1996 Refunding Bonds Trustee. The Plan's
10 classification, indemnification, exculpation, release, and injunction provisions are consistent with
11 sections 105, 1122, 1123(b)(6), 1123(b)(3)(A), 1129, and 1142 of the Bankruptcy Code, and are each
12 necessary for the Debtor's successful reorganization.

13 31.5.3. Entry into and consummation of the transactions contemplated by 1999
14 Refunding Certificates of Participation Amendment and the 1996 Refunding Bonds Amendment is in
15 the best interests of the City and holders of the Insured Bonds and are approved in all respects. Each of
16 the City, National, the 1999 Refunding Certificates of Participation Trustee and the 1996 Refunding
17 Bonds Trustee has exercised reasonable business judgment in connection with the negotiation and
18 consummation of the 1999 Refunding Certificates of Participation Amendment and the 1996 Refunding
19 Bonds Amendment, respectively, and the transactions contemplated thereby. The City, the 1999
20 Refunding Certificates of Participation Trustee and the 1996 Refunding Bonds Trustee are authorized,
21 without further notice to or action, order, or approval of this Court or any other Person, to enter into and
22 fully perform their obligations under the Plan and each of the Plan Documents and ancillary agreements
23 and undertakings necessary to effectuate the Plan (including, without limitation, the 1999 Refunding
24 Certificates of Participation Amendment and the 1996 Refunding Bonds Amendment).

25 31.5.4. The City, National, the 1999 Refunding Certificates of Participation
26 Trustee, the 1996 Refunding Bonds Trustee, and each of their respective agents, successors,
27 predecessors, control persons, members, officers, directors, employees and agents and their respective
28 attorneys, financial advisors, investment bankers, accountants, and other professionals retained by such

1 persons, to the extent applicable, (i) have acted in “good faith” within the meaning of section 1125(e) of
2 the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code, the
3 Bankruptcy Rules, the Local Rules and any applicable non-bankruptcy law, rule, or regulation governing
4 the adequacy of disclosure in connection with all their respective activities relating to the solicitation of
5 acceptances to the Plan and their participation in the activities described in section 1125 of the
6 Bankruptcy Code and (ii) shall be deemed to have participated in good faith and in compliance with the
7 applicable provisions of the Bankruptcy Code in the offer and issuance of any securities under the Plan,
8 and therefore are not, and on account of such offer, issuance and solicitation will not be, liable at any
9 time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances
10 or rejections of the Plan or the offer and issuance of the securities under the Plan, and are entitled to the
11 protections afforded by section 1125(e) of the Bankruptcy Code and the release, exculpation and related
12 Plan provisions, as set forth and to the extent provided pursuant to Article XI of the Plan.

13 31.6. Agreements with the United States. Notwithstanding any other provision of the
14 Plan or this Confirmation Order to the contrary:

15 31.6.1. The City’s obligations pursuant to its Contracts for Loan Guarantee
16 Assistance Under Section 108 of the Housing and Community Development Act of 1974, as amended,
17 42 U.S.C. § 5308, with the United States Department of Housing and Urban Development shall remain
18 extant and enforceable and not subject to discharge pursuant to 11 U.S.C. § 944; provided, however, that
19 the City retains all defenses to the enforceability of such obligations under applicable non-bankruptcy
20 law.

21 31.6.2. Nothing in the Plan or Confirmation Order shall adversely affect in any
22 way the rights and remedies of the United States and the State of California under the consolidated
23 actions styled as *City of San Bernardino v. United States and State of California, on behalf of*
24 *Department of Toxic Substances Control v. United States*, Civil Action Nos. 96-8867 (MRP), 96-5205
25 (MRP) - Consolidated (C.D. Cal.), including without limitation, the Consent Decree therein and any
26 amendment thereto (“C.D. Cal. Actions”), nor shall anything in the Plan or the Confirmation Order
27 divest or limit the jurisdiction of the United States District Court for the Central District of California
28 over the C.D. Cal. Actions. Upon the Effective Date of the Plan, the C.D. Cal. Actions shall survive the

1 bankruptcy case and may be adjudicated and enforced in the United States District Court for the Central
2 District of California, provided, however, that Bankruptcy Court approval must be obtained for any
3 allowance of an administrative expense.

4 31.6.3. As to the United States, its agencies, departments or agents, nothing in
5 the Plan or Confirmation Order shall discharge, release, or otherwise preclude: (1) any liability of the
6 City to the United States, its agencies, departments or agents arising on or after the Effective Date; (2)
7 any liability to the United States, its agencies, departments or agents that is not a “claim” within the
8 meaning of section 101(5) of the Bankruptcy Code; (3) any valid defense of setoff or recoupment with
9 respect to a Claim of the United States, its agencies, departments or agents; (4) the continued validity of
10 the City’s obligations to the United States, its agencies, departments or agents under any grant or
11 cooperative assistance agreement; (5) any liability of any entity under environmental law arising or
12 springing anew after the Effective Date that any entity would be subject to as a post-Effective Date
13 owner or operator of property; or (6) the United States from, subsequent to the Confirmation Date,
14 pursuing any police or regulatory action against the City.

15 32. Notice of Effective Date. On or before 14 days after occurrence of the Effective Date,
16 the City or its agent shall mail or cause to be mailed to all holders of Claims the Notice of the Effective
17 Date, which will inform such holders of: (i) entry of the Confirmation Order; (ii) the occurrence of the
18 Effective Date; (iii) the assumption and rejection of the City’s executory contracts and unexpired leases
19 pursuant to this Plan, as well as the deadline for the filing of Claims arising from such rejection; (iv) the
20 procedures for changing an address of record pursuant to Section IX of the Plan; and (v) such other
21 matters as the City deems to be appropriate.

22 33. Findings Of Fact And Conclusions Of Law. Regardless of where set forth in this
23 Confirmation Order, any finding of fact constitutes a finding of fact even if it is stated as a conclusion of
24 law or otherwise, and any conclusion of law constitutes a conclusion of law even if it is stated as a
25 finding of fact or otherwise. All findings of fact and conclusions of law announced by the Court on the
26 record in connection with confirmation of the Plan or otherwise at the Confirmation Hearing are
27 incorporated herein by reference. The findings of fact and conclusions of law set forth herein and in the
28 record of the Confirmation Hearing constitute the Court’s findings of fact and conclusions of law

1 pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy
2 Rules 7052 and 9014.

3

4

5 Dated: _____, 2017

6

**THE HONORABLE MEREDITH A. JURY,
UNITED STATES BANKRUPTCY JUDGE**

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**Exhibit A to “Order Confirming Third Amended Plan for the Adjustment of
Debts of the City of San Bernardino, California (July 29, 2016), as Modified”**

THIRD AMENDED PLAN FOR THE ADJUSTMENT
OF DEBTS OF THE CITY OF SAN BERNARDINO,
CALIFORNIA (JULY 29, 2016), AS MODIFIED

Exhibit B to “Order Confirming Third Amended Plan for the Adjustment of Debts of the City of San Bernardino, California (July 29, 2016), as Modified”

Schedule of: (a) lawsuits pending against the City in which pre-Confirmation Date claims against Indemnified Parties are asserted; and (b) pre-Confirmation Date claims asserted against Indemnified Parties as to which the City has received notice but that no lawsuit has yet been filed

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: **NOTICE OF LODGMENT OF ORDER IN BANKRUPTCY CASE** 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)* 01/03/2017, 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:
United States Trustee (RS) ustpreion16.rs.ecf@usdoj.gov

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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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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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INVESTMENT GROUP VI-C, LP
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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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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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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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Cathy Ta on behalf of Big Independent Cities Excess Pool Joint Powers Authority ("BICEP")
cathy.ta@bbklaw.com, Arthur.Johnston@bbklaw.com;lisa.spencer@bbklaw.com

Mohammad Tehrani on behalf of U.S. Trustee United States Trustee (RS)
Mohammad.V.Tehrani@usdoj.gov

David A Tilem on behalf of Creditor Rovinski Renter
davidtilem@tilemlaw.com, DavidTilem@ecf.inforuptcy.com;malissamurguia@tilemlaw.com;
joanfidelson@tilemlaw.com;JoanFidelson@ecf.inforuptcy.com;MalissaMurguia@ecf.inforuptcy.com;
SylviaTilemLaw@gmail.com

Sheila Totorp on behalf of Creditor Landmark American Insurance Company
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Benjamin R Trachtman on behalf of Interested Party Courtesy NEF
btrachtman@trachtmanlaw.com, sstraka@trachtmanlaw.com

Matthew J Troy on behalf of Creditor United States of America
matthew.troy@usdoj.gov

United States Trustee (RS)
ustpregion16.rs.ecf@usdoj.gov

Anne A Uyeda on behalf of Official Committee Of Retired Employees
auyeda@bmkattorneys.com; admin@bmkattorneys.com

Annie Verdries on behalf of Interested Party Courtesy NEF

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

verdries@lbbslaw.com, Autodocket@lbbslaw.com

Brian D Wesley on behalf of Interested Party Courtesy NEF
brian.wesley@doj.ca.gov

Arnold H Wuhrman on behalf of Creditor Serenity Legal Services, P.C.
Wuhrman@serenitylls.com

Clarisse Young on behalf of Interested Party Courtesy NEF
youngshumaker@smcounsel.com, levern@smcounsel.com

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On (*date*) 01/03/2017, 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 (*date*) 01/03/2017, 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 Delivery)

U.S. Bankruptcy Court

3420 Twelfth Street, Suite 325

Riverside, CA 92501-3819

Via overnight mail with Golden State Overnight (www.gso.com) Delivery Tracking number: 534553069

UNITED STATES TRUSTEE

Office of the United States Trustee (Overnight Delivery)

3801 University Ave

Suite 720

Riverside, CA 92501

Via overnight mail with Golden State Overnight (www.gso.com) Delivery Tracking number: 534553799

OBJECTING PARTY WILLIAM J. SCHMART (Overnight Delivery)

William J. Schmart

1275 E. Date Street, #102

San Bernardino, CA 92404-4257

Via overnight mail with Golden State Overnight (www.gso.com) Delivery Tracking number: 534553199

OBJECTING PARTY DAVID J. PARKE (Overnight Delivery)

David J. Parke

3198 Parkside Drive

San Bernardino, CA 92404

Via overnight mail with Golden State Overnight (www.gso.com) Delivery Tracking number: 534553298

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

ATTORNEYS FOR UNITED PACIFIC RAILROAD COMPANY (Via Email)

Mary Ann Kilgore MKILGORE@UP.COM

Jennie L. Anderson JLANDERS01@UP.COM

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.

01/03/2017

Date

Christine Pesis

Printed Name

/s/ Christine Pesis

Signature

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