

1 MICHAEL J. GEARIN (admitted pro hac vice)
MICHAEL B. LUBIC (SBN 122591)
2 BRETT D. BISSETT (SBN 280366)
K&L GATES LLP
3 10100 Santa Monica Boulevard, Seventh Floor
Los Angeles, California 90067
4 Telephone: 310.552.5000
Facsimile: 310.552.5001
5 Email: michael.lubic@klgates.com
brett.bissett@klgates.com
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7 Attorneys for California Public Employees'
Retirement System

8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 RIVERSIDE DIVISION

11 In re
12 CITY OF SAN BERNARDINO, CALIFORNIA,
13 Debtor.

Case No. 6:12-bk-28006 MJ

Chapter 9

DECLARATION OF MICHAEL J. GEARIN
IN SUPPORT OF REPLY OF CALPERS IN
SUPPORT OF ITS PRELIMINARY
OBJECTION TO THE CITY OF SAN
BERNARDINO'S CHAPTER 9 PETITION
AND REQUEST FOR RELIEF UNDER 11
U.S.C. § 941

Date: December 21, 2012
Time: 10:00 a.m.
Place: United States Bankruptcy Court
3420 Twelfth Street
Courtroom 301
Riverside, CA 92501

21
22 I, Michael J. Gearin, declare as follows:

23 1. I am a partner in the law firm of K&L Gates LLP, counsel for the California Public
24 Employees' Retirement System ("CalPERS") in this case. I am licensed to practice law in the State
25 of Washington and am admitted pro hac vice in this case.

26 2. I am aware from my review of email correspondence that in early October 2012, my
27 partner Michael B. Lubic began discussions with counsel for the City, Paul Glassman, regarding the
28 City's production of financial information. During these initial discussions, counsel for the City

1 expressed a willingness to provide informal discovery subject to CalPERS executing a confidentiality
2 agreement and agreeing to enter into a stipulation governing terms upon which the discovery would
3 be produced.

4 3. On October 24, 2012, CalPERS filed its Preliminary Objection to the City of San
5 Bernardino's Chapter 9 Petition and Request for Relief under 11 U.S.C. § 941 (the "Preliminary
6 Objection") (Dkt. #207). In its Preliminary Objection, CalPERS stated that it is unable to determine
7 whether the City meets the eligibility requirements of chapter 9 because the "City has failed to
8 provide interested parties with reliable information and a purported plan upon which to evaluate the
9 City's legitimate desire to effect a plan of adjustment." *Id.* at p. 1.

10 4. On October 26, 2012, I met with Paul Glassman at the National Conference of
11 Bankruptcy Judges in San Diego, California. We talked about the need for informal discovery
12 regarding the City's finances and its desire to effect a confirmable plan of adjustment. Later that day,
13 I provided Mr. Glassman with preliminary comments to the City's proposed confidentiality
14 agreement.

15 5. On October 31, 2012, I sent counsel for the City, a revised version of the draft
16 stipulation regarding the voluntary production of documents. The City protracted negotiations
17 regarding the terms of the stipulation and confidentiality agreement until November 15, 2012, when
18 counsel for CalPERS delivered executed copies of both agreements to counsel for the City.

19 6. On November 5, 2012, the Court held an initial status conference on the City's
20 eligibility. At the status conference, CalPERS raised concerns regarding the inadequacy of the
21 debtor's financial records and lack of transparency regarding important financial affairs of the City.

22 7. At the request of the City, the Court continued the initial status conference to
23 December 21, 2012. The City committed to file its pendency plan and to cooperate in providing
24 necessary financial information to creditors and parties in interest necessary to an understanding of
25 the City's intentions and good faith in these proceedings.

26 8. Between the time of my meeting with Mr. Glassman of October 26, 2012 and late
27 November, I made repeated requests of Mr. Glassman to expedite a facilitation of production of
28 financial records. I asked Mr. Glassman to arrange meetings between representatives of the City and

1 the financial consultants for CalPERS. Specifically, during our conversations I requested that the
2 City make financial representatives Michael Busch, Jason Simpson, Andrea Travis-Miller and Cindy
3 Navaroli available to meet with CalPers financial consultants, Mesirow Consulting. *See id.*

4 9. On or about December 7, 2012, the City provided its initial production of documents
5 to CalPERS. The information provided by the City was incomplete and represented only a fraction of
6 the documents that had been requested. That day, the City produced for a one hour telephone
7 interview its management consultant Michael Busch. This was the first interview of a financial
8 representative offered by the City. Since December 7, the City made its finance director Jason
9 Simpson available for a one hour telephone interview and has made four of its representatives
10 available for an in person interview of only 2 hours. The City has insisted that all meetings between
11 financial representatives be attended by counsel.

12 10. The City still has not provided the information requested by Mesirow in November.
13 Crucially, the City has still not provided sufficient records to understand the sources and uses of the
14 City's cash since the petition date. Notwithstanding the efforts of CalPERS to engage in informal
15 discovery with the City, the City has failed to deliver on its promises to provide essential financial
16 information. The City has dribbled out selected quantities of records to CalPERS over the past six
17 weeks and has made its management available for informational exchanges for, in the aggregate, only
18 a few hours.

19 12. During the course of the December 7, 2012 call with Mr. Simpson and counsel for the
20 City, CalPERS learned that the year end 2011 CAFR had been prepared on November 27, but had not
21 been produced to CalPERS. The 2011 CAFR was among the documents that CalPERS had been
22 requesting for weeks. The 2011 CAFR was not produced to CalPERS until December 10, 2012.

23 13. It is impossible for CalPERS to obtain an understanding of the issues the City's good
24 faith absent meaningful discovery responses by the City. Based on the pace at which the City has
25 acted in responding to CalPERS informal requests for information to this point, I do not believe that
26 informal discovery will result in the level of transparency that is necessary to resolve the complex
27 issues in this case efficiently and expeditiously.
28

1 I declare under the penalty of perjury under the laws of the United States that the foregoing is
2 true and correct to the best of my knowledge.

3 EXECUTED this 14th day of December, 2012, at Seattle, Washington.

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5 /s/ Michael J. Gearin
6 Michael J. Gearin
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PROOF OF SERVICE OF DOCUMENT

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

K&L Gates LLP, 10100 Santa Monica Blvd., 7th Floor, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): **DECLARATION OF MICHAEL J. GEARIN IN SUPPORT OF REPLY OF CALPERS IN SUPPORT OF ITS PRELIMINARY OBJECTION TO THE CITY OF SAN BERNARDINO'S CHAPTER 9 PETITION AND REQUEST FOR RELIEF UNDER 11 U.S.C. § 941**

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*) 12/14/12, 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:

- Jerrold Abeles abeles.jerry@arentfox.com, labarreda.vivian@arentfox.com
- Franklin C Adams franklin.adams@bbklaw.com, arthur.johnston@bbklaw.com;lisa.spencer@bbklaw.com;bknotices@bbklaw.com
- Joseph M Adams jadams@lawjma.com
- Andrew K Alper aalper@frandzel.com, efilings@frandzel.com;ekidder@frandzel.com
- Thomas V Askounis taskounis@askounisdarcy.com
- Anthony Bisconti tbisconti@bmkattorneys.com
- Jeffrey E Bjork jbjork@sidley.com
- Sarah C Boone sboone@marshackhays.com, ecfmarshackhays@gmail.com
- J Scott Bovitz bovitz@bovitz-spitzer.com
- Jeffrey W Broker jbroker@brokerlaw.biz
- Deana M Brown dbrown@milbank.com
- Michael J Bujold Michael.J.Bujold@usdoj.gov
- Christopher H Conti chc@sdlaborlaw.com, sak@sdlaborlaw.com
- Christina M Craige ccraige@sidley.com
- Alex Darcy adarcy@askounisdarcy.com
- Susan S Davis sdavis@coxcastle.com
- Robert H Dewberry robert.dewberry@dewlaw.net
- Todd J Dressel dressel@chapman.com, lubecki@chapman.com
- Chrysta L Elliott elliottc@ballardspahr.com, manthiek@ballardspahr.com
- Scott Ewing contact@omnimgt.com, sewing@omnimgt.com;katie@omnimgt.com
- John A Farmer jfarmer@orrick.com
- Paul R. Glassman pglassman@sycr.com
- David M Goodrich dgoodrich@marshackhays.com, ecfmarshackhays@gmail.com
- Christian Graham cgraham23@dlblaw.net
- Everett L Green everett.l.green@usdoj.gov
- Chad V Haes chaes@marshackhays.com, ecfmarshackhays@gmail.com
- James A Hayes jhayes@cwlawyers.com
- M Jonathan Hayes jhayes@hayesbklaw.com, roksana@hayesbklaw.com;carolyn@hayesbklaw.com;elizabeth@hayesbklaw.com
- D Edward Hays ehays@marshackhays.com, ecfmarshackhays@gmail.com
- Eric M Heller eric.m.heller@irscounsel.treas.gov
- Jeffery D Hermann jhermann@orrick.com
- Bonnie M Holcomb bonnie.holcomb@doj.ca.gov
- Whitman L Holt wholt@ktbslaw.com

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

- Michelle C Hribar mch@sdlaborlaw.com
- Steven J Katzman SKatzman@bmkattorneys.com
- Jane Kespradit jane.kespradit@limruger.com, amy.lee@limruger.com
- Mette H Kurth kurth.mette@arentfox.com
- Michael B Lubic michael.lubic@klgates.com, jonathan.randolph@klgates.com
- Richard A Marshack rmarshack@marshackhays.com,
lbergini@marshackhays.com;ecfmarshackhays@gmail.com
- Gregory A Martin gmartin@winston.com
- David J Mccarty dmccarty@sheppardmullin.com, pibsen@sheppardmullin.com
- Reed M Mercado rmercado@sheppardmullin.com
- Aron M Oliner roliner@duanemorris.com
- Scott H Olson solson@seyfarth.com
- Dean G Rallis drallis@sulmeyerlaw.com
- Christopher O Rivas crivas@reedsmith.com
- Kenneth N Russak krussak@frandzel.com, efilng@frandzel.com;dmoore@frandzel.com
- Gregory M Salvato gsalvato@salvatolawoffices.com, calendar@salvatolawoffices.com
- Mark C Schnitzer mschnitzer@rhlaw.com, mschnitzer@verizon.net
- Diane S Shaw diane.shaw@doj.ca.gov
- Jason D Strabo jstrabo@mwe.com, apolin@mwe.com
- Matthew J Troy matthew.troy@usdoj.gov
- United States Trustee (RS) ustpregion16.rs.ecf@usdoj.gov
- Anne A Uyeda auyeda@bmkattorneys.com
- Annie Verdries verdries@lbbsslaw.com
- Brian D Wesley brian.wesley@doj.ca.gov
- Kirsten A Roe Worley kworley@wthf.com, bcordova@wthf.com

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 12/14/12, 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.

Debtor

City of San Bernardino, California
City Hall
300 North "D" Street
San Bernardino, CA 92418
SAN BERNARDINO-CA

U.S. Trustee

United States Trustee (RS)
3801 University Avenue, Suite 720
Riverside, CA 92501-3200

Paul R. Glassman
Stradling Yocca Carlson & Rauth
100 Wilshire Blvd Ste 440
Santa Monica, CA 90401

Bryan C Altman
The Altman Law Group
6300 Wilshire Blvd Ste 980
Los Angeles, CA 90048

Roger Jon Diamond
2115 Main Street
Santa Monica, CA 90405

Dale K Galipo
21800 Burbank Blvd Ste 310
Woodland Hills, CA 91367

John A Henley
2068 Orange Tree Lane Ste 220
Redlands, CA 92374

Susan Millslagle
10045 Jonathan Ave
Cherry Valley, CA 92223

Jon Schlueter
108 Orange St Ste 8
Redlands, CA 92373

Neil S Steiner
433 N Camden Drive Ste 730
Beverly Hills, CA 90210

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) 12/14/12, 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.

The Hon. Meredith A. Jury
United States Bankruptcy Court
3420 Twelfth Street
Suite 325 / Courtroom 301
Riverside, CA 92501-3819

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.

12/14/12
Date

Brett D. Bissett
Printed Name

/s/ Brett D. Bissett
Signature