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8 **United States District Court**  
9 **Central District of California**  
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11 In Re:

12 CITY OF SAN BERNARDINO,  
13 CALIFORNIA,

14 Debtor,

15 \_\_\_\_\_  
16 SAN BERNARDINO CITY  
17 PROFESSIONAL FIREFIGHTERS  
18 LOCAL 891

19 Appellant,

20 v.

21 CITY OF SAN BERNARDINO,  
22 CALIFORNIA,

23 Appellee.

Case No. 5:15-cv-00042-ODW

**OPINION****Appeal from the United States  
Bankruptcy Court for the Central  
District of California, Riverside  
Division;****The Honorable Meredith A. Jury  
Presiding (No. 6:12-bk-28006)**24 **I. INTRODUCTION**

25 This case is the third in a trilogy of meritless appeals by Appellant San  
26 Bernardino City Professional Firefighters Local 891 (the “Union”). The Union  
27 appeals an order entered by the United State Bankruptcy Court for the Central District  
28 of California, Riverside Division, entered on December 11, 2014. The order in

1 question is titled “Amended Order Continuing in Effect the Automatic Stay Pending  
2 Final Hearing on the Motions for Relief from Automatic Stay Filed by the San  
3 Bernardino City Professional Firefighters Local 891 and the San Bernardino Police  
4 Officers Association Pending Final Hearing on the Motions.” *San Bernardino City*  
5 *Prof’l Firefighters Local 891 v. San Bernardino (In re City of San Bernardino)*, No.  
6 6:12-bk-28006, ECF No. 1337 (Dec. 11, 2014) (the “*Continuation Order*”). The  
7 *Continuation Order* continued the automatic stay in the underlying chapter 9  
8 bankruptcy of Appellee City of San Bernardino (the “City”). For the reasons  
9 discussed below, the Court **DISMISSES** this appeal for lack of jurisdiction.

## 10 **II. FACTUAL AND PROCEDURAL BACKGROUND**

11 On August 1, 2012, the City filed a voluntary petition under chapter 9 of the  
12 Bankruptcy Code. (AER 297–304.)<sup>1</sup> At that time, the City was in a financial crisis  
13 with an estimated budget deficit of \$45.8 million. (SER 473–76.) The City’s  
14 insolvency is detailed in the Bankruptcy Court’s chapter 9 eligibility opinion. *In re*  
15 *San Bernardino*, 499 B.R. 776 (Bankr. C.D. Cal. 2013). The City then implemented a  
16 series of cost-reduction measures, to include involuntary modifications to the  
17 memorandum of understanding (the “MOU”) between the City and the Union. (SER  
18 446–51, 874–923.) The negotiation efforts between the parties and the specifics of the  
19 cost-reduction measures are detailed in two concurrently-filed opinions from this  
20 Court. *See In re San Bernardino*, No. 5:14-cv-02073, ECF No. 47 (C.D. Cal. May 7,  
21 2015); *In re San Bernardino*, No. 5:14-cv-02505, ECF No. 31 (C.D. Cal. May 7,  
22 2015).

23 On March 4, 2013, the City filed a motion with the Bankruptcy Court to reject  
24 the MOU (the “Rejection Motion”). (AER 176–204; SER 1419–99.) The hearing on  
25 the Rejection Motion was initially scheduled for March 27, 2013. (AER 176.) On  
26 March 8, 2013, the Union filed a motion for relief from the automatic bankruptcy stay

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27 <sup>1</sup> Citations to the “Appellant’s Excerpts of the Record” or “AER” denote the excerpts submitted by  
28 the Union. (ECF No. 13.) Citations to the “Supplemental Excerpts of the Record” or “SER” denote  
the excerpts submitted the City. (ECF No. 19.) The parties do not dispute any facts on appeal.

1 in order to file state-law claims in state court (the “Stay Motion”). (*Id.* at 1–175.) The  
2 hearing on the Stay Motion was initially scheduled for April 4, 2013. (*Id.* at 1.) On  
3 March 12, 2013, the City and the Union filed a joint stipulation which stated that the  
4 parties agreed, *inter alia*, to continue the hearing on the Rejection Motion to April 4,  
5 2013, and that the Bankruptcy Court would conduct preliminary hearings for both  
6 pending motions. (*Id.* at 205–10.) The Bankruptcy Court approved the joint  
7 stipulation on March 13, 2013. (SER 1017–22.)

8 On April 4, 2013, the Bankruptcy Court held preliminary hearings on both the  
9 City’s Rejection Motion and the Union’s Stay Motion. (AER 211–79.) With the  
10 consent of the Union, the Bankruptcy Court then continued the hearings to allow for  
11 additional discovery. (*Id.* at 211–27; SER 1534–40, 1551–52, 1586–93.) Both  
12 motions were continued again in response to the Union’s claim that the Bankruptcy  
13 Court must first decide whether the City was eligible for chapter 9 relief. (SER 2794.)  
14 On August 28, 2013, the Bankruptcy Court issued its opinion ruling that the City was  
15 eligible for chapter 9 relief. (*Id.* at 2253–94.)

16 Between September 2013 and June 2014, the hearings on the City’s Rejection  
17 Motion and the Union’s Stay Motion were continued to the same dates as the status  
18 conferences in the chapter 9 case to accommodate the ongoing mediations between the  
19 parties. (AER 412; SER 2126–27, 2130–31, 2190–94, 2211–13, 2217, 2343–48,  
20 2365–67.) On June 19, 2014, the Bankruptcy Court granted the Union’s request to be  
21 relieved from further mediations with the City. (AER 599.) The Bankruptcy Court  
22 then set a briefing schedule for the Rejection Motion and heard arguments on  
23 September 11, 2014. (SER 2530–34.) At the September 11, 2014 hearing, the  
24 Bankruptcy Court granted the City’s Rejection Motion. (*Id.* at 2622–31.) On  
25 September 19, 2011, the Bankruptcy Court entered an order granting the Rejection  
26 Motion (the “Rejection Order”), and set a hearing date for the Stay Motion, to include  
27 a supplemental briefing schedule. (*Id.* at 2656–60.)

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1 On December 3, 2014, the Bankruptcy Court heard arguments on the Stay  
2 Motion and denied it on the record. (AER 295–96; SER 2699–2701.) The  
3 Bankruptcy Court then entered two separate orders. On December 11, 2014, the  
4 Bankruptcy Court entered the *Continuation Order* which specifically denied the  
5 Union’s Stay Motion and is the focus of this appeal. (AER 280–94.) The  
6 *Continuation Order* holds “that the automatic stay is continued as to both the  
7 [Union’s] motion for relief and the [police union’s] motion for relief nunc pro tunc to  
8 April 4, 2013, and that such stay shall remain in effect until an order after final  
9 hearing by this court on each such motion.” (*Id.* at 281.) On December 19, 2014, the  
10 Bankruptcy Court entered an “Order Denying San Bernardino City Professional  
11 Firefighters Local 891’s Motion for Relief from the Automatic Stay Under 11 U.S.C.  
12 § 362.” (*Id.* at 295–96.) This order denied the Union’s July 21, 2014 motion for relief  
13 which was filed after the City implemented certain cost-reduction measures in June  
14 2014. (ECF No. 1054.)

### 15 III. STANDARD OF REVIEW AND CONTROLLING LAW

16 The Court reviews its own jurisdiction *de novo*. *Silver Sage Partners, Ltd. v.*  
17 *Desert Hot Springs (In re City of Desert Hot Springs)*, 339 F.3d 782, 787 (9th Cir.  
18 2004). “It is an inexorable command of the United States Constitution that the federal  
19 courts confine themselves to deciding actual cases and controversies.” *Gator.com*  
20 *Corp. v. L.L. Bean, Inc.*, 398 F.3d 1125, 1128 (9th Cir. 2005) (citing U.S. CONST. art.  
21 III, § 2, cl. 1). “The province of courts is to decide real controversies, not to discuss  
22 abstract propositions.” *Lieutenant Colonel Daniel C. Stearns v. Brigadier General*  
23 *George H. Wood*, 236 U.S. 75, 78 (1915). In order for a federal court to decide a  
24 case, “[i]t must be a real and substantial controversy admitting of specific relief  
25 through a decree of a conclusive character, as distinguished from an opinion advising  
26 what the law would be upon a hypothetical state of facts.” *Aetna Life Ins. Co. of*  
27 *Hartford, Conn. v. Haworth*, 300 U.S. 227, 241 (1937).

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1 **IV. ISSUE ON APPEAL**

2 The Union raises one issue on appeal: “The central issue in this appeal is  
3 whether the Bankruptcy Court erred when, following the lapse of the automatic stay  
4 under 11 U.S.C. § 362(e), it, *sua sponte*, reinstated or ‘continued’ (*nunc pro tunc*) the  
5 automatic stay created under 11 U.S.C. § 362(a) outside the context of an adversary  
6 proceeding.” (Appellant Br. at 1–2.)

7 **V. DISCUSSION**

8 This appeal is surprisingly meritless. The Union has asked this Court to answer  
9 a hypothetical question. The Union wants the Court to *assume* that the automatic stay,  
10 which was issued pursuant to 11 U.S.C. § 362 on the day the City filed its voluntary  
11 petition, lapsed when the Bankruptcy Court waited longer than thirty days to issue a  
12 ruling on the Union’s Stay Motion. (Appellant Br. at 7.) Once the Court makes this  
13 assumption, the Union then wants the Court to decide whether the Bankruptcy Court  
14 can “reinstate” the stay. (*Id.*) To its credit, the Union is unabashed in framing its  
15 hypothetical question: “The first issue necessarily presupposes the automatic stay  
16 terminated.” (Appellant Reply at 3.) The Union explains that the “issue of whether or  
17 not the automatic stay terminated, however, is the subject of a separate appeal pending  
18 before this Court . . . which has yet to be briefed by the parties.” (*Id.* at 1.)

19 There is no doubt that the Court must reject this appeal. The Union’s request  
20 that the Court “presuppose” a legal question is unequivocal proof that this appeal runs  
21 afoul of this Court’s jurisdiction. The Court cannot decide the Union’s “abstract  
22 proposition.” *Stearns*, 236 U.S. at 78. According to the Union, however, the Court  
23 can safely assume that the automatic stay did in fact lapse/terminate because “there  
24 would be no other reason for the Bankruptcy Court to enter the Stay Order” and  
25 “otherwise, the Stay Order was an unnecessary exercise in redundancy.” (*Id.* at 3–4.)  
26 The Union is mistaken. In December 2014, there were *two* pending motions for relief.  
27 The Union filed its first motion for relief—the one appealed here—on March 8, 2013  
28 (ECF No. 460), and its second motion for relief on July 21, 2014 (ECF No. 1054). It

1 comes as no surprise that the Bankruptcy Court would issue two orders to deny two  
2 separate motions. Contrary to the Union’s claim, the Bankruptcy Court *did* have a  
3 reason to issue two orders denying motions for relief. There is no redundancy.

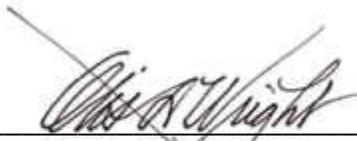
4 To resolve the Union’s issue on appeal, the Court must first decide whether or  
5 not the automatic stay lapsed as a matter of law. The Union wants the Court to bypass  
6 this determination and render an advisory opinion based on a “hypothetical state of  
7 facts.” *Haworth*, 300 U.S. at 241. This Court does not have jurisdiction to do so.

8 **VI. CONCLUSION**

9 The Court hereby **DISMISSES** this appeal for lack of jurisdiction. The Clerk  
10 of the Court shall close this case.

11 **IT IS SO ORDERED.**

12  
13 May 7, 2015

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17 **OTIS D. WRIGHT, II**  
18 **UNITED STATES DISTRICT JUDGE**