

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**United States District Court  
Central District of California**

In re:

CITY OF SAN BERARDINO,  
CALIFORNIA,  
Debtor.

Case № 5:15-cv-00815-ODW

U.S. Bankruptcy Court Case Nos.

Adverse Action: 6:15-ap-01119-MJ

Main Action: 6:12-bk-28006-MJ

SAN BERNARDINO CITY  
PROFESSIONAL FIREFIGHTERS,  
LOCAL 891; GREGORY PARKER; SAM  
BASHAW; CHRIS NIGG; THOMAS  
JEFF ENGLISH; RICHARD LENTINE;  
STEVE TRACY; KENNETH KONIOR,  
Plaintiffs,  
CITY OF SAN BERARDINO,  
CALIFORNIA; ALAN PARKER; and  
DOES 1-10,  
Defendants.

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS’  
MOTION TO WITHDRAW  
REFERENCE [1]**

1 **I. INTRODUCTION**

2 This action is part of a lengthy feud between the City of San Bernardino  
3 (“City”) and its firefighters over the terms and conditions of their employment, which  
4 has undergone several changes as a result the City’s bankruptcy. *In re: City of San*  
5 *Bernardino, Cal.*, No. 6:12–bk–28006–MJ (Bankr. C.D. Cal.). Plaintiffs San  
6 Bernardino City Professional Firefighters Local 891, Gregory Parker, Sam Bashaw,  
7 Chris Nigg, Thomas Jeff English, Richard Lentine, Steve Tracy, and Kenneth Konior  
8 (“Firefighters”) filed this adverse action in the bankruptcy court, alleging that the City  
9 reduced their wages and benefits in violation of the City’s Charter. The Firefighters  
10 now move this Court to withdraw reference of the case from the bankruptcy court and  
11 proceed with the matter before this Court. For the reasons discussed below, the Court  
12 **GRANTS IN PART** and **DENIES IN PART** the Firefighters’ Motion.<sup>1</sup> (ECF No. 1.)

13 **II. FACTUAL BACKGROUND**

14 The extensive factual and procedural history underlying the City’s bankruptcy  
15 and the labor negotiations between the City and the Firefighters has been recited by  
16 this Court at length in prior orders,<sup>2</sup> and thus the Court will recite only the salient  
17 facts. In 2003, the City and the Firefighters entered into a collective bargaining  
18 agreement, also known as a Memorandum of Understanding (“MOU”). Although the  
19 MOU technically expired in 2010, it contained an “evergreen clause” that allowed the  
20 terms of the MOU to remain in effect until a new MOU was negotiated. (Mot. at 7.)  
21 There were some attempts thereafter to negotiate a successor MOU, but those  
22 negotiations were not fruitful. (Compl. ¶ 14.)

23 In August 2012, after projecting a budget deficit of \$45.8 million, the City filed  
24 a voluntary petition under Chapter 9 of Title 11 of the United States Code. (*Id.* ¶ 12.)

25 \_\_\_\_\_  
26 <sup>1</sup> After considering the papers filed in support of and in opposition to the Motion, the Court  
deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

27 <sup>2</sup> See, e.g., *In re City of San Bernardino, Cal.*, 530 B.R. 474, 477–80 (C.D. Cal. 2015); *In re*  
28 *City of San Bernardino, Cal.*, 530 B.R. 489, 492–93 (C.D. Cal. 2015); *In re City of San Bernardino,*  
*Cal.*, No. 5:15-CV-00042-ODW, 2015 WL 2153770, at \*1–2 (C.D. Cal. May 7, 2015).

1 On November 26, 2012, the City Council passed a “Pendency Plan,” which set forth a  
2 series of expenditure reductions and required the City to negotiate contract  
3 modifications with the City’s six labor unions, including the Firefighters. (*Id.* ¶ 14.)  
4 Five unions agreed to modify their employment agreements, but the Firefighters and  
5 the City were unable to reach an agreement. (*See id.*) On February 1, 2013, the City  
6 Council, relying on its fiscal emergency status, passed a resolution that imposed  
7 “interim terms and conditions of employment” on the Firefighters. (*Id.* ¶ 13.) The  
8 Firefighters allege that this resolution effectively reduced their wages in violation of  
9 the City’s Charter. (*See id.* ¶ 15.)

10 On March 4, 2013, the City requested authorization from the bankruptcy court  
11 to reject the MOU, and for *nunc pro tunc* approval of the City Council’s February 1,  
12 2013 resolution. (*Id.* ¶ 17.) The bankruptcy court authorized the City to reject the  
13 MOU, but declined to approve the resolution. (*Id.* ¶ 25.) On October 6, 2014, the  
14 City further amended the Firefighters’ terms and conditions of employment, which  
15 again allegedly reduced their wages and benefits in violation of the City’s Charter.  
16 (*Id.* ¶¶ 26–28.)

17 On April 10, 2015, the Firefighters filed this adverse action in the bankruptcy  
18 court. (ECF No. 1-1.) The Firefighters assert eight causes of action: (1) violation of  
19 the First, Fifth, and Fourteenth Amendments under 42 U.S.C. § 1983; (2) violation of  
20 the federal Fair Labor Standards Act; (3) violation of the California Public  
21 Employees’ Retirement Law (two counts); (4) violation of California Code of Civil  
22 Procedure section 1085; (5) declaratory relief under state law (two counts); and (6)  
23 violation of the California Labor Code. (*Id.*) On April 24, 2015, the Firefighters  
24 moved this Court to withdraw reference of the proceeding from the bankruptcy court  
25 and to proceed with the matter before this Court. (ECF No. 1.) The City timely  
26 opposed, and the Firefighters timely replied. (ECF Nos. 16, 20.) The Motion is now  
27 before the Court for consideration.

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**III. LEGAL STANDARD**

In the Central District of California, all cases arising under the United States Bankruptcy Code, as well as any proceedings related thereto, are automatically referred to the bankruptcy court. 28 U.S.C. § 157(a); C.D. Cal. Gen. Order No. 13-05 (2013). However, on timely motion of a party, the district court must withdraw the reference “if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.” 28 U.S.C. § 157(d). Alternatively, the district court may withdraw the proceeding “for cause shown.” *Id.* “The burden of proving that withdrawal is appropriate is on the party seeking withdrawal.” *Lucore v. Guild Mortgage Co.*, No. 12-CV-1411-IEG WVG, 2012 WL 2921354, at \*2 (S.D. Cal. July 16, 2012).

**IV. DISCUSSION**

The Firefighters argue that withdrawing the reference is either required or advisable on several grounds. First, they argue that withdrawal is mandatory because the Complaint asserts claims under non-bankruptcy federal law. (Mot. at 14–16.) Second, they argue that withdrawal is mandatory because their claims are personal injury tort claims. (Mot. at 16–18.) Third, they argue that the Court should exercise its discretion to withdraw the action because it is a non-core proceeding that would be more efficiently litigated in the district court. (Mot. at 18–19, 25–26.) Finally, they argue that they have a Seventh Amendment right to a jury trial on their claims, which must be conducted in the district court. (Mot. at 22–25.) The Court rejects all arguments except the last one.

**A. Mandatory Withdrawal**

The Firefighters argue that because this action asserts claims under the Civil Rights Act and Fair Labor Standards Act, it *ipso facto* must proceed before the district court. (Mot. at 14–16.) They also contend that the civil rights claim is a “personal injury tort” that must be tried in the district court. (Mot. at 16–18.) The Firefighters

1 are wrong on both counts.

2 **1. Federal Claims**

3 As an initial matter, the standard for mandatory withdrawal is not nearly as  
4 lenient as the Firefighters claim. Federal courts nationwide overwhelmingly follow  
5 the rule that mandatory withdrawal “is not available merely whenever non-Bankruptcy  
6 Code federal statutes will be considered in the bankruptcy court proceeding, but is  
7 reserved for cases where substantial and material consideration of non-Bankruptcy  
8 Code federal statutes is necessary for the resolution of the proceeding.” *In re*  
9 *Ionosphere Clubs, Inc.*, 103 B.R. 416, 418–19 (S.D.N.Y. 1989) (footnote omitted); *see*  
10 *also, e.g., In re Imperial Capital Bancorp, Inc.*, No. 11-CV-2065, 2012 WL 10710, at  
11 \*2 (S.D. Cal. Jan. 3, 2012) (“[W]ithdrawal is only mandatory when complicated,  
12 interpretive issues [of non-bankruptcy federal law] are involved.” (citation omitted));  
13 *In re Temecula Valley Bancorp, Inc.*, 523 B.R. 210, 214 (C.D. Cal. 2014). The Ninth  
14 Circuit has, in dicta, implicitly endorsed this standard. *Sec. Farms v. Int’l Bhd. of*  
15 *Teamsters, Chauffers, Warehousemen & Helpers*, 124 F.3d 999, 1008 & n.4 (9th Cir.  
16 1997). Other circuits also follow this standard, reasoning that a more liberal reading  
17 of the statute would “eviscerate much of the work of the bankruptcy courts” and  
18 would “create an ‘escape hatch’ by which bankruptcy matters could easily be removed  
19 to the district court.” *Matter of Vicars Ins. Agency, Inc.*, 96 F.3d 949, 954 (7th Cir.  
20 1996); *see also In re Ionosphere Clubs, Inc.*, 922 F.2d 984, 995 (2d Cir. 1990).

21 Despite this overwhelming authority, the Firefighters strenuously argue that  
22 withdrawal is mandatory where the case presents only material considerations of  
23 federal law, as opposed to *substantial* and material considerations that are *necessary*  
24 to resolve the proceedings. The Firefighters rely solely on the Ninth Circuit’s dicta in  
25 *Security Farms* to support their position. 124 F.3d at 1008. Not only is dicta not  
26 binding on this Court, but *Security Farms* has been uniformly interpreted as  
27 supporting the more exacting standard. *E.g., One Longhorn Land I, L.P. v. Presley*,  
28 529 B.R. 755, 760 (C.D. Cal. 2015); *Temecula Valley Bancorp*, 523 B.R. at 214 &

1 n.2; *Imperial Capital Bancorp*, 2012 WL 10710, at \*2. Thus, the Court sees no  
2 reason to adopt the more lenient standard advanced by the Firefighters.

3 In addition to—or perhaps because of—their erroneous recitation of the  
4 governing legal standard, the Firefighters do not explain how the resolution of this  
5 proceeding requires the Court to consider substantial and material issues of federal  
6 law. Instead, they assume that the mere presence of any federal claim (and a § 1983  
7 claim in particular) instantly mandates withdrawal of the action. This, of course, is  
8 just plain wrong. Whether a particular claim presents “complicated [and] interpretive”  
9 issues of federal law, *Imperial Capital Bancorp*, 2012 WL 10710, at \*2, and whether  
10 resolution of those issues is necessary to resolve the proceeding, must be analyzed on  
11 a case-by-case basis; there is no one-size-fits-all rule. *See In re Chadborne Indus.,*  
12 *Ltd.*, 100 B.R. 663, 666 (S.D.N.Y. 1989). The Firefighters fail to do this, and have  
13 therefore failed to meet their burden to show that withdrawal is mandatory.

14 Indeed, the Court’s analysis of the issues in this action strongly suggests that  
15 substantial federal issues do *not* predominate. All of the Firefighters’ federal claims,  
16 and four of their six state claims, turn on whether or not the City’s Charter guarantees  
17 the Firefighters a certain minimum level of wages and benefits. (Compl. ¶¶ 37, 74,  
18 132, 156–59, 190.) Thus, if the bankruptcy court interprets the City’s Charter in the  
19 Firefighters’ favor, they will receive substantially all of their requested relief under  
20 their state law causes of action without any need to address issues of federal law. (*See*  
21 *Mot.* at 11–12 (“This [state law] claim seeks to compel the City to comply with its  
22 own City Charter by, among other things, setting aside its actions to implement  
23 changes to employee pension contributions and reimburse Plaintiffs for all earned  
24 wages and salary wrongfully withheld.”).) And even if additional relief is possible  
25 under the federal causes of action, the Firefighters do not point to any “complicated  
26 [and] interpretive issues” of federal law that must be resolved for the Court to afford  
27 that relief. On the other hand, if the bankruptcy court interprets the Charter in the  
28 City’s favor, the Firefighters’ federal claims necessarily fail without any consideration

1 of federal law.<sup>3</sup> As a result, the Court sees no basis for mandatory withdrawal.

## 2 **2. Personal Injury Tort**

3 The Firefighters also argue that their civil rights claim is a personal injury tort  
4 that must be tried before the district court. Under § 157, all “personal injury tort and  
5 wrongful death claims” that arise in a bankruptcy proceeding must be tried before the  
6 district court. 28 U.S.C. § 157(d)(5). The Bankruptcy Code does not define the term  
7 “personal injury tort,” and the Supreme Court has noted that “there is at least a three-  
8 way divide” among the lower courts as to what constitutes a “personal injury tort.”  
9 *Stern v. Marshall*, 131 S. Ct. 2594, 2606 n.4 (2011).

10 Under the narrow view, “a personal injury tort claim requires an actual physical  
11 injury.” *In re Arnold*, 407 B.R. 849, 852 (Bankr. M.D.N.C. 2009); *see also In re*  
12 *Vinci*, 108 B.R. 439, 442 (Bankr. S.D.N.Y. 1989) (adopting the narrow view). Under  
13 the expansive view, “a personal injury tort claim is not limited to a claim involving  
14 bodily injury[, and instead] ‘embraces a broad category of private or civil wrongs or  
15 injuries for which a court provides a remedy in the form of an action for damages, and  
16 includes damage to an individual’s person and any invasion of personal rights, such as  
17 libel, slander and mental suffering.’” *Arnold*, 407 B.R. at 852; *see also Moore v.*  
18 *Idealease of Wilmington*, 358 B.R. 248, 250 (E.D.N.C. 2006) (adopting the expansive  
19 view); *In re Gary Brew Enter. Ltd.*, 198 B.R. 616, 620 (Bankr. S.D. Cal. 1996)  
20 (same). The intermediate approach “look[s] to whether a claim falls within the  
21 purview of a personal injury tort claim under the expansive view, yet retain[s]  
22 bankruptcy jurisdiction over the claim if it has ‘earmarks of a financial, business or  
23 property tort claim, or a contract claim.’” *Arnold*, 407 B.R. at 852 (citations omitted);

---

24 <sup>3</sup> The Court declines to consider the Firefighters’ drive-by allegations that certain “acts or  
25 omissions” by the City violate 42 U.S.C. § 1985, 18 U.S.C. § 241, and 18 U.S.C. § 242. The  
26 Firefighters do not identify what “acts or omissions” among the fifty preceding paragraphs they are  
27 referring to, how those acts violate those statutes, what “complicated and interpretive” issues of  
28 federal law they present, or how resolution of those issues is necessary to resolving the proceeding.  
Much the same can be said about their First Amendment claims. To the extent these allegations  
could form a basis for mandatory withdrawal, the Court considers any such argument waived.

1 *see also In re Ice Cream Liquidation, Inc.*, 281 B.R. 154, 160–64 (Bankr. D. Conn.  
2 2002) (adopting the middle-ground approach); *Lewis v. Cekosh*, No. 08-CV-985, 2010  
3 WL 2102452, at \*2 (E.D. Wis. May 21, 2010) (same).

4 Under the narrow view, the Firefighters’ civil rights claim is not a “personal  
5 injury tort” because it indisputably does not arise from physical injuries. Neither is it  
6 under the intermediate approach because the essence of the claim is for economic loss  
7 (i.e., lost wages), not physical injuries or emotional distress.<sup>4</sup> Under the expansive  
8 view, however, the claim could arguably be a “personal injury tort” because the  
9 Firefighters allege emotional distress as an ancillary harm. Unfortunately for the  
10 Firefighters, the Court finds the expansive view unpersuasive.

11 First, cases following the expansive view “place too much reliance on whether  
12 the alleged claim would be considered a ‘personal injury tort’ in a nonbankruptcy  
13 context.” *Ice Cream Liquidation*, 281 B.R. at 161. For example, in *Moore* (on which  
14 the Firefighters heavily rely), the court held that *all* § 1983 claims were “personal  
15 injury torts” merely because the Supreme Court characterized the claims as such in  
16 deciding whether a state’s personal injury statute of limitations applies. 358 B.R. at  
17 250; *see also Gary Brew Enter.*, 198 B.R. at 620 (same). *Moore* presents no  
18 convincing reason to look to the Supreme Court’s non-bankruptcy jurisprudence to  
19 evaluate the meaning of that term as it is used in the Bankruptcy Code, and the wholly  
20 different policy considerations underlying the Bankruptcy Code in general (and the  
21 withdrawal statute in particular) counsels against doing so.

22 Second, characterizing all § 1983 claims as “personal injury torts” is grossly  
23 overbroad. That statute provides a private right of action for any constitutional  
24 violation or violation of federal law, which, as this case illustrates, will occasionally  
25 involve claims for purely economic damages (such as wage claims and business loss  
26 claims). It would stretch the term “personal injury tort” beyond all recognition if it

---

27 <sup>4</sup> Again, the Court considers any arguments concerning violation of 42 U.S.C. § 1985, 18  
28 U.S.C. § 241, 18 U.S.C. § 242, or the First Amendment waived. (*See supra* note 2.)



1 included such claims. *Cf. In re Miller*, 124 F. App'x 495, 501 (9th Cir. 2005) (a claim  
2 for tortious interference with business interests was not a personal injury tort under  
3 § 157(d)(5)). The bankruptcy court is clearly better suited to handle such claims  
4 insofar as they relate to an ongoing bankruptcy proceeding, particularly where (as  
5 here) those claims are asserted by a creditor against the debtor. For these reasons, the  
6 Court cannot conclude that Congress intended for the district court to try such claims.  
7 Consequently, § 157(d)(5) does not provide a basis on which to withdraw the  
8 reference of this action.

9 **B. Discretionary Withdrawal**

10 The Firefighters next contend that the Court should exercise its discretion to  
11 withdraw reference because this case is a non-core proceeding, and efficiency would  
12 be enhanced by litigating this case in the district court. The City responds that the  
13 action is a core proceeding because it is, in effect, a proof of claim, and is thus better  
14 situated for resolution in the bankruptcy court. The Court disagrees that the action is  
15 effectively a proof of claim, but holds that it is nonetheless a core proceeding and thus  
16 should stay with the bankruptcy court.

17 Even if withdrawal is not mandatory, the district court still has the discretion to  
18 withdraw the reference upon a showing of “good cause” by the movant. 28 U.S.C.  
19 § 157(d). “To determine whether cause for permissive withdrawal exists, a district  
20 court ‘should first evaluate whether the claim is core or non-core, since it is upon this  
21 issue that questions of efficiency and uniformity will turn.’” *Temecula Valley*  
22 *Bancorp*, 523 B.R. at 214 (quoting *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2d  
23 Cir. 1993)). “Next, the ‘district court should consider the efficient use of judicial  
24 resources, delay and costs to the parties, uniformity of bankruptcy administration, the  
25 prevention of forum shopping, and other related factors.’” *Id.* (quoting *Sec. Farms*,  
26 124 F.3d at 1008).

27 **1. Core/Non-Core Proceeding**

28 A core proceeding is one that “aris[es] under title 11[] or aris[es] in a case under

1 title 11.” 28 U.S.C. § 157(b)(1). “The term ‘arising under’ describes those  
2 proceedings involving a cause of action created or determined by a statutory provision  
3 of title 11[, w]hereas ‘arising in’ refers to administrative matters that are not based on  
4 any right expressly created by title 11 but would nevertheless have no existence  
5 outside of the bankruptcy case.” *In re ACI-HDT Supply Co.*, 205 B.R. 231, 234–35  
6 (B.A.P. 9th Cir. 1997). Section 157 provides a non-exhaustive list of core  
7 proceedings, including the following two “catch-all” categories:

8 (A) matters concerning the administration of the estate;

9 . . .

10 (O) other proceedings affecting the liquidation of the assets of the  
11 estate or the adjustment of the debtor-creditor or the equity security  
holder relationship, except personal injury tort or wrongful death claims.

12 28 U.S.C. § 157(b)(2)(A), (O). The Ninth Circuit has also referenced several factors  
13 that may be useful in determining whether or not a matter is a core proceeding in  
14 borderline cases. This includes “whether the rights involved exist independent of title  
15 11, depend on state law for their resolution, existed prior to the filing of a bankruptcy  
16 petition, or were significantly affected by the filing of the bankruptcy case.” *In re*  
17 *Cinematronics, Inc.*, 916 F.2d 1444, 1450 n.5 (9th Cir. 1990).

18 Here, although the Firefighters’ claims are obviously not brought under  
19 bankruptcy law, it is equally apparent that they would not exist outside of the City’s  
20 bankruptcy proceeding. A debtor is “empowered by virtue of the Bankruptcy Code to  
21 deal with its contracts and property in a manner it could not have done absent the  
22 bankruptcy filing.” *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984). This  
23 includes the power to restructure labor relations with its employees by, among other  
24 things, rejecting a collective bargaining agreement. 11 U.S.C. § 365(a); *Bildisco*, 465  
25 U.S. at 528. This, in turn, allows the debtor to unilaterally amend the terms and  
26 conditions of employment for their employees. *Bildisco*, 465 U.S. at 528–34. That is  
27 exactly what happened here—the City filed for bankruptcy, requested authority from  
28 the bankruptcy court to reject the MOU, and then proceeded to impose new labor

1 conditions on its employees in an attempt to narrow its substantial budget deficit.  
2 Although the Firefighters allege that the City violated its Charter and various state  
3 statutes by doing so, the fact remains that none of this would have occurred had the  
4 City not filed for bankruptcy in the first place. As a result, this action would not exist  
5 outside of the bankruptcy context, and thus it is a core proceeding. *See also Int'l*  
6 *Ass'n of Machinists & Aerospace Workers, AFL-CIO v. E. Air Lines, Inc.*, 121 B.R.  
7 428, 433 (S.D.N.Y. 1990) (“[L]abor disputes are core proceedings.”), *aff'd*, 923 F.2d  
8 26 (2d Cir. 1991); *Elsinore Shore Assocs. v. Local 54, Hotel Emps. & Rest. Emps.*  
9 *Int'l Union*, 820 F.2d 62, 66 (3d Cir. 1987) (“[A] request for a[n injunction

10 prohibiting a labor strike] was a ‘matter concerning the administration of the estate,’  
11 and therefore was a core proceeding.”).

12 The Court also finds that this matter fits within either of the two catch-all  
13 categories of core proceedings under § 157(b)(2). The City imposed interim  
14 conditions of employment on its employees in order to reduce its budget deficit and  
15 remain solvent during the pendency of the bankruptcy proceedings, and thus the  
16 conduct was part of its administration of the estate. § 157(b)(2)(A). Moreover, the  
17 injunctive relief sought will significantly affect the adjustment of the financial  
18 relationship between the creditor-City and the debtor-Firefighters. § 157(b)(2)(O).  
19 *See also In re City of Stockton, Cal.*, 478 B.R. 8, 29–30 (Bankr. E.D. Cal. 2012)  
20 (adverse action by City retirees against City for unilateral reduction in benefits held to  
21 be a core proceeding under subsections (A), (B), and (O)).

22 For the foregoing reasons, the Court does not hesitate to conclude that this  
23 matter is a core proceeding.

## 24 **2. Other Factors**

25 Because the bankruptcy court has the power to enter judgments in core  
26 proceedings, 28 U.S.C. § 157(b)(1), the remaining factors bearing on discretionary  
27 withdrawal—efficient use of judicial resources, delay and costs to the parties,  
28 uniformity of bankruptcy administration, the prevention of forum shopping—will

1 usually disfavor withdrawal once the action is found to be a core proceeding. This  
2 case is no different.

3 Judicial resources will no doubt be more efficiently used by keeping this matter  
4 with the bankruptcy court. That court has overseen the City's bankruptcy proceedings  
5 for several years, and is thus intimately familiar with all of its moving parts. This is  
6 particularly important given the size and complexity of this municipal bankruptcy.  
7 The bankruptcy court is also familiar with the long history and the circumstances of  
8 the dispute between the City and Firefighters, and thus is in a much better position to  
9 adjudicate this action. *See Hawaiian Airlines, Inc. v. Mesa Air Grp., Inc.*, 355 B.R.  
10 214, 224 (D. Haw. 2006). It would also be highly disruptive to the ultimate  
11 disposition of the City's bankruptcy proceeding if this matter were to proceed along a  
12 completely separate timeline ungoverned by the bankruptcy court.

13 For similar reasons, allowing this case to proceed before the bankruptcy court  
14 will also minimize delay and costs to the parties, and will promote uniformity of  
15 bankruptcy administration. This proceeding is now seven months old, and the  
16 bankruptcy court has already made several significant rulings in this matter.  
17 Restarting the case in this Court would require the Court to get up to speed on the  
18 actions taken by the parties and the bankruptcy court, which would delay resolution of  
19 the matter. It could also result in rulings that are inconsistent with other rulings made  
20 in the broader bankruptcy case.

21 Finally, the Court suspects that the Firefighters are engaging in forum shopping.  
22 "Forum shopping is likely where a party moves to withdraw the reference after  
23 adverse findings have been made against it by the Bankruptcy Court." *In re GTS 900*  
24 *F, LLC*, No. 2:09-BK-35127-VZ, 2010 WL 4878839, at \*5 (C.D. Cal. Nov. 23, 2010).  
25 Here, the Firefighters have appealed at least four adverse orders from the bankruptcy  
26 court. Given this succession of appeals, it seems apparent that the Firefighters simply  
27 do not want to litigate before the Bankruptcy Judge assigned to this matter. The Court  
28 therefore declines to exercise its discretion to withdraw the reference of this matter.

1 **C. Right to Jury Trial**

2 Finally, the Firefighters argue that they are entitled to a jury trial before the  
3 district court on their claims. The City again counters that the Firefighters’ claims are  
4 essentially proofs of claims, and that there is no right to a jury trial for proofs of  
5 claims. The Court agrees that the Firefighters have a right to a jury trial on their  
6 claims under § 1983 and the FLSA, but not on any other claims in their Complaint.

7 “[T]he bankruptcy court is unable to preside over a jury trial absent explicit  
8 consent from the parties and the district court.” *In re Dyer*, 322 F.3d 1178, 1194 (9th  
9 Cir. 2003) (citing 28 U.S.C. § 157(e)); *see also Cinematronics*, 916 F.2d at 1451  
10 (bankruptcy court cannot conduct jury trial in noncore proceedings); *In re Clay*, 35  
11 F.3d 190, 197 (5th Cir. 1994) (bankruptcy court cannot conduct trial in core  
12 proceedings). Thus, for any claim on which a party has a right to a jury trial, that trial  
13 must be conducted before the district court.

14 The right to a jury trial derives from one of two sources: the statute under which  
15 the claim is brought or the Seventh Amendment. *Tamosaitis v. URS Inc.*, 781 F.3d  
16 468, 485 (9th Cir. 2015). The Supreme Court has determined that a Seventh  
17 Amendment jury right extends to a § 1983 claim seeking damages for violations of the  
18 Fifth Amendment’s Takings Clause. *City of Monterey v. Del Monte Dunes at*  
19 *Monterey, Ltd.*, 526 U.S. 687, 709 (1999). The Court has also held that a private  
20 plaintiff has a right to a jury trial for claims under the FLSA, *Lorillard v. Pons*, 434  
21 U.S. 575, 580 (1978), although it is unclear whether the source of this right is  
22 statutory or constitutional, *see Lehman v. Nakshian*, 453 U.S. 156, 164 & n.11 (1981).  
23 The Firefighters’ remaining claims, however, all seek only equitable remedies, such as  
24 declaratory or injunctive relief and writs of mandate. (Compl. ¶¶ 114–16, 122, 145,  
25 149, 169, 186, 192.) It is well-settled that a Seventh Amendment jury trial right exists  
26 only for legal claims, not equitable claims. *See Ross v. Bernhard*, 396 U.S. 531, 533  
27 (1970); *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 962 (9th Cir. 2001). Thus, the  
28 Firefighters are entitled to a jury trial on only their § 1983 claim and their FLSA

1 claim.

2 But this does not mean that “the bankruptcy court must instantly give up  
3 jurisdiction and that the case must be transferred to the district court. Instead, the  
4 bankruptcy court is permitted to retain jurisdiction over the action for pre-trial  
5 matters.” *In re Healthcentral.com*, 504 F.3d 775, 787 (9th Cir. 2007) (citation  
6 omitted). “[R]equiring that an action be immediately transferred to district court  
7 simply because of a *jury trial right* would run counter to our bankruptcy system[,] . . .  
8 [which] promotes judicial economy and efficiency by making use of the bankruptcy  
9 court’s unique knowledge of Title 11 and familiarity with the actions before them.  
10 Accordingly, if [the Court] were to require an action’s *immediate* transfer to district  
11 court simply because there is a *jury trial right* we would effectively subvert this  
12 system. Only by allowing the bankruptcy court to retain jurisdiction over the action  
13 until *trial is actually ready* do we ensure that our bankruptcy system is carried out.”  
14 *Id.* at 787–88 (citations omitted) (emphasis in original). As a result, the Court shall  
15 only conduct the trial on these claims; all pre-trial proceedings, including hearing and  
16 ruling on any dispositive motions, will be conducted by the bankruptcy court. *See id.*

## 17 V. CONCLUSION

18 For the reasons discussed above, the Court **GRANTS IN PART** and **DENIES**  
19 **IN PART** the Firefighters’ Motion to Withdraw Reference. (ECF No. 1.) The  
20 bankruptcy court shall retain jurisdiction over this action, with the sole exception that  
21 any jury question that is necessary to resolve the Firefighters’ claims for damages  
22 under § 1983 and the FLSA shall be tried before this Court. With respect to those two  
23 claims, the Court **ORDERS** as follows:

24 (1) The bankruptcy court shall fully control all pre-trial proceedings—  
25 including (but not limited to) setting a trial date, resolving all pre-trial discovery  
26 disputes, and hearing and determining all issues of law (including dispositive  
27 motions)—except as otherwise provided in this Order;

28 (2) The Firefighters and the City shall file a Joint Report on **February 1,**

1 **2016** advising the Court of the trial date (if one has been set), and all pre-trial dates  
2 and deadlines. The parties shall file a Joint Report every ninety days thereafter  
3 advising on the status on the action, including the status of any motions pending  
4 before the bankruptcy court and any changes in the case timeline affecting the trial of  
5 this matter;

6 (3) This Court shall conduct the Pre-Trial Conference, hear and determine all  
7 Motions in Limine, and conduct trial. The parties shall file all pre-trial documents in  
8 this Court, including (but not limited to): Pre-Trial Conference Order, Trial Briefs,  
9 Exhibit Lists, Witness Lists, Jury Instructions, Verdict Forms, and Motions in Limine.  
10 The parties are strongly encouraged to review the Local Rules and the Court's  
11 Standing Order with respect to its trial and pre-trial procedures.

12 The Firefighters are directed to file a copy of this Order with the bankruptcy  
13 court. If the parties later decide to stipulate to the bankruptcy court conducting the  
14 trial, they shall submit a stipulation and proposed order to this Court for its review.

15  
16 **IT IS SO ORDERED.**

17  
18 November 10, 2015

19  
20 

21 **OTIS D. WRIGHT, II**  
22 **UNITED STATES DISTRICT JUDGE**  
23  
24  
25  
26  
27  
28