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 14 Themselves and Others Similarly Situated

15 **UNITED STATES BANKRUPTCY COURT**  
 16 **EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION**

17 In re:  
 18 CITY OF STOCKTON, CALIFORNIA,  
 19 Debtor.

20 Case No. 12-32118  
 21 Chapter 9

22 ASSOCIATION OF RETIRED EMPLOYEES  
 23 OF THE CITY OF STOCKTON, a nonprofit  
 24 California corporation, SHELLEY GREEN,  
 25 PATRICIA HERNANDEZ, REED HOGAN,  
 26 GLENN E. MATTHEWS, PATRICK L.  
 27 SAMSELL, ALFRED J. SIEBEL, BRENDA  
 JO TUBBS, TERI WILLIAMS, on Behalf of  
 Themselves and Others Similarly Situated,  
 Plaintiffs,

Adv. No.  
 DECLARATION OF DWANE NEIL  
 MILNES IN SUPPORT OF  
 APPLICATION FOR TEMPORARY  
 RESTRAINING ORDER OR RELIEF  
 FROM STAY

vs.  
 CITY OF STOCKTON, CALIFORNIA,  
 Defendant.

1 I, Dwane Neil Milnes, declare:

2 1. I have personal knowledge of the facts set forth in this declaration and, if called as  
3 a witness, I could and would testify competently to these facts under oath.

4 2. I was City Manager of the City of Stockton from October 8, 1991 to April 30,  
5 2001. I am presently employed by Citygate Associates as a consultant with the title of General  
6 Government Principal.

7 3. As part of my position as City Manager, I was responsible for preparing  
8 recommendations to the City Council regarding terms and conditions of employment to be  
9 included in Memoranda of Understanding with employee labor groups representing employees  
10 of the City of Stockton. My responsibilities also included presenting these recommendations to  
11 the City Council in both closed and open session. I explained the cost and operational  
12 implications of changes in the terms and conditions of employment that would be different from  
13 those contained in the MOUs that were being renegotiated. The City Council gave me direction  
14 regarding terms and conditions of employment acceptable to the City Council in Memoranda of  
15 Understanding between the City of Stockton and the officially recognized labor groups. Terms  
16 and conditions of employment that were described to the City Council included health benefits  
17 for both employees and current and future retirees of the City of Stockton. While serving as City  
18 Manager, I was responsible for supervising and advising the City's lead labor negotiator who  
19 met with the representatives of the labor groups to negotiate the terms and conditions of  
20 employment to be contained in the MOUs. Periodically, following labor negotiation sessions,  
21 the City's lead labor negotiator and I reported to the City Council in closed session the response  
22 to the City's offered terms and conditions of employment, and the requested changes in those  
23 terms and conditions made by the labor representatives.

24 4. Once agreement had been reached between the City Manager, the City's lead  
25 labor negotiator and employee representatives on the terms and conditions of employment in the  
26 Memorandum of Understanding, and the terms and conditions had been approved by an  
27 employee vote, I was responsible for scheduling each Memorandum of Understanding for  
28 consideration and approval by the City Council on a Council Agenda in open session.

1           5.     Based on my experience as City Manager, I understand that a Memorandum of  
2 Understanding with a recognized labor group is a binding contract between the City and the  
3 employees covered by that Memorandum of Understanding, once approved by the City Council  
4 and by a vote of the employees represented by the labor group.

5           6.     I also understand that once an employee has retired with entitlements to specific  
6 health benefits, including the cost for co-pay for those benefits to the employee, that these  
7 specific health benefits cannot be changed by the City without approval of the retiree, except to  
8 increase the benefits.

9           7.     In 1992, I discussed with the City Attorney of Stockton at that time, R. Thomas  
10 Harris, whether the City could change the benefits of retirees who were receiving health benefits  
11 from the City as specified in the Memorandum of Understanding in force at the time of their  
12 retirement. The City Attorney affirmed my understanding that the right to the benefits was  
13 vested and the City could not change the level of medical benefits for those who had already  
14 retired. He stated that if the City were to implement a medical plan with benefits at a lower level  
15 than those of the retirees, then the City would need to establish a Modified Medical Plan  
16 applicable only to current employees and future retirees.

17           8.     Effective in 1993, the City established a Modified Medical Plan with medical  
18 benefits for employees and retirees that were different from the benefits to which those who had  
19 already retired were entitled.

20           9.     As City Manager, I reviewed and approved the Modified Medical Plan in 1992. I  
21 then presented it to the City Council for its approval in closed session as part of changes to the  
22 terms and conditions of employment in the Memorandums of Understanding that the City was  
23 then negotiating with labor groups representing the employees.

24           10.    Section 6.17 of the Modified Medical Plan was written by me and included at my  
25 direction. I directed that Section 6.17 be included in the Modified Medical Plan document to be  
26 presented to the City Council solely for the purpose of providing the City with the right to  
27 change third party administrators of the medical plan or to add or change medical plan provisions  
28 required by the state or federal government without first having to obtain the approval of the

1 labor groups or retirees. I explained this to the City Council in closed session and explained that  
2 the City would not have the right to make any other changes to the Modified Medical Plan  
3 without first complying with the meet and confer requirements of State law and reaching a  
4 mutually acceptable agreement with the bargaining units. Based on my conversation with the  
5 City Attorney, I also explained to the City Council in closed session that the City could not make  
6 any other changes in the medical plan as it affected retirees, except to add benefits, without the  
7 approval of the retirees. Accordingly, I explained to the City Council in closed session in 1992  
8 that everyone who had retired prior to the effective date of the Modified Medical Plan would be  
9 entitled to the specific medical benefits that were included in the Memorandum of Understanding  
10 for their labor group at the time of their retirement. At the same meeting, I explained the specific  
11 language of Section 6.17, its presence in the Modified Medical Plan document, and the meaning  
12 and limitations of the language.

13 11. George Bist, the City's chief labor negotiator in 1992, reported to me in 1992 that  
14 he had been questioned by a labor group during negotiations to renew a Memorandum of  
15 Understanding regarding the meaning of Section 6.17 in the proposed Modified Medical Plan.  
16 Following this meeting with me, George Bist communicated to them this same  
17 meaning/understanding of that language, as set forth above.

18 12. Following approval by the labor groups of the Memorandum of Understanding  
19 that implemented the Modified Medical Plan, the City did not make any changes in the plan  
20 without consulting with the labor groups. On several occasions while I served as City Manager,  
21 we added medical benefits to the plan and changed third party administrators without obtaining  
22 the approval of the retirees, because I understood that we were not decreasing the specific  
23 medical benefits being received by those who retired after the adoption of the Modified Medical  
24 Plan.

25 13. During labor negotiations in 1992 through 1998 to establish wages for the  
26 employees represented by the labor groups, the City provided wage increases that were lower  
27 than the increase in the Consumer Price Index and lowered the starting salary of future new  
28 employees in the public safety bargaining units in order to reflect the fact that the City would be

1 incurring a cost to pay the medical premiums for current employees and retirees. I know this  
2 because I participated in the design of the wage benefit packages included in all MOUs  
3 negotiated during this period and I approved the wage benefit packages to be presented to the  
4 City Council for their review. The labor group representatives understood and accepted that the  
5 City was guaranteeing payment of the premiums and maintenance of the specific medical  
6 benefits at a cost to the City and that this cost and the benefit to the employees and retirees was  
7 part of the compensation package received by employees for their current benefit and benefit  
8 upon retirement. I know this because I recall discussing this with various members of the labor  
9 group executive boards at the time the MOUs were approved by the labor groups. The lower  
10 wages also meant that the employee upon retirement would be receiving a lower retirement  
11 payment from the California Public Employee Retirement System, since the retirement payment  
12 was based on the employee's highest year of wages, normally the wage received by the  
13 employee at the time of retirement. This savings by the City in retirement payments was  
14 intended to assist in offsetting the cost of the City providing medical benefits to retirees  
15 following their retirement.

16 14. In 1980, the City began providing medical benefits to members of the Stockton  
17 Police Officers Association who retired from City service. The benefit included payment of the  
18 entire premium for a retired employee and his or her dependent until the retiree reached age 62,  
19 but not to exceed seven years. The City extended a retiree health benefit to various unions  
20 throughout the 1980s and increased the maximum age through which retiree health benefits  
21 would be available to age 65. By 1991, the City had extended the Retiree Health Benefit to all  
22 City employees through numerous MOUs and City Council resolutions approving those MOUs  
23 and benefits, and had added a Medicare supplement benefit for many unions.

24 15. The MOUs typically described the City as paying "a premium" or "all premiums"  
25 for health insurance benefits for retirees until age 65. These terms have always been understood  
26 by the City to require the City to pay the entire premium for health insurance for all qualifying  
27 retirees and their spouses or one dependent. Attached are true and correct copies of sample  
28 MOUs (Exhibit A: Comprehensive Summary of City of Stockton Unrepresented

1 Management/Confidential Employees' Compensation Plan (January 1, 1997 – December 31,  
 2 2008) at p. 9 [“The City will contribute all premiums necessary”]; Exhibit B: MOU between  
 3 City of Stockton and Stockton Police Officers' Association (January 1, 1999 – December 31,  
 4 2003 at p. 37 [“the City shall pay a premium”]; Exhibit C: Mid-Management/Supervisory Level  
 5 MOU (April 16, 2000 – December 31, 2008) at p. 33-34 [“The City will contribute all premiums  
 6 necessary”]; Exhibit D: MOU with City of Stockton Fire Unit (July 1, 2003 – June 30, 2011) at  
 7 pp. 38-39 [“The city shall pay a premium”]). Indeed, to the best of my knowledge, until 2011,  
 8 the City consistently paid the entire premium for health insurance for each of its qualifying  
 9 retirees and one dependent or spouse. Retiree health benefits were also continued by the City for  
 10 the surviving spouse of a retiree.

11 16. The Retiree Medical Benefit was extended as a supplement to Medicare *after* age  
 12 65. The City provides the following timeline in the City's adopted GASB 45 Report for June 30,  
 13 2011:

14	January 1, 1985	Management & Confidential, Mid-Management and Supervisory,
15		and Law Department
16	January 1, 1990	Police Management
17	January 1, 1996	Fire
18	January 1, 1997	SCEA, Trades and Maintenance, and Fire Management (based on
19		MOU between City and Fire Management)
20	August 1, 1998	Police

21 17. Employees hired after March 31, 1986 were enrolled in Medicare but those hired  
 22 before that date were not. For some of the retirees who had not qualified for Medicare upon  
 23 retirement, the City began also paying the Part A Medicare premium (or in the alternative at the  
 24 City's choice, continuing City medical benefits as primary coverage). This benefit was extended  
 25 to Police and Fire union members. The City provides the following timeline in the City's adopted  
 26 GASB 45 Report for June 30, 2011 for the benefit available to employees retiring after the dates  
 27 shown below:

28	January 1, 1996	Fire
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1 January 1, 1997 Fire Management

2 July 1, 2006 Police and Police Management

3 Because some of the retirees did not qualify for Medicare themselves or through a spouse, part of  
4 the rationale for extending the Retiree Medical Benefit beyond age 65 was that the City had not  
5 participated in Medicare prior to 1986. The city had saved money by not having to enroll  
6 employees in Medicare prior to March 31, 1986 and continued to save money thereafter on  
7 employees hired prior to that date. The existence of the savings and the fact that some retirees  
8 would not be eligible for Medicare was part of the reason for the expansion of health benefits  
9 beyond age 65.

10 18. In January 1993 the City changed its medical benefits in order to align them more  
11 closely with industry standards and to reduce costs. Any employee who had retired prior to that  
12 date was continued on what was called the “Original Plan,” while all current employees and  
13 those who retired from that date forward received the benefits in the “Modified Plan.” The  
14 City’s unions agreed to give up 20% of their annual cost of living increases in exchange for  
15 securing the “Modified Plan” for City employees and future retirees, with the 20% helping to  
16 fund the Modified Plan’s annual cost increases.

17 19. A few changes were made in the Modified Plan in the following years that  
18 improved benefits. However, the City did not reduce benefits in the Modified Plan because City  
19 officials believed that the benefits received by retirees at the time of their retirement were vested  
20 and so could not be changed unilaterally by the City. This understanding—that retiree benefits  
21 vest upon retirement and cannot be changed thereafter—was also the reason the City continued  
22 existing retirees on the Original Plan, while adopting the Modified Plan for current employees  
23 and future retirees.

24 20. Whenever the City made changes in benefits, including changes in third party  
25 administrators, employee unions had the opportunity to meet and confer in a negotiation process  
26 with the City regarding the changes if they so desired. However, the City’s retirees were not  
27 represented by unions, and the retirees had already completed their end of the employment  
28

1 contract. For this reason, the City believed that it could not reduce the benefits it offered to  
2 retirees after retirement.

3 **Stockton’s Retiree Health Benefit Is a Lifetime Health Benefit**

4 21. The City repeatedly told its employees that the Retiree Medical Benefit was a  
5 benefit that qualifying employees would enjoy for the rest of their lives. Until at least July 3,  
6 2007, to the best of my knowledge the City provided every retiree with a letter upon retirement  
7 that summarized their retiree benefits. The letter described the Retiree Medical Benefit and said  
8 “[t]his is a lifetime benefit for both you and your spouse,” or “[t]his lifetime benefit is provided  
9 to both you are your spouse.” A true and correct copy of one such letter from the City to a  
10 retiree is attached hereto as Exhibit E.

11 22. The Stockton City Council also reviewed and/or accepted numerous  
12 Comprehensive Annual Financial Reports (“CAFR”) that described the Retiree Medical Benefit  
13 as a lifetime benefit. Every CAFR for the City of Stockton from at least June 30, 2001 through  
14 June 30, 2006 describes Post Retirement or Post Employment Health Care Benefits as follows:  
15 “This is a lifetime benefit provided to the retired employee and his or her eligible spouse.”  
16 Similarly, the June 30, 2007 through June 30, 2010 CAFRs state: “This is a lifetime benefit  
17 provided to the retired employee and his or her eligible dependent.” Similarly, the MOU with  
18 the Trades and Maintenance Unit for the period from 2006-2008 (Operation Engineers, Local 3,  
19 AFL-CIO) states: “This lifetime benefit is provided to the employee and the employee’s  
20 spouse.”

21 **Unions Made Numerous Wage Concessions in Exchange for Continuing the Benefit**

22 23. The City’s unions made numerous wage concessions in order to maintain benefits  
23 under the Modified Medical Plan. In December, 1996 the San Joaquin Public Employees  
24 Association (“SJPEA”) and in March, 2000 the Stockton City Employees Association (“SCEA”),  
25 the successor to the SJPEA, agreed to terms of compensation to be included in the MOUs for the  
26 period 1997 through 2008 that included a lower wage than the unions would have otherwise  
27 agreed to in exchange for the City continuing to pay all of the premium for medical benefits for  
28 employees and their dependents and continuing unchanged the benefits included in the Modified

1 Medical Plan incorporated as a part of the MOU. The lower wages were also intended to provide  
2 savings for the City that would assist in offsetting the cost of providing lifetime medical benefits  
3 to retirees.

4 24. The savings from lower wages were achieved by the City in the following way:

- 5 • Starting in January 1, 1994, annual wages increases through January 1, 1996 were  
6 to be 80% of the change in the Consumer Price Index during the previous year,  
7 with the wage increase not to exceed 4%.
- 8 • Starting in January 1, 1995, annual wage increases through January 1, 2008 were  
9 to be 80% of the change in the Consumer Price Index during the previous year,  
10 with the wage increase not to be less than 2.5% nor more than 6%.

11 25. The other employee groups made similar wage concessions in exchange for the  
12 City continuing to pay the entire health premiums and maintaining the level of benefits provided  
13 in the Modified Medical Plan. The Mid-Management/Supervisory unit agreed to annual wage  
14 increases that, beginning January 1, 1996, were to be 80% of the change in the Consumer Price  
15 Index during the previous year, with the wage increase not to exceed 4%. Starting January 1,  
16 1997 annual wage increases through 2008 were to be 80% of the change in the Consumer Price  
17 Index during the previous year, with the wage increase not to be less than 2.5% nor more than  
18 6%.

19 26. The Stockton Police Officers Association agreed that new employees starting  
20 January 1, 1994 would start at a salary level approximately 5% lower than was previously the  
21 case. This “six step” pay plan added the lower step at the beginning of what was a “five step”  
22 pay plan. Beginning January 1, 1999 the six step pay plan was changed to a nine step plan with  
23 each new employee now beginning approximately an additional 15% lower in pay.

24 27. In addition to the added steps in the pay plan, the Police MOU provided that from  
25 Calendar Year 1996 through Calendar Year 1998 annual wage increases were to be 80% of the  
26 change in the Consumer Price Index during the previous year, with the wage increase not to  
27 exceed 4%. Beginning in January 1, 1999 annual wage increases through 2009 were to be 80%  
28 of the change in the Consumer Price Index during the previous year, with the wage increase not

1 to be less than 2.5% nor more than 6%. Police wages were also to be adjusted in 2002, 2006 and  
2 2008 if a salary survey warranted additional adjustment.

3 28. The Fire MOU provided that effective Calendar Year 1996 newly hired  
4 firefighters would be paid 15% less as a starting salary than previous newly hired employees.  
5 This was accomplished by implementing an eight step salary plan to replace a five step plan. An  
6 additional lower salary step was added effective July 1, 2003 to create a nine step salary plan  
7 comparable to the one in the Police Department.

8 29. The Fire employee MOU also provided that salary increases from Calendar Year  
9 1997 through 2000 would be 80 % of the change in the Consumer Price Index during the  
10 previous year, with the wage increase not to be less than 2.5% nor more than 6%. For the  
11 following years there were various salary surveys and other means of salary adjustment.

12 30. These concessions reached further than an employee's base wage. Overtime and  
13 some other benefits are tied to an employee's wage level, and would also decrease as a  
14 consequence of lower wages negotiated in an effort to preserve employee and retiree benefits.

15 31. Critically, when unions accepted lower wages in order to secure benefits, the  
16 result was that many employee's received a lower wage in their last year of employment. The  
17 last year of employment provides the basis for calculating a retired employee's annual pension  
18 payments. Accordingly, not only did employees accept lower wages in exchange for the Retiree  
19 Health Benefit and other benefits, *but they also received a lower pension for the rest of their life.*  
20 The City benefited from this concession: not only did the City save money on the lower wages,  
21 but the City also paid less to the California Public Employees' Retirement System ("CalPERS")  
22 in annual pension payments because the City's pension payments to CalPERS are based on the  
23 wages being paid.

#### 24 **Changes to the Retiree Health Benefit**

25 32. After maintaining the level of benefits offered under the Modified Medical Plan  
26 for nearly two decades, effective July 1, 2010, the City implemented an increase in the yearly  
27 deductible to be paid by retirees participating in the Modified Medical Plan and an increase in  
28 the co-pay for drugs. These changes were relatively minor. The deductible increased from \$150

1 to \$200 for an individual and from \$450 to \$500 for a Family. Co-pay for Prescription Drug  
2 coverage was similarly small.

3 33. In 2011, the City adopted major changes in the Modified Medical Plan that were  
4 projected to save the City 30% per year on medical costs. There were corresponding changes in  
5 co-pay, deductible and prescription drug provisions. Neither the changes in 2010 nor the  
6 changes in 2011 were made with any attempt by the City to meet with retirees to obtain  
7 agreement for the changes.

8 34. When the City made the changes in 2011 to the Modified Medical Plan, the City  
9 asserted at a June 2011 Council meeting that the unilateral changes were authorized by the  
10 following language that has been in the Modified Medical Plan since its inception in January  
11 1993:

12 Section 6.17. Amendment and Termination. In order that the Plan may carry out its  
13 obligation to maintain within the limits of its resources, a program dedicated to  
14 providing good benefits for all Employees, the City reserves the right, at any time to  
15 amend either the amount or condition with respect to any benefits payable, and to  
16 terminate the Plan.

17 35. The City asserted that Section 6.17 gave it the right to make unilateral changes to  
18 retiree health benefits, including requiring retirees to pay their own premiums and ending the  
19 Retiree Medical Benefit altogether for existing retirees. However, the City had never interpreted  
20 it that way in the 18 years since the language was added to the Modified Medical Plan in 1993.  
21 Rather, Section 6.17 was intended and understood to allow the City to change third-party  
22 administrators and make other administrative changes without having to engage in the meet and  
23 confer process with the unions. This true meaning was conveyed to employee unions who  
24 subsequently agreed to inclusion of the language after reassurance regarding its meaning. I  
25 understood Section 6.17 to have this limited meaning during labor negotiations between the City  
26 and the unions. From 1993 until 2010, the City made no changes to benefits offered under the  
27 Modified Medical Plan without consulting with the employee unions, and never once reduced  
28 benefits offered to retirees under the Modified Medical Plan.

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