

14-1550

**In the United States Bankruptcy Appellate Panel
for the Ninth Circuit**

IN RE CITY OF STOCKTON, CALIFORNIA,

Debtor.

FRANKLIN HIGH YIELD TAX-FREE INCOME FUND AND FRANKLIN CALIFORNIA HIGH
YIELD MUNICIPAL FUND,

Appellants,

v.

CITY OF STOCKTON, CALIFORNIA,

Appellee.

APPEAL FROM THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA,
CASE NO. 12-32118, HON. CHRISTOPHER M. KLEIN

**EXHIBITS TO DEBTOR AND APPELLEE CITY OF STOCKTON,
CALIFORNIA'S MOTION TO DISMISS THE APPEAL AS EQUITABLY
MOOT**

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EXHIBIT A

14-1550

**In the United States Bankruptcy Appellate Panel
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APPEAL FROM THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA,
CASE NO. 12-32118, HON. CHRISTOPHER M. KLEIN

**DECLARATION OF SCOTT CARNEY IN SUPPORT OF DEBTOR AND
APPELLEE CITY OF STOCKTON, CALIFORNIA'S MOTION TO DISMISS
THE APPEAL AS EQUITABLY MOOT**

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Attorneys for Debtor-Appellee

I, Scott Carney, hereby declare:

1. I am the Acting Chief Financial Officer (“CFO”), Treasurer and Director of the Administrative Services Department (the “Department”) for the City of Stockton, California (“the City” or “Stockton”). I am also one of two Deputy City Managers, a position I have held since September 2, 2014. I make this declaration in support of the City’s Motion To Dismiss The Appeal As Equitably Moot.

2. As Acting CFO, Treasurer and Director of the Department, my responsibilities include, among other things, management of the City’s finance, budget, revenue, and treasury functions. I became the Acting CFO, Treasurer and Director of the Department on July 17, 2015, when the City’s previous CFO, Treasurer and Director of the Department, Vanessa Burke, resigned to enter the private sector.

3. On February 4, 2015, the United States Bankruptcy Court for the Eastern District of California entered its order approving the First Amended Plan for the Adjustment of Debts of City of Stockton, California (the “Plan”). The Plan required the City to make a number of cash payments either before or on the date on which the Plan became effective (the “Effective Date”) or shortly thereafter. The City, having made the cash payments and completed the transactions that the Plan specified must occur on or before the Effective Date, filed a notice of the occurrence of the Effective Date with the bankruptcy court on March 6, 2015. A true and correct copy of such notice is attached hereto as **Exhibit 1**.

4. Among the payments the City was required by the Plan to make on or shortly after the Effective Date was \$5.1 million in the aggregate to the approximately 1,100 retirees in satisfaction of their approximately \$545 million in claims against the City for lost health benefits. Pursuant to the Plan, the City retained Rust Consulting/Omni Bankruptcy (“Rust Omni”) as its distribution agent. The City’s agreement with Rust Omni required the City to transmit adequate funds to Rust Omni to enable it to make the distribution to the health benefits claimants, along with funds sufficient to compensate Rust Omni for its service and to pay for a performance bond, and to pay the City’s share of applicable taxes.¹

5. The Plan included agreements between the City and Assured Guaranty Municipal Corp. and Assured Guaranty Corp. (together, “Assured”) and the City and National Public Finance Guarantee Corporation (“NPFPG”). Such agreements required the City to make certain cash payments on the Effective Date to Wells Fargo Bank, National Association (“Wells Fargo”), in its capacity as indenture trustee for the bonds insured by Assured and NPFPG. In addition, the City’s agreement with Ambac Insurance Corporation (“Ambac”), also memorialized in the Plan, required the City to

¹ As described in the declaration of Eric Schwarz filed concurrently, Rust Omni also distributed payments in satisfaction of employment-related claims known as “Leave Buyout Claims.” The distribution on account of the Leave Buyout Claims was several orders of magnitude smaller than the distribution to retirees. For simplicity, I have omitted details about the Leave Buyout Claims.

make a cash payment to Ambac on the Effective Date. These were to be the first of many scheduled payments under these settlements, which provide for payments over several decades. These three settlements, which together adjusted over \$259 million in principal amount of claims against the City, also required the City to make payments to CBRE, a real estate management company, for services related to the City's settlement with Assured, and to Mintz Levin, counsel for Wells Fargo, for certain of the Mintz Levin fees incurred in connection with the chapter 9 case.

6. The Plan also required the City to make a \$4,337,227.53 cash payment on the Effective Date to Wells Fargo, in its role as indenture trustee for bonds held by Franklin Advisers, Inc., Franklin High Yield Tax-Free Income Fund, and Franklin California High Yield Municipal Fund (together, "Franklin"), in full satisfaction of the approximately \$36 million in allowed claims against the City on account of these bonds. Unlike the Effective Date payments under the settlements with Ambac, Assured, and NCFG, the payment for the bonds held by Franklin was a one-time payment.

7. The City made the payments described above by wire transfer. Before the City made the wire transfers, Ms. Burke, the City's Chief Financial Officer and then-Director of the Department, reviewed and authorized each transfer.

8. Following Ms. Burke's authorization, the City's bank made the following wire transfers:

Payee	Amount	Comment
Rust Omni	\$5,156,867.05	February 18, 2015 initial payment for distribution to retiree health benefit and certain other unsecured creditors
Rust Omni	\$10,600.37	February 24, 2015 supplemental payment for distribution to retiree health benefit creditors
Ambac	\$278,347.40	Effective Date payment for legal fees and interest
Wells Fargo	\$2,254,439.93	Scheduled payment for Assured settlement made on Effective Date
CBRE	\$177,802.25	Effective Date payment to increase deposit and pay rent related to Assured settlement
NPFG	\$104,811.99	Effective Date payment to "catch up" on delinquent debt service
Wells Fargo	\$708,302.50	Scheduled payment for NPFG settlement made on Effective Date
Chicago Title Company	\$20,566.00	Effective Date payment for title insurance related to NPFG settlement
Mintz Levin	\$20,000.00	Effective Date payment for attorney fees related to Assured bonds
Wells Fargo	\$4,337,227.53	Effective Date payment for claims arising from bonds held

Payee	Amount	Comment
		by Franklin
Mintz Levin	\$80,000.00	March 18, 2015 payment for attorney fees related to miscellaneous bonds

9. Together, these payments total approximately \$13.1 million.

10. Since making the Effective Date-related payments listed in the chart above, the City has taken further steps to implement the Plan. In particular, the City has made the following scheduled payments under the Assured, NPFPG, and Ambac settlement agreements:

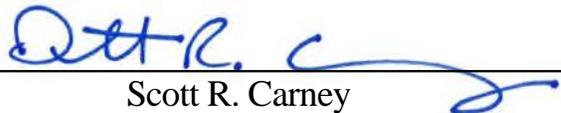
Payee	Amount	Comment
Wells Fargo	\$1,441,164.00	Scheduled payment for Assured settlement made on July 1, 2015
Wells Fargo	\$692,581.57	Scheduled payment for Ambac settlement made on August 14, 2015
Wells Fargo	\$1,414,531.94	Scheduled payment for NPFPG arena settlement made on August 25, 2015
Wells Fargo	\$708,302.50	Scheduled payment for NPFPG parking settlement made on August 25, 2015
Wells Fargo	\$135,656.70	Scheduled payment for Ambac settlement made on September 16, 2015

Payee	Amount	Comment
Wells Fargo	\$185,975.84	Scheduled payment for NPMFG arena settlement made on September 16, 2015

11. Together, these additional payments total approximately \$4.6 million.

12. Since the Effective Date, the City has continued to pay General Fund obligations that were not impaired by the Plan. These include scheduled payments on the bonds (insured by NPMFG) that financed the construction of the City's Essential Services Building and payments of the City's operating expenses, including those to labor pursuant to the City's collective bargaining agreements and to CalPERS, payments due under the leases for certain fire and emergency rescue vehicles, and payments due under the City's purchase agreement for a large HVAC system. These payments were made in reliance on the economic and financial projections embodied in the City's long-range financial plan and the Plan.

Executed this 30th day of September 2015, at Stockton, California. I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.



 Scott R. Carney

Exhibit 1

3

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 City of Stockton
 8

9 UNITED STATES BANKRUPTCY COURT
 10 EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION
 12

13 In re:
 14 CITY OF STOCKTON, CALIFORNIA,
 15 Debtor.

Case No. 2012-32118
 Chapter 9
**NOTICE OF FEBRUARY 25, 2015
 EFFECTIVE DATE**

17
 18 TO ALL CREDITORS, PARTIES IN INTEREST, AND THEIR ATTORNEYS OF
 19 RECORD:

20 PLEASE TAKE NOTICE that on February 4, 2015, the United States Bankruptcy Court
 21 for the Eastern District of California entered the Order Confirming First Amended Plan For The
 22 Adjustment Of Debts Of City Of Stockton, California, As Modified (August 8, 2014) [Dkt. No.
 23 1875] (“Order” confirming the “Plan”). The City’s mailing agent sent you a Notice of Entry of
 24 Order on or around February 12, 2015. Such Notice included a CD containing PDF copies of the
 25 Order and the Plan, among other documents.

26 PLEASE TAKE FURTHER NOTICE that, pursuant to Sections VII through XIII of the
 27 Plan, on February 25, 2015, the City satisfied or waived the conditions precedent enumerated in

28 ///

1 Section XIII of the Plan. As defined in the Plan, the Effective Date occurred on February 25,
2 2015 (“Effective Date”).

3 PLEASE TAKE FURTHER NOTICE that all proofs of claim for Other Postpetition
4 Claims¹ arising on or after August 16, 2013, and requests for payment or any other means of
5 preserving and obtaining payment of Administrative Claims that have not been paid, released, or
6 otherwise settled, and all requests for approval of Professional Claims, must be filed with the
7 Bankruptcy Court and served upon the City no later than 30 days after the date on which this
8 Notice is served. Any proof of claim for Other Postpetition Claims, or request for payment of an
9 Administrative Claim or a Professional Claim, that is not timely filed by such date will be forever
10 barred, and holders of such Claims shall be barred from asserting such Claims in any manner
11 against the City. For the avoidance of doubt, proofs of claim for Other Post-Petition Claims that
12 arose before August 16, 2013 must have been filed by August 16, 2013 in order to be considered
13 timely.

14 PLEASE TAKE FURTHER NOTICE that all distributions to any holder of an Allowed
15 Claim were or shall be made at the address of such holder as set forth in the books and records of
16 the City or its agents, unless the City has been notified by such holder of a different address in a
17 writing that contains an address for such holder different from the address reflected in the City’s
18 books and records. All such notifications of address changes and all address confirmations should
19 be mailed to: Rust Consulting/Omni Bankruptcy, 5955 DeSoto Avenue, Suite 100, Woodland
20 Hills, CA 91367.

21 PLEASE TAKE FURTHER NOTICE that as of the Effective Date, the City assumed all
22 executory contracts and unexpired leases to which it was a party, and assigned certain of those
23 executory contracts as set forth in the Plan, except (i) for those unexpired leases and executory
24 contracts specified in the following paragraph, and (ii) as otherwise provided in the Plan. The
25 Bankruptcy Court shall resolve all disputes regarding (a) the amount of any cure payment to be
26 made in connection with the assumption of any contract or lease (b) the ability of the City to
27 provide “adequate assurance of future performance” within the meaning of 11 U.S.C. § 365 under

28 _____
¹ All capitalized terms not defined herein have the definitions given to them in the Plan.

EXHIBIT B

14-1550

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CITY OF STOCKTON, CALIFORNIA,

Appellee.

APPEAL FROM THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA,
CASE NO. 12-32118, HON. CHRISTOPHER M. KLEIN

**DECLARATION OF ERIC SCHWARZ IN SUPPORT OF DEBTOR AND
APPELLEE CITY OF STOCKTON, CALIFORNIA'S MOTION TO DISMISS
THE APPEAL AS EQUITABLY MOOT**

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Attorneys for Debtor-Appellee

I, Eric Schwarz, hereby declare:

1. I am the Executive Vice President of Rust Consulting/Omni Bankruptcy (“Rust Omni”). I make this declaration in support of the City of Stockton, California’s (“the City”) Motion To Dismiss The Appeal As Equitably Moot.

2. As Executive Vice President of Rust Omni, which I joined in 2003, I am responsible for the day-to-day case administration of client engagements. During my tenure at Rust Omni, I also have served as the liquidating trustee and settlement trustee in several chapter 11 post-confirmation matters.

3. The City retained Rust Omni as its distribution agent to make payments by check to approximately 1,100 creditors following confirmation of the City’s plan of adjustment. I coordinated the preparation and distribution of these checks. In so doing, I supervised the withholding and reporting of amounts withheld from the payments for federal and state taxes and benefits. I also coordinated Rust Omni’s obtaining of a \$5,182,000 surety bond in favor of the City to secure Rust Omni’s performance of its disbursing agent duties.

4. Rust Omni distributed an aggregate \$5,119,330.12 (less amounts withheld, as described in paragraph 7 below) to approximately 1,100 City retirees on account of their claims for lost health benefits (“Retiree Health Claims”). It also distributed an aggregate \$5,480.80 to 25 former City employees on account of their

claims for unpaid leave (“Leave Buyout Claims”). I coordinated the preparation and distribution of the 1,126 checks by which Rust Omni made these payments for the City.

5. On instruction from the City, Rust Omni withheld federal and state income taxes from payments to those recipients for whom such withholding was necessary. Rust Omni also withheld amounts for Medicare from payments to those recipients for whom such withholding was necessary, and withheld Social Security taxes from its payment to the one recipient for whom such withholding was necessary. After withholding these amounts, the net distribution to all recipients was \$4,143,068.14. The applicable law that required withholding for federal and state income taxes also required the City to report the payments to federal and state taxing authorities. The City incurred the liability for these taxes on the date on which Rust Omni distributed the checks, rather than the date on which each check cleared.

6. In advance of the distribution, Rust Omni received an initial payment of \$5,156,867.05 from the City by wire transfer on February 18, 2015. The City wired a supplemental payment of \$10,600.37 February 24, 2015. The two wires totaled \$5,167,467.42.

7. Rust Omni mailed the distribution checks on February 23, 2015. As noted in paragraph 5, the aggregate amount distributed to claimants via the 1,126 checks that Rust Omni mailed – i.e., the distribution net of amounts withheld for taxes and benefits – totaled \$4,143,068.14.

8. On March 4, 2015, Rust Omni sent \$697,408.28 representing the entire aggregate amount withheld for federal income taxes, Medicare, and Social Security to the United States Department of the Treasury via wire transfer. Also on March 4, Rust Omni sent \$326,991.00 representing the entire aggregate amount withheld for state income taxes to the California Employment Development Department via wire transfer.

9. Rust Omni prepared a draft Internal Revenue Service Form 941 and provided it to the City. I am informed and believe that the City finalized the Form 941 and filed it with the Internal Revenue Service.

10. As of September 25, 2015, all but one of the 1,126 checks mailed on February 23 had been honored by the bank that Rust Omni instructed to send the wires. The cleared checks total \$4,141,800.15. The one outstanding check is for \$1,267.99.

Executed this 25th day of September 2015, at Woodland Hills, California. I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.


Eric Schwarz

EXHIBIT C

14-1550

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IN RE CITY OF STOCKTON, CALIFORNIA,

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Appellee.

APPEAL FROM THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA,
CASE NO. 12-32118, HON. CHRISTOPHER M. KLEIN

**DECLARATION OF MICAH RUNNER IN SUPPORT OF DEBTOR AND
APPELLEE CITY OF STOCKTON, CALIFORNIA'S MOTION TO DISMISS
THE APPEAL AS EQUITABLY MOOT**

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Attorneys for Debtor-Appellee

I, Micah Runner, hereby declare:

1. I am the Director of the Economic Development Department (the “Department”) for the City of Stockton, California (“the City” or “Stockton”). I make this declaration in support of the City’s Motion To Dismiss The Appeal As Equitably Moot. As Director of the Department, I am responsible for the Stockton Parking Authority, which oversees the Central Parking District. I am also responsible for the Economic Development Division, the Housing Division, and the Asset Management Division. I became the Director of the Department in December of 2014 after serving as the Interim Director for three months.

2. On and after the February 25, 2015, effective date of the City’s plan of adjustment (the “Effective Date” of the “Plan”), the City implemented the provisions of the Plan for restructuring its obligations to National Public Finance Guaranty (“NPF”) and to the two affiliated Assured Guaranty entities (together, “Assured Guaranty”), which involved multiple transfers of interests in real property. In my capacity as Director of Economic Development, I was directly involved in the transactions described below.

3. With respect to the Plan treatment and settlement with NPF, on the Effective Date, the City conveyed fee title to 17 separate parking lots and garages to the newly-created Stockton Parking Authority, assigned its leasehold interests in six additional parking lots to the Parking Authority, and transferred management control of

all parking assets – including approximately 1,700 parking meters – to the Parking Authority. In turn, the Parking Authority entered into a three-year management agreement with a third party parking lot operator, SP+, under which SP+ will operate and manage these transferred facilities, as required by the settlement between the City, the Parking Authority and NCFG embodied in the Plan. The settlement provided, among other things, that NCFG will receive lower payments over a longer period of time from parking revenues generated by such assets in lieu of amounts previously due to be paid from the City's general fund.

4. SP+ began operating all of the Parking Authority properties on April 1, 2015. Subsequent to the Effective Date, \$708,302.50 in payments have been made to the trustee under the indenture relating to NCFG's bonds under the terms established by the Plan. All of these funds came from the revenues of the Parking Authority.

5. The City made many staffing changes as part of the transition to SP+ as the day-to-day operator of the parking facilities. A Parking District Supervisor, a Parking Attendant Supervisor and 31 Parking Attendants – each of whom was a City employee – were issued layoff notices as part of outsourcing this operation. SP+, the new parking operator, hired 19 of the Parking Attendants, and the two Supervisors found employment in other City functions. SP+ has now moved into the offices where the parking functions previously had been administered by City staff.

6. The settlement with NPFG also required that the parking enforcement functions be assumed by the new Parking Authority. That resulted in the Parking Authority hiring a new Parking Enforcement Supervisor on April 15, 2015. In addition, the Parking Authority recruited two additional Parking Enforcement Officers who started work on July 1 and 16, 2015. On August 3, 2015, the Parking Authority took over parking enforcement from the Stockton Police Department.

7. Turning to the Assured Guaranty restructuring pursuant to the Plan, on the Effective Date, Stockton conveyed an option to Assured Guaranty to enable it to purchase the office building owned by the City located at 400 East Main Street. Shortly thereafter, control of the building was transferred to a receiver appointed by the San Joaquin Superior Court for the benefit of Assured Guaranty, which receives the net rent from the building. A true and correct copy of the San Joaquin Superior Court order appointing the receiver is attached hereto as **Exhibit 1**. Also on the effective date, Stockton, as tenant, executed an 8-year lease (with four one-year extension options) for approximately 80,000 square feet of that building. The City's Information Technology function, including all of its main servers and associated equipment, are located at 400 East Main. No alternative location is currently available for the Information Technology function and, even if an acceptable alternative location did exist, moving the IT function would entail relocation expenses of a minimum of two million dollars due to the complex nature of the equipment and associated support facilities such as

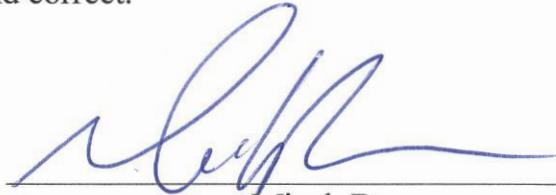
chillers and cabling. The IT function has relocated many staff from other locations within Stockton, and expects additional staff to move in the near future into the space at 400 East Main that does not require new tenant improvements.

8. The City has begun the process of moving other governmental functions and services into the 400 East Main building. Thus, in December 2014, the City issued a Request for Interest from architectural firms. On January 6, 2015, approximately 20 firms participated in the building walk-through. Six of the firms submitted responses that allowed the City to review specific qualifications and make a recommendation based on those qualifications, the timeliness of services, and cost. On February 24, 2015, the City Council approved a contract with LDA Partners to provide architectural services for the relocation to 400 East Main. So far, the City has spent approximately \$103,194 on the site plans and construction drawings for the buildout of new City Council chambers and related offices at 400 East Main. The cafeteria on the first floor has already been demolished in preparation for the buildout.

9. Since the Effective Date, my staff and I have spent approximately 200 hours working on the transition to 400 East Main, including work devoted to allocating floor space among the City departments that will move to the building. In addition, the City's outside consultants and architects have spent approximately 650 hours preparing for the transition and buildout. LDA has completed roughly a third of its construction

drawings for the first phase of construction. To date, the City has spent approximately \$150,000 on staff and outside consultant time related to the transition to 400 East Main.

Executed this 25th day of September 2015, at Stockton, California. I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.



Micah Runner

Exhibit 1

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JAN 27 2015
Filed
ROSA JUNQUEIRO, CLERK
By ALICIA MARTIN
DEPUTY

6 **Attorneys for Plaintiffs**
7 **Four Hundred Main Street LLC and**
8 **Assured Guaranty Corp.**

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN JOAQUIN**

11
12 **FOUR HUNDRED MAIN STREET LLC, a) Case No. 39-2015-00320553-CU-CO-STK**
13 **Delaware limited liability company, ASSURED)**
14 **GUARANTY CORP., a Maryland company,) Assigned to: Hon. Linda Lofthus**
15 **Plaintiffs,) [PROPOSED] ORDER APPOINTING**
16 **vs.) RECEIVER AND TEMPORARY**
17 **THE CITY OF STOCKTON, a municipal) RESTRAINING ORDER**
18 **corporation; MAIN STREET STOCKTON) Date: January 27, 2015**
19 **LLC, a Delaware limited liability company;) Time: 1:15 p.m.**
20 **DOES 1 through 50, inclusive,) Place: Dept. 33**
21 **Defendants,) [Ex Parte Reservation No. 2026046]**
22 **) Complaint Filed: January 8, 2015**
23 **) Trial Date: None**

24 The Court having considered the Complaint filed in this case, the Unopposed *Ex Parte*
25 Application of Plaintiffs For Entry of Order Appointing Receiver Pursuant to Stipulation
26 (“Application”), the Declarations of John Gray, William J. Hoffman, and Bridget S. Johnsen in
27 support of the Application, the Joint Stipulation Re: Appointment of a Receiver, all other documents
28 in the record, and any argument of counsel at the hearing on the Application, and good cause
appearing therefore, now orders as follows:

JAN 28 2015

BY FAX

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EFFECTIVE DATE OF THIS ORDER

IT IS HEREBY ORDERED that this Order shall have no force or effect until the effective date (“Effective Date”) of the City of Stockton’s Plan of Adjustment (“Plan”) which was confirmed on October 30, 2014 by the United States Bankruptcy Court for the Eastern District of California in chapter 9 Case Number 2012-32118. On the Effective Date, this Order shall become effective without further order of this Court. The parties to this action shall notify this Court of the Effective Date when known.

APPOINTMENT OF RECEIVER

IT IS HEREBY ORDERED that William J. Hoffman of Trigild Inc. (“Receiver”) is qualified to act as the Receiver in this action and is hereby appointed Receiver to take possession, custody, and control of the property described below (“Property”).

1. Description of the Property:

(A) Land. That certain real property located in the City of Stockton, County of San Joaquin, State of California, commonly known as 400 East Main Street and more particularly described in Exhibit “A” attached hereto, together with all right, title and interest of the City of Stockton (the “City”) in and to all privileges, rights, easements, rights of way, and appurtenances belonging to the real property, including without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the real property (collectively, the “Land”);

(B) Improvements. All of the City’s right, title and interest in and to all buildings, structures, systems, facilities, fixtures, parking structures, fences and parking areas located on the Land and any and all machinery, equipment, apparatus and appliances used in connection with the operation or occupancy of the Land (such as facilities used to provide utility services or other amenities on the Land) and other improvements located upon the Land (collectively, the “Improvements” and, together with the Land, the “Real Property”); and

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(C) Personal Property. All of the City’s right, title and interest in and to all tangible and intangible personal property used in connection with the operation, use, maintenance, or occupancy of the Real Property (collectively, the “Personal Property”).

2. Receiver’s Oath and Bond:

The Receiver shall execute a Receiver’s Oath. Within three days of this appointment, the Receiver shall also post a Bond from an insurer in the sum of \$_____, conditioned upon the faithful performance of the Receiver’s duties. The Receiver’s Bond and Oath may be filed by facsimile transmission and/or the filing of a pdf copy, and this Order shall become effective upon the Court’s receipt of the bond and oath.

3. Receiver’s Fees:

All fees and costs of the Receiver and employees of the Receiver shall be funded by the receivership estate, and shall be accounted for in the monthly financial report provided in accordance with Paragraph 8 below (the “Monthly Deposit”). Upon submission of the monthly report, following the approval of Plaintiffs Assured Guaranty Corp. and Four Hundred Main Street LLC (collectively referenced herein as “Plaintiff”), without further order of the Court, the Receiver shall be entitled to fees and reimbursement of all expenses, from funds of the receivership estate for such time as is reasonable and necessary for the Receiver to accomplish the purposes and tasks set forth in this Order, at the rate of \$3,000 per month. To the extent that any court appearances are required of the Receiver, the receivership estate shall pay the blended rate of \$175.00 per hour for any appearances by the Receiver. The blended rate reflects the hourly rate of the Receiver’s agents assisting the Receiver with the receivership estate. The Receiver expenses shall include, but not be limited to travel, mileage, faxes, copies, photographs, printing and similar benefits provided by the Receiver.

1 **4. Receiver's Authority and Duties:**

2 The Receiver is hereby given the powers and authority usually held by receivers and
3 reasonably necessary to accomplish the purpose of this receivership, including, without limitation,
4 the specific powers defined below:

- 5 (A) The Receiver shall take immediate and exclusive possession, custody and control of
6 the Property and all monies therefrom, equipment, fixtures, furnishings, records,
7 inventory, assets, royalties, rents, receivables, accounts, deposits, equities, and profits,
8 subject to the terms of Paragraph 27(B). The Receiver shall care for, preserve and
9 maintain the Property, and may incur any reasonable expenses necessary for this
10 purpose. All such expenses shall be paid from funds of the receivership estate.
- 11 (B) As to the operation and maintenance of the Property, the specific power to:
- 12 i. Pay accounts payable and expenses associated with the management and
13 maintenance of the Property, including any incurred but not paid prior to the
14 Receiver's appointment;
- 15 ii. Change any and all locks on the Property and limit access thereto, subject to the
16 terms of Paragraph 27(B);
- 17 iii. Maintain, protect, collect, sell, liquidate, or otherwise dispose of property;
18 provided, however, that the Receiver shall not sell or otherwise dispose of any
19 property, other than in the ordinary course of business, except as provided in
20 section 10 of this Order;
- 21 iv. With the prior written approval of Plaintiff, hire, on a contract basis,
22 professionals, real estate brokers, general contractors and other personnel
23 necessary to manage, preserve, market and sell the Property, including without
24 limitation, Trigild Inc. and CBRE, Inc. (the "Property Manager");
- 25 v. To oversee and direct the actions of the Property Manager as necessary to
26 maintain, preserve, and protect the Property;
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- vi. To the extent not already undertaken by the Property Manager, hire, employ, pay and terminate servants, agents, employees, clerks and accountants; purchase materials, supplies, advertising, and other services at ordinary and usual rates and prices using funds that shall come into the Receiver’s possession; collect or compromise debts of the receivership estate; incur risks and obligations ordinarily incurred by owners, managers, and operators of similar enterprises, which in the Receiver’s reasonable judgment are necessary for the operation of the Property, and no such risk or obligation incurred shall be the personal risk or obligation of the Receiver, but only that of the receivership estate;
- vii. To the extent not otherwise in the possession or control of the Property Manager, take possession of all licenses, permits or other government-issued documents necessary for the continued operation of the Property. This shall include licenses and permits even if the license/permit is not issued in the name of the City. If the issuing agency requires that the Receiver apply for a new license, permit or other document, the Receiver shall be allowed to continue to operate under the current permit until the new one is issued to ensure no disruption of service occurs;
- viii. To the extent not already undertaken by the Property Manager, execute and perform all acts and prepare all documents, either in the name of the City, receivership estate or in the Receiver’s own name, that are necessary or incidental to operating, preserving, protecting, managing and/or controlling the Property; provided, however, that any related costs shall be borne by the receivership estate;
- ix. Enter into, assume, continue, and/or become the beneficiary of any contracts, agreements, and/or other instruments as the Receiver reasonably believes necessary for the operation of the Property, including without limitation, a

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property management agreement with the Property Manager. Subject to Plaintiff's prior written approval, the Receiver is authorized to negotiate, make, assume, enter into or modify leases, contracts, or agreements affecting any part or all of the Property, including, without limitation, any and all leases affecting the Real Property. Upon the termination by its terms of that certain 400 East Main Street Office Lease, dated as of June 1, 2012, between Main Street Stockton LLC (landlord) and the City (tenant), as amended by that certain Amendment to Office Lease, dated as of July 23, 2013, and that certain Second Amendment to Office Lease, dated as of October 31, 2014, the Receiver is authorized to enter into that certain 400 East Main Street Office Lease between William J. Hoffman, as Receiver (landlord), and the City (tenant) (the "City Office Lease"). Subject to Plaintiff's prior written approval, the Receiver is authorized to terminate any existing contract, agreement, or instrument that is not commercially reasonable or beneficial to the operation of the Property; provided, however, that the City Office Lease is not subject to such termination, whether or not the Receiver deems it not commercially reasonable or beneficial to the operation of the Property, as the City Office Lease may only be terminated by the Receiver in accordance with its terms;

- x. Borrow from Plaintiff or, if Plaintiff notifies the Receiver in writing that Plaintiff is not willing or able to lend such funds, from third parties funds required to continue the operation of the Property, prevent the filing of, or otherwise remove, any liens against the Property and/or when current Property income is insufficient to pay normal operating expenses, upon such terms as deemed reasonable by the Receiver and Plaintiff. Nothing in this Order shall obligate Plaintiff to provide such funds unless Plaintiff or other lending party is issued a Receiver's Certificate in accordance with Section 20 of this Order;

- 1 **xi.** To the extent not already undertaken by the Property Manager, collect all rents,
2 profits and income that now or hereafter may be due from the operation of the
3 Property, including such rents, income and profits presently held in bank
4 accounts for the Property, all of which, whether collected by the Property
5 Manager or the Receiver, shall be paid over to Plaintiff without further Court
6 approval;
- 7 **xii.** To the extent not already undertaken by the Property Manager, bring and
8 prosecute all proper actions for the collection of accounts receivable and
9 contract rights of the Property when due;
- 10 **xiii.** Take possession of, open and review mail in the possession of the Property
11 Manager pertaining to the Property;
- 12 **xiv.** To the extent not already undertaken by the Property Manager, receive and
13 endorse checks pertaining to the Property, whether in the Receiver's name or in
14 the name of the City or Main Street Stockton LLC ("Main Street Stockton");
- 15 **xv.** To the extent not already undertaken by the Property Manager, employ and
16 compensate unlawful detainer attorneys or eviction services with respect to the
17 operation of the Property without prior Court approval;
- 18 **xvi.** Issue subpoenas on any party in possession of items that are covered in this
19 Order;
- 20 **xvii.** Seek Plaintiff's approval to abandon property the Receiver considers to be of
21 little or no value to the receivership estate;
- 22 **xviii.** With the consent and approval of Plaintiff, complete unfinished construction
23 and improvements on the Property; and
- 24 **xix.** Do such other things as may be necessary or incidental to the foregoing specific
25 powers, directions and general authorities; and if beyond the scope
26 contemplated by the provisions set forth above, take actions relating to the
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1 Property, provided the Receiver obtains prior approval of the Plaintiff and the
2 Court.

3 (C) The Receiver shall not be obligated to file, and is expressly not authorized to file, any
4 federal or state income tax, returns, schedules or other forms on behalf of the City.

5 **5. Overhead Expenses of Receiver:**

6 All fees and expenses incurred by the Receiver that pertain solely to the Receiver's general
7 office administration and/or overhead, including, but not limited to office supplies, employee wages,
8 taxes and benefits and other charges, shall not be an expense of the receivership estate.

9 **6. Inventory:**

10 Within thirty (30) days after entry of this Order, the Receiver shall file an inventory of all of
11 the Property taken into possession pursuant to this Order.

12 **7. Security Deposits:**

13 Any security or other deposits that tenants have paid or may pay to the Receiver or the
14 Property Manager, if otherwise refundable under the terms of their leases or agreements with the
15 Receiver, the City, or Main Street Stockton, shall be refundable by the Receiver in accordance with
16 such leases or agreements. The Receiver shall not be liable for any other security or other deposits
17 that tenants have paid to the City or Main Street Stockton or their respective agents and that are not
18 paid to the Receiver or are not being held by the Property Manager and over which the Receiver has
19 no control, and neither the Receiver nor Plaintiff shall have any obligations with respect to such
20 deposits.
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22 **8. Monthly Reports:**

23 The Receiver shall prepare and serve on Plaintiff and Defendants the Monthly Reports on the
24 condition and operation of the Property within thirty (30) days after the closing of each accounting
25 period or month. Such Monthly Reports shall consist of the monthly reports prepared and delivered
26 by the Property Manager, together with any other information the Receiver deems material regarding
27 the Property. These Monthly Reports shall also include the Receiver's fees and expenses of the
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1 receivership estate, including fees and costs of accountants and attorneys authorized by the Court (to
2 the extent Court authorization is required under this Order), incurred for each reporting period in the
3 operation and administration of the receivership estate. Subject to the disclosure requirements of
4 applicable law, Defendants agree to use reasonable efforts to keep the Monthly Reports confidential.
5 The Receiver shall follow accounting standards typical for similar properties, and may enlist the aid
6 of accountants for preparation of the Receiver's reports, to the extent the Receiver deems it
7 necessary to supplement the Property Manager's reports. If no objections are received within
8 twenty (20) days after service of each report, the Receiver may disburse from estate funds the
9 amount due to third parties, as well as the reasonable fees and expenses due to the Receiver for the
10 applicable period, as set forth in such report. Notwithstanding periodic payment of fees and
11 expenses to the Receiver, all remaining unpaid fees and expenses shall be submitted to the Court for
12 approval at the hearing to discharge the Receiver.
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14 **9. Management of the Property and/or Business Entity:**

15 In conjunction with the Property Manager, the Receiver shall operate and manage the
16 Property, including, but not limited to, collecting rent. The Receiver may employ such agents,
17 independent contractors, employees and management companies to assist the Receiver in managing
18 the Property, with Plaintiff's consent, including, but not limited to, the Property Manager and any
19 company in which the Receiver is a principal, provided the amount of compensation paid to any
20 such agent or firm is comparable to that charged by similar entities for similar services. The
21 Receiver may undertake the risks and obligations ordinarily incurred by owners, managers and
22 operators of similar businesses and enterprises, and the Receiver shall pay for these services from the
23 funds of the receivership estate. No such risk or obligation so incurred shall be the personal risk or
24 obligation of the Receiver, but shall be the risk and obligation of the receivership estate. All who are
25 acting, or have acted, on behalf of the Receiver or at the request of the Receiver are protected and
26 privileged with the same protections of this Court as the Receiver has.
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1 **10. Sale of the Property:**

2 (A) The Receiver is authorized and directed, and the Court appoints and makes the
3 Receiver the City's attorney-in-fact, for the sole purpose of (y) exercising the rights
4 of "Optionor" under that certain Real Property Option Agreement and Joint Escrow
5 Instructions to be entered into by and between Main Street Stockton and the City as
6 of the Effective Date (the "Option Agreement"), and (z) selling the Property¹ on
7 behalf of, and in the name of, the City, pursuant to the terms of the Option
8 Agreement, subject to the following conditions:

- 9
- 10 i. The automatic and non-automatic exercise of the "Option" granted by the City
11 under the Option Agreement shall not be subject to approval by this Court; and
 - 12 ii. The sale of the Property shall be free and clear of all liens and encumbrances,
13 except as approved by Plaintiff.

14 (B) The Receiver has the following authority with respect to the sale of the Property:

- 15
- 16 i. To do and perform all and every act desirable, proper or necessary, including,
17 without limitation, to convey title, execute and deliver deeds of conveyance,
18 bills of sale, closing statements, certificates and affidavits, all other documents
19 necessary or desirable to transfer the Property and obtain title insurance, all on
20 behalf of, and in the name of, the City, pursuant to the terms of the Option
21 Agreement.
 - 22 ii. To select, with Plaintiff's approval, a title company.
 - 23 iii. To prepare and execute a closing statement, with Plaintiff's approval, which
24 shall not require any further approval of this Court of such proposed sale,
25 including all closing costs, prorations, sales commissions, and any other
26 adjustments to the purchase price.

27 ¹ The definition of "Property" herein notwithstanding, the rooftop chillers purchased by the City of Stockton, the servers
28 used by the City of Stockton, and the furniture located in the space currently occupied by the City of Stockton on the
third and fourth floors of the Land will not be conveyed by the Receiver.

1 (C) After closing on the sale of the Property, the Receiver shall include in the Monthly
2 Report the sale price and the date of the sale.

3 (D) The "Net Proceeds of the Sale of the Property" shall be the gross sales price of the
4 Property, less closing costs, title insurance, prorations, sales commissions, transaction
5 fees and any other additional adjustments, provided such additional adjustments are
6 approved by both the Receiver and Plaintiff.

7 (E) The Net Proceeds of the Sale of the Property shall be disbursed as follows:

8 i. First, for payment of any unpaid fees and expenses of the Receiver, to the extent
9 approved by Plaintiff; and

10 ii. Second, to Plaintiff.

11 **11. Police Assistance:**

12 The Receiver, as agent of the Court, shall be entitled in the same manner as any other citizen
13 to request the assistance of law enforcement officials when taking possession of the Property, or at
14 any other time during the term of the receivership, if in the opinion of the Receiver, such assistance
15 is necessary to preserve the peace and protect the receivership assets, without further order from this
16 Court.
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18 **12. Bank Accounts**

19 The Receiver shall have the power to take possession of, and receive from all depositories,
20 banks, brokerages, and otherwise, any money on deposit in such institutions associated with,
21 belonging to, arising from or holding any funds related to the operation of the Property that is
22 controlled by and/or in the name of the Property Manager. The Receiver may indemnify the
23 institution upon whom such demand is made, and is empowered to open or close any such accounts.
24 The Receiver shall not have any rights with respect to any accounts controlled by the City as of the
25 date this Order becomes effective. The Receiver shall deposit monies and funds it collects and
26 receives in connection with the receivership estate at federally-insured banking institutions or
27 savings associations that are not parties to this case. Monies coming into the possession of the
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1 Receiver and not expended for any purposes herein authorized shall be delivered to Plaintiff. All
2 banks and financial institutions upon presentation of a copy of this Order shall provide copies of any
3 requested records regarding any such accounts to the Receiver. For any accounts already under the
4 control of the Property Manager, the Receiver may add his agents or employees as additional
5 signatories to any bank accounts, money market accounts, CD's or any other financial instruments or
6 accounts controlled by the Property Manager.

7 **13. Delivery of Revenues:**

8 To the extent not already being handled by the Property Manager, the Receiver may demand,
9 collect, and receive all rents, sub-rents, and profits for the Property, or any part, owed, unpaid, and
10 collected or uncollected as of the effective date of this Order, or which hereafter becomes due.

11 **14. Use of Funds:**

12 The Receiver shall pay, in conjunction with the Property Manager, only those bills that are
13 reasonable and necessary for the operation of the protection of the Property for the period after the
14 entry of this Order (except as expressly specified herein) until termination of the receivership and
15 shall allocate funds in the following order of priority: (1) the costs and expense of the receivership
16 estate as more fully described herein; (2) utilities, insurance premiums, general and special taxes or
17 assessments levied on the Property and improvements thereon; (3) accounts payable and expenses
18 associated with the management and maintenance of the Property, including any incurred but not
19 paid prior to the Receiver's appointment; (4) the creation and retention by the Property Manager, on
20 behalf of the Receiver, of a reasonable working capital fund for the operation and maintenance of the
21 Property; (5) after reserving sufficient funds the Receiver (after consulting with the Property
22 Manager) deems reasonable to retain for operation and protections of the Property, the Receiver
23 shall pay any remaining amounts to Plaintiff without further order of this Court pursuant to the
24 terms of the Plan, the Option Agreement, and/or to reduce the amounts due, owing and unpaid by the
25 City to Plaintiff. All monies coming into the Receiver's possession shall only be expended for the
26 purposes herein authorized.
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1 **15. Utilities:**

2 Any utility company providing services to the Property, including gas, electricity, water,
3 sewer, trash collection, telephone, communications or similar services, shall be prohibited from
4 discontinuing service to the Property for any non-payment by Defendants prior to the Receiver's
5 appointment by this Court based upon unpaid bills incurred by Defendants. Further, to the extent not
6 already being handled by the Property Manager, such utilities shall transfer any deposits held by the
7 utility company to the exclusive control of the Receiver and be prohibited from demanding that the
8 Receiver deposit additional funds in advance to maintain or secure such services.

9 **16. Insurance:**

10 The Receiver shall maintain such insurance as is required by any leases at the Property and
11 shall determine, in conjunction with the Property Manager and upon taking possession of the
12 Property, whether in the Receiver's judgment there is sufficient insurance coverage. With respect to
13 any insurance coverage in existence or obtained, the Receiver, Plaintiff, and the Property Manager
14 shall be named as an additional insured on the policies for the period of the receivership. If
15 sufficient insurance coverage does not exist, and the Property Manager is unable to obtain same, the
16 Receiver shall immediately notify the parties to this lawsuit and shall have thirty (30) calendar days
17 to procure sufficient all-risk and liability insurance on the Property (excluding earthquake and flood
18 insurance); provided, however, that if the Receiver does not have sufficient funds to do so, the
19 Receiver shall seek instructions from the Court with regard to adequately insuring the Property. The
20 Receiver shall not be responsible for claims arising from the lack of procurement or inability to
21 obtain insurance.
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1 **17. Taxes:**

2 The Receiver shall pay any taxes necessary to preserve the Property, including real property
3 taxes, as such taxes become due.

4 **18. Entry to Property:**

5 To the extent not available through the Property Manager, and only as permitted under the
6 leases at the Property or any applicable law: (A) the Receiver shall further be entitled to engage a
7 locksmith for the purposes of gaining entry to the Property and through any security system, in order
8 to obtain any property or documents to which the Receiver is entitled pursuant to this Order, as well
9 as giving any notices that may be required in performing the Receiver's duties hereunder; and (B)
10 the Receiver may have locks or security codes changed or have keys created that will work for the
11 existing locks.

12 **19. Legal Counsel:**

13 The Receiver may hire independent legal counsel, if needed by the Receiver, and pay such
14 persons for their services at such rates as the Receiver deems appropriate for the services provided,
15 and subject to Court and Plaintiff approval.

16 **20. Receiver's Certificates:**

17 The Receiver may borrow from Plaintiff or, if Plaintiff notifies the Receiver in writing that
18 Plaintiff is not willing or able to lend such funds, from third parties, funds required to continue the
19 operation of the Property, prevent the filing of, or otherwise remove, any liens against the Property
20 and/or when current Property income is insufficient to pay normal operating expenses, upon such
21 terms as deemed reasonable by the Receiver and Plaintiff. The Receiver is authorized to issue
22 Receiver's Certificates to secure such indebtedness. Any Receiver's Certificates shall have priority
23 over all other general claims against the receivership estate. After any Receiver's Certificate is
24 issued, a copy shall be included in the Receiver's monthly report. As funds in the receivership estate
25 are deemed by the Receiver to be in excess of necessary reserves, with Plaintiff's approval, the
26 Receiver may redeem these Certificates.
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1 **21. Plaintiff to notify Receiver of the Appearances of all Parties:**

2 Plaintiff is ordered to promptly notify the Receiver of the names, addresses, and telephone
3 numbers of all parties and their counsel who appear in the action, so that the Receiver may give
4 notice to all parties of any matters affecting the receivership.

5 **22. Contempt:**

6 Upon the failure of the City, its agents, representatives and all persons acting under, in
7 concert with, or for them, to abide by any term or condition of this order, the Receiver may petition
8 this court for further action to compel and enforce this Order.

9 **23. Termination of Receivership Estate; Discharge of the Receiver:**

10 The receivership estate shall be terminated upon order of the Court upon the earlier to occur
11 of the following two events:

- 12 (A) Thirty (30) days following the sale of the Property pursuant to Paragraph 10; or
13 (B) Plaintiff's written election to terminate the Receiver, in which event Plaintiff shall
14 have the right to select a new receiver, subject to Court approval.

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16 Plaintiff shall seek termination of the rights and obligations of the Receiver, as provided
17 herein, upon the termination of the Receivership Estate, discharge of the Receiver, and the
18 determination that no other Receiver shall be appointed.

19 Plaintiff, and to the extent required, Defendants, agree to dismiss all claims alleged in this
20 action upon the termination of the Receivership Estate, discharge of the Receiver, and the
21 determination that no other Receiver shall be appointed. Plaintiff and Defendants agree that they
22 will be responsible for their own fees and costs in connection with this action and the proceedings
23 associated with the appointment, termination, and discharge of the Receiver, provided, however, that
24 nothing herein shall impair or modify any rights Main Street Stockton may have for reimbursement
25 of its legal fees and costs from Plaintiff pursuant to applicable agreements between Main Street
26 Stockton and Plaintiff.

27 The bond of the Receiver shall be canceled upon the Court's discharge of the Receiver.
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1 **24. Receiver's Final Report and Account:**

2 As soon as is practicable after the receivership terminates, the Receiver shall file, serve, and
3 set for hearing in this Court his "Final Report and Accounting". Notice shall be given to all persons
4 from whom the Receiver has received notice regarding potential claims against the receivership
5 estate. The motion to approve the Final Report and Accounting, and for discharge of the Receiver,
6 shall contain a summary of the receivership accounting, including enumeration, by major categories,
7 of total revenues and total expenditures, the net amount of any surplus or deficit with supporting
8 facts, a declaration under penalty of perjury of the basis for the termination of the receivership, and
9 evidence to support an order for the distribution of any surplus, or payment of any deficit, in the
10 receivership estate.

11 **25. Instructions from the Court:**

12 The Receiver and the parties to this case may at any time apply to this Court for instructions
13 or orders. The Court may grant any order requested by the Receiver, without further notice or
14 hearing, if no objection is filed with the Court and served on the Receiver and the parties within
15 twenty days after filing and service of the Receiver's request.

16 **26. General Provisions.**

17 (A) No person or entity shall file suit against the Receiver, or take other action against the
18 Receiver, without an order of this Court permitting the suit or action, provided,
19 however, that no prior court order is required to file a motion in this action to enforce
20 the provisions of this Order or any other order of this Court in this action.

21 (B) The Receiver and its employees, agents, attorneys and all professionals and
22 management companies retained by the Receiver (including the Property Manager)
23 shall not be held liable for any claim, obligation, liability, action, cause of action,
24 cost, expense or debts incurred by the City, other than those related to the Receiver's
25 breach of this Order, gross negligence or willful misconduct. The Receiver and its
26 employees, agents and attorneys shall have no personal liability, and they shall have
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1 no claim asserted against them relating to the Receiver's duties under this Order,
2 without prior authority from this court as stated in (A) above, other than those related
3 to the Receiver's breach of this Order, gross negligence or willful misconduct.

4 (C) Nothing contained in this Order shall be construed as obligating or permitting the
5 Receiver to advance its own funds to pay any costs and expense of the receivership
6 estate.

7 (D) Plaintiff shall indemnify, defend and hold the Receiver harmless from all suits in
8 connection with the Property and from any and all liability, including for damages to
9 property and injury or death related to the Property, except for liability arising out of
10 the Receiver's willful misconduct or gross negligence that is not the result of
11 Plaintiff's instruction or direction.
12

13 **INJUNCTION**

14 27. It is further ordered that Defendants and their agents, partners, property managers,
15 employees, assignees, successors, representatives, and all persons acting under, in concert with, or
16 for them are ordered, to the extent not already undertaken by the Property Manager, to:

17 (A) **Turnover of Property:**

18 Relinquish and turn over possession of the Property to the Receiver upon his
19 appointment becoming effective.

20 (B) **Turnover of Keys, Books, and Records:**

21 At the Receiver's request, turn over to the Receiver and all keys, leases, books,
22 records, books of account, banking records, statements, cancelled checks, and all other business
23 records relating to the Property and in the possession of the Property Manager, and/or wherever
24 located, but only as is necessary for the management of the Property; and provide the Receiver with
25 all passwords needed for the management of the Property, including those in the possession of the
26 Property Manager. The Receiver's rights under this Paragraph 27(B) are limited to what is required
27 to sell and manage the Property as the owner and landlord, and the Receiver shall not be entitled to
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1 any keys, leases, books, records, books of account, banking records, statements, cancelled checks,
2 passwords, and any other business records that pertain to the operations of any tenant, including the
3 City, performed on premises or otherwise.

4 **(C) Turnover of Licenses, Permits, and Taxpayer ID Number:**

5 Turn over to the Receiver all documents that pertain to all licenses, permits, or
6 government approvals relating to the Property and shall immediately advise the Receiver of any
7 Federal and State taxpayer identification numbers used in connection with the operation of the
8 Property.

9 **(D) Notification of Insurance:**

10 Shall immediately advise the Receiver as to the nature and extent of insurance
11 coverage on the Property. To the extent permitted by law, Defendants shall immediately name the
12 Receiver as an additional insured on the insurance policy(ies) for the period that the Receiver shall
13 be in possession of the Property. Defendants are prohibited from canceling, reducing, or modifying
14 any and all insurance coverage currently in existence with respect to the Property; and

15 **(E) Turnover of Monies and Security Deposits:**

16 Immediately turn over to the Receiver any monies now held or subsequently received
17 relating in any way to the Property including, but not limited to, rent, security deposits, prepaid rent,
18 or funds in property management bank accounts or other depository accounts for the Property. The
19 tenants occupying, using or leasing the Property, or any portion thereof, shall make payments to the
20 Property Manager, as agent for the Receiver, until otherwise directed by the Receiver.

21 **28.** It is further ordered that, pending further order of this Court, the City and their agents,
22 partners, property managers and employees and all other persons acting in concert with them who
23 have actual or constructive knowledge of this Order, and their agents and employees, shall not:
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25 **(A) Commit Waste:**

26 Commit or permit any waste on the Property or any part thereof, or suffer, commit or
27 permit any act on the Property or any part thereof in violation of law, or remove, transfer, encumber
28

1 or otherwise dispose of any of the Property or the fixtures presently on the Property or any part
2 thereof.

3 **(B) Collect Rents:**

4 Demand, collect, receive, discount, or in any other way divert or use any of the rents,
5 insurance proceeds or any other cash proceeds from the Property.

6 **(C) Interfere with Receiver:**

7 Directly or indirectly interfere in any manner with the discharge of the Receiver's
8 duties under this Order or the Receiver's possession, operation or management of the Property.

9 **(D) Transfer or Encumber the Property:**

10 Expend, disburse, transfer, assign, sell, convey, devise, pledge, mortgage, create a
11 security interest in, encumber, conceal or in any manner whatsoever deal in or dispose of the whole
12 or any part of the Property, including, but not limited to, the rents, without prior Court order;
13 provided, however, that the City may place liens on the Property on account of unpaid taxes,
14 assessments and similar obligations to the extent the City is permitted to do so under applicable law
15 and under the authority it has with any property in the jurisdiction of the City.

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17 **29.** It is further ordered that, except by leave of this Court, all lessors, lessees, customers,
18 principals, investors, suppliers, and or creditors seeking to enforce any claim, right, or interest
19 against Defendants are barred by this Order from using any "self-help" remedy or doing anything
20 whatsoever to interfere in any way with the Receiver in the conduct of the receivership estate.

21 **30.** As to the injunctive relief granted herein, this Order shall be binding on the parties to this
22 action, their officers, agents, servants, employees, and attorneys, and on those who have actual or
23 constructive notice of this injunction.

24 **31.** In order to promote judicial efficiency, all persons who receive actual or constructive notice
25 of this Order are enjoined in any way from disturbing the Property or from prosecuting any new
26 proceedings (including collection or enforcement proceedings) that involve the Receiver or the
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1 Property (including any proceeding initiated pursuant to the United States Bankruptcy Code) unless
2 such person or persons first obtains the permission of this Court.

3 **IT IS FURTHER ORDERED** that all third parties (including but not limited to
4 financial institutions and their affiliates) in possession of assets subject to this Order (other than the
5 Property Manager) are hereby ordered to turn over such assets to the Receiver within five (5)
6 business days of receipt of a copy of this Order.

7
8
9 Dated: _____, 2015

JAN 27 2015

LINDA LOFTHUS

JUDGE OF THE SUPERIOR COURT

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EXHIBIT A

EXHIBIT A

Real Property Description

DESCRIPTION OF THE SITE

All that certain real property situated in the City of Stockton, San Joaquin County, State of California, described as follows:

PARCEL ONE:

Lot Seven (7), in Block Fourteen (14), EAST OF CENTER STREET, in the said City of Stockton, according to the official map or plat thereof.

PARCEL TWO:

Portions of Lots Eight (8), Ten (10), Fifteen (15) and Sixteen (16), in Block Fourteen (14), EAST OF CENTER STREET, in the City of Stockton, San Joaquin County, California, and more particularly described as follows:

Beginning at the northwest corner of said Lot 15; thence easterly along the north line of said Lot 15, 52.24 feet to the east face of a Brick Wall; thence southerly along the east face of said Brick Wall, 49.425 feet to a point in the north line of property of Rebecca E. Noble, bearing westerly along said property line, 99.17 feet from the west line of California Street; thence westerly along the north line of property of Rebecca E. Noble, 0.44 feet to the northwest corner of said Noble property; thence southerly along the west line of property of Rebecca E. Noble, 51.685 feet to a point in the north line of said Lot 10; thence easterly along the north line of said Lot 10, 0.93 feet; thence southerly along the east face of a Brick Wall and along the continuation of said face of said Brick Wall, 35.00 feet; thence westerly and parallel to the north line of said Lots 8 and 10, 52.93 feet to a point in the west line of said Lot 8; thence northerly along the west line of said Lot 8, 35.00 feet to the northwest corner of said Lot 8; thence northerly along the west line of said Lot 16 and 15, 101.11 feet to the point of beginning. All dimensions are U.S. Standard measure.

PARCEL THREE:

Lot Two (2), in Block Fourteen (14), EAST OF CENTER STREET, in the City of Stockton according to the official map or plat thereof, San Joaquin County Records.

EXCEPT THEREFROM the South 23 1/2 inches of said Lot 2, conveyed to the City of Stockton for sidewalk extension.

PARCEL FOUR:

The West 3 feet (actual measure) of Lot Four (4), in Block Fourteen (14), EAST OF CENTER STREET, in the City of Stockton, according to the official map or plat thereof, San Joaquin County Records.

EXCEPT THEREFROM the South 1 foot 11 1/2 inches of said Lot 4 conveyed to the City of Stockton for sidewalk extension.

PARCEL FIVE:

Lot Eight (8), in Block Fourteen (14), EAST OF CENTER STREET, in the City of Stockton, according to the official map or plat thereof.

EXCEPT the East Sixteen (E 16) feet thereof.

ALSO EXCEPTING the South 1 foot 11 1/2 inches thereof.

ALSO EXCEPTING the North 35 feet thereof as conveyed to Yosemite Theatre Company, by Deed recorded January 26, 1937 in Volume 567 of Official Records, at page 45, San Joaquin County Records.

PARCEL SIX:

A portion of Lots Four (4) and Six (6), in Block Fourteen (14), EAST OF CENTER STREET, in the City of Stockton according to the official map or plat thereof, San Joaquin County Records, described as follows:

Commencing at a point on the north line of Market Street, which point is 53 feet 6 1/4 inches east of the east line of Sutter Street (measured along the north line of Market Street); thence east along the north line of Market Street, 87 feet 6 1/4 inches to a point which point is 10 feet 6 1/4 inches west of the east line of said Lot 6, measured along the north line of said Market Street; thence north and parallel with the east line of said Lot 6, 99 feet 2 inches to the north line of said Lot 6; thence west along the north line of said Lot 6 and said Lot 4, 87 feet 6 1/4 inches to a point 3 feet east of the northwest corner of said Lot 4; thence south and parallel with the west line of said Lot 4, 99 feet 2 inches to the point of commencement.

PARCEL SEVEN:

All that portion of the East 10 feet 6 1/4 Inches of Lot Six (6), in Block Fourteen (14), EAST OF CENTER STREET, in the City of Stockton, according to the official map or plat thereof, San Joaquin County Records, which lies north of the present north line of Market Street in said City of Stockton.

PARCEL EIGHT:

The East 25 feet of the North 70 feet of Lot Eleven (11); in Block Fourteen (14), EAST OF CENTER STREET, in the City of Stockton, according to the official map or plat thereof, San Joaquin County Records.

PARCEL NINE:

The West Twenty-Five (W 25) feet of North Seventy (N 70) feet of Lot Eleven (11), in Block Fourteen (14), EAST OF CENTER STREET, in the said City of Stockton, according to the official map or plat thereof, commencing for the same at a point on the south side of Main Street, distant 25 feet from the southwest corner of Main and California Streets, and running thence southerly 70 feet; thence at right angles westerly 25 feet; thence at right angles North 70 feet; thence at right angles easterly along and fronting on Main Street, 25 feet to the point of beginning.

Also all our right, title and interest in the Party Walls adjoining on the west and east sides of above described premises and being all interest in said walls and land, particularly described and set out in those certain instruments recorded in Book "A" of Deeds, Volume 41, at page 629 and Book "A" of Deeds, Volume 42, at page 71, and in Book "G" of Miscellaneous, Volume 23, at page 227, San Joaquin County Records.

PARCEL TEN:

The East 2/3 of Lot Fifteen (15), in Block Fourteen (14), EAST OF CENTER STREET, in the said City of Stockton, according to the official map or plat thereof.

EXCEPT the South 1.13 feet thereof conveyed by George L. Wolf to Lita Alma Camm, by Deed recorded May 3, 1916 in Book "A" of Deeds, Volume 265, at page 555, San Joaquin County Records.

ALSO EXCEPTING THEREFROM that portion thereof included within the parcel of land conveyed with other land to Yosemite Theater Company, a corporation, by Deed recorded January 26, 1937 in Volume 567 of Official Records, at page 45, San Joaquin County Records.

PARCEL ELEVEN:

Being the East 99.61 feet of the North 0.25 feet of the South 1.13 feet of Lot Fifteen (15), in Block Fourteen (14), EAST OF CENTER STREET, in said City of Stockton, according to the official map or plat thereof. (All measurements are U.S. Standards.)

PARCEL TWELVE:

All of Lots Eight (8) and Ten (10), in Block Fourteen (14), EAST OF CENTER STREET, according to the official map or plat thereof.

EXCEPT THEREFROM THE FOLLOWING:

(1) the North 35 feet of said Lot 8; (2) the West 34.5 feet of the South 63.04 feet of the North 98.04 feet of said Lot 8; (3) the South 1.96 feet of said Lot 8; (4) the West 2.43 feet of the North 35 feet of said Lot 10; (5) the South 1.96 feet of said Lot 10.

PARCEL THIRTEEN:

All that certain piece or parcel of land situate, lying and being in the City of Stockton, County of San Joaquin, State of California, and more particularly described as follows:

All of Lot 12, excepting therefrom the South 1.96 feet in Block 14, EAST OF CENTER STREET, as said Lot and Block are shown upon the official map of the City of Stockton, approved and adopted by the City Council of the City of Stockton on July 23, 1894, said map is on file in the Office of the City Clerk of said City.

PARCEL FOURTEEN:

All that certain piece of parcel of land situate, lying and being in the City of Stockton, County of San Joaquin, State of California, and more particularly described as follows:

The East 99.61 feet of Lot 16 and the South 1.13 feet of the East 99.61 feet of Lot 15, in Block 14, EAST OF CENTER STREET, as said lots and block is shown upon the official map of the City of Stockton, approved and adopted by the City Council of the City of Stockton on July 23, 1894, said map is on file in the Office of the City Clerk of said City.

PARCEL FIFTEEN:

A portion of Lot Thirteen (13) and all of Lot Fourteen (14), in Block Fourteen (14), EAST OF CENTER STREET, in the City of Stockton, according to the official map or plat thereof, San Joaquin County Records, more particularly described as follows:

Commencing at the southwest corner of said Lot 14; thence run northerly along the west line of said Lots 13 and 14, a distance of 65.39 feet to the center of an 18 inch Brick Wall; thence easterly parallel to the south line of said Lot 14, along the center of said 18 inch Brick Wall, a distance of 119.84 feet to the center of a 13 inch Brick Wall; thence northerly parallel to the west line of said Lot 13, along the center of said 13 inch Brick Wall, a distance of 35.15 feet to the north face of an 8 inch Brick Wall; thence easterly parallel to the south line of said Lot 14, along the north face of said 8 inch Brick Wall and said north face of wall produced easterly a distance of 31.72 feet to the east line of said Lot 13; thence southerly along the easterly line of said Lots 13 and 14, a distance of 100.54 feet to the southeast corner of said Lot 14; thence westerly along the south line of said Lot 14, a distance of 151.56 feet to the point of beginning.

PARCEL SIXTEEN:

Portions of Lots Five (5) and Thirteen (13), in Block Fourteen (14), EAST OF CENTER STREET, in the City of Stockton, according to the official map or plat thereof, San Joaquin County Records, more particularly described as follows:

Beginning at a point on the southerly line of Main Street, distant thereon 119.27 feet easterly from the easterly line of Sutter Street; thence easterly along said line of Main Street, 32.29 feet to the easterly line of said Lot 5; thence at right angle, southerly along the easterly lines of said Lots 5 and 13, in said Block 14, 101.68 feet to the northerly line of that certain parcel of land conveyed by Deed dated August 2, 1921, executed by Delia Wolf Meigs, et al., to Salvatore S. Solari, recorded August 8, 1921 in Volume 463 of Book "A" of Deeds, at page 305, San Joaquin County Records; running thence westerly along the northerly line of the property so conveyed in said deed and the extension thereof, westerly 32.29 feet; thence Northerly 101.68 feet to the point of beginning. All dimensions are United States Standards Measure.

PARCEL SEVENTEEN:

All of Lot One (1), in Block Fourteen (14), EAST OF CENTER STREET, in the said City of Stockton, according to the official map or plat thereof, San Joaquin County Records, and more particularly described by metes and bounds, as follows:

Beginning at the northwest corner of said Lot 1, being also the northwest corner of said Block 14 and being also the intersection of the southerly line of Main Street with the easterly line of Sutter Street in the said City; thence North 78 degrees 06 minutes East along the southerly line of Main Street, 50.52 feet to the northeast corner of said Lot 1; thence South 12 degrees 00 minutes East, along the easterly line of said Lot 1, 101.11 feet to the southeast corner of said Lot 1; thence South 78 degrees 06 minutes West, along the southerly line of said Lot 1, 50.52 feet to the lot corner; thence North 12 degrees 00 minutes West, along lot line, being the easterly line of Sutter Street, 101.11 feet to the point of beginning. All dimensions of United States Standard Measure, being the same property conveyed to I.H.L. Corporation, by the Vincent Astor Foundation by Deed dated March 27, 1956 and recorded in Volume 1852 of Official Records, at page 116, San Joaquin County Records.

PARCEL EIGHTEEN:

All of Lot Three (3) and a portion of Lots Five (5) and Thirteen (13), in Block Fourteen (14), EAST OF CENTER STREET, in the said City of Stockton, according to the official map or plat thereof, San Joaquin County Records, more particularly described as follows:

Beginning at a point on the southerly line of Main Street, distant thereon 50.52 feet easterly from the easterly line of Sutter Street; running thence easterly along said line of Main Street, 68.75 feet; thence at a right angle southerly, 101.68 feet to the northerly line extended westerly of that certain parcel of land conveyed by Deed dated August 1, 1921, executed by Delia Wolf Meigs, et al., to Salvatore S. Solari, re-recorded August 8, 1921 in Volume 463 of Book "A" of

Deeds, at page 305, San Joaquin County Records; thence at right angles easterly, 0.57 feet to the most northwesterly corner of said parcel so conveyed to said Salvatore S. Solari; thence at right angles southerly along the line of the property so conveyed to Salvatore S. Solari, 35.15 feet; thence at right angles westerly along the line of the property conveyed to said Salvatore S. Solari, 119.84 feet to the easterly line of Sutter Street; thence northerly along the easterly line of Sutter Street, 35.72 feet; thence at right angles easterly 50.52 feet; thence at right angles northerly, 101.11 feet to the southerly line of Main Street and the point of beginning.

PARCEL NINETEEN:

All of Lot Nine (9) and the Southerly 30 feet of Lot Eleven (11), all in Block Fourteen (14), EAST OF CENTER STREET, in the said City of Stockton, according to the official map or plat thereof.

EXCEPT an undivided 1/2 of a Brick Wall as described in and conveyed by Deed of Record in Book "A" of Deeds, Volume 42, at page 71, San Joaquin County Records.

ALSO EXCEPTING an undivided 1/2 of the upper story of a certain Brick Wall as described in and conveyed by Grant of Brick Wall of record in Book "G" of Miscellaneous, Volume 23, at page 227, San Joaquin County Records.

PARCEL TWENTY:

The South One (1) foot, Eleven and One Half (11 1/2) inches of the following described parcel of land:

Lot Two (2), Four (4), Six (6), Eight (8), Ten (10), and Twelve (12), in Block Fourteen (14), EAST OF CENTER STREET, in the City of Stockton, according to the official map or plat thereof, San Joaquin County Records.

PARCEL TWENTY-ONE:

A Non-Exclusive Surface Easement over the premises described herein for the construction, use, maintenance, repair and reconstruction of sidewalks, entry ways, planter boxes and other structures or improvements that may be constructed, reconstructed or installed, and an exclusive subterranean easement for the construction, operation, use, maintenance, repair, replacement and reconstruction of an underground parking facility or other uses necessary to the dominant tenement hereinafter described except the outer 6.5 feet of the perimeter thereof, and a nonexclusive subterranean easement for the installation and maintenance of utilities, vents, drains and other related or incidental uses over the outer 6.5 feet of the perimeter of the subterranean easement, as granted American Savings and Loan Association, a California corporation, recorded July 3, 1987, Recorder's Instrument No. 87066275, San Joaquin County Records.

Said easements are appurtenant to land described as follows:

City of Stockton All of Block Fourteen (14), EAST OF CENTER STREET, in the said City of Stockton, according to the official map or plat thereof.

Said easements are described as follows:

PARCEL A:

Beginning at the southeast corner of said Block Fourteen(14); thence North 17 degrees 59 minutes 00 seconds West 303.44 feet along the boundary thereof to the northeast corner of said block; thence North 72 degrees 06 minutes 20 seconds East 19.00 feet along the easterly projection of the north line of said Block 14; thence South 17 degrees 59 minutes 00 seconds East, 303.44 feet to a point on the easterly projection of the south line of said Block 14; thence South 72 degrees 05 minutes 45 seconds West, 19.00 feet to the point of beginning.

PARCEL B:

Beginning at the southwest corner of said Block 14; thence North 72 degrees 05 minutes 45 seconds East, 303.15 feet along the boundary thereof to the southeast corner of said block; thence continuing North 72 degrees 05 minutes 45 seconds East, 19.00 feet; thence South 17 degrees 59 minutes 00 seconds East 16.63 feet; thence South 72 degrees 01 minutes 00 seconds West, 340.75 feet; thence North 17 degrees 59 minutes 00 seconds West, 17.10 feet to a point on the westerly projection of the south line of said Block 14; thence North 72 degrees 05 minutes 45 seconds East, 18.60 feet along said projection to the point of beginning.

PARCEL C:

Beginning at the northwest corner of said Block Fourteen (14); thence South 18 degrees 00 minutes 00 seconds East, 303.49 feet along the boundary thereof to the southwest corner of said block; thence South 72 degrees 05 minutes 45 seconds West, 18.60 feet along the westerly projection of the south line of said block 14; thence North 17 degrees 59 minutes 00 seconds West, 303.50 feet to a point on the westerly projection of the north line of said Block 14; thence North 72 degrees 06 minutes 20 seconds East, 18.51 feet along said projection to the point of beginning.

PARCEL D:

Beginning at the northeast corner of said Block 14; thence South 72 degrees 06 minutes 20 seconds West, 303.24 feet along the boundary thereof to the northwest corner of said block; thence continuing South 72 degrees 06 minutes 20 seconds West, 18.51 feet; thence North 17 degrees 59 minutes 00 seconds West, 16.15 feet; thence North 72 degrees 01 minutes 00 seconds East 340.75 feet; thence South 17 degrees 59 minutes 00 seconds East, 16.68 feet to a point on the easterly projection of the north line of said Block 14; thence South 72 degrees 06 minutes 20 seconds West, 19.00 feet along said projection to the point of beginning. All distances in the four described parcels are U.S. Standard Measurements.

EXHIBIT D

13

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11 *Income Fund and Franklin California High*
12 *Yield Municipal Fund*

13 **UNITED STATES BANKRUPTCY COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**
15 **SACRAMENTO DIVISION**

16 In re:) Case No. 12-32118
17 CITY OF STOCKTON, CALIFORNIA,) D.C. No. JD-1
18 Debtor.) Chapter 9
19) **FRANKLIN'S MOTION FOR STAY**
20) **PENDING APPEAL OF**
21) **CONFIRMATION ORDER**
22) Date: December 10, 2014
23) Time: 11:00 a.m.
24) Dept: C, Courtroom 35
25) Judge: Hon. Christopher M. Klein
26)
27)
28)

1 Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal
2 Fund (collectively, “Franklin”) hereby move for a stay pending appeal of the Court’s forthcoming
3 order confirming the *First Amended Plan For The Adjustment Of Debts Of City Of Stockton,*
4 *California, As Modified (August 8, 2014)* [DN 1645] (the “Plan”).¹

5
6 **I. PRELIMINARY STATEMENT**

7 Franklin has initiated an appeal of the Court’s confirmation of the Plan. By this Motion,
8 Franklin seeks to protect its right to pursue and obtain effective relief in that appeal.

9 Absent a stay of confirmation, the City undoubtedly will argue that Franklin’s appeal is
10 equitably moot. Although any such argument would be without merit, the absence of a stay will
11 subject Franklin to unnecessary litigation over the mootness issue and the small risk that its appellate
12 rights might be foreclosed by a finding of mootness. Under the circumstances described below, that
13 risk is sufficient to warrant a stay pending Franklin’s appeal.

14
15 **II. BACKGROUND**

16 The underlying facts of this case are well known to all involved. Franklin is the beneficial
17 owner of the 2009 Golf Course/Park Bonds. Pursuant to the Plan, Franklin has an allowed secured
18 claim of \$4,052,000 and an allowed unsecured claim of \$32,551,625.93 in respect of those bonds.
19 The Plan provides for Franklin to be paid in cash for the full amount of its secured claim and for less
20 than 1% of its unsecured claim. The Plan does not provide for any other payments, compensation, or
21 distributions to Franklin, now or in the future.

22
23
24 ¹ The Court confirmed the Plan on the record at the hearing held on October 30, 2014, as to which
25 a minute order [DN 1747] also was entered on October 30, 2014. The Court has stated its
26 intention to enter a formal order of confirmation, but no such order has yet been lodged.
27 Franklin has filed a notice of appeal of confirmation of the Plan and all findings, conclusions,
28 and rulings incorporated into or made in connection with the forthcoming confirmation order,
including the minute order and the findings, conclusions, and rulings set forth on the record at
the hearing held on October 30, 2014. Capitalized terms not defined in this Motion have the
meanings given to them in the Plan.

1 Franklin voted to reject the Plan and objected to its confirmation on numerous grounds,
2 including that the Plan (a) is not “in the best interests of creditors” as required by section 943(b)(7)
3 of the Bankruptcy Code; (b) improperly classifies, disparately treats, and unfairly discriminates
4 against Franklin’s unsecured claim, in violation of the requirements of sections 1122(a), 1123(a)(4),
5 and 1129(b) of the Bankruptcy Code; (c) was not “proposed in good faith” pursuant to
6 section 1129(a)(3) of the Bankruptcy Code; and (d) violates section 943(b)(3) of the Bankruptcy
7 Code because the City has not provided information sufficient to enable the Court to conclude that
8 “all amounts to be paid by the debtor or by any person for services or expenses in the case or
9 incident to the plan have been fully disclosed and are reasonable.”

10 At the hearing held on October 30, 2014, the Court overruled Franklin’s objections and stated
11 that it would enter an order confirming the Plan. Franklin filed a notice of appeal on
12 November 12, 2014.

13 14 **III. A STAY PENDING APPEAL IS WARRANTED**

15 Rule 8005 of the Federal Rules of Bankruptcy Procedure provides that a court “may suspend
16 or order the continuation of other proceedings in the case under the Code or make any other
17 appropriate order during the pendency of an appeal on such terms as will protect the rights of all
18 parties in interest.” Fed. R. Bankr. P. 8005. When deciding whether to issue a stay, courts consider
19 the same four factors that are required for the issuance of a preliminary injunction, namely: (1) the
20 movant’s likelihood of success on appeal; (2) significant and/or irreparable harm that will come to
21 the movant absent a stay; (3) harm to the adverse party if a stay is granted; and (4) the public
22 interest. *See, e.g., In re N. Plaza, LLC*, 395 B.R. 113, 119 (S.D. Cal. 2008) (citing *Hilton v.*
23 *Braunskill*, 481 U.S. 770, 776 (1987)). The Ninth Circuit employs a balancing test in weighing
24 those four factors, such that “a stronger showing of one element may offset a weaker showing of
25 another.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

26 Franklin has a compelling case for relief on the merits of its appeal. Respectfully, Franklin
27 submits that the Court made several fundamental errors of law in concluding that the Plan satisfied
28

1 the Bankruptcy Code’s confirmation requirements. Those errors will be reviewed on a *de novo* basis
2 and are likely to lead to reversal. Because Franklin’s likelihood of prevailing is high, Franklin need
3 not demonstrate a certainty of irreparable harm in order to obtain a stay pending appeal. The delay
4 and expense of defending against a baseless equitable mootness argument by the City, and the risk of
5 dismissal due to mootness (albeit a small one), is sufficient.

6 Moreover, there is little risk of harm to the City or other parties in interest if a stay is
7 imposed. As a chapter 9 debtor, the City has full control over its assets and affairs, and will be able
8 to continue on with its operations as it has for the nearly two-and-one-half years it already has spent
9 during the pendency of this bankruptcy case. Among other things, just as it has done throughout the
10 case, the City will remain free to pay the creditors it wants to pay, to continue to fund its unfunded
11 pensions, and to honor its collective bargaining agreements and obligations to employees. A stay
12 will merely preserve the *status quo*, which has been quite beneficial to the City. Finally, the public
13 interest weighs strongly in favor of a stay in light of the importance of an appellate-level decision on
14 the significant issues of first impression raised by Franklin.

15 **A. Franklin Has A Substantial Likelihood Of Success On The Merits**

16 In order to show likelihood of success on the merits, an appellant seeking a stay pending
17 appeal generally need not “demonstrate that it is more likely than not that [he or she] will win on the
18 merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011). Instead, the movant ordinarily
19 must show only “that she has a substantial case for relief on the merits.” *Id.* at 968. Where it can be
20 shown that the movant is more likely than not to prevail on the merits, the movant then need only
21 show a possibility of irreparable harm. *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983) (“At
22 one end of the continuum, the moving party is required to show both a probability of success on the
23 merits and the possibility of irreparable injury. . . . At the other end of the continuum, the moving
24 party must demonstrate that serious legal questions are raised and that the balance of hardships tips
25 sharply in its favor.”), *rev’d in part on other grounds*, 463 U.S. 1328 (1983).

26 Here, Franklin’s appeal raises several legal questions, or mixed questions of law and fact,
27 that will be reviewed on a *de novo* basis by the appellate court. *See, e.g., United States v.*

1 *Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (*en banc*) (appellate court first “determines *de novo*
2 whether the [bankruptcy] court identified the correct legal rule to apply to the relief requested”);
3 *In re BCE W., L.P.*, 319 F.3d 1166, 1170 (9th Cir. 2003) (applying *de novo* standard of review to
4 bankruptcy court’s conclusions of law, decisions with respect to mixed questions of law and fact,
5 and interpretation of the Bankruptcy Code). Franklin believes that, on *de novo* review, one or more
6 of the Court’s conclusions with respect to the disputed confirmation issues are likely to be reversed.

7 Best Interests Test. For example, the Court erred in its interpretation of the best interests of
8 creditors test established by section 943(b)(7) of the Bankruptcy Code. The Court found that the
9 Plan satisfies this requirement based upon its determination that the Plan “is about the best that can
10 be done – or is the best that can be done in terms of the restructuring and adjustments of the debts of
11 the City of Stockton.” 10/30/14 Tr. at 41:9-12.

12 In so holding, the Court did not identify or apply the correct legal rule for determining
13 whether a chapter 9 plan of adjustment satisfies section 943(b)(7). As demonstrated by the cases and
14 legislative history discussed in Franklin’s briefs and at argument, the requirement that a municipal
15 plan of adjustment be in the “best interests of creditors” goes far beyond a rudimentary conclusion
16 that a plan is “about the best that can be done” for a majority of creditors.

17 Rather, the test in chapter 9 protects the interests of individual dissenting creditors, not
18 merely the interests of creditors as a whole. *Kelley v. Everglades Drainage Dist.*, 319 U.S. 415, 418
19 (1943) (“[M]inorities under the various reorganization sections of the Bankruptcy Act cannot be
20 deprived of the benefits of the statute by reason of a waiver, acquiescence or approval by the other
21 members of the class. The applicability of that rule to proceedings under Ch. IX is plain.”)
22 (quotation omitted). The “best interests” test protects the interests of individual creditors and
23 minorities even when they conflict with the preferences of the majority of creditors. *See, e.g., Fano*
24 *v. Newport Heights Irrigation Dist.*, 114 F.2d 563 (9th Cir. 1940) (reversing confirmation on the
25 grounds that plan was not in the “best interests” of a dissenting bondholder despite the fact that 90%
26 of bondholders had accepted the plan). The Court’s conclusion that the Plan satisfies
27 section 943(b)(7) merely because it purportedly is “the best that can be done in terms of the
28

1 restructuring” – without any analysis or consideration of the interests of Franklin and the sub-1%
2 payment on Franklin’s unsecured claim – is error as a matter of law and more likely than not to be
3 reversed on appeal.

4 Moreover, the Court also erred by failing to make the necessary factual findings to support its
5 conclusion that the Plan is in the best interests of creditors – particularly Franklin. The Court, in
6 fact, made no findings whatsoever regarding the treatment of Franklin. The legislative history of
7 section 943(b)(7), however, is crystal clear on this point: the bankruptcy court must “make findings
8 as detailed as possible to support a conclusion that this test has been met.” 124 Cong. Rec. H 11,100
9 (Sept. 28, 1978), S 17,417 (Oct. 6, 1978). *Fano* and *Kelley*, which are specifically cited in the
10 legislative history, point to the type of factual findings that must be made, including “the revenues
11 which have in the past been received from each source of taxation,” the “probable effect on future
12 revenues” of any impending changes to the existing tax structure, the “extent of past tax
13 delinquencies,” and “any general economic conditions” that may bear on the future delinquency rate.
14 *Kelley*, 319 U.S. at 420-21.

15 The ultimate purpose of such detailed factual findings is to support the court’s determination
16 that creditors will receive under the plan “all that could reasonably be expected in all the existing
17 circumstances,” *i.e.*, that the plan constitutes a reasonable effort by the debtor to pay the claims of
18 each creditor over time based upon its probable future revenues. *Kelley*, 319 U.S. at 420
19 (bankruptcy court must determine whether the plan dedicates a “fair” amount of “probable future
20 revenues” for “satisfaction of creditors”); *see W. Coast Life Ins. Co. v. Merced Irrigation Dist.*, 114
21 F.2d 654, 678 (9th Cir. 1940) (“[T]he only question before this court is whether or not the 51.501
22 [cents] on the dollar is all that could reasonably be expected in all the existing circumstances.”);
23 *Bekins v. Lindsay-Strathmore Irrigation Dist.*, 114 F.2d 680, 685 (9th Cir. 1940) (“It seems clear to
24 us that the 59.978 cents on the dollar of principal amount of their bonds is all that the bondholders
25 can reasonably expect in the circumstances.”).

26 The Court made virtually no findings to support such a conclusion, which is directly contrary
27 to the wealth of evidence establishing that the City in fact can pay far more to Franklin on its
28

1 unsecured claim, over time from future revenues, than the sub-1% payment called for under the Plan.
2 Indeed, there are no facts establishing that a one-cent recovery for Franklin is “all that could
3 reasonably be expected” or that the amount of the City’s probable future revenues devoted to the
4 payment of Franklin’s claim under the Plan – *i.e.*, \$0 – is “fair.” This is particularly true given the
5 evidence that the City’s initial “Ask” proposed future payments representing a present value
6 recovery of more than 50% to Franklin, that the future payments to be received by all other material
7 creditors under the Plan have a present value exceeding 50%, and that Franklin is the only material
8 creditor in this case – or to Franklin’s knowledge, any other successful chapter 9 case – to receive no
9 meaningful recovery at all.

10 The Court’s failure to make the necessary findings in this regard constitutes independent
11 reversible error.

12 Disparate And Discriminatory Classification And Treatment. Franklin also established that
13 the Plan’s classification scheme – in which Franklin’s unsecured claim was classified together with
14 part of the claims of City retirees (health benefit claims but not pension claims) and separately from
15 the claims of all of the City’s other bondholders – had only one purpose: to enable the City to avoid
16 the “cramdown” requirements of section 1129(b)(1) of the Bankruptcy Code. By improperly
17 gerrymandering Franklin’s unsecured claim into a class whose other members (the retirees) had
18 committed to vote to accept the Plan due to the promise of unimpaired pensions, the Plan violates the
19 strictures of section 1122(a) of the Bankruptcy Code. *In re Barakat*, 99 F.3d 1520, 1525 (9th
20 Cir. 1996) (plan violates section 1122 where “the classifications are designed to manipulate class
21 voting”) (quoting *In re Holywell Corp.*, 913 F.2d 873, 880 (11th Cir. 1990)). The Court erred in
22 concluding otherwise.

23 The Court also erred in disregarding the disparate treatment of Class 12 claims and creditors
24 holding Class 12 claims. Specifically, the Court turned a blind eye to the direct linkage under the
25 Retirees Settlement between the retirees’ recovery in Class 12 and the City’s agreement to leave the
26 retirees’ pensions unimpaired. While nominally providing a sub-1% recovery to all claims within
27 Class 12, the Plan actually provides retirees with a recovery of somewhere between 53% and 70%

1 due to the fact that, as *quid pro quo* for the sub-1% “settlement” of Retiree Health Benefit Claims,
2 the City agreed to pay pensions in full. As many cases cited by Franklin establish, that treatment
3 violates section 1123(a)(4), which requires that claims and creditors in the same class receive the
4 same treatment. The Court erred by disregarding that authority.

5 Finally, the Court erred by failing to consider the undeniably unfair discrimination against
6 Franklin’s unsecured claim. Had the Court properly rejected the City’s gerrymandered classification
7 and disparate treatment of Franklin’s unsecured claim, it would have concluded that the sub-1%
8 payment on that claim unfairly discriminated against Franklin in comparison to the Plan’s 50%-70%
9 payment of retiree claims and 52% to 100% payment of other City bonds, including the wholly-
10 unsecured Pension Obligation Bonds. This legal error is likely to lead independently to reversal.

11 Bad Faith. The Court also erred in concluding that the Plan was proposed and prosecuted in
12 good faith. Contrary to the Court’s conclusion, the evidence established that the City acted in bad
13 faith in imposing a punitive one-time recovery of less than 1% on Franklin’s unsecured claim,
14 apparently because Franklin did not acquiesce in the City’s settlement demands like other material
15 creditors. The City’s bad faith is made apparent by its refusal to use a single dollar of restricted
16 public facility fees – which may not be applied to other general fund liabilities – to pay Franklin’s
17 claim, despite the fact that it sold the Franklin’s bonds on the premise that PFFs would be sufficient
18 to pay all scheduled debt service, proposed to use PFFs to pay Franklin in the pre-bankruptcy neutral
19 evaluation, and assumed in its own Long-Range Financial Plan that available PFFs would be paid to
20 Franklin over the entire projection period. The City’s bad faith also is apparent in its refusal to make
21 – or even attempt to make – a single payment over time, from future revenues, in satisfaction of
22 Franklin’s claim, despite the fact that all other material creditors are receiving substantial payments
23 for the next thirty or forty years and pension holders remain unimpaired.

24 Ignoring Franklin’s arguments altogether, the Court focused on the fact that the City had
25 reached settlements with substantially all of its other material creditors, which the Court found to be
26 evidence of good faith. The Court also held that the Plan provided for Franklin to share in “more
27 than 20 percent” of a contingent fund and that, because Franklin “elected” not to “take advantage” of

1 the “opportunity” to access that fund prior to the time of confirmation, the City’s good faith had been
2 established. 10/30/14 Tr. at 36:13-21.

3 This is clear, reversible error. For one thing, the fact that the City reached settlements with
4 other material creditors is not evidence that the Plan was proposed in good faith as to Franklin.
5 Considering the City’s refusal to devote any future revenues to the satisfaction of Franklin’s claim
6 over time (just as it is paying the claims of other creditors over time), the opposite is true. For
7 another, there simply was no “contingent fund” made available to Franklin under the Plan. At no
8 time in any draft of the Plan did the City ever make a contingent fund available to Franklin. To the
9 contrary, each and every draft of the Plan provided for Franklin’s unsecured claim to receive a single
10 payment of less than 1%, all while other creditors were able to benefit from future payments over
11 time. In fact, the contingent note provided to Assured as part of the treatment afforded its Pension
12 Obligation Bonds (apparently the “contingent fund” to which the Court referred) included a carve
13 out, which could have been (but was not) earmarked for Franklin. The fact that the City had the
14 ability to provide Franklin with a portion of that contingent note but chose not to is illustrative of the
15 City’s bad faith, not the converse.

16 Section 943(b)(3). The Court also committed legal error in concluding that the Plan
17 complies with section 943(b)(3) of the Bankruptcy Code, which requires the Court to find that “all
18 amounts to be paid by the debtor or by any person for services or expenses in the case or incident to
19 the plan have been fully disclosed and are reasonable.” 11 U.S.C. § 943(b)(3). Although there is
20 limited legal authority interpreting section 943(b)(3), COLLIER confirms that its purpose is to allow
21 “[t]he courts [to] monitor the payment of fees and the reimbursement of expenses in or in connection
22 with a chapter 9 case to insure that the fees and expenses are reasonable, that there is no
23 overreaching by attorneys or agents either of the debtor or of creditors, and that there is full
24 disclosure so that those whose rights are affected directly by the plan and directly or indirectly by
25 compensation arrangements are aware of the practice in a particular case and can determine whether
26 the plan is being proposed for the benefit of the debtor and its creditors or is a scheme to benefit
27

1 private interests at the expense of the debtor and/or its creditors.” 6 COLLIER ON BANKRUPTCY
 2 ¶ 943.03[3] (16th ed. 2013) (emphasis added).

3 The City failed to make the full disclosure required by section 943(b)(3). Instead, it
 4 submitted a summary “chart” with line items showing aggregate amounts paid to professionals. That
 5 is not remotely adequate to enable the Court (or Franklin) to determine whether the fees paid by the
 6 City “have been fully disclosed and are reasonable.” The Court first did not apprehend that Franklin
 7 had objected on section 943(b)(3) and then, upon being reminded of the objection, compounded that
 8 error by concluding that section 943(b)(3) only applied to prospective payments to be made by the
 9 City in the future. 10/30/14 Tr. at 38:5-23; 51:16-53:22.

10 Franklin submits that such ruling will not stand appellate scrutiny. The Plan cannot be
 11 confirmed unless and until the City fully discloses all amounts “for services or expenses in the case
 12 or incident to the plan” – not just an aggregate amount – and the Court then determines that those
 13 amounts are “reasonable” as required by the statute. That did not happen here and there is no basis
 14 for the Court’s ruling that the Plan complies with section 943(b)(3).

15 **B. There Is A Possibility Of Irreparable Harm Absent A Stay.**

16 “If it ‘is apparent that absent a stay pending appeal . . . the appeal will be rendered moot,’
 17 that circumstance is . . . ‘the quintessential form of prejudice’ justifying a stay.” *In re Pac. Gas &*
 18 *Elec. Co.*, No. C-02-1550 VRW, 2002 U.S. Dist. LEXIS 27549, at *8 (N.D. Cal. Nov. 14, 2002)
 19 (quoting *In re Country Squire Associates of Carle Place, LP*, 203 B.R. 182, 183 (2d Cir.
 20 BAP 1996)); *see also Mt. Paradise Vill., Inc. v. Fannie Mae*, No. 2:13-CV-01813-GMN, 2013 U.S.
 21 Dist. LEXIS 148837, at *5 (D. Nev. Oct. 15, 2013) (crediting movant’s argument that “the loss of
 22 appellate review itself is a form of irreparable injury”). To invoke the risk of dismissal for mootness
 23 as a form of irreparable injury, the party seeking a stay “must make apparent to the court the
 24 imminent danger that the issues [it] seek[s] to raise on appeal will become moot.” *Pac. Gas &*
 25 *Elec.*, 2002 U.S. Dist. LEXIS 27549, at *8-9.

26 Given the City’s history of scorched earth tactics, it is all but inevitable that the City will
 27 seek to dismiss Franklin’s appeal on equitable mootness grounds if Franklin fails to obtain a stay,
 28

1 and Franklin clearly would suffer irreparable injury if the appeal were to be dismissed before a
 2 decision on the merits. Admittedly, Franklin does not believe that its appeal can or should be
 3 dismissed. Recent authority confirms that the doctrine of “equitable mootness does not apply to
 4 challenges to a Confirmation Order in Chapter 9 proceedings” because “it is based on Chapter 11
 5 concepts that may be inapplicable to or inappropriate for [a] Chapter 9 case.” *Bennett v. Jefferson*
 6 *Cnty.*, Case No. 2:14-CV-0213-SLB, 2014 U.S. Dist. LEXIS 139655, at *52 (N.D. Ala.
 7 Sept. 30, 2014). Moreover, even if theoretically available in a chapter 9 case, Franklin’s appeal is
 8 not equitably moot because, among other things, there are many effective and equitable remedies
 9 that an appellate court can and will craft to protect Franklin’s rights. Indeed, because the City will
 10 have sufficient future resources with which it can make payments that will provide Franklin with a
 11 reasonable recovery over time even if the Plan is consummated, there can be no equitable mootness
 12 here. *See, e.g., In re Dynamic Brokers, Inc.*, 293 B.R. 489, 494 (9th Cir. BAP 2003) (no equitable
 13 mootness where “future payments [under the plan] could be adjusted if” the appeal is successful).

14 Nonetheless, because there is at least some small possibility that an appellate court could
 15 dismiss the appeal on mootness grounds if Franklin fails to obtain a stay, under the Ninth Circuit’s
 16 flexible, “sliding scale” test that possibility combined with the delay and expense of responding to
 17 the City’s mootness argument (no matter how frivolous) is sufficient to satisfy the requirement of
 18 irreparable harm for purposes of a stay pending appeal.

19
 20 **C. Delayed Implementation Of The Plan Will Not Seriously Harm
 The City Or Its Other Creditors.**

21 Any alleged harm resulting from a stay of confirmation would come only in the form of
 22 delay. Specifically, a stay of the Confirmation Order will result in a delay in the City’s exit from
 23 chapter 9 and delay in implementation of the Plan.

24 In the typical complex chapter 11 case, delay can be synonymous with irreparable harm
 25 because the debtor is unable to implement transactions and business opportunities while in
 26 bankruptcy. Here, however, the City is a debtor under chapter 9 of the Bankruptcy Code and
 27 therefore free to conduct “business as usual,” as it has done for the last two-and-one-half years. *See,*
 28

1 *e.g., In re City of Stockton*, 486 B.R. 194, 199 (Bankr. E.D. Cal. 2013) (the City “can expend its
2 property and revenues during the chapter 9 case as it wishes”). Indeed, during the bankruptcy case
3 the City has paid all of its prepetition trade debt, honored all of its obligations to employees,
4 continued to fund its pensions and payments to CalPERS, and settled claims and litigation in the
5 ordinary course of business.

6 The only theoretical harm to the City and certain other creditors if a stay is imposed is the
7 passage of additional time before distributions under the Plan can commence if the City chooses not
8 to make payments earlier. Because the City proposes to make payments to those creditors over the
9 next twenty to forty years, with minimal payments called for in the next several years, that is not
10 serious harm, particularly when considering that the Plan provides for Franklin to receive, on
11 account of its unsecured claim, a single payment of less than one cent on the dollar and no future
12 payments at all. The relatively brief delay associated with a stay is nothing more than the “cost” of
13 ensuring that confirmation of the Plan is legally appropriate.

14 **D. The Public Interest Favors A Stay.**

15 Finally, under the unique circumstances of this case, the public interest also would be served
16 by a stay. It is in the interest of California municipalities, and municipal bondholders everywhere,
17 for Franklin’s appeal to be heard. The appeal raises important questions regarding the nature, extent
18 and scope of a municipality’s ability to impose an adjustment of bond debt upon a dissenting creditor
19 in a chapter 9 proceeding, while at the same time leaving vastly-larger liabilities for unfunded
20 pensions left untouched and unadjusted. If the Confirmation Order is allowed to stand without any
21 review by an appellate court, those important questions will remain unanswered now and, with a
22 mootness precedent, may never be addressed. The potential consequences of this are unpredictable,
23 but potentially significant. It is well worth the wait of a few additional months to ensure that
24 whatever those consequences may be, they are the result of a legally sound decision regarding
25 confirmation of the Plan.

1 **IV. CONCLUSION**

2 Franklin is more likely than not to prevail on its appeal of the Confirmation Order. The City,
3 however, no doubt will argue that Franklin’s appeal should never be heard absent this Court’s stay of
4 the Confirmation Order. For that reason, and for all of the other reasons discussed above, Franklin
5 requests that this Court issue a stay pending appeal of the Confirmation Order until such time as
6 Franklin’s appeal is adjudicated on a final basis.

7
8 Dated: November 12, 2014

JONES DAY

9
10 By: /s/ James Johnston
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14 UNITED STATES BANKRUPTCY COURT
 15 EASTERN DISTRICT OF CALIFORNIA
 16 SACRAMENTO DIVISION
 17

18 In re:
 19 CITY OF STOCKTON, CALIFORNIA,
 20 Debtor.
 21

Case No. 2012-32118
 D.C. No. JD-1
 Chapter 9

**CITY OF STOCKTON'S OPPOSITION
 TO FRANKLIN'S MOTION FOR STAY
 PENDING APPEAL OF
 CONFIRMATION ORDER**

Date: December 10, 2014
 Time: 11:00 a.m.
 Dept: C, Courtroom 35
 Judge: Hon. Christopher M. Klein

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1 Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal
2 Fund (“Franklin”) filed a motion to stay this Court’s forthcoming order confirming the City’s
3 First Amended Plan pending Franklin’s appeal. The motion should be denied.

4 **I. PRELIMINARY STATEMENT AND BACKGROUND**

5 The City of Stockton has been in bankruptcy since 2012. Throughout this chapter 9 case,
6 the City has worked diligently to do right by all interested parties while building financial
7 stability that will enable it to provide necessary services to its residents. These efforts culminated
8 in this Court’s recent confirmation of the City’s plan of adjustment. The Plan allows claims
9 totaling more than \$1 billion spread over twenty classes of creditors.¹ It provides desperately-
10 needed certainty to not only the City, but to the bond holders and insurers, employees, labor
11 organizations, and citizens that depend upon its fiscal health. To be sure, the Plan is a complex
12 document with many moving pieces, and implementation will take time and resources. But once
13 it goes effective, the City will emerge from bankruptcy with the long-term strength and flexibility
14 it needs to serve its essential functions.

15 Franklin asks this Court to simply put all of this on hold while it pursues an appeal over a
16 \$32 million unsecured claim. That appeal will likely take years to progress through the
17 Bankruptcy Appellate Panel and the Ninth Circuit Court of Appeals. The impact of such a
18 lengthy stay on the City’s ability to resume its normal functioning would be dramatic and
19 devastating to the City—as nearly a dozen declarants and common sense attest. Were
20 implementation of the Plan stayed, the City would have to put its financial and economic
21 development planning on hold, would not be able to make payments to its creditors, some of
22 whom desperately need the funds, and would continue to struggle to attract new businesses and
23 retain employees, particularly police officers. Yet to justify its need to stay the implementation of
24 the Plan, Franklin adduces no evidence that it will suffer some grave and irreparable harm, and
25 indeed *argues* that the only harm it identifies—the risk of equitable mootness—will never come
26 to pass. It offers little more than a repetition of its arguments on the merits of its appeal, and a
27 few paragraphs simply going through the motions on the other factors relevant to its motion.

28 ¹ See Trial Ex. Nos. 1376, 3060, and 3061; Dkt. Nos. 1150 and 1645.

1 That strategy no longer holds any water. In *Winter v. Natural Res. Def. Council, Inc.*, “the
2 Supreme Court definitively refuted [the Ninth Circuit’s] ‘possibility of irreparable injury’
3 standard.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009); see *Winter*, 555 U.S.
4 7, 22 (2008) (“[T]he Ninth Circuit’s ‘possibility’ standard is too lenient.”). In *Alliance for the*
5 *Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011)—one of the cases Franklin itself cites—
6 the Ninth Circuit repeatedly explained that “[u]nder *Winter*, [movants] must establish that
7 irreparable harm is *likely*, not just possible,” *id.* at 1131. See *id.* at 1132; 1135.

8 In light of *Winter* and other Ninth Circuit authority post-*Winter*, the *Lopez v. Heckler* case
9 Franklin cites is plainly no longer good law. See, e.g., *Am. Trucking Ass’n, Inc. v. City of Los*
10 *Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (“To the extent that our cases have suggested a
11 lesser standard, they are no longer controlling, or even viable.”). Franklin cannot skirt the
12 requirement that it show a likelihood of irreparable harm. Its failure to do so is fatal to its motion
13 regardless of its showing on the other factors. And the stay motion is also properly denied
14 because of the inadequacy of its showing on those factors as well.

15 **III. FRANKLIN HAS NOT DEMONSTRATED ENTITLEMENT TO A STAY**
16 **PENDING APPEAL**

17 Franklin devotes most of its motion to advancing the same legal arguments this Court has
18 already carefully examined and rejected. Franklin Mot. 4-10. This Court need not rehash the
19 merits to resolve Franklin’s motion because Franklin has mustered next to nothing on the other
20 three relevant factors. First, Franklin has completely failed to show that it is likely that it will be
21 irreparably harmed absent a stay. Second, against Franklin’s non-existent showing of harm, the
22 City has provided extensive evidence of the harm that it and various constituencies risk suffering
23 as a result of a lengthy delay in implementing the Plan. And third, Franklin has done nothing to
24 refute the obvious public interest in the City’s emergence from bankruptcy. Each of these failures
25 is a sufficient basis upon which to deny the motion. The failure on all three renders the motion
26 completely without merit. If the Court does feel the need to dive back into Franklin’s likelihood
27 of success on the merits, however, Franklin’s motion plainly fails on that basis, too.

28 ///

1 **A. Franklin Has Not Demonstrated a Likelihood of Irreparable Harm**

2 As explained above, Franklin erroneously suggests that it may obtain a stay by showing
3 something less than a likelihood of irreparable harm. *Winter* and a host of Ninth Circuit authority
4 hold directly to the contrary. No stay can issue unless Franklin shows that irreparable harm is
5 likely. *Winter*, 555 U.S. at 22; *Stormans, Inc.*, 586 F.3d at 1127; *Alliance for the Wild Rockies*,
6 632 F.3d at 1131-32, 35; *Am. Trucking*, 559 F.3d at 1052. And Franklin does not even argue that
7 it satisfies this standard, let alone produce evidence to satisfy it.

8 Instead, Franklin simply invokes the mere possibility that the City may at some point
9 move to dismiss Franklin’s coming appeal on the ground of equitable mootness. Franklin Mot.
10 10-11. Equitable mootness arises where a “comprehensive change in circumstances”—most
11 often substantial consummation of a plan—“render[s] it inequitable for th[e] court to consider the
12 merits of the appeal.” *In re Roberts Farms*, 652 F.2d 793, 798 (9th Cir. 1981). This bridge, of
13 course, is one for the BAP or the Ninth Circuit to cross if and when circumstances take those
14 courts there. Notably, Franklin does not argue that it is likely that its appeal will be deemed moot
15 at any point. To the contrary, Franklin says the actual chance of mootness is next to nothing.
16 According to Franklin, a mootness motion would be “frivolous.” Franklin Mot. 11. It contends
17 that its appeal will never be found moot because the City will never lack “sufficient resources
18 with which it can make payments that will provide Franklin with reasonable recovery.” Franklin
19 Mot. 11. Franklin even submits that the doctrine “does not apply to challenges to a Confirmation
20 Order in Chapter 9 proceedings” at all. Franklin Mot. 11 (internal quotation marks omitted).

21 Whether or not the City holds a different view of the prospects of mootness is not the
22 issue here. It is Franklin’s burden to affirmatively show a likely irreparable harm. Instead, its
23 argument is that a mootness motion may be filed and will be denied. That is hardly a compelling
24 case for likely irreparable harm. Put simply, Franklin cannot establish that irreparable harm is
25 likely to occur by arguing that it is not likely to occur. In any event, the mere existence of a
26 possible equitable mootness motion cannot be enough to stay a confirmation order. Otherwise, a
27 stay pending appeal would be automatic instead of discretionary—which it is not, *Nken*, 556 U.S.

28 ///

1 at 433—and the 14-day automatic stay prescribed in Federal Rule of Bankruptcy Procedure
2 3020(e) would be superfluous.

3 Perhaps mindful that its argument is self-defeating, Franklin also argues that it will suffer
4 irreparable harm in the form of “the delay and expense of responding to the City’s mootness
5 argument.” Franklin Mot. 11. This is not a legally cognizable harm. The Supreme Court has
6 squarely held that “[m]ere litigation expense, even substantial and unrecoupable cost, does not
7 constitute irreparable injury.” *Renegotiation Bd. v. Bannercrest Clothing Co., Inc.*, 415 U.S. 1, 24
8 (1974). “[T]ime and expenses due to litigation are not enough.” *Bakersfield City School Dist. v.*
9 *Boyer*, 610 F.2d 621, 626 (9th Cir. 1979).

10 It was Franklin’s burden to show that it will likely suffer irreparable harm if a stay is not
11 granted, *Lair*, 697 F.3d at 1203, and it has not carried that burden. Thus, under *Winter*, its motion
12 must be denied.

13 **B. A Stay Would Inflict Serious Harm on the City and Other Interested Parties**

14 The motion must also be denied because “issuance of the stay will substantially injure the
15 other parties interested in the proceeding.” *Nken*, 556 U.S. at 426. Franklin argues that this is not
16 so because the City is still free to operate while the chapter 9 bankruptcy is ongoing.² Franklin
17 Mot. 12. And it maintains that any harm from delay is “theoretical.” Franklin Mot. 12. The
18 chorus of declarations filed contemporaneously herewith begs to differ. These declarations
19 demonstrate the dramatic impact a stay would have on the essential services, labor relations,
20 quality of life, and morale in the City.

21 City Employees and Services. According to Eric Jones, Stockton’s Chief of Police, the
22 City’s chapter 9 case has made it difficult to retain existing officers and recruit new ones. Jones
23 Decl.³ ¶ 3-4. Jones reports that “since January of 2012, [the Department has] hired 185 police
24

25 ² Franklin even goes so far as to claim that spending over two years in bankruptcy “has been quite beneficial to the
26 City.” Franklin Mot. 4. As amply demonstrated by the evidence adduced by the City at the eligibility hearing, at the
27 confirmation trial, and in the declarations filed contemporaneously herewith, the City’s ongoing bankruptcy has,
28 among other things, been a time-consuming distraction to City staff, has generated over \$15 million of professional
fees, and has impeded the City’s ability to recruit and retain qualified employees.

³ Declaration of Eric Jones in Support of City of Stockton’s Opposition to Franklin’s Motion for Stay Pending
Appeal of Confirmation Order (“Jones Decl.”). Unless otherwise specified, all references in this Opposition to
declarations are to the declarations filed in support of this Opposition on November 26, 2014.

1 officers with a net gain of only 52” due to departures. *Id.* ¶ 4. “48 of these departures are by
2 officers leaving to other law enforcement agencies,” which poach Stockton’s officers “with
3 compensation packages at market rates” or “less dangerous, more stable, and less stressful
4 working environments.” *Id.* “Even more alarming is that since the October 1, 2014
5 announcement of a delay in the confirmation ruling, the number of departures of our young and
6 most mobile police officers increased over the number that departed during any other two-month
7 period since the bankruptcy filing in June 2012.” *Id.* ¶ 5. These officers “believe their pensions
8 are at risk while the City remains in bankruptcy.” *Id.* ¶ 7. Meanwhile, “[c]rime is still a major
9 issue” and violent crime is going up. *Id.* ¶ 8. The result is a department that is “having great
10 difficulty keeping a well-trained and experienced Police Department to address Stockton’s crime
11 problem, and its violent crime problem specifically.” *Id.* ¶ 9. “[A] delay in implementing the
12 plan of adjustment until Franklin’s appeal is resolved would prolong and worsen the Stockton
13 Police Department’s attrition problems, which in turn would adversely affect the City’s crime
14 problem.” *Id.* ¶ 7.

15 Ann Goodrich, a consultant and labor relations project manager for the City, echoes Chief
16 Jones’s sentiments. She explains that “[t]he ongoing stigma and uncertainty of Stockton’s
17 continuing bankruptcy almost certainly has a very negative impact on the views of candidates
18 about Stockton’s desirability as employer.” Goodrich Decl. ¶ 4. Cuts to benefits and salaries,
19 concerns about pensions, and the turnover of City staff have crushed morale among existing City
20 employees. *Id.* ¶ 8. “The October 30, 2014, ruling approving the City’s plan of adjustment
21 encouraged City employees and gave them hope,” Goodrich reports, but “[a] stay could crush
22 these hopes and cause employees severe disappointment by prolonging the uncertainty resulting
23 from the bankruptcy case.” *Id.* ¶ 8.

24 The harm of a stay would be extraordinarily acute in City Hall, where all work pertaining
25 to “budget and financial monitoring, payroll, revenue and accounts payable, ... agenda
26 management and documentation of official City actions, emergency planning, and overall City
27 management and leadership” takes place. MacKay Decl. ¶ 3. Gordon MacKay, the City’s
28 Director of Public Works, explains that “[a] major building failure is a very real concern” in the

1 current City Hall building. *Id.* ¶ 4. Conditions like “roof leaks,” “plumbing issues,” “[r]odents,”
 2 and even potentially “hazardous materials” create a “poor work environment for City Hall staff,
 3 which affects productivity and morale.” *Id.* ¶ 6. The Plan would alleviate these issues by moving
 4 all of these employees to 400 East Main Street. But “[e]ach day that this relocation is delayed is
 5 another day that City Hall staff is exposed to the conditions and risks discussed above.” *Id.* ¶ 7.

6 Labor Relations. In light of the above, it is perhaps unsurprising that a stay could
 7 dramatically damage relations between the City and its employee’s labor organizations. As
 8 Goodrich explains, “[y]ears of hardship, including compensation reductions, cuts to and then
 9 complete elimination of retiree medical benefits, and two and a half years of a bankruptcy where
 10 their pensions have been threatened, has put a strain on the relationships between the City and its
 11 unions.” Goodrich Decl. ¶ 10. Kathryn Nance, President of the Stockton Police Officers
 12 Association (“SPOA”), agrees that the bankruptcy has taken a toll, but also feels that “[s]ome of
 13 the tension felt by SPOA Members was relieved when the City’s Plan of Adjustment was
 14 confirmed on October 30, 2014.” Nance Decl.⁴ ¶ 5. Both declarants fear that a delay in exiting
 15 bankruptcy would squander that feeling. *Id.*; Goodrich Decl. ¶ 11.

16 Economic Development. The City’s efforts to rejuvenate its economy also would be
 17 hampered by delay. Micah Runner, the Director of the Economic Development Department,
 18 avers that “[s]ince the City filed for bankruptcy, there has been a significant decrease in the
 19 Economic Development Department’s meetings with prospective businesses interested in locating
 20 in the City.” Runner Decl. ¶ 4. He reports “concerns and questions ... from prospective
 21 businesses” about issues like “public safety” and “whether the City will increase taxes, fees and
 22 business license costs in an attempt to solve funding issues.” *Id.* ¶ 4. Meanwhile, “many existing
 23 companies in Stockton are not moving forward with expansion plans because of the unknown
 24 impacts of the City’s bankruptcy case.” *Id.* ¶ 7. The City has “prepar[ed] an economic
 25 development strategic plan to promote the growth of business and business revenue in the City,”

26 ///

27 _____
 28 ⁴ Declaration of Kathryn Nance in Opposition to Franklin’s Motion for Stay Pending Appeal of Confirmation Order (“Nance Decl.”).

1 but it “cannot implement the strategic plan, and thus start the process of rebuilding the City’s
2 economic future, until [it is] out of bankruptcy.” *Id.* ¶ 9.

3 The Chamber of Commerce, led by “fifth-Generation Stocktonian” Douglass Wilhoit, Jr.,
4 agrees that a stay would be a major setback for economic development. Wilhoit Decl. ¶ 2. He
5 adds that “[t]he Stockton business community breathed a great sigh of relief when the City’s plan
6 of adjustment was approved,” and he “fear[s] that the letdown from these high hopes and
7 expectations that would occur if Stockton were forced to defer implementing its plan of
8 adjustment and remain in bankruptcy for another year or two years, or longer, would have a direct
9 and very negative impact upon the confidence of the Stockton business community.” *Id.* ¶ 6-7.
10 Similarly, according to Greenlaw Grupe, Jr., the Chairman of the Business Council of San
11 Joaquin County, “a delay could potentially destroy the credibility of the City and degrade the
12 recent uptick in confidence within the business community” Grupe Decl. ¶ 6.

13 Other Creditors. Finally, if a stay were granted, thousands of creditors would suffer.
14 Jeanette Schenck, a Community Service Officer for over 20 years, was dramatically affected by
15 the City’s gut-wrenching decision to cut retiree health benefits. Schenck Decl.⁵ ¶ 6. Her husband
16 is sick, and payment on her unsecured claim would “provide [her] with some much needed funds
17 to pay for [her] health benefits and other necessary expenses.” *Id.* ¶ 7. Wayne Klemin, a City
18 mechanic for almost 30 years, is counting on payment of his claim to pay for care for diabetes and
19 hypertension. Klemin Decl.⁶ ¶ 8. And Brenda Jo Tubbs, a Circulation Assistant for two decades,
20 has had to cut back on prescription medications because of the loss of her benefits, and
21 desperately needs payment on her claim to pay medical expenses. Tubbs Decl.⁷ ¶ 7. For these
22 creditors, whether the City emerges from bankruptcy now or in three years is not about
23 business—it means funds to pay for health care and expenses that get them through their lives.

24 * * *

25 _____
26 ⁵ Declaration of Jeanette N. Schenck in Support of Retiree Committee’s Opposition to Franklin’s Motion for Stay
Pending Appeal of Confirmation Order (“Schenck Decl.”).

27 ⁶ Declaration of Wayne Klemin in Support of Retiree Committee’s Opposition to Franklin’s Motion for Stay Pending
Appeal of Confirmation Order (“Klemin Decl.”).

28 ⁷ Declaration of Brenda Jo Tubbs in Support of Retiree Committee’s Opposition to Franklin’s Motion for Stay
Pending Appeal of Confirmation Order (“Tubbs Decl.”).

1 The extensive harms articulated by the various individuals filing in support of the City’s
2 opposition to a stay would be crippling. To be sure, some of them are calculable. The steadily
3 accruing interest, for example, is susceptible to valuation, and Franklin could post a bond to make
4 the City whole for these costs.⁸ But there is no way to quantify the uncertainty of a City retiree
5 waiting for funds to pay for health care, the unease of a police force long stretched too thin, the
6 loss of new business that might have moved to the City had it emerged from bankruptcy, or
7 delay’s harm to a municipal administration whose roof is literally crumbling over its head. There
8 is no bond that could secure the City and other interested parties against these serious and
9 irreparable harms.

10 **C. The Public Interest Supports Denial of a Stay**

11 For similar reasons, the public interest cuts decidedly against a stay. As Judge Rhodes
12 explained in the context of the Detroit chapter 9 case, “the public has a substantial interest in the
13 speedy and efficient resolution of a municipal bankruptcy case.” *In re City of Detroit, Mich.*, 501
14 B.R. 702, 710 (Bankr. E.D. Mich. 2013). And no less than the residents of Detroit, Stocktonians
15 have an interest in “the basic services that [the City’s residents] need for their health and safety
16 [and] to regenerate [the City’s] economic livelihood.” *Id.* The declarations discussed above
17 make clear that the Plan’s implementation will further these interests.

18 The Ninth Circuit has also recognized both “the public interest in the stability of collective
19 bargaining agreements” and “the public interest in the finality of a compensation package
20 between a city and a group of its employees.” *Leonard v. Clark*, 12 F.3d 885, 891 (9th Cir. 1993).
21 Ann Goodrich and Kathryn Nance have explained why both of these interests will be served by
22 consummation of the plan and damaged by continued delays.

23 Franklin cannot overcome this. It positions itself as representing “municipal bondholders
24 everywhere,” who apparently—according to Franklin’s own unsupported statements—have a
25 deep interest in the outcome of Franklin’s appeal. Franklin Mot. 12. Never mind that Franklin is
26 the only one of the several capital markets creditors *in this case* that would benefit from a stay.

27 ⁸ See Trial Ex. No. 3033 at 19 (interest on delinquent payments under the Assured Guaranty Settlement), 169
28 (interest on delinquent payments under the NPFPG Arena Settlement), 235, and 273 (interest on delinquent payments
under the NPFPG Parking Settlement).

1 Or that the Plan is based largely on the unique constellation of facts and financial circumstances
 2 of this case, and therefore unlikely to tell “municipal bondholders everywhere” much about the
 3 “nature, extent and scope” of a municipality’s treatment of the unsecured claims of bondholders
 4 in chapter 9 cases. Franklin Mot. 12. In any event, Franklin’s public interest argument is again
 5 based on the same hollow suggestion that the case will be rendered moot—and thus never reach
 6 the decision all municipal bondholders crave—which Franklin argues will not actually come to
 7 pass. Franklin Mot. 10-12.

8 The purpose of chapter 9 is to permit a municipality in financial distress to adjust its debts
 9 and emerge capable of governing in the public interest. The sooner the City can get out from
 10 under the cloud of bankruptcy, the better able it will be to provide for the health, safety, and
 11 welfare of its citizens. When Franklin’s weak claim of injury is stacked up against the near
 12 certain damage that a lengthy stay pending appeal will cause the City and the public, this is not
 13 even a close case.

14 **D. Franklin’s Appeal Is Unlikely to Succeed on the Merits**

15 Finally, Franklin has little chance of succeeding on the merits. Its arguments are just as
 16 flawed as they were when this Court rejected them last month.⁹

17 Best Interests of the Creditors. Franklin first raises two purported errors in the Court’s
 18 determination that the Plan is “in the best interests of creditors and feasible,” 11 U.S.C.
 19 § 943(b)(7). Neither has merit.

20 Franklin first maintains that this Court erroneously rested its determination on the
 21 “rudimentary conclusion that [the] plan is ‘about the best that can be done’ for a majority of
 22 creditors.” Franklin Mot. 5 (citing 10/30/14 Tr. at 41:9-12). Franklin mischaracterizes the
 23 Court’s holding. The Court did not base its conclusion on the opinions or treatment of “a
 24 majority of creditors.” It concluded that the Plan did “the best that can be done in terms of the
 25 restructuring and adjustments of the debts of the City of Stockton”—all of them, as a whole—

26 _____
 27 ⁹ Franklin suggests that its appeal “raises several legal questions, or mixed questions of law and fact” without
 28 specifically identifying which issues it thinks are governed by which standards. Franklin Mot. 4-5. Franklin’s
 challenges are unlikely to succeed under any standard of review. The City nevertheless reserves the right to contest
 the applicable appellate standard during the appeal.

1 “under the circumstances.” 10/30/14 Tr. at 40-41. The Court thus evaluated Bankruptcy Code
2 § 943(b)(7)’s twin considerations—the interests of the creditors and the Plan’s feasibility—
3 exactly as the statutory text contemplates. Section 943(b)(7) does not, contrary to Franklin’s
4 suggestion, require individualized protection of the best interests of Franklin as an individual
5 dissenting creditor. There will often, if not always, be a dissenting creditor that believes it
6 deserves more favorable treatment. Section 943(b)(7) simply requires that the Plan represent “a
7 reasonable effort by the municipal debtor that is a better alternative to its creditors than dismissal
8 of the case.” Collier on Bankruptcy ¶ 943.03[7][a] (16th ed. 2014). And, as this Court found, the
9 City satisfied that requirement here.

10 Next, Franklin suggests that it will win on appeal by arguing that this “Court ... erred by
11 failing to make the necessary factual findings to support its conclusion that the Plan is in the best
12 interests of creditors—particularly Franklin.” Franklin Mot. 6. Franklin’s appellate strategy is a
13 clear loser. It is premised on Federal Rule of Civil Procedure 52(a), which provides that “the
14 court must find the facts specially and state its conclusions of law separately.” Fed. R. Civ. P.
15 52(a); *see Kelley v. Everglades Drainage Dist.*, 319 U.S. 415, 417-18 (1943) (citing Rule 52(a)
16 for the court’s obligation to find facts supporting determination on the “best interests of creditors”
17 test). Rule 52(a) requires that “the findings are sufficiently comprehensive and pertinent to the
18 issues to provide a basis for the decision.” *Vance v. Am. Haw. Cruises, Inc.*, 789 F.2d 790, 792
19 (9th Cir. 1986); *Carr v. Yokohama Specie Bank, Ltd.*, 200 F.2d 251, 255 (9th Cir. 1952) (“[I]f the
20 findings are sufficient to support the ultimate conclusion of the court they are sufficient.”);
21 Charles Wright & Arthur Miller, Federal Practice and Procedure § 2580 (3d ed. 2014).
22 Considered in light of the extensive briefing, testimony, and evidentiary record, the basis for the
23 Court’s decision is plain.

24 Over seven briefs, two hearings, and four days of trial, the parties and this Court
25 crystallized the pertinent issues. At the October 30 confirmation hearing, this Court discussed,
26 among other matters: (1) the City’s collective bargaining agreements and retirement plans going
27 forward, 10/30/14 Tr. at 13; (2) the City’s bond financings and the negotiations with the
28 monolines who insured the various series of bonds, 10/30/14 Tr. at 15; (3) the effect under

1 Classification. Franklin next repeats its arguments regarding classification and
2 discriminatory treatment. Franklin Mot. 7-8. These are non-starters. Franklin’s classification
3 arguments have consistently failed to contend with the dual principles that (1) a debtor is afforded
4 considerable discretion in classifying claims under 11 U.S.C. § 1122 and (2) that it is permitted to
5 classify similarly-situated claims separately if their legal character is different or if business or
6 economic justification exist for doing so. *Steelcase Inc. v. Johnston (In re Johnston)*, 21 F.3d
7 323, 327 (9th Cir. 1994). The City classified Franklin’s \$32 million unsecured deficiency claim
8 with the Retiree Health Benefit Claims because they are both general unsecured claims to be paid
9 from the City’s General Fund. It classified Ambac, Assured Guaranty, and NCFG’s claims
10 separately because the properties involved in those transactions are essential to the City and
11 because the settlements with those parties restructured the City’s obligations in a manner that
12 provided the City with needed flexibility. This Court credited the City’s basis for these decisions
13 over Franklin’s unsubstantiated claims of gerrymandering. This factual conclusion was not
14 clearly erroneous—it was clearly correct. This means that Franklin’s legal argument fails as well.

15 Franklin’s disparate treatment argument, predicated on the § 1123(a)(4) requirement of
16 equal treatment, fails too. Franklin Mot. 7-8. Section 1123(a)(4) requires “the same treatment for
17 each *claim* ... of a particular class,” not each creditor that happens to hold a claim in that class.
18 Franklin’s unsecured claim is treated exactly the same as the other unsecured claims in Class 12,
19 so § 1123(a)(4) is satisfied. It simply does not matter that other creditors with unsecured claims
20 in Class 12 happen to have other claims outside of Class 12 that provoke jealousy in Franklin.¹¹

21 Lastly, the court of appeals is just as likely as this Court to reject Franklin’s invitation to
22 engage in cramdown analysis. Franklin Mot. 8. Franklin’s cramdown argument is predicated on
23 its contention that its classification with the Retiree Health Benefit Claims is an attempt to
24 gerrymander around § 1129(a)(8). As explained above, this Court has now found that Franklin,
25 as a matter of fact and law, was properly classified. This means that Franklin is properly in a

26 _____
27 ¹¹ Franklin continues to speak out of both sides of its mouth on this issue. It baldly claims that it is “the only material
28 creditor ... in this case to receive no meaningful recovery,” Franklin Mot. 7, despite the fact that all of the other
creditors in its class, including the retiree health beneficiaries and their approximately \$545 million in claims, are
treated the same as Franklin. At the same time, it points to the retiree’s treatment on *separate* claims, *id.*, while
omitting that it will receive over \$4 million as payment in full on its own separate, secured claim.

1 class that “has accepted the plan” under § 1129(a)(8), and therefore that § 1129(b) simply does
2 not apply.

3 Good Faith. Franklin also argues that it is likely to prevail on a challenge to this Court’s
4 determination that the City proposed the Plan in good faith, 11 U.S.C. § 1129(a)(3). Franklin
5 Mot. 8. It offers nothing in support but overblown rhetoric and a mischaracterization of this
6 Court’s findings. The City supported every single decision it has made throughout this case with
7 legal, business, or economic justifications. It has made earnest efforts to cut its own costs (e.g.,
8 by eliminating retiree health liability), raise revenues (e.g., by passing a sales tax hike), and reach
9 agreements with creditors. In short, it has done all it can to repay creditors while building the
10 fiscal strength and flexibility chapter 9 is designed to provide.

11 Franklin’s suggestions that this Court relied on improper considerations in finding good
12 faith are simply wrong. Contrary to Franklin’s contentions, it is absolutely relevant to good faith
13 that the City engaged in “intensive arms-length negotiations” with all creditors, including
14 Franklin. 10/30/14 Tr. at 36. This demonstrates the City’s “fundamental fairness in dealing with
15 [its] creditors,” *Stolrow v. Stolrow’s, Inc. (In re Stolrow’s, Inc.)*, 84 B.R. 167, 172 (B.A.P. 9th
16 Cir. 1988). It is also relevant that the City structured its agreements with Assured Guaranty to
17 provide Franklin a 22% stake in the upside obligation in the event negotiations thawed. 10/30/14
18 Tr. at 36. That is why Franklin’s complaints of “punitive” treatment, Franklin Mot. 8, ring so
19 hollow. This Court properly considered these factors in determining that the City “acted
20 equitably” under “the totality of circumstances.” *Fridley v. Forsythe (In re Fridley)*, 380 B.R.
21 538, 543 (B.A.P. 9th Cir. 2007) (internal quotation marks omitted).

22 Disclosure Of Amounts To Be Paid. Finally, Franklin asserts that it is likely to win an
23 appeal of this Court’s determination that the City complied with 11 U.S.C. § 943(b)(3). Section
24 943(b)(3) requires that “all amounts to be paid by the debtor or any person for services or
25 expenses in the case or incident to the plan have been fully disclosed and are reasonable.” As this
26 Court held, the plain meaning of the words “amounts to be paid” establish that § 943(b) “is
27 looking at payments that are to be made during and under the Plan in the future.” 10/30/14 Tr. at
28 52. “Where the statute’s language is plain, the sole function of the courts is to enforce it

1 according to its terms, for courts must presume that a legislature says in a statute what it means
2 and means in a statute what it says there.” *Meruelo Maddux Properties, Inc. v. Bank of Am., N.A.*,
3 667 F.3d 1072, 1076 (9th Cir. 2012) (quoting *Int’l Ass’n of Machinists & Aerospace Workers v.*
4 *BF Goodrich Aero-space Aerostuctures Grp.*, 387 F.3d 1046, 1051 (9th Cir. 2004)). That
5 Congress meant what it said in § 943(b)(3) is only reinforced by its deliberate decision not to
6 make 11 U.S.C. § 329—requiring a statement of “compensation paid or agreed to be paid” to
7 attorneys—applicable in chapter 9 cases. *See* 10/30/14 Tr. at 51-52.

8 There is no dispute that the City disclosed all amounts to be paid, and Franklin does not
9 contend that these amounts are unreasonable. The City has therefore complied with § 943(b)’s
10 plain language. Franklin is unlikely to obtain reversal on this ground.

11 **IV. CONCLUSION**

12 For the foregoing reasons, this Court should deny Franklin’s motion to stay the order
13 confirming the Plan pending Franklin’s appeal.

14
15 Dated: November 26, 2014

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EXHIBIT F

6

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11 **UNITED STATES BANKRUPTCY COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**
13 **SACRAMENTO DIVISION**
14

15 In re:

16 CITY OF STOCKTON, CALIFORNIA,

17 Debtor.

) Case No. 12-32118

) D.C. No. JD-1

) Chapter 9

) **FRANKLIN'S REPLY IN**
) **SUPPORT OF MOTION FOR**
) **STAY PENDING APPEAL OF**
) **CONFIRMATION ORDER**

) Hearing: December 10, 2014

) Time: 11:00 a.m.

) Dept: C, Courtroom 35

) Judge: Hon. Christopher M. Klein

1 Franklin agrees with the Stockton Police Officers Association – “if no stay is issued,
2 Franklin will not be irreparably harmed, because, based on Franklin’s own argument, the City will
3 have the ability to pay Franklin more money – up to payment in full of Franklin’s approximately
4 \$[32.5] million unsecured claim – if the appellate court requires it.”¹ For reasons summarized in
5 the Motion, Franklin’s appeal of confirmation is not equitably moot by any reasonable assessment.

6 Unfortunately, the City will not acknowledge that fact, choosing instead to play coy with
7 respect to its intentions.² As a result, the Court must assume that the City will try to deprive
8 Franklin of any appellate review. The prospect of dismissal before review – no matter how remote
9 – constitutes the irreparable harm against which the requested stay pending appeal would protect.
10 Because that harm outweighs the speculative countervailing harm identified by the City and the
11 other objectors, the Court should exercise its discretion to stay effectiveness of the Plan pending
12 review of the Confirmation Order by a tribunal capable of rendering binding precedent on the
13 important issues implicated by Franklin’s appeal.

14 **Irreparable Harm To Franklin**

15 Franklin concedes that, in describing the factors considered in the preliminary injunction
16 context, it misstated the threshold necessary for a showing of irreparable harm, mistakenly relying
17 on outdated Ninth Circuit authority. The City correctly notes that, at least for purposes of a
18 preliminary injunction, the movant must show a likelihood of irreparable injury.³ This, however,
19 does not mean that Franklin must establish that the City actually will prevail in mooting Franklin’s
20 appeal. That would put appellants like Franklin in the impossible position of arguing against
21 themselves.

22 Courts recognize that, because “[t]he ability to review decisions of the lower courts is the
23 guarantee of accountability in our judicial system[,] . . . the ability to appeal a lower court ruling is

24 ¹ SPOA Obj. at 5 (emphasis in original). The SPOA erroneously described Franklin’s unsecured
25 claim as a \$31 million claim.

26 ² City Obj. at 4 (“Whether or not the City holds a different view of the prospects of mootness is
27 not the issue here.”) (“This bridge, of course, is one for the BAP or the Ninth Circuit to cross if
28 and when circumstances take those courts there.”).

³ City Obj. at 3.

1 a substantial and important right.” *In re Adelpia Commc’ns Corp.*, 361 B.R. 337, 342 (S.D.N.Y.
 2 2007) (footnote omitted) (“no single judge or court can violate the Constitution and laws of the
 3 United States, or the rules that govern court proceedings, with impunity, because nearly all
 4 decisions are subject to appellate review”). As a consequence, “loss of appellate rights is a
 5 quintessential form of prejudice . . . [and], where the denial of a stay pending appeal risks moot
 6 any appeal of significant claims of error, the irreparable harm requirement is satisfied,” at least in
 7 the context of appeals from a bankruptcy confirmation order. *Id.* at 348 (emphasis in original)
 8 (quotations and footnote omitted).

9 It is the risk, not the likelihood, of mootness that is the key. Franklin faces that risk unless
 10 the City agrees that it will not seek to dismiss Franklin’s pending appeal. That is sufficient for
 11 purposes of the flexible “balancing” approach that continues to apply in the Ninth Circuit. *E.g.*,
 12 *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (“If anything, a flexible approach is even
 13 more appropriate in the stay context . . . [because] stays are typically less coercive and less
 14 disruptive than are injunctions.”) (emphasis in original) (citations omitted); *Alliance for the Wild*
 15 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (“Under this approach, the elements of the
 16 preliminary injunction test are balanced, so that a stronger showing of one element may offset a
 17 weaker showing of another.”); *see id.* at 1132 (balancing approach “survives *Winter*”).

Lesser Harm To Others

19 The City and other objectors argue that a stay will cause them various harm and injury.
 20 Many of the identified harms are speculative, nebulous, and unquantifiable. The employee unions,
 21 for example, claim that their members “have suffered anxiety” and fear that a stay would cause a
 22 “return to the state of uncertainty” regarding pensions.⁴ The City parrots that concern, complaining
 23 that “officers believe their pensions are at risk while the City remains in bankruptcy” and that a stay
 24 “would squander [the] feeling” of relief resulting from confirmation.⁵ The City also worries that a
 25

26
 27 ⁴ SPOA Obj. at 2, Union Obj. at 2, 5-6.

28 ⁵ City Obj. at 6-7.

1 stay would produce a “letdown from [the] high hopes and expectations” and “degrade the recent
2 uptick in confidence” of the “Stockton business community.”⁶

3 While uncertainty may be unpleasant and undesirable, the fact is that the City has assumed
4 the unions’ collective bargaining agreements, the union members have received every dollar owed
5 to them under those agreements, and the City has made (and, even during a stay, would continue to
6 make) all required pension contributions to employees and retirees alike. Moreover, to the extent
7 that there is “anxiety” regarding pensions, the uncertainty will remain whether or not a stay is
8 granted, as the City’s disparate treatment of pensions (full payment) and Franklin’s unsecured claim
9 (1% payment) will be a primary issue and subject to reversal on appeal. Similarly, as it has done
10 over the course of the last two-and-a-half years, the City is free to foster economic development and
11 implement its “strategic plan to promote the growth of business and business revenue in the City”
12 (none of which will be shared with Franklin under the Plan as confirmed).

13 Much of the harm identified by the objectors thus is the product of misinformation,
14 apparently promulgated (or tolerated) by the City itself and much of it capable of being eliminated
15 by dissemination of accurate (non-inflammatory) information regarding the actual state of affairs.⁷
16 That is not the sort of cognizable, concrete harm that factors into the stay analysis.

17 Aside from anxiety and disappointment, the objectors have identified little concrete harm
18 that might result from a stay. The Committee, for example, notes that 1,100 retirees would be
19 delayed in receiving their *pro rata* share of the \$5.1 million to be paid to them under the Plan.⁸
20 Those one-time payments are small, averaging \$4,636 per retiree (all of whom are receiving
21 substantially-greater ongoing pension payments that are many multiples of the one-time payment on
22 their Retiree Health Benefit Claims). In fact, the Committee’s declarants, who are entitled to
23 payments ranging from \$3,334 (Milnes) to \$5,995 (Schenck), each concede that “the City’s one-
24 time payment will only cover a small amount of my new health care expenses.”⁹ Nevertheless, to

25 ⁶ City Obj. at 8.

26 ⁷ See City Obj. at 5-6.

27 ⁸ Committee Obj. at 2-3.

28 ⁹ Klemin Decl. ¶ 8; Tubbs Decl. ¶ 7; Schenck Decl. ¶ 7.

1 the extent that delay in receipt of those small payments causes hardship, there is nothing to prevent
 2 the City from making payments to the retirees in advance of effectiveness of the Plan, just as it has
 3 made millions of dollars of payments to hundreds of trade creditors and settling claimants during
 4 the bankruptcy case. In fact, as explained in Franklin’s accompanying reply in support of its
 5 motion to alter or amend the Court’s findings regarding the Retiree Health Benefit Claims, Franklin
 6 has no objection to the *pro rata* allocation of the \$5.1 million payment amongst the retirees and
 7 would not oppose the City’s distribution of that entire sum during Franklin’s appeal. As established
 8 at trial (and noted by the police officers’ union), the City has substantial additional resources with
 9 which to make a fair, non-discriminatory distribution on Franklin’s unsecured claim.¹⁰

10 **Likelihood Of Success On The Merits**

11 Franklin and the City have said their piece (many times) regarding the merits of
 12 confirmation. There is no purpose served by responding to the City’s rewarmed arguments (with
 13 which Franklin disagrees) at this stage. If the Court believes that Franklin has no prospect of
 14 success on appeal – notwithstanding the lack of controlling precedent and the wealth of evidence,
 15 expert testimony and persuasive authority marshaled by Franklin – then a stay should not issue.

16 The point to be made here is that, contrary to the City’s implication, Franklin need not
 17 convince the Court that it erred or show that it is likely to prevail on appeal. “[T]o justify a stay,
 18 petitioners need not demonstrate that it is more likely than not that they will win on the merits.”
 19 *Leiva-Perez*, 640 F.3d at 966. Rather, the question is whether there are “substantial grounds for a
 20 difference of opinion,” which frequently can arise in cases where there is no controlling precedent:

21 For the purposes of this motion, it does not matter whether this Court
 22 believes that Defendants should succeed on appeal. In considering the
 23 likelihood of success on the merits, it seems illogical to require that the
 24 court in effect conclude that its original decision in the matter was wrong
 25 before a stay can be issued. In fact, a court may grant a motion for a stay
 26 pending appeal even when it has confidence in the rectitude of its
 decision. This Court is confident that the December 13 Opinion is
 supported by the language of the Bankruptcy Code and case law.
 However, there is a significant issue in that opinion that to my knowledge
 has not been addressed in a reported opinion in the Third Circuit. . . .

27 ¹⁰ Similarly, Franklin does not oppose the City providing SPOA members with 22 hours of paid
 28 leave as provided for under the Plan. *See* SPOA Obj. at 3, 6.

EXHIBIT G

80

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9 UNITED STATES BANKRUPTCY COURT
10 EASTERN DISTRICT OF CALIFORNIA
11 SACRAMENTO DIVISION

13 In re:
14 CITY OF STOCKTON, CALIFORNIA,
15 Debtor.

Case No. 2012-32118

Chapter 9

**ORDER CONFIRMING FIRST
AMENDED PLAN FOR THE
ADJUSTMENT OF DEBTS OF CITY
OF STOCKTON, CALIFORNIA, AS
MODIFIED (AUGUST 8, 2014)**

Continued Confirmation Hearing

Date: October 30, 2014
Time: 10:00 a.m.
Dept: Courtroom 35
Judge: Hon. Christopher M. Klein

22 The City of Stockton (the “City”) having proposed and filed the following:

- 23 1. First Amended Plan for the Adjustment of Debts of City of Stockton, California,
24 As Modified (August 8, 2014) [Dkt. No. 1645] (the “Plan”), a copy of which is attached as
25 Exhibit A;
26 2. Modified Disclosure Statement with Respect to First Amended Plan for the
27 Adjustment of Debts of City of Stockton, California (November 15, 2013) [Dkt. No. 1215]; and
28 ///

RECEIVED

January 21, 2015

CLERK, U. S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
0005427166

1 3. Second Supplemental Plan Supplement in Connection with the First Amended
2 Plan for the Adjustment of Debts of City of Stockton, California, As Modified (August 8, 2014)
3 [Dkt. Nos. 1842 (Exhibits 1 and 2) and 1843 (Exhibits 3 through 8)] (collectively, the “Second
4 Supplemental Plan Supplement”).¹

5 The Bankruptcy Court, having entered the Order (1) Approving Modified Disclosure
6 Statement with Respect to First Amended Plan for the Adjustment of Debts of City of Stockton,
7 California (November 15, 2013); (2) Setting Confirmation Procedures; and (3) Scheduling Filing
8 Dates and the Confirmation Hearing [Dkt. No. 1220], having considered the evidence adduced at
9 the Confirmation Hearing, the pleadings, and the arguments of the City and the other interested
10 parties in this case, and having made its findings of fact and conclusions of law pursuant to
11 Bankruptcy Rules 7052 and 9014 at hearings conducted on October 1 and October 30, 2014:

12 **IT IS HEREBY ORDERED that:**

13 1. The Plan is confirmed.

14 2. Subpart (iii) of definition 69 of the Plan (Contracts for Loan Guarantee)
15 erroneously refers to “a promissory note issued by the City numbered B-03-MC-06-0036.” Such
16 subpart of Definition 69 of the Plan is modified to refer to “a promissory note issued by the City
17 numbered B-03-MC-06-0026.”

18 3. The last sentence of definition 102 of the Plan (Golf Course/Park Unsecured
19 Claim) is revised to read as follows: “The Allowed amount of the Golf Course/Park Unsecured
20 Claim as of the date of confirmation of the Plan is \$30,480,190.00, which is: (i) \$34,532,190.00
21 minus (ii) the Allowed Amount of the Golf Course/Park Secured Claim.”

22 4. The objection to the Plan filed by creditors Franklin High Yield Tax-Free Income
23 Fund and Franklin California High Yield Municipal Fund [Dkt. No. 1273] and all other
24 objections to the Plan are overruled.

25 5. The record of the Confirmation Hearing is closed.

26 ///

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¹ Capitalized terms used but not defined in this Order have the meanings set forth in the Plan.

1 6. Any holder of a Claim that has accepted or rejected the November 15, 2013, plan
2 of adjustment [Dkt. No. 1204] is deemed to have accepted or rejected the Plan. The City is not
3 required to resolicit acceptances or rejections of the Plan.

4 7. All transactions contemplated under the Plan, the Second Supplemental Plan
5 Supplement and documents related thereto are hereby authorized and approved.

6 8. The assumption of executory contracts and unexpired leases pursuant to
7 Section VI.A. of the Plan is approved. Any party to an executory contract or unexpired lease
8 assumed by the City that asserts that any payment or other performance is due as a condition to
9 the proposed assumption shall, within 90 days of the Effective Date, file with the Bankruptcy
10 Court and serve upon the City a written statement and accompanying declaration in support
11 thereof, specifying the basis for its Claim. The failure to timely file and serve such a statement
12 shall be deemed to be a waiver of any and all objections to the proposed assumption and any
13 claim for cure amounts of the agreement at issue.

14 9. If a party to an executory contract or unexpired lease assumed by the City timely
15 asserts that any payment or other performance is due as a condition to the proposed assumption,
16 and the Bankruptcy Court enters an order determining that the City is required to pay a cure
17 amount or otherwise render performance as a condition to such assumption, then the City may
18 elect, within 14 days after the date of any such order, to reject such executory contract or
19 unexpired lease by filing a motion with the Bankruptcy Court seeking approval of such rejection.

20 10. The rejection by the City of the following executory contracts or unexpired leases
21 is approved: (1); Office Building Standby Agreement; (2) Lease, dated as of June 21, 1988,
22 between the City, as lessor, and Stockton Sailing Club, a California corporation, as lessee, as
23 amended by the First Amendment to Lease, dated as of August 22, 1994; (3) Lease, dated as of
24 December 27, 1974, between the City, as lessor, and Stephens Marine, Inc., a California
25 corporation, as lessee, as amended; and (4) Agreement for Purchase and Sale of Real Property,
26 dated as of August 17, 2004, by and between the City and the County of San Joaquin. Upon the
27 Effective Date, such executory contracts and unexpired leases shall be deemed rejected by the
28 City without further action by the City or the Bankruptcy Court.

1 11. Without prejudice to the right of the City or any other party in interest to object to
2 a proof of claim filed after any applicable bar date as untimely, and except as expressly provided
3 in any order approving a Rejection Motion, any proof of claim filed after the date that is 35 days
4 after the date of entry of this Order shall be deemed not timely filed and shall be disallowed in its
5 entirety without any further action by the City or the Bankruptcy Court.

6 12. On the Effective Date, and upon the City’s payment to the Retiree Health Benefit
7 Claimants of an aggregate amount of \$5,100,000 for the Allowed Retiree Health Benefit Claims
8 as provided in Class 12 of the Plan, the Retirees Committee shall be released and discharged of
9 and from all further authority, duties, responsibilities, and obligations relating to and arising from
10 and in connection with the Chapter 9 Case, and, except for the limited purpose of presenting to
11 the City any invoices for fees and expenses, the Retirees Committee shall be deemed dissolved.

12 13. Within 14 days of the entry of this Order, the City shall, pursuant to Bankruptcy
13 Rule 3020(c)(2), cause to be served by mail to all creditors, parties in interest, and all parties to
14 the City’s executory contracts and unexpired leases a Notice of Entry of this Order (“Notice of
15 Entry”) in the form of or substantially similar to Exhibit B hereto. The mailing of the Notice of
16 Entry shall include a CD containing this Order, the Plan and the Second Supplemental Plan
17 Supplement, and shall provide that any party in interest desiring a paper copy of such documents
18 may request these documents at no cost from the City’s claims agent, Rust Omni, via the City’s
19 chapter 9 website, U.S. Mail, or facsimile.

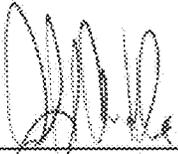
20 14. The City shall cause the Notice of Entry to be published in a newspaper of general
21 circulation in the City. The Plan need not be reprinted in such publication, which shall instead
22 provide information enabling any interested party to obtain a copy of the Plan or this Order at no
23 cost via internet or U.S. Mail.

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15. In the event of any inconsistency between the Plan and this Order, this Order shall govern.

Dated: February 04, 2015



United States Bankruptcy Judge

Exhibit A

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re
CITY OF STOCKTON, CALIFORNIA,
Debtor.

Case No. 2012-32118
Chapter 9

**FIRST AMENDED PLAN FOR
THE ADJUSTMENT OF DEBTS
OF CITY OF STOCKTON,
CALIFORNIA, AS MODIFIED
(AUGUST 8, 2014)**

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1 The City of Stockton, California, a debtor under chapter 9 of the Bankruptcy Code
2 in the case styled *In re City of Stockton, California*, Case No. 2012-32118, currently pending in
3 the United States Bankruptcy Court for the Eastern District of California, hereby proposes the
4 following First Amended Plan of Adjustment of Debts for City of Stockton, California, As
5 Modified (August 8, 2014), pursuant to section 941 of the Bankruptcy Code.¹

6 Please refer to the Disclosure Statement for a discussion of the City’s financial
7 condition, the developments throughout the Chapter 9 Case, and for other important information.
8 The City encourages you to read this Plan and the Disclosure Statement in their entirety before
9 voting to accept or reject this Plan. No materials other than the Disclosure Statement and the
10 various exhibits and schedules attached to or incorporated therein have been approved for use in
11 soliciting acceptance or rejection of this Plan.

12 **I. DEFINITIONS, INTERPRETATION AND RULES OF CONSTRUCTION**

13 **A. Definitions.**

14 1. **2003 Fire/Police/Library Certificates** means the 2003A
15 Fire/Police/Library Certificates and the 2003B Fire/Police/Library Certificates.

16 2. **2003 Fire/Police/Library Certificates Reimbursement Agreement**
17 means that certain Reimbursement Agreement, dated as of June 1, 2003, by and between the
18 Successor Agency and the City.

19 3. **2003 Fire/Police/Library Certificates Supplemental Trust Agreement**
20 means the First Supplemental Trust Agreement, dated as of May 9, 2013, by and among Wells
21 Fargo, the Financing Authority, and the City, the form of which is attached as Exhibit B to the
22 Declaration of Robert Deis in Support of the City of Stockton’s Motion Under Bankruptcy
23 Rule 9019 for Approval of Its Settlement with Ambac Assurance Corporation, filed in the
24 Chapter 9 Case on February 26, 2013 [Dkt. No. 725].

25 ///

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27 _____
28 ¹The definitions of capitalized terms used throughout this Plan are set forth in Section I(A). As set forth in Section I.B., unless otherwise noted, all references to a “section” are references to a section of the Bankruptcy Code.

1 4. **2003 Fire/Police/Library Certificates Trust Agreement** means the Trust
2 Agreement, dated as of June 1, 2003, by and among Wells Fargo, the Financing Authority, and
3 the City, relating to the 2003 Fire/Police/Library Certificates.

4 5. **2003 Fire/Police/Library Certificates Trustee** means Wells Fargo, as
5 trustee under the 2003 Fire/Police/Library Certificates Trust Agreement, or any successor trustee
6 thereunder.

7 6. **2003A Fire/Police/Library Certificates** means the Certificates of
8 Participation (Redevelopment Housing Projects) Series 2003A, issued on June 27, 2003, in the
9 original principal amount of \$1,160,000.

10 7. **2003B Fire/Police/Library Certificates** means the Certificates of
11 Participation (Redevelopment Housing Projects) Taxable Series 2003B, issued on June 27, 2003,
12 in the original principal amount of \$12,140,000.

13 8. **2004 Arena Bond Indenture** means the Indenture of Trust, dated as of
14 March 1, 2004, by and between the Successor Agency and the 2004 Arena Bond Trustee, relating
15 to the 2004 Arena Bonds.

16 9. **2004 Arena Bond Insurance Policy** means the Municipal Bond New
17 Issue Insurance Policy No. 04010198 issued by NPMG, as successor to Financial Guaranty
18 Insurance Company, with respect to the 2004 Arena Bonds.

19 10. **2004 Arena Bond Trustee** means Wells Fargo, as indenture trustee under
20 the 2004 Arena Bonds Indenture, or any successor indenture trustee thereunder.

21 11. **2004 Arena Bonds** means the Successor Agency of the City of Stockton
22 Revenue Bonds, Series 2004, (Stockton Events Center – Arena Project), issued on March 26,
23 2004 in the original aggregate principal amount of \$47,000,000.

24 12. **2004 Parking Bond Indenture** means the Indenture of Trust, dated as of
25 June 1, 2004, by and between the Financing Authority and the 2004 Parking Bond Trustee,
26 relating to the 2004 Parking Bonds.

27 ///

28 ///

1 **13. 2004 Parking Bond Insurance Policy** means the Municipal Bond New
2 Issue Insurance Policy No. 04010390 issued by NPMG, as successor to Financial Guaranty
3 Insurance Company, with respect to the 2004 Parking Bonds.

4 **14. 2004 Parking Bond Trustee** means Wells Fargo, as indenture trustee
5 under the 2004 Parking Bonds Indenture, or any successor indenture trustee thereunder.

6 **15. 2004 Parking Bonds** means the Stockton Public Financing Authority
7 Lease Revenue Bonds, Series 2004, (Parking and Capital Projects), issued on June 25, 2004, in
8 the original aggregate principal amount of \$32,785,000.

9 **16. 2006 SEB Bond Insurance Policy** means the Financial Guaranty
10 Insurance Policy No. 47756(1) issued by NPMG, as successor to MBIA Insurance Corporation,
11 with respect to the 2006 SEB Bonds.

12 **17. 2006 SEB Bond Trustee** means Wells Fargo, as indenture trustee under
13 the 2006 SEB Bonds Indenture, or any successor indenture trustee thereunder.

14 **18. 2006 SEB Bonds** means the Stockton Public Financing Authority 2006
15 Lease Revenue Refunding Bonds, Series A, issued on April 6, 2006, in the original aggregate
16 principal amount of \$13,965,000.

17 **19. 2006 SEB Indenture** means the Indenture of Trust, dated as of March 1,
18 2006, by and between the Financing Authority and the 2006 SEB Bond Trustee, relating to the
19 2006 SEB Bonds.

20 **20. 2007 Office Building Bond Insurance Policy** means, collectively, the
21 Financial Guaranty Insurance Policy No. D-2007-293 and the Financial Guaranty Insurance
22 Policy No. D-2007-295, each issued by Assured Guaranty with respect to the 2007 Office
23 Building Bonds (Series A) and the 2007 Office Building Bonds (Series B), respectively.

24 **21. 2007 Office Building Bond Trustee** means Wells Fargo as the indenture
25 trustee under the 2007 Office Building Bonds Indenture, or any successor indenture trustee
26 thereunder.

27 **22. 2007 Office Building Bonds** means, collectively, the 2007 Series A Bonds
28 and the 2007 Series B Bonds.

1 **23. 2007 Office Building Bonds Indenture** means the Indenture of Trust,
2 dated as of November 1, 2007, by and between the Financing Authority and the 2007 Office
3 Building Bond Trustee, relating to the 2007 Office Building Bonds.

4 **24. 2007 Series A Bonds** means the Stockton Public Financing Authority
5 Variable Rate Demand Lease Revenue Bonds, 2007 Series A (Building Acquisition Financing
6 Project), issued on November 29, 2007, in the original aggregate principal amount of
7 \$36,500,000.

8 **25. 2007 Series B Bonds** means the Stockton Public Financing Authority
9 Taxable Variable Rate Demand Lease Revenue Bonds, 2007 Series B (Building Acquisition
10 Financing Project), issued on November 29, 2007, in the original aggregate principal amount of
11 \$4,270,000.

12 **26. 2009 Golf Course/Park Bond Trustee** means Wells Fargo as the
13 indenture trustee under the 2009 Golf Course/Park Bonds Indenture, or any successor indenture
14 trustee thereunder.

15 **27. 2009 Golf Course/Park Bonds** means the Stockton Public Financing
16 Authority Lease Revenue Bonds, 2009 Series A (Capital Improvement Projects), issued on
17 September 9, 2009, in the original aggregate principal amount of \$35,080,000.

18 **28. 2009 Golf Course/Park Bonds Indenture** means the Indenture of Trust,
19 dated as of September 1, 2009, by and between the Financing Authority and the 2009 Golf
20 Course/Park Bond Trustee, relating to the 2009 Golf Course/Park Bonds.

21 **29. 400 E. Main Office Building Property** means the office building located
22 at 400 E. Main Street in the City.

23 **30. AB 506** means Assembly Bill 506, codified at California Government
24 Code 53760 *et seq.*

25 **31. Additional Tax Increment Revenues** has the meaning set forth in the
26 definition of Arena Lease Back Transaction.

27 **32. Administrative Claim** means the costs or expenses of administration of
28 the Chapter 9 Case not already paid by the City, allowed under section 503(b) and entitled to

1 priority under section 507(a)(2) to the extent made applicable in Chapter 9: (i) which the City
2 agrees is an Allowed administrative expense; or (ii) which the Bankruptcy Court determines is an
3 Allowed administrative expense. The City’s consent to the Bankruptcy Court adjudicating
4 Administrative Claim status is given without the City in any way consenting or agreeing that
5 Claims for postpetition obligations of the City are or would be entitled to status as Administrative
6 Claims as “the actual necessary costs and expenses of preserving the estate” under section 503(b),
7 and the City reserves its right to maintain that such Claims would instead constitute Other
8 Postpetition Claims.

9 **33. Allowed means,**

10 (a) with reference to any Claim, a Claim that

11 (i) has been listed on the list of creditors filed by the City, as
12 such list may be amended from time to time pursuant to Bankruptcy Rule 1009; is not listed as
13 unliquidated, contingent or disputed; and for which no contrary proof of claim has been filed
14 (subject to objection as set forth in the next subsection);

15 (ii) is asserted in a proof of claim filed in compliance with
16 section 501 and any applicable orders of the Bankruptcy Court or listed in the list of creditors
17 filed by the City and as to which: (A) no objection has been, or subsequently is, filed within the
18 deadline established pursuant to Section X(A) of the Plan (as such deadline may be extended by
19 the Bankruptcy Court upon application of the City from time to time); (B) the Bankruptcy Court
20 has entered a Final Order allowing all or a portion of such Claim (but only in the amount so
21 allowed); or (C) the Bankruptcy Court has entered a Final Order under section 502(c) estimating
22 the amount of the Claim for purposes of allowance;

23 (iii) is subject to a stipulation between the City and the holder of
24 such Claim providing for the allowance of such Claim;

25 (iv) is deemed “Allowed” pursuant to this Plan;

26 (v) is designated as “Allowed” in a pleading entitled
27 “Designation Of Allowed Claims” (or a similar title of the same import) filed with the
28 Bankruptcy Court by the City on or after the Effective Date; or

1 (b) with reference to any Administrative Claim or Other Postpetition
2 Claim, as to which the Bankruptcy Court has entered a Final Order allowing all or a portion of
3 such Administrative Claim or Other Postpetition Claim (but only in the amount so allowed).

4 34. **Ambac** means Ambac Assurance Corporation, a Wisconsin stock
5 insurance corporation.

6 35. **Ambac Effective Date** means the first Business Day following the day on
7 which all the conditions contained in section 5.1 of the Ambac Settlement Agreement have either
8 occurred or been expressly waived by the parties thereto.

9 36. **Ambac Insurance Policy** means the Financial Guaranty Insurance Policy
10 No. 21154BE issued by Ambac in connection with the Fire/Police/Library Lease Back
11 Transaction, which insures the 2003 Fire/Police/Library Certificates executed and delivered by
12 the 2003 Fire/Police/Library Certificates Trustee to fund affordable housing projects in the City.

13 37. **Ambac Settlement Agreement** means the Stipulation and Settlement
14 Agreement, dated as of February 26, 2013, by and among the City, the Financing Authority, the
15 2003 Fire/Police/Library Certificates Trustee, and Ambac, which is attached as Exhibit A to the
16 Declaration of Robert Deis in Support of the City of Stockton's Motion Under Bankruptcy
17 Rule 9019 for Approval of Its Settlement with Ambac Assurance Corporation, filed in the
18 Chapter 9 Case on February 26, 2013 [Dkt. No. 725].

19 38. **Arena** means that property described as Parcel 4, as shown on the Parcel
20 Map filed for record in the office of the Recorder of the County of San Joaquin, State of
21 California, on March 4, 2003, in Book 23 of Maps, page 15, and the Arena located thereon, an
22 indoor facility capable of hosting events such as ice hockey, indoor football, indoor soccer,
23 concerts, boxing events, rodeos, and other such indoor events, and located at 248 West Fremont
24 Street in downtown Stockton.

25 39. **Arena Claims of the 2004 Arena Bond Trustee/NPFG** means the Claims
26 arising in connection with the Arena Lease Back Transaction (which claims are asserted by the
27 2004 Arena Bond Trustee at the direction of NPFG (as the insurer of the 2004 Arena Bonds) as a
28 result of the assignment by the Successor Agency of all of its rights under the Arena Lease Out

1 and the Arena Lease Back to the 2004 Arena Bond Trustee), as modified by the NPMF
2 Settlement. The Arena Claims of the 2004 Arena Bond Trustee/NPMF do not include any claims
3 arising out of non-payment of the 2004 Arena Bonds as all such claims are claims against the
4 Successor Agency and are not obligations of the City (except to the extent specifically provided
5 under the terms of the NPMF Settlement).

6 **40. Arena Lease Back** means that certain Lease Agreement, dated as of
7 March 1, 2004, pursuant to which the Successor Agency leased the Arena to the City.

8 **41. Arena Lease Back Transaction** means, collectively, all transactions
9 memorialized in, among other things, the 2004 Arena Bonds, Arena Lease Out, and the Arena
10 Lease Back, and all related documents in connection therewith.

11 **42. Arena Lease Out** means that certain Site Lease, dated as of March 1,
12 2004, pursuant to which the City leased the Arena to the Successor Agency.

13 **43. Arena Pledge Agreement** means that certain Pledge Agreement, dated as
14 of March 1, 2004, between the City, as pledgor, and the Successor Agency, as pledgee, pursuant
15 to which the City pledged certain incremental tax revenues expected to be collected from the
16 West End Urban Renewal Project No. 1.

17 **44. Assured Guaranty** means, collectively, Assured Guaranty Municipal
18 Corp. and Assured Guaranty Corp.

19 **45. Assured Guaranty Settlement** means the settlement among the City and
20 Assured Guaranty relating to the Office Building Lease Back Transaction and the Pension
21 Obligation Bonds, the terms of which settlement are memorialized in the Assured Guaranty
22 Settlement Documents.

23 **46. Assured Guaranty Settlement Documents** means the documents
24 implementing the Assured Guaranty Settlement, copies of which documents are annexed as
25 Collective Exhibit 1 to the Plan Supplement.

26 **47. Ballot** means the ballot(s), in the form(s) approved by the Bankruptcy
27 Court in the Plan Solicitation Order accompanying the Disclosure Statement and provided to each
28 holder of a Claim entitled to vote to accept or reject this Plan.

1 **48. Bankruptcy Code** means title 11 of the United States Code, as amended
2 from time to time, as applicable to the Chapter 9 Case.

3 **49. Bankruptcy Court** means the United States Bankruptcy Court for the
4 Eastern District of California, Sacramento Division, or such other court that lawfully exercises
5 jurisdiction over the Chapter 9 Case.

6 **50. Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure, as
7 amended from time to time, as applicable to the Chapter 9 Case, together with the local rules of
8 the Bankruptcy Court applicable to the Chapter 9 Case. Unless otherwise indicated, references in
9 this Plan to “Bankruptcy Rule _____” are to the specifically identified rule of the Federal Rules
10 of Bankruptcy Procedure.

11 **51. Bar Date** means the applicable date by which a particular proof of claim
12 must be filed, as established by the Bankruptcy Court.

13 **52. BEDI** means the Brownfields Economic Development Initiative.

14 **53. BEDI Grant** means the award by HUD of \$1,212,807 in BEDI grant funds
15 for costs chargeable to the City’s fiscal year 2003 BEDI award for the Downtown Stockton
16 Waterfront Project, the award of which is contingent upon the City’s compliance with the terms
17 set forth in that certain letter dated May 7, 2014, from Yolanda Chávez, Deputy Assistant
18 Secretary for Grant Programs, HUD, to the Honorable Anthony Silva.

19 **54. Business Day** means a day other than a Saturday, a Sunday, or any other
20 day on which banking institutions in New York, New York, are required or authorized to close by
21 law or executive order.

22 **55. CalPERS** means the California Public Employees’ Retirement System.

23 **56. CalPERS Pension Plan** means the pension plan between CalPERS and the
24 City, dated as of September 1, 1944, as amended (CalPERS ID 6373973665).

25 **57. CalPERS Pension Plan Participants** means those current and former City
26 employees and their survivors and other dependents who are the beneficiaries of the CalPERS
27 Pension Plan.

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1 **58. Cash** means cash and cash equivalents, including withdrawable bank
2 deposits, wire transfers, checks, and other similar items.

3 **59. Chapter 9 Case** means the case under chapter 9 of the Bankruptcy Code
4 commenced by the City, styled *In re City of Stockton, California*, Case No. 2012-32118, currently
5 pending in the Bankruptcy Court.

6 **60. City** means the City of Stockton, California, the debtor in the Chapter 9
7 Case.

8 **61. City Council** means the duly elected legislative body of the City.

9 **62. CJPRMA** means California Joint Powers Risk Management Authority.

10 **63. Claim** has the meaning set forth in section 101(5).

11 **64. Class** means any group of Claims classified herein pursuant to
12 section 1123(a).

13 **65. Confirmation Date** means the date on which the Clerk of the Bankruptcy
14 Court enters the Confirmation Order on the docket of the Bankruptcy Court.

15 **66. Confirmation Hearing** means the hearing to be conducted by the
16 Bankruptcy Court regarding confirmation of this Plan, as such hearing may be adjourned,
17 reconvened or continued from time to time.

18 **67. Confirmation Order** means the order of the Bankruptcy Court confirming
19 this Plan pursuant to section 943.

20 **68. Construction Agreement** means that certain “Agreement Regarding
21 Construction Costs” dated as of April 29, 2008, among SCC 16, the City, and the Successor
22 Agency, relating to the City’s obligation to reimburse SCC 16 for construction costs paid by
23 SCC 16 that the City was otherwise liable to pay, for the construction of improvements to certain
24 premises located in the Edmund S. Coy Parking Structure leased by SCC 16.

25 **69. Contracts for Loan Guarantee** means (i) that certain Contract of Loan
26 Guarantee Assistance Under Section 108 of the Housing and Community Development Act of
27 1974, as amended, 42 U.S.C. §5308, dated December 27, 2000, by and between the City, as
28 borrower, and HUD, as guarantor, for two promissory notes issued by the City both numbered B-

1 98-MC-06-0026; (ii) that certain Contract of Loan Guarantee Assistance Under Section 108 of the
2 Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5308, dated
3 December 27, 2000, by and between the City, as borrower, and HUD, as guarantor, for a
4 promissory note issued by the City numbered B-98-MC-06-0026-A; and (iii) that certain Contract
5 of Loan Guarantee Assistance Under Section 108 of the Housing and Community Development
6 Act of 1974, as amended, 42 U.S.C. § 5308, dated March 2, 2006, by and between the City, as
7 borrower, and HUD, as guarantor, for a promissory note issued by the City numbered B-03-MC-
8 06-0036.

9 **70. Convenience Class Claim** means any Allowed Claim that is greater than
10 \$0.00 in Allowed amount and less than or equal to \$100 in Allowed amount or irrevocably
11 reduced to \$100 in Allowed amount at the election of the holder of the Allowed Claim as
12 evidenced by the Ballot submitted by such holder; *provided, however*, that an Allowed Claim
13 may not be subdivided into multiple Claims of \$100 or less for purposes of receiving treatment as
14 a Convenience Class Claim.

15 **71. DBW** means the California Department of Boating and Waterways, now
16 the Boating and Waterways division of the Department of Parks and Recreation.

17 **72. DBW Settlement Agreement** means the agreement implementing the
18 DBW settlement between the City and DBW, annexed as Exhibit 4 to the Supplemental Plan
19 Supplement and annexed as an exhibit to the Second Supplemental Plan Supplement.

20 **73. Dexia** means Dexia Crédit Local, a banking corporation duly organized
21 and existing under the laws of the Republic of France, acting through its New York branch.

22 **74. Disallowed** means a Claim or portion thereof that: (i) has been disallowed
23 by a Final Order of the Bankruptcy Court; (ii) has been listed by the City in its list of creditors, as
24 it may be amended from time to time in accordance with Bankruptcy Rule 1009, as in the amount
25 of \$0.00, contingent, disputed, or unliquidated, and as to which no proof of claim has been filed
26 by the applicable deadline or deemed timely filed pursuant to any Final Order of the Bankruptcy
27 Court; (iii) as to which the holder thereof has agreed to be equal to \$0.00 or to be withdrawn,
28 disallowed or expunged; or (iv) has not been listed in the list of creditors and as to which no proof

1 of claim has been filed by the applicable deadline or deemed timely filed pursuant to a Final
2 Order of the Bankruptcy Court.

3 **75. Disclosure Statement** means the disclosure statement, and all exhibits and
4 schedules incorporated therein, that relates to this Plan and was approved by the Bankruptcy
5 Court pursuant to section 1125 in an order filed on November 22, 2013, as the same may be
6 amended, modified, or supplemented in accordance with the Bankruptcy Code.

7 **76. Disputed Claim** means any Claim or portion thereof that has not become
8 Allowed and that is not Disallowed. In the event that any part of a Claim is a Disputed Claim,
9 except as otherwise provided in this Plan, such Claim shall be deemed a Disputed Claim in its
10 entirety for purposes of distribution under this Plan unless the City otherwise agrees in writing in
11 its sole discretion. Without limiting the foregoing, a Claim that is the subject of a pending
12 application, motion, complaint, objection, or any other legal proceeding seeking to disallow,
13 limit, reduce, subordinate, or estimate such Claim shall be deemed to be a Disputed Claim.

14 **77. Edmund S. Coy Parking Structure** means the parking structure located at
15 N. Hunter Street and E. Channel Street in the City.

16 **78. Effective Date** means the first Business Day after the Confirmation Date
17 on which the conditions specified in Section XIII of the Plan have been satisfied or waived.

18 **79. Eligibility Contest** means, collectively, the trial on the City's eligibility to
19 be a debtor under Chapter 9 of the Bankruptcy Code and all ancillary and related pleadings,
20 discovery, hearings, and actions.

21 **80. Exculpated Party** means each or any of the City, NCFG, Assured
22 Guaranty, Ambac, the Indenture Trustee in all its capacities (except in its capacity as the 2009
23 Golf Course/Park Bond Trustee), and the respective Related Persons of each of the foregoing.

24 **81. Events Center Project** has the meaning set forth in the definition of Arena
25 Lease Back Transaction.

26 **82. Final Order** means a judgment, order, ruling, or other decree issued and
27 entered by the Bankruptcy Court or by any state or other federal court or other tribunal having
28 jurisdiction over the subject matter thereof which judgment, order, ruling, or other decree has not

1 been reversed, stayed, modified, or amended and as to which: (i) the time to appeal or petition for
2 review, rehearing, or certiorari has expired and no appeal or petition for review, rehearing, or
3 certiorari is then pending; or (ii) any appeal or petition for review, rehearing, or certiorari has
4 been finally decided and no further appeal or petition for review, rehearing, or certiorari can be
5 taken or granted.

6 **83. Financing Authority** means the Stockton Public Financing Authority, a
7 joint powers authority organized and existing under the laws of the state of California and that
8 certain Joint Exercise of Powers Agreement dated as of June 16, 1990, by and between the City
9 and the Successor Agency.

10 **84. Fire/Police/Library Lease Back** means that certain Lease Agreement,
11 dated as of June 1, 2003, pursuant to which the Financing Authority leased the
12 Fire/Police/Library Properties to the City.

13 **85. Fire/Police/Library Lease Back Transaction** means, collectively, all
14 transactions memorialized in, among other things, the 2003 Fire/Police/Library Certificates
15 Reimbursement Agreement, the 2003 Fire/Police/Library Certificates, the Fire/Police/Library
16 Lease Out, the Fire/Police/Library Lease Back, and all related documents in connection therewith.

17 **86. Fire/Police/Library Lease Out** means that certain Site and Facility Lease,
18 dated as of June 1, 2003, pursuant to which the City leased the Fire/Police/Library Properties to
19 the Financing Authority.

20 **87. Fire/Police/Library Lease Out Assignment Agreement** means the
21 Assignment Agreement by and between the Financing Authority and the 2003 Fire/Police/Library
22 Certificates Trustee, in substantially the form annexed to the Ambac Settlement Agreement as
23 Exhibit A (and referred to in the Ambac Settlement Agreement as the “Site Lease Assignment
24 Agreement”).

25 **88. Fire/Police/Library Properties** means, collectively, the City’s Main
26 Police Facility, located at 22 E. Market Street; the Maya Angelou Southeast Branch Library,
27 located at 2324 Pock Lane; Fire Station No. 1, located at 1818 Fresno Avenue; Fire Station No. 5,
28 located at 3499 Manthey Road; and Fire Station No. 14, located at 3019 McNabb Street.

1 **89. Fourth Floor Lease of 400 E. Main** means that certain 400 East Main
2 Street Office Lease dated as of June 1, 2012, between Main Street Stockton LLC and The City of
3 Stockton.

4 **90. Franklin** means, collectively, Franklin Advisers, Inc., Franklin High Yield
5 Tax-Free Income Fund, and Franklin California High Yield Municipal Fund.

6 **91. General Fund** means the City’s chief operating fund, which is used to
7 account for all financial resources except those required to be accounted for in another fund (such
8 as the Restricted Funds).

9 **92. General Liability Claim** means a tort or contract Claim filed against the
10 City pursuant to the Government Claims Act, California Government Code section 810 *et seq.*

11 **93. General Unsecured Claim** means any unsecured Claim *that is not* (i) an
12 Administrative Claim; (ii) a General Liability Claim; or (iii) a Workers Compensation Claim; *but*
13 *excluding* the unsecured portion, if any, of the claims of the holders of the Claims in Classes 1A
14 and 1B (Ambac), 2, 3, and 4 (NPMFG), and 5 and 6 (Assured Guaranty), which unsecured claims,
15 if any, will be paid in accordance with the various settlements with such holders.

16 **94. Golf Course/Park Claims** means, collectively, the Golf Course/Park
17 Secured Claim and the Golf Course/Park Unsecured Claim. The Allowed amount of the Golf
18 Course/Park Claims is \$36,603,625.93.

19 **95. Golf Course/Park Collateral** means the right of the 2009 Golf
20 Course/Park Bond Trustee to take possession of the Golf Course/Park Properties through
21 September 1, 2038, or such other date as is determined by the Bankruptcy Court to be the
22 termination date for such possession. The Bankruptcy Court determined the value of the Golf
23 Course/Park Collateral on July 8, 2014.

24 **96. Golf Course/Park Lease Back** means that certain Lease Agreement, dated
25 as of September 1, 2009, pursuant to which the Financing Authority leased the Golf Course/Park
26 Properties to the City.

27 ///

28 ///

1 **97. Golf Course/Park Lease Back Rental Payments** means the semi-annual
2 rental payments in varying amounts that the City agreed to make as tenant under the Golf
3 Course/Park Lease Back.

4 **98. Golf Course/Park Lease Back Transaction** means, collectively, all
5 transactions memorialized in, among other things, the 2009 Golf Course/Park Bonds, the Golf
6 Course/Park Lease Out, and the Golf Course/Park Lease Back, and all related documents in
7 connection therewith.

8 **99. Golf Course/Park Lease Out** means that certain Site and Facility Lease,
9 dated as of September 1, 2009, pursuant to which the City leased the Golf Course/Park Properties
10 to the Financing Authority.

11 **100. Golf Course/Park Properties** means, collectively, Oak Park, the Van
12 Buskirk Golf Course, and the Swenson Golf Course.

13 **101. Golf Course/Park Secured Claim** means the Secured Claim of the 2009
14 Golf Course/Park Bond Trustee arising from the recharacterization of the Golf Course/Park Lease
15 Back Transaction as a secured financing transaction pursuant to the Partial Judgment. The
16 Allowed amount of the Golf Course/Park Secured Claim as of the date of confirmation of the
17 Plan is the value of the Golf Course/Park Collateral, which the Bankruptcy Court determined to
18 be \$4,052,000 at the continued Confirmation Hearing held on July 8, 2014. The Bankruptcy
19 Court valued the component parts as follows: the possessory interest of (a) Swenson Golf
20 Course: \$1,572,500; (b) Van Buskirk Golf Course: \$658,750; (c) Van Buskirk Community
21 Center: \$1,600,000; and (d) Oak Park: \$221,000.²

22 **102. Golf Course/Park Unsecured Claim** means the Class 12 unsecured Claim
23 of the 2009 Golf Course/Park Bond Trustee arising from the recharacterization of the Golf
24 Course/Park Lease Back Transaction as a secured financing transaction pursuant to the Partial
25 Judgment. The Allowed amount of the Golf Course/Park Unsecured Claim as of the date of
26

27
28 ² At the July 8 hearing, the Court rounded the sum of these values (\$4,052,250) to \$4,052,000.

1 confirmation of the Plan is equal to: (i) \$36,603,625.93 minus (ii) the Allowed amount of the
2 Golf Course/Park Secured Claim.

3 **103. HUD** means the U.S. Department of Housing and Urban Development.

4 **104. Impaired** means a Claim or interest that is impaired within the meaning of
5 section 1124.

6 **105. Indenture Trustee** means the 2003 Fire/Police/Library Certificates
7 Trustee, the 2004 Arena Bond Trustee, the 2004 Parking Bond Trustee, the 2006 SEB Bond
8 Trustee, the 2007 Office Building Bond Trustee, the 2009 Golf Course/Park Bond Trustee, and/or
9 the Pension Obligation Bonds Trustee, as the context requires.

10 **106. Insurance Policies** means the 2004 Arena Bond Insurance Policy, the 2004
11 Parking Bond Insurance Policy, the 2006 SEB Bond Insurance Policy, the 2007 Office Building
12 Bond Insurance Policy, and the Ambac Insurance Policy.

13 **107. Insured Portion** means that portion of an Allowed Workers Compensation
14 Claim or an Allowed General Liability Claim that is covered by one or more of the excess risk-
15 sharing pools of which the City is a member, up to the amount of the policy limits, including any
16 excess coverage policies.

17 **108. Leave Buyout Claim** means a Claim of a former City employee on
18 account of unpaid sick leave or other compensation or reimbursement due upon such employee's
19 retirement or other separation from City service.

20 **109. Marina Construction Loan** means that certain Stockton Waterfront
21 Marina \$13,300,000 Loan Contract, dated as of June 21, 2004.

22 **110. Marina Construction Loan Agreement** means the amended Marina
23 Construction Loan.

24 **111. Marina Project** has the meaning set forth in the Marina Construction Loan
25 Agreement.

26 **112. Market Street Garage** means the structure located within the City's
27 Central Parking District on Market Street between Sutter and California Streets.

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1 **113. New 400 E. Main Lease** means the lease to the City of a portion of the
2 400 E. Main Office Building Property, a copy of which lease is included in the Assured Guaranty
3 Settlement Documents.

4 **114. Notice of the Effective Date** shall have the meaning ascribed to such
5 phrase in Section XIV(E) of the Plan.

6 **115. NPFG** means National Public Finance Guarantee Corporation, a New York
7 stock insurance corporation.

8 **116. NPFG Arena Settlement** means the settlement between the City and
9 NPFG relating to the Arena Lease Back Transaction, the terms of which settlement are
10 memorialized in the NPFG Arena Settlement Documents.

11 **117. NPFG Arena Settlement Documents** means the documents implementing
12 the NPFG Arena Settlement, copies of which documents are annexed as Collective Exhibit 2 to
13 the Plan Supplement.

14 **118. NPFG Parking Settlement** means the settlement between the City and
15 NPFG relating to the Parking Structure Lease Back Transaction, the terms of which settlement are
16 memorialized in the NPFG Parking Settlement Documents.

17 **119. NPFG Parking Settlement Documents** means the documents
18 implementing the NPFG Parking Settlement, copies of which documents are annexed as
19 Collective Exhibit 3 to the Plan Supplement.

20 **120. NPFG Settlement** means, collectively, the NPFG Arena Settlement, the
21 NPFG Parking Settlement, and the NPFG/SEB Settlement.

22 **121. NPFG/SEB Settlement** means the settlement between the City and NPFG
23 relating to the SEB Lease Back Transaction, the terms of which settlement are embodied herein.

24 **122. Oak Park** means the public park of approximately 61.2 acres in the City,
25 bounded on the east by Union Pacific railroad tracks, on the north by East Fulton Street, on the
26 south by East Alpine Street, and on the west by North Sutter and Alvarado Streets.

27 **123. Office Building Claims of the 2007 Office Building Bond**
28 **Trustee/Assured Guaranty** means the Claims arising in connection with the Office Building

1 Lease Back Transaction, which Claims are asserted by the 2007 Office Building Bond Trustee at
2 the direction of Assured Guaranty as a result of the assignment by the Financing Authority of all
3 of its rights under the Office Building Lease Out and the Office Building Lease Back to the 2007
4 Office Building Bond Trustee.

5 **124. Office Building Lease Back** means that certain Lease Agreement, dated as
6 of November 1, 2007, pursuant to which the Financing Authority leased the 400 E. Main Office
7 Building Property to the City.

8 **125. Office Building Lease Back Transaction** means, collectively, all
9 transactions memorialized in, among other things, the 2007 Office Building Bonds, the Office
10 Building Lease Out, and the Office Building Lease Back, and all related documents in connection
11 therewith.

12 **126. Office Building Lease Out** means that certain Site and Facility Lease,
13 dated as of November 1, 2007, pursuant to which the City leased the 400 E. Main Office Building
14 Property to the Financing Authority.

15 **127. Office Building Standby Agreement** means that certain Standby Bond
16 Purchase Agreement, dated as of November 29, 2007, entered into by the City, the Financing
17 Authority, and Dexia.

18 **128. Other Postpetition Claims** means Claims asserted against the City for
19 services rendered to, or goods delivered to, or obligations incurred by, the City after the Petition
20 Date that do not constitute Administrative Claims.

21 **129. Parking Authority** means the Parking Authority of the City of Stockton, a
22 public body corporate and politic, organized and existing under and by virtue of the laws of the
23 State of California.

24 **130. Parking Structure Claims of the 2004 Parking Bond Trustee/NPFG**
25 means the Claims arising in connection with the Parking Structure Lease Back Transaction, as
26 modified by the NPFG Settlement. The Parking Structure Claims of the 2004 Parking Bond
27 Trustee/NPFG do not include any claims arising out of non-payment of the 2004 Parking Bonds,
28 as all such claims are non-recourse claims against the Financing Authority secured only by the

1 assignment by the Financing Authority of the Parking Structure Lease Back Rental Payments and
2 are not obligations of the City (except to the extent specifically provided under the terms of the
3 NPMFG Settlement).

4 **131. Parking Structure Lease Back** means that certain Lease Agreement,
5 dated as of September 1, 2004, pursuant to which the Financing Authority leased the Parking
6 Structure Properties to the City.

7 **132. Parking Structure Lease Back Transaction** means, collectively, the
8 transactions memorialized in the 2004 Parking Bonds, the Parking Structure Lease Out, and the
9 Parking Structure Lease Back.

10 **133. Parking Structure Lease Out** means that certain Site and Facility Lease,
11 dated as of June 1, 2004, pursuant to which the City leased the Parking Structure Properties to the
12 Financing Authority.

13 **134. Parking Structure Properties** means, collectively, the Edmund S. Coy
14 Parking Structure, the Stockton Events Center Parking Structure, and the Market Street Garage.

15 **135. Partial Judgment** means the Partial Judgment in Favor of Plaintiffs
16 entered on April 21, 2014 in the Recharacterization Adversary Proceeding [Adv. Dkt. No. 56].

17 **136. Pension Obligation Bonds** means the City of Stockton 2007 Taxable
18 Pension Obligation Bonds issued on April 5, 2007 in the aggregate principal amount of
19 \$125,310,000 pursuant to articles 10 and 11 (commencing with section 53570) of chapter 3 of
20 part 1 of division 2 of title 5 of the Government Code of the State of California and the Pension
21 Obligation Bonds Indenture.

22 **137. Pension Obligation Bonds Claims** means the Claims arising in
23 connection with the Pension Obligation Bonds.

24 **138. Pension Obligation Bonds Indenture** means that certain Indenture of
25 Trust, dated as of April 1, 2007, by and between the City and the Pension Obligation Bonds
26 Trustee.

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1 **139. Pension Obligation Bonds Insurance Policy** means that certain
2 Municipal Bond Insurance Policy No. 208382-N issued by Assured Guaranty, as successor to
3 Financial Security Assurance, with respect to the Pension Obligation Bonds.

4 **140. Pension Obligation Bonds Trustee** means Wells Fargo, as indenture
5 trustee under the Pension Obligation Bonds Indenture, or any successor indenture trustee
6 thereunder.

7 **141. Petition Date** means June 28, 2012.

8 **142. Plan** means this First Amended Plan of Adjustment of Debts of City of
9 Stockton, California (November 15, 2013), together with any exhibits (including any Plan
10 Supplement and exhibits annexed to any Plan Supplement), each in their present form or as they
11 may be altered, amended or modified from time to time in accordance with the provisions of this
12 Plan, the Confirmation Order, the Bankruptcy Code, and the Bankruptcy Rules.

13 **143. Plan Document** means any agreement or instrument contemplated by, or
14 to be entered into pursuant to, this Plan, that is in form and substance acceptable to the City, has
15 been duly and validly executed and delivered, or deemed executed by the parties thereto, and for
16 which all conditions to its effectiveness have been satisfied or waived.

17 **144. Plan Solicitation Order** means the Order Approving (1) Modified
18 Disclosure Statement with Respect to First Amended Plan for the Adjustment of Debts of City of
19 Stockton (November 15, 2013); (2) Setting Confirmation Procedures; and (3) Scheduling Filing
20 Dates and the Confirmation Hearing [Dkt. No. 1220], entered on November 22, 2013, by which
21 the Bankruptcy Court approved the Disclosure Statement as containing adequate information for
22 the purpose of dissemination and solicitation of votes on and confirmation of this Plan and
23 established certain rules, deadlines, and procedures for the solicitation of votes with respect to
24 and the balloting on this Plan.

25 **145. Plan Supplement** means the Plan Supplement in Connection with the First
26 Amended Plan for the Adjustment of Debts of City of Stockton, California (November 15, 2013)
27 [Dkt. No. 1236], filed on January 27, 2014, which includes drafts reflecting the material
28 economic terms of the Assured Guaranty Settlement Documents, the NPMG Arena Settlement

1 Documents, and the NCFG Parking Settlement Documents. The Supplemental Plan Supplement
2 includes updated drafts of these documents as well as additional documents, as will the Second
3 Supplemental Plan Supplement.

4 **146. Ports License Agreement** means that certain “Events Center Ball Park
5 License Agreement” dated as of March 2, 2004, between the City and 7th Inning Stretch, LLC
6 regarding the terms and conditions upon which the Ports may use the Banner Island Ballpark
7 located next to the Arena.

8 **147. Ports** means, collectively, the professional minor-league baseball team
9 known as the Stockton Ports and 7th Inning Stretch, LLC.

10 **148. Ports Settlement** means the settlement between the City and the Ports
11 regarding the Claims of the Ports and the terms of the City’s financial support of the Ports. The
12 terms of the Ports Settlement are implemented by the Ports Settlement Documents.

13 **149. Ports Settlement Documents** mean the documents implementing the Ports
14 Settlement, which as of the date hereof have not been finalized. However, the term sheet, which
15 sets forth the material terms of the Ports Settlement, is annexed as an exhibit to the Second
16 Supplemental Plan Supplement.

17 **150. Pre-Confirmation Date Claims** means all Claims against the City that
18 arose prior to the Confirmation Date.

19 **151. Price Claims** mean the Claims of the Price Judgment Creditors, who filed
20 a proof of claim in the Chapter 9 Case in the amount of \$1,423,164.

21 **152. Price Judgment Creditors** mean Richard Price and five other low-income
22 individuals who were displaced from single-room-occupancy housing units in downtown
23 Stockton in connection with the City’s code-enforcement activities, and the Interfaith Council of
24 San Joaquin (formerly Stockton Metro Ministry Inc.), who collectively filed an action against the
25 City, the Successor Agency, and other parties on May 2, 2002, captioned as *Price, et al. v. City of*
26 *Stockton, et al.*, U.S. District Court for the Eastern District of California, case no. 2:02-cv-00065-
27 LKK-KJM.

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1 **153. Price Settlement** means the settlement between the City and the Price
2 Judgment Creditors regarding the Price Claims. The terms of the Price Settlement are
3 summarized by the Price Settlement Documents.

4 **154. Price Settlement Documents** mean the documents implementing the Price
5 Settlement, copies of which are annexed as Exhibit 5 to the Supplemental Plan Supplement.

6 **155. Professional Claim** means a Claim required to be filed pursuant to
7 Section II(B) of the Plan for approval of amounts, if any, to be paid after the Effective Date for
8 services or expenses in the Chapter 9 Case or incident to this Plan.

9 **156. Recharacterization Adversary Proceeding** means the adversary
10 proceeding that the 2009 Golf Course/Park Bond Trustee, Franklin High Yield Tax-Free Income
11 Fund, and Franklin California High Yield Municipal Fund commenced by filing a Complaint for
12 Declaratory Relief against the City in the Bankruptcy Court. [Dkt. No. 1181, commencing
13 Adversary Case 13-2315].

14 **157. Rejection Motion** means the motion or motions to be filed by the City
15 pursuant to section 365(a) by which the City shall seek approval and authorization for the
16 rejection of such executory contracts and unexpired leases as shall be identified in such motion(s).

17 **158. Related Persons** means, with respect to any Person, such Person's
18 predecessors, successors, assigns and present and former Affiliates (whether by operation of law
19 or otherwise) and subsidiaries, and each of their respective current and former officers, directors,
20 principals, employees, shareholders, members (including ex officio members), partners, agents,
21 financial advisors, attorneys, accountants, investment bankers, investment advisors, consultants,
22 representatives, and other professionals, and any Person claiming by or through any of them.

23 **159. Released Party** means each or any of NPMFG, Assured Guaranty, Ambac,
24 the Indenture Trustee, and the respective Related Persons of each of the foregoing.

25 **160. Restricted Funds** means the approximately 200 special purpose and
26 enterprise funds administered by the City, the use of which is restricted by, among other things,
27 grants, federal law, the California Constitution, or other California law, such that the assets of the
28 Restricted Funds may not lawfully be used to pay obligations of the General Fund, but which can

1 be used to pay the Pension Obligation Bonds and the Restricted Revenue Bond and Note Payable
2 Obligations.

3 **161. Restricted Revenue Bond and Note Payable Obligations** means,
4 collectively, (i) the City of Stockton Revenue Certificates of Participation 1998 Series A
5 (Wastewater System Project), the City of Stockton Certificates of Participation 2003 Series A
6 (Wastewater System Project), the Stockton Public Financing Authority 2005 Water Revenue
7 Bonds, Series A (Water System Capital Improvement Project), Stockton Public Financing
8 Authority Water Revenue Bonds, Series 2009A (Delta Water Supply Project) & Taxable Build
9 America Bonds Series 2009 B (Delta Water Supply Project), Stockton Public Financing Authority
10 Variable Rate Demand Water Revenue Bonds, Series 2010A (Delta Water Supply Project),
11 including all installment purchase agreements, security agreements, trust indentures,
12 reimbursement agreements, fee letters, and other agreements with respect thereto to which the
13 City is a party and which are payable from and secured by special and restricted sources of
14 revenues; and (ii) the City's obligations under that certain Installment Purchase Agreement, dated
15 as of May 1, 2002, by and between the City and California Statewide Communities Development
16 Authority, to make installment payments, from certain revenues of the City's water system, that
17 relate to California Statewide Communities Development Authority Water and Wastewater
18 Revenue Bonds (Pooled Financing Program), Series 2002A.

19 **162. Retiree Health Benefit Claim** means a Claim by a former City employee
20 or dependent on account of or in any way related to the City's postpetition reduction of its
21 contribution to health benefit payments to former City employees and dependents.

22 **163. Retiree Health Benefit Claimant** means a former City employee (or
23 dependent) who was eligible for retiree health benefits based on his or her collective bargaining
24 agreement at the time of retirement and: (i) who was receiving City retiree health benefits as of
25 June 30, 2012 (which includes any retiree who had waived coverage prior to that date but was
26 otherwise eligible, or any retiree who had exceeded the 15-year cap for under-65 retiree health
27 benefits, but who was eligible for a City retiree benefit for an over-65 retiree); or (ii) who retired
28 prior to July 1, 2012 with his or her last day on payroll having occurred on or before June 30,

1 2012; or (iii) who was a surviving spouse of a deceased retiree who was receiving retiree benefits
2 on June 30, 2012.

3 **164. Retirees Committee** means the Official Committee of Retirees, appointed
4 in the Chapter 9 Case on April 1, 2013 [Dkt. No. 846], by the Office of the United States Trustee
5 pursuant to sections 1102(a)(1) and 1102(b)(1), as the membership thereof may have been
6 reconstituted from time to time by the Office of the United States Trustee.

7 **165. Retirees Settlement** means the agreement between the City and the
8 Retirees Committee by which the City agrees to propose a plan of adjustment containing the
9 provisions set forth in the Retirees Settlement.

10 **166. Rights of Action** means any rights, claims, or causes of action owned by,
11 accruing to, or assigned to the City pursuant to the Bankruptcy Code or pursuant to any contract,
12 statute, or legal theory, including without limitation any rights to, claims, or causes of action for
13 recovery under any policies of insurance issued to or on behalf of the City.

14 **167. Risk Management Internal Service Fund** means the fund established by
15 the City to accumulate resources for interdepartmental charges expended on self insurance for
16 General Liability Claims. The City also has other internal service funds.

17 **168. Rust Omni** means Rust Consulting/Omni Bankruptcy, the Ballot Tabulator
18 in the Chapter 9 Case.

19 **169. SCC 16** means Stockton City Center 16, LLC, a California limited liability
20 company.

21 **170. SCC 16 Claims** means any Claim of SCC 16 arising out of the
22 Construction Agreement.

23 **171. SCC 16 Lease** means that certain Master Lease dated February 26, 2008
24 between the City, as lessor, and SCC 16, as lessee, whereby the City subleased to SCC 16 a
25 portion of that certain parcel of real property situated in Stockton commonly known as The Coy
26 Parking Garage, and more particularly described in the Lease.

27 **172. SCC 16 Promissory Note** means that certain promissory note executed by
28 the City in favor of SCC 16 pursuant to, and in accordance with, the Construction Agreement.

1 **173. SCC 16 Settlement** means the settlement, if any, memorialized in the SCC
2 Settlement Agreement.

3 **174. SCC Settlement Agreement** means that certain settlement agreement, if
4 any, among the City, the 2004 Parking Structure Bond Trustee, and SCC 16.

5 **175. SEB Claims of the 2006 SEB Bond Trustee/NPFG** means the Claims (if
6 any) arising under the SEB Lease Back or the SEB Lease Out.

7 **176. SEB Lease Back** means that certain Lease Agreement, dated as of
8 March 1, 2006, pursuant to which the Financing Authority leased the SEB Properties to the City.

9 **177. SEB Lease Back Transaction** means, collectively, the transactions
10 memorialized in the 2006 SEB Bonds, SEB Lease Out, and the SEB Lease Back.

11 **178. SEB Lease Out** means that certain Ground Lease, dated as of March 1,
12 2006, pursuant to which the City leased the SEB Properties to the Financing Authority.

13 **179. SEB Properties** means the Stewart/Eberhardt Building located at 22 East
14 Weber Avenue, in the City, and the adjacent public parking facility located at 15 North El Dorado
15 Street.

16 **180. Second Supplemental Plan Supplement** means the Second Supplemental
17 Plan Supplement in Connection with the First Amended Plan for the Adjustment of Debts of City
18 of Stockton, California, As Modified (August 8, 2014), to be filed by the City, which includes the
19 Assured Guaranty Settlement Documents, the NPFG Arena Settlement Documents, the NPFG
20 Parking Settlement Documents, the DBW Settlement Document, the Price Settlement Documents,
21 and the Thunder Settlement Documents as approved by the City Council by resolution dated
22 April 15, 2014, as well as the term sheet executed by the City and the Ports.

23 **181. Secured Claim** means a Claim that is secured, in whole or in part, (i) by a
24 lien that is not subject to avoidance or subordination under the Bankruptcy Code or applicable
25 non-bankruptcy law; or (ii) as a result of rights of setoff under section 553; but in any event only
26 to the extent of the value, determined in accordance with section 506(a), of the holder's interest in
27 the City's interest in property or to the extent of the amount subject to such setoff, as the case
28 may be.

1 **182. SIR Claim Portion** means the portion of a Workers Compensation Claim
2 or General Liability Claim subject to the City’s self insurance retention. For any resolved
3 Workers Compensation Claim, the SIR Claim Portion is the first \$500,000. For any resolved
4 General Liability Claim, the SIR Claim Portion is the first \$1,000,000. The SIR Claim Portion is
5 an obligation of the City rather than an obligation of any excess risk-sharing pool of which the
6 City is a member.

7 **183. Special Assessment and Special Tax Obligations** means, collectively:

- 8 • Stockton Public Financing Authority Reassessment Revenue Bonds
9 (Arch Road and Stockton Business Park Assessment Districts) Series
10 1998, including claims related to those certain:
 - 11 ○ Stockton Airport Business Park Ltd. Obligation Refunding
12 Improvement Bonds Project 84-1 Phase IV, Series 229 (Local
13 Obligation Bonds);
 - 14 ○ Stockton Airport Business Park Ltd. Obligation Refunding
15 Improvement Bonds Project 84-1 Phase V, Series 230 (Local
16 Obligation Bonds);
 - 17 ○ Stockton Airport Business Park Ltd. Obligation Refunding
18 Improvement Bonds Project 84-1 Phase I, Series 231 (Local
19 Obligation Bonds);
- 20 • City of Stockton Camera Estates Community Facilities District No.
21 2003-1 Special Tax Bonds, Series 2003;
- 22 • City of Stockton Limited Obligation Improvement Bonds March
23 Lane/Holman Assessment District 2003-1;
- 24 • City of Stockton Limited Obligation Improvement Bonds Mosher
25 Assessment District 2003-02;
- 26 • City of Stockton Limited Obligation Improvement Bonds Waterford
27 Estates East Phase II Assessment District 2003-03;

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- Stockton Public Financing Authority Refunding Revenue Bonds (West Eighth Street Reassessment District);
- City of Stockton South Stockton Community Facilities District No. 90-1 2005 Special Tax Refunding Bonds;
- Stockton Public Financing Authority Refunding Revenue Bonds (2005 Assessment Districts Refinancing) Series A Senior Lien Bonds and Series B Subordinate Lien Bonds:
 - City of Stockton Limited Obligation Refunding Bond Blossom Ranch Assessment District No. 93-1 (Reassessment and Refunding of 2005);
 - City of Stockton Limited Obligation Refunding Bond La Morada Assessment District No. 96-4 (Reassessment and Refunding of 2005);
 - City of Stockton Limited Obligation Refunding Bond Morada North Assessment District No. 2002-01 (Reassessment and Refunding of 2005);
 - City of Stockton Limited Obligation Refunding Bond Morada Ranch Assessment District No. 2000-01 (Reassessment and Refunding of 2005);
 - City of Stockton Limited Obligation Refunding Bond Waterford Estates East Assessment District No. 2002-03 (Reassessment and Refunding of 2005);
- City of Stockton Community Facilities District No. 90-2 (Brookside Estates) 2005 Special Tax Refunding Bonds;
- Stockton Public Financing Authority Revenue Bonds (Redevelopment Projects) 2006 Series A and Taxable Revenue Bonds (Housing Projects) 2006 Series C;

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- City of Stockton Community Facilities District No. 1 (Weston Ranch) Special Tax Refunding Bonds, Series 2006;
- City of Stockton Spanos Park West Community Facilities District No. 2001-1 Special Tax Refunding Bonds, Series 2006;
- City of Stockton Community Facilities District No. 2006-1 (Riverbend) Special Tax Bonds, Series 2006;
- City of Stockton Community Facilities District No. 2006-3 (Northbrook) Woodside Improvement Area 1 Special Tax Bonds, Series 2007;
- City of Stockton Arch Road East Community Facilities District No. 99-02 2007 Special Tax Bonds;
- City of Stockton 2001 Combined Assessment District Refunding, 2001 Charter Way (86-4), North Stockton Interim Sewer (88-2), and Little John Creek (97-01) 2001 Limited Obligation Improvement Refunding Bonds;
- Stockton Public Financing Authority 2008 Refunding Revenue Bonds:
 - City of Stockton Limited Obligation Refunding Bonds, Reassessment District No. 91-1R (Local Obligation Bonds);
 - Stockton Public Financing Authority Communities Facilities District No. 90-4 (Spanos Park) Special Tax Refunding Bonds (Local Obligation Bonds); and
- All installment purchase agreements, security agreements, trust indentures, reimbursement agreements, fee letters, and other agreements with respect thereto to which the City is a party and which are payable from and secured by special and restricted sources of revenues.

184. SPOA means the Stockton Police Officers’ Association.

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1 **185. SPOA Claims** means the Claims of members of the SPOA in the
2 approximate amount of \$13 million included in and resolved under the SPOA MOU.

3 **186. SPOA MOU** means the Memorandum of Understanding between the City
4 and the SPOA effective July 1, 2012, through June 30, 2014, as approved by the City, a copy of
5 which is attached as Exhibit 5 to the Plan Supplement.

6 **187. Stockton Events Center Parking Structure** means the structure located at
7 the intersection of Fremont and Van Buren streets in the City.

8 **188. Successor Agency** means the City, acting in its capacity as Successor
9 Agency to the Redevelopment Agency of the City of Stockton following the dissolution of such
10 agency. References to actions by the Successor Agency in the Plan incorporate references to
11 actions taken and agreements entered into by the former Redevelopment Agency of the City of
12 Stockton prior to its dissolution and the Successor Agency's succession in interest.

13 **189. Supplemental Plan Supplement** means the Supplemental Plan
14 Supplement in Connection with the First Amended Plan for the Adjustment of Debts of City of
15 Stockton, California (November 15, 2013) [Dkt. No. 1259], filed on February 10, 2014, which
16 includes drafts reflecting the material economic terms of the Assured Guaranty Settlement
17 Documents, the NCFG Arena Settlement Documents, the NCFG Parking Settlement Documents,
18 the DBW Settlement Document, the Price Settlement Documents.

19 **190. Swenson Golf Course** means the property in the City located on
20 approximately 219 acres at 6803 Alexandria Place.

21 **191. Thunder Claims** means the Claims arising in connection with the Thunder
22 License Agreement, as modified by the Thunder Settlement.

23 **192. Thunder License Agreement** means that certain agreement dated as of
24 March 2, 2004, titled "Team Lease for Stockton Events Center (Ice Hockey Team)" between the
25 City and IFG-Stockton Franchise Group, Inc. as the same may have been amended from time to
26 time, relating to the rights of the Stockton Thunder ice hockey team to use the facilities of the
27 Arena.

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1 **193.** Thunder Settlement means that certain settlement between the City and SC
2 Hockey Franchise Corporation, as successor to IFG-Stockton Franchise Group, Inc., regarding the
3 treatment under this Plan of the claims arising out of the Thunder License Agreement, the
4 material terms of which agreement are set forth in the Thunder Settlement Term Sheet.

5 **194. Thunder Settlement Documents** means the documents implementing the
6 Thunder Settlement, copies of which are annexed as an exhibit to the Second Supplemental Plan
7 Supplement.

8 **195. Thunder Settlement Term Sheet** means that certain Term Sheet—
9 Proposed Amendments to Team Lease for Stockton Events Center, dated as of September 18,
10 2013, a copy of which is attached as Exhibit E to the Disclosure Statement and incorporated by
11 reference.

12 **196. Unimpaired** means a Claim that is not Impaired within the meaning of
13 section 1124.

14 **197. Uninsured Portion Claim** means the amount in excess of the Insured
15 Portion of an Allowed Workers Compensation Claim or an Allowed General Liability Claim that
16 is covered by one or more of the excess risk-sharing pools of which the City is a member.

17 **198. Unsecured Claim Payout Percentage** means the percentage of the
18 Allowed amount of General Unsecured Claims that will be paid to holders of Class 12 Claims,
19 equal to the percentage paid on account of the Retiree Health Benefit Claims (unless the amount
20 of the Retiree Health Benefit Claims changes, that percentage will be equal to 0.93578%, i.e.,
21 \$5,100,000 divided by \$545,000,000), or such other amount as is determined by the Bankruptcy
22 Court before confirmation of this Plan to constitute a pro-rata payment on such other General
23 Unsecured Claims; *provided, however*, the dollar amount to be paid on account of General
24 Unsecured Claims other than the Retiree Health Benefit Claims on the Effective Date shall not
25 exceed \$500,000. If the amounts to be paid exceed \$500,000, then such excess amounts shall be
26 made in two equal annual installments on the first and second anniversary of the Effective Date,
27 together with simple interest accruing from and after the Effective Date at 5% per annum. Such
28 excess amounts may be prepaid at the option of the City.

1 **199. Wells Fargo** means Wells Fargo Bank, National Association, acting solely
2 in its role as 2003 Fire/Police/Library Certificates Trustee, the 2004 Arena Bond Trustee, the
3 2004 Parking Bond Trustee, the 2006 SEB Bond Trustee, the 2007 Office Building Bond Trustee,
4 the 2009 Golf Course/Park Bond Trustee, the Pension Obligation Bonds Trustee, as well as in its
5 role as trustee, fiscal agent or other like capacity with respect to certain of the Restricted Revenue
6 Bond and Note Payable Obligations and the Special Assessment and Special Tax Obligations.

7 **200. Workers Compensation Claims** means those Claims pursuant to
8 California workers compensation law (California Labor Code section 3200 *et seq.*) of current and
9 former City employees who have suffered an eligible injury while employed by the City

10 **201. Workers Compensation Internal Service Fund** means the fund
11 established by the City to accumulate resources for interdepartmental charges expended on self
12 insurance for Workers Compensation Claims.

13 **B. Rules of Construction.**

14 The following rules of construction apply to this Plan: (a) unless otherwise
15 specified, all references in this Plan to “sections” (lowercased) are references to a section of the
16 Bankruptcy Code; (b) unless otherwise specified, all references in this Plan to “Sections” and
17 “Exhibits” (uppercased) are to the respective Section in or Exhibit to this Plan, as the same may
18 be amended or modified from time to time; (c) the headings in this Plan are for convenience of
19 reference only and do not limit or otherwise affect the provisions of this Plan; (d) words denoting
20 the singular number include the plural number and vice versa; (e) the rules of construction set
21 forth in section 102 apply; (f) in computing any period of time prescribed or allowed by this Plan,
22 the provisions of Bankruptcy Rule 9006(a) apply; (g) any term used in capitalized form herein
23 that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules
24 shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as
25 the case may be; and (h) the words “herein,” “hereof,” “hereto,” “hereunder,” and others of
26 similar import refer to this Plan as a whole and not to an particular section, subsection, or clause
27 contained in this Plan.

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1 **C. Plan Supplement, Supplemental Plan Supplement, and Second Supplemental**
2 **Plan Supplement.**

3 On January 27 and February 10, respectively, the City electronically filed with the
4 Bankruptcy Court and Rust Omni served in CD-ROM format by U.S. mail on all parties entitled
5 to vote on the Plan the Plan Supplement [Dkt. No. 1236] and the Supplemental Plan Supplement
6 [Dkt. No. 1259]. Further, the City will electronically file with the Bankruptcy Court and Rust
7 Omni will serve in CD-ROM format by U.S. mail on all parties entitled to vote on the Plan the
8 Second Supplemental Plan Supplement. The City has made (and in the case of the Second
9 Supplemental Plan Supplement, will make) each of these documents electronically available on
10 its website. The exhibits and schedules contained in these documents are incorporated into, and
11 are a part of, the Plan as if set forth herein.

12 **II. TREATMENT AND DEADLINE FOR THE ASSERTION OF ADMINISTRATIVE**
13 **CLAIMS AND PROFESSIONAL CLAIMS**

14 **A. Treatment of Administrative Claims.**

15 Except to the extent that the holder of an Allowed Administrative Claim agrees to
16 a different treatment, the City or its agent shall pay to each holder of an Allowed Administrative
17 Claim, in full satisfaction, release, and discharge of such Allowed Administrative Claim, Cash in
18 an amount equal to such Allowed Administrative Claim on the later of (i) the Effective Date or
19 (ii) the date on which such Claim becomes an Allowed Administrative Claim, or as soon
20 thereafter as is practicable.

21 **B. Treatment of Professional Claims.**

22 Pursuant to section 943(b)(3), all amounts paid following the Effective Date or to
23 be paid following the Effective Date for services or expenses in the Chapter 9 Case or incident to
24 this Plan must be disclosed to the Bankruptcy Court and must be reasonable. There shall be paid
25 to each holder of a Professional Claim, in full satisfaction, release, and discharge of such Claim,
26 Cash in an amount equal to that portion of such Claim that the Bankruptcy Court approves as
27 reasonable, on or as soon as reasonably practicable following the date on which the Bankruptcy
28 Court enters a Final Order determining such reasonableness. The City, in the ordinary course of

1 its business, and without the requirement for Bankruptcy Court approval, may pay for
2 professional services rendered and costs incurred following the Effective Date.

3 **C. Priority Claims in Chapter 9.**

4 The only priority claims incorporated into chapter 9 through section 901 are
5 Administrative Claims allowed under section 503(b) and entitled to priority under
6 section 507(a)(2). The treatment of all such Administrative Claims is set forth immediately above
7 in Sections II(A) and II(B). No other kinds of priority claims set forth in section 507 are
8 recognized in chapter 9 cases, and Claims that are not Administrative Claims herein and that
9 would constitute administrative expenses in a case under another chapter of the Bankruptcy Code,
10 including Other Postpetition Claims, are treated in chapter 9 and in this Plan as General
11 Unsecured Claims.

12 **D. Deadline for the Filing and Assertion of Other Postpetition Claims,**
13 **Administrative Claims and Professional Claims.**

14 **All proofs of claim for Other Postpetition Claims arising on or after**
15 **August 16, 2013, and requests for payment or any other means of preserving and obtaining**
16 **payment of Administrative Claims that have not been paid, released, or otherwise settled,**
17 **and all requests for approval of Professional Claims, must be filed with the Bankruptcy**
18 **Court and served upon the City no later than 30 days after the date on which the Notice of**
19 **Effective Date is served.** Any proof of claim for Other Postpetition Claims, or request for
20 payment of an Administrative Claim or a Professional Claim, that is not timely filed by such date
21 will be forever barred, and holders of such Claims shall be barred from asserting such Claims in
22 any manner against the City. For the avoidance of doubt, proofs of claim for Other Post-Petition
23 Claims that arose before August 16, 2013 must have been filed by August 16, 2013, in order to be
24 considered timely.

25 **III. DESIGNATION OF CLASSES OF CLAIMS**

26 Pursuant to sections 1122 and 1123(a)(1), all Claims other than Administrative
27 Claims and Professional Claims are classified for all purposes, including voting, confirmation,
28 and distribution pursuant to this Plan, as follows:

- 1 Class 1A – Claims of Ambac – 2003 Fire/Police/Library Certificates;
- 2 Class 1B – Claims of Holders of 2003 Fire/Police/Library Certificates;
- 3 Class 2 – SEB Claims of the 2006 SEB Bond Trustee/NPFG;
- 4 Class 3 – Arena Claims of the 2004 Arena Bond Trustee/NPFG;
- 5 Class 4 – Parking Structure Claims of the 2004 Parking Bond Trustee/NPFG –
- 6 2004 Parking Structure Bonds;
- 7 Class 5 – Office Building Claims of the 2007 Office Building Bond
- 8 Trustee/Assured Guaranty – 2007 Office Building Bonds;
- 9 Class 6 – Pension Obligation Bonds Claims;
- 10 Class 7 – Claims of DBW;
- 11 Class 8 – SCC 16 Claims;
- 12 Class 9 – Thunder Claims;
- 13 Class 10 – Claims of Holders of Restricted Revenue Bond and Note Payable
- 14 Obligations;
- 15 Class 11 – Claims of the Holders of Special Assessment and Special Tax
- 16 Obligations;
- 17 Class 12 – General Unsecured Claims.
- 18 This Class includes:
- 19 • General Unsecured Claims;
- 20 • The Golf Course/Park Unsecured Claim;
- 21 • Retiree Health Benefit Claims;
- 22 • Leave Buyout Claims;
- 23 • The Claim filed by Michael A. Cobb; and
- 24 • Other Postpetition Claims.
- 25 Class 13 – Convenience Class Claims;
- 26 Class 14 – Claims of Certain Tort Claimants;

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1 Class 15 – Claims of CalPERS Pension Plan Participants Regarding City’s
2 Obligations to Fund Employee Pension Plan Contributions to CalPERS under the
3 CalPERS Pension Plan;
4 Class 16 – Claims of Equipment Lessors;
5 Class 17 – Workers Compensation Claims;
6 Class 18 – SPOA Claims;
7 Class 19 – Price Claims; and
8 Class 20 – Golf Course/Park Secured Claim.

9 **IV. TREATMENT OF CLAIMS**

10 **A. Class 1A – Claims of Ambac – 2003 Fire/Police/Library Certificates.**

11 **1. Impairment and Voting.**

12 Class 1A is Impaired by this Plan since the treatment of this Class will affect the
13 legal, equitable, or contractual rights of Ambac, the holder of the Claims. Accordingly, this Class
14 is entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

15 **2. Treatment.**

16 The treatment of the Class 1A Claims will be as set forth in the Ambac Settlement
17 Agreement, which should be consulted for the precise terms of the treatment. The Plan does not
18 modify, amend, or alter the amounts due to the holders of the 2003 Fire/Police/Library
19 Certificates or the obligations of Ambac to pay principal or redemption price of, or interest on,
20 the 2003 Fire/Police/Library Certificates as and when such amounts become due under the 2003
21 Fire/Police/Library Certificates Trust Agreement, which payments shall be made by Ambac in
22 accordance with, and subject to, the terms of the Ambac Insurance Policy. Ambac, as the holder
23 of the Class 1A Claims, is entitled to vote to accept or reject this Plan in accordance with the Plan
24 Solicitation Order.

25 **B. Class 1B – Claims of Holders of 2003 Fire/Police/Library Certificates.**

26 **1. Impairment and Voting.**

27 Class 1B is Impaired by this Plan since the treatment of this Class will affect the
28 legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, Ambac, as

1 the deemed holder of the Claims in this Class, is entitled to vote to accept or reject this Plan in
2 accordance with the Plan Solicitation Order.

3 **2. Treatment.**

4 The treatment of the Class 1B claimants, the 2003 Fire/Police/Library Certificates
5 holders, is identical to the treatment of Ambac, the Class 1A claimant.

6 **C. Class 2 – SEB Claims of the 2006 SEB Bond Trustee/NPFG – 2006 SEB**
7 **Bonds.**

8 **1. Impairment and Voting.**

9 Class 2 is not Impaired by this Plan since the treatment of this Class will not affect
10 the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, NPFG, as
11 the deemed holder of the Claims in this Class, is not entitled to vote to accept or reject this Plan in
12 accordance with the Plan Solicitation Order.

13 **2. Treatment.**

14 On the Effective Date, the City will assume the SEB Lease Back and the SEB
15 Lease Out under section 365(a) pursuant to the NPFG/SEB Settlement. The finding by the
16 Bankruptcy Court that the Plan is feasible shall constitute adequate assurance of future
17 performance of the SEB Lease Back and the SEB Lease Out. The Plan does not modify, amend,
18 or alter the 2006 SEB Bonds or the obligations of NPFG to pay principal or redemption price of,
19 or interest on, the 2006 SEB Bonds as and when such amounts become due under the 2006 SEB
20 Bond Indenture, which payments shall be made by NPFG in accordance with, and subject to, the
21 terms of the 2006 SEB Bond Insurance Policy.

22 **D. Class 3 – Arena Claims of the 2004 Arena Bond Trustee/NPFG – 2004 Arena**
23 **Bonds.**

24 **1. Impairment and Voting.**

25 Class 3 is Impaired by this Plan since the treatment of this Class will affect the
26 legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, NPFG, as the
27 deemed holder of the Claims in this Class, is entitled to vote to accept or reject this Plan in
28 accordance with the Plan Solicitation Order.

1 **2. Treatment.**

2 The treatment of the Class 3 Claims will be as set forth in the NPMG Arena
3 Settlement, which should be consulted for the precise terms of the treatment. The Plan does not
4 modify, amend, or alter the 2004 Arena Bonds or the obligations of NPMG to pay principal or
5 redemption price of, or interest on, the 2004 Arena Bonds as and when such amounts become due
6 under the 2004 Arena Bond Indenture, which payments shall be made by NPMG in accordance
7 with, and subject to, the terms of the 2004 Parking Bond Insurance Policy. On the Effective Date,
8 without the need to file any further motions, the Arena Lease Out and the Arena Lease Back shall
9 be assumed, subject to the modification of the City's obligations pursuant to the terms of the
10 NPMG Arena Settlement.

11 **E. Class 4 – Parking Structure Claims of the 2004 Parking Bond Trustee/NPMG**
12 **– 2004 Parking Bonds.**

13 **1. Impairment and Voting.**

14 Class 4 is Impaired by this Plan since the treatment of this Class will affect the
15 legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, NPMG, as the
16 deemed holder of the Claims in this Class, is entitled to vote to accept or reject this Plan in
17 accordance with the Plan Solicitation Order.

18 **2. Treatment.**

19 The treatment of the Class 4 Claims will be as set forth in the NPMG Parking
20 Settlement Documents, which should be consulted for the precise terms of the treatment. On the
21 Effective Date, without the need to file any further motions, the Parking Structure Lease Out shall
22 be assumed, and any and all rights and obligations thereunder shall be assigned to the Parking
23 Authority, with the obligations of the City limited by the NPMG Parking Settlement Documents.
24 To the extent the City determines it is necessary or desirable to do so, in addition to those
25 executory contracts being assigned to the Parking Authority by virtue of the above, the City
26 reserves the right to file before or after the Effective Date a motion in which it will seek authority
27 to assign to the Parking Authority certain executory contracts and unexpired leases executed in
28 connection with the Parking Structure Lease Out that are assumed under the Plan.

1 The Plan does not modify, amend, or alter the 2004 Parking Bonds or the
2 obligations of NPMFG to pay principal or redemption price of, or interest on, the 2004 Parking
3 Bonds as and when such amounts become due under the 2004 Parking Bond Indenture, which
4 payments shall be made by NPMFG in accordance with, and subject to, the terms of the 2004
5 Parking Bond Insurance Policy.

6 **F. Class 5 – Office Building Claims of the 2007 Office Building Bond**
7 **Trustee/Assured Guaranty – 2007 Office Building Bonds.**

8 **1. Impairment and Voting**

9 Class 5 is Impaired by this Plan since the treatment of this Class will affect the
10 legal, equitable, or contractual rights of the holder of the Claims, and, accordingly, Assured
11 Guaranty, as the holder of the Claims in this Class, is entitled to vote to accept or reject this Plan
12 in accordance with the Plan Solicitation Order.

13 **2. Treatment.**

14 The treatment of the Class 5 Claims will be as set forth in the Assured Guaranty
15 Settlement, which should be consulted for the precise terms of the treatment.

16 **G. Class 6 – Pension Obligation Bonds Claims.**

17 **1. Impairment and Voting.**

18 Class 6 is Impaired by this Plan since the treatment of this Class will affect the
19 legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, Assured
20 Guaranty, as the deemed holder of the Claims in this Class, is entitled to vote to accept or reject
21 this Plan in accordance with the Plan Solicitation Order. The Plan does not modify, amend or
22 alter the Pension Obligation Bonds or the obligations of Assured Guaranty to pay principal or
23 redemption price of, or interest on Pension Obligation Bonds as and when such amounts become
24 due under Pension Obligation Bonds Indenture, which payments shall be made by Assured
25 Guaranty in accordance with, and subject to, the terms of the Pension Obligation Bonds Insurance
26 Policy.

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1 **2. Treatment.**

2 The treatment of the Class 6 Claims will be as set forth in the Assured Guaranty
3 Settlement, which should be consulted for the precise terms of the treatment. The Plan does not
4 modify, amend, or alter the Pension Obligation Bonds or the obligations of Assured Guaranty to
5 pay principal or redemption price of, or interest on Pension Obligation Bonds as and when such
6 amounts become due under Pension Obligation Bonds Indenture, which payments shall be made
7 by Assured Guaranty in accordance with, and subject to, the terms of the Pension Obligation
8 Bonds Insurance Policy.

9 **H. Class 7 – Claims of DBW.**

10 **1. Impairment and Voting.**

11 Class 7 is Impaired by this Plan since the treatment of this Class will affect the
12 legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holder of
13 the Claims in this Class is entitled to vote to accept or reject this Plan in accordance with the Plan
14 Solicitation Order.

15 **2. Treatment.**

16 The treatment of the Class 7 Claims will be as set forth in the DBW Settlement
17 Agreement. The General Fund will have no obligation to pay debt service on this obligation, or
18 to reimburse operating expenses to DBW should DBW take over operations of the Marina
19 Project. DBW will retain its pledge of rents and leases generated from the Marina Project.
20 However, the pledge of gross revenues will be converted to a pledge of revenues net of all
21 reasonable and direct operating expense of the Marina Project, calculated on a fiscal year basis
22 ending June 30 of each year pursuant to section 928(b). Upon no less than 120 days notice to the
23 City, DBW may take possession of the facilities comprising the Marina Project, and if DBW
24 elects to continue operations of the Marina Project, DBW will be responsible for payment of all
25 operating expenses of the Marina Project. If DBW should elect to continue operations, DBW
26 shall provide adequate security of the premises. The General Fund shall have no liability, directly
27 or indirectly, for the Claims of DBW, and the City may decide at any time to cease subsidizing
28 the operating deficits of the operation of the Marina Project. DBW has stated to the City an

1 interest in exercising its remedy of taking possession of the Marina Project. The real property
2 that is the subject of the Marina Project shall be that real property described in Exhibit A to this
3 Plan, and should DBW exercise its remedy of taking possession of the Marina Project, DBW shall
4 succeed to possession and control only over the real property set forth in Exhibit A.

5 **I. Class 8 – SCC 16 Claims.**

6 **1. Impairment and Voting.**

7 Class 8 is not Impaired by this Plan since the treatment of this Class will not affect
8 the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the
9 holders of the Claims in this Class are not entitled to vote to accept or reject this Plan in
10 accordance with the Plan Solicitation Order.

11 **2. Treatment.**

12 To the extent SCC 16 has any offset rights arising under the Construction
13 Agreement, SCC 16 shall apply any such offsets against amounts owing under the SCC 16
14 Promissory Note. On the Effective Date, pursuant to the Plan, without the need to file any further
15 motions, the SCC 16 Lease shall be assumed, and any and all rights and obligations thereunder
16 shall be assigned to the Parking Authority. On the Effective Date, any and all rights of the City
17 under the SCC 16 Settlement, the Construction Agreement shall be assumed and assigned by the
18 City to the Parking Authority.

19 **J. Class 9 – Thunder Claims.**

20 **1. Impairment and Voting.**

21 Class 9 is Impaired by this Plan since the treatment of this Class will affect the
22 legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of
23 the Claims in this Class are entitled to vote to accept or reject this Plan in accordance with the
24 Plan Solicitation Order.

25 **2. Treatment.**

26 The treatment of the Class 9 Claims will be as set forth in the Thunder Settlement,
27 which should be consulted for the precise terms of the treatment.

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K. Class 10 – Claims of Holders of Restricted Revenue Bond and Note Payable Obligations.

1. Impairment and Voting.

Class 10 is not Impaired by this Plan since the treatment of this Class will not affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of the Claims in this Class are not entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

2. Treatment.

Class 10 consists of Claims of the holders of Restricted Revenue Bond and Note Payable Obligations, which are secured by special and restricted sources of revenues.

Restricted Revenue Bond and Notes Payable Obligations. The City’s Restricted Revenue Bond and Notes Payable Obligations are secured by a pledge of and lien on revenues of various of the City’s systems and enterprises, which are restricted revenues pursuant to the California Constitution, and are “special revenues” as defined in section 902(2). These revenues are not a part of or available to the General Fund, and the General Fund is not obligated to make any payment on the Restricted Revenue Bond and Note Payable Obligations. The City may transfer amounts from the restricted revenues to the General Fund only to pay costs which are incurred by the General Fund to provide the facility or enterprise-related services and which are allocated to the enterprises on a reasonable basis in accordance with the City’s accounting and allocation policies and pursuant to the provisions of the relevant documents related to the Restricted Revenue Bonds and Notes Payable Obligations. Such transfers are treated by the facility or enterprise as operation and maintenance expenses. The City will continue to apply restricted revenues to pay the Restricted Revenue Bond and Notes Payable Obligations as required by the terms of such obligations.

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L. Class 11 – Claims of Holders of Special Assessment and Special Tax Obligations.

1. Impairment and Voting.

Class 11 is not Impaired by this Plan since the treatment of this Class will not affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of the Claims in this Class are not entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

2. Treatment.

Class 11 consists of Claims of the holders of Special Assessment and Special Tax Obligations, which are secured by special and restricted sources of revenues consisting of specific levies on real property within certain financing districts created by the City.

Special Assessment and Special Tax Obligations. The Special Assessment and Special Tax Obligations are secured by certain special assessments and special taxes levied on specific real property within the respective districts for which these obligations were issued. These special assessment and special tax revenues are legally restricted to the payment of debt service on the Special Assessment and Special Tax Obligations under California statutes and the California Constitution, are “special revenues” as defined in section 902(2), and cannot be used for any other purpose or be transferred to the General Fund. The General Fund is not obligated to pay debt service on the Special Assessment and Special Tax Obligations. The City will continue to apply revenues from the applicable special assessments and special taxes to pay the Special Assessment and Special Tax Obligations as required by the terms of such obligations.

M. Class 12 – General Unsecured Claims.

1. Impairment and Voting.

Class 12 is Impaired by this Plan since the treatment of this Class will affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of the Claims in this Class are entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

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1 **2. Treatment.**

2 The Claims in this Class include without limitation: (i) the Retiree Health Benefit
3 Claims; (ii) the Golf Course/Park Unsecured Claim; (iii) the Leave Buyout Claims; (iv) the Claim
4 filed by Michael A. Cobb; and (v) Other Postpetition Claims.

5 Pursuant to the Retirees Settlement, on the Effective Date, the City will pay the
6 Retiree Health Benefit Claimants an aggregate amount of \$5,100,000 in full satisfaction of the
7 Allowed Retiree Health Benefit Claims, and no other retiree health benefits will be provided by
8 the City. If required by state or federal law, the City will withhold from the aggregate \$5,100,000
9 payment any taxes or other deductions to be withheld from the individual payment to each Retiree
10 Health Benefit Claimant. The individual recipient is responsible for any tax liability for this
11 payment, and the City will not provide any advice to any recipient as to the taxable impact of this
12 payment.

13 All other General Unsecured Claims shall receive cash on the Effective Date in the
14 amount equal to a percentage of the Allowed amount of such Claims, which percentage equals the
15 Unsecured Claim Payout Percentage, or such other amount as is determined by the Bankruptcy
16 Court before confirmation of this Plan to constitute a pro-rata payment on such other General
17 Unsecured Claims; *provided, however*, that the dollar amount to be paid on account of General
18 Unsecured Claims other than the Retiree Health Benefit Claims on the Effective Date shall not
19 exceed \$500,000. If the amounts to be paid exceed \$500,000, then such excess amounts shall be
20 made in two equal annual installments on the first and second anniversary of the Effective Date,
21 together with simple interest accruing from and after the Effective Date at 5% per annum. Such
22 excess amounts may be prepaid at the option of the City without penalty.

23 **N. Class 13 – Convenience Class Claims.**

24 **1. Impairment and Voting.**

25 Class 13 is not Impaired by this Plan since the treatment of this Class will not
26 affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the
27 holders of the Claims in this Class are not entitled to vote to accept or reject this Plan in
28 accordance with the Plan Solicitation Order.

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2. Treatment.

Holders of Convenience Class Claims will receive cash on the Effective Date in the amount of their Allowed Convenience Class Claim, but not to exceed \$100.

O. Class 14 – Claims of Certain Tort Claimants.

1. Impairment and Voting.

Class 14 is Impaired by this Plan since the treatment of this Class will affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of the Claims in this Class are entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

2. Treatment.

The SIR Claim Portion of each Allowed General Liability Claim will be paid on the Effective Date from the Risk Management Internal Service Fund, and will receive the same percentage payment on the dollar of Allowed Claim as will the holders of Allowed Class 12 Claims. The Insured Portion of each Allowed General Liability Claim is not Impaired, and shall be paid by the applicable excess risk-sharing pool.

P. Class 15 – Claims of CalPERS Pension Plan Participants Regarding City’s Obligations to Fund Employee Pension Plan Contributions to CalPERS under the CalPERS Pension Plan.

1. Impairment and Voting.

Class 15 is not Impaired by this Plan because the treatment of this Class will not affect the legal, equitable, or contractual rights of the holder of such Claims, and, accordingly, the holder of the Claims in this Class is not entitled to vote to accept or reject this Plan.

2. Treatment.

The City will continue to honor its obligations under the CalPERS Pension Plan, and CalPERS and the CalPERS Pension Plan Participants retain all of their rights and remedies under applicable nonbankruptcy law. Thus, CalPERS and the CalPERS Pension Plan Participants will be entitled to the same rights and benefits to which they are currently entitled under the CalPERS Pension Plan. CalPERS, pursuant to the CalPERS Pension Plan, will

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1 continue to provide pension benefits for participants in the manner indicated under the provisions
2 of the CalPERS Pension Plan and applicable nonbankruptcy law.

3 **Q. Class 16 – Claims of Equipment Lessors.**

4 **1. Impairment and Voting.**

5 Class 16 is not Impaired by this Plan because the treatment of this Class will not
6 affect the legal, equitable, or contractual rights of the holder of such Claims, and, accordingly, the
7 holders of the Claims in this Class is not entitled to vote to accept or reject this Plan.

8 **2. Treatment.**

9 Any equipment leases not specifically rejected by the Rejection Motion will be
10 assumed under this Plan. The City believes that it is current on all such equipment leases and
11 therefore no cure payments are required.

12 **R. Class 17 – Workers Compensation Claims.**

13 **1. Impairment and Voting.**

14 Class 17 is not Impaired by this Plan since the treatment of this Class will not
15 affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the
16 holders of the Claims in this Class are not entitled to vote to accept or reject this Plan in
17 accordance with the Plan Solicitation Order.

18 **2. Treatment.**

19 The City must pay Allowed SIR Claim Portions related to Workers Compensation
20 Claims in full. If not, the City will lose its State workers compensation insurance for those claims
21 in excess of the SIR Claim Portions, exposing the City’s current and former workers to grave risk.
22 The City will pay the SIR Claim Portions related to Worker Compensation Claims from the
23 Workers Compensation Internal Service Fund.

24 **S. Class 18 – SPOA Claims.**

25 **1. Impairment and Voting.**

26 Class 18 is Impaired by this Plan since the treatment of this Class will affect the
27 legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of

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1 the Claims in this Class are entitled to vote to accept or reject this Plan in accordance with the
2 Plan Solicitation Order.

3 **2. Treatment.**

4 The City will honor the SPOA Claims held by SPOA members on the terms and
5 conditions set forth in the SPOA MOU.

6 **T. Class 19 – Price Claims.**

7 **1. Impairment and Voting.**

8 Class 19 is Impaired by this Plan since the treatment of this Class will affect the
9 legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of
10 the Claims in this Class are entitled to vote to accept or reject this Plan in accordance with the
11 Plan Solicitation Order.

12 **2. Treatment.**

13 The treatment of the Class 19 Claims will be as set forth in the Price Settlement,
14 which should be consulted for the precise terms of the treatment.

15 **U. Class 20 – Golf Course/Park Secured Claim.**

16 **1. Impairment and Voting.**

17 The treatment of the Golf Course/Park Secured Claim set forth below is the result
18 of the entry by the Bankruptcy Court of the Partial Judgment. Class 20 is Impaired by this Plan
19 since the treatment of this Class will affect the legal, equitable, or contractual rights of the holder
20 of the Claim, and, accordingly, the holder of the Claim in this Class is entitled to vote to accept or
21 reject this Plan in accordance with the Plan Solicitation Order.

22 **2. Treatment.**

23 a. The City will pay to the 2009 Golf Course/Park Bond Trustee the
24 full amount of the Allowed Golf Course/Park Secured Claim (i.e., \$4,052,000) in cash on the
25 Effective Date, in full and complete satisfaction of the Allowed Golf Course/Park Secured Claim.

26 b. Such payment will be in complete satisfaction of the Allowed Golf
27 Course/Park Secured Claim, and all liens and security interests in any properties of the City and
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1 the Financing Authority that secure it will be fully satisfied and released by the holder of the
2 Allowed Golf Course/Park Secured Claim upon payment.

3 c. For the avoidance of doubt, and in furtherance of the Partial
4 Judgment, the Golf Course/Park Lease Out and the Golf Course/Park Lease Back are terminated
5 as of the Effective Date.

6 **V. ACCEPTANCE OR REJECTION; CRAMDOWN**

7 **A. Voting of Claims.**

8 Each holder of an Allowed Claim (and, as applicable as specified herein, Ambac,
9 NPMG, and Assured Guaranty) classified into Classes 1A, 1B, 3, 4, 5, 6, 7, 9, 12, 14, 18, 19, and
10 20 shall be entitled to vote each such Claim to accept or reject this Plan. The holder of the
11 Class 20 Claim is deemed not to have accepted the Plan.

12 With respect to any Class of Impaired Claims that fails to accept this Plan, the
13 City, as proponent of this Plan, will request that the Bankruptcy Court nonetheless confirm this
14 Plan pursuant to the so-called “cramdown” powers set forth in section 1129(b).

15 **VI. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

16 **A. Assumption of Executory Contracts and Unexpired Leases.**

17 Without the need to file any further motions, in addition to the assumption of
18 equipment leases in Class 16, the City elects to assume and will assume as of the Effective Date
19 all executory contracts and unexpired leases to which it is a party (and will assign certain of those
20 executory contracts as set forth in the Plan) except: (i) for those unexpired leases and executory
21 contracts specified in subsection C. below; and (ii) as otherwise provided in this Plan. Further, as
22 set forth in Section IV.E.2 dealing with the treatment of the Class 4 Claims, and in addition to the
23 assignment described and effected therein, to the extent the City determines it is necessary or
24 desirable to do so, the City reserves the right to file before or after the Effective Date a motion in
25 which it will seek authority to assign to the Parking Authority certain executory contracts and
26 unexpired leases executed in connection with the Parking Structure Lease Out that are assumed
27 under the Plan.

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1 **B. Cure Payments.**

2 The Bankruptcy Court shall resolve all disputes regarding: (i) the amount of any
3 cure payment to be made in connection with the assumption of any contract or lease; (ii) the
4 ability of the City to provide “adequate assurance of future performance” within the meaning of
5 section 365 under the contract or lease to be assumed; and (iii) any other matter pertaining to such
6 assumption and assignment. Any party to an executory contract or unexpired lease that is to be
7 assumed by the City that asserts that any payment or other performance is due as a condition to
8 the proposed assumption shall file with the Bankruptcy Court and serve upon the City a written
9 statement and accompanying declaration in support thereof, specifying the basis for its Claim
10 within 90 days of the Effective Date. The failure to timely file and serve such a statement in
11 accordance shall be deemed to be a waiver of any and all objections to the proposed assumption
12 and any claim for cure amounts of the agreement at issue.

13 **C. Rejection of Executory Contracts and Unexpired Leases.**

14 The Golf Course/Park Lease Out and the Golf Course/Park Lease Back (to the
15 extent that such leases, which were recharacterized by the Partial Judgment, remain in effect
16 notwithstanding the treatment in Section IV.U.2.c) and the Office Building Standby Agreement
17 are rejected under this Plan, without the need to file any motions.

18 In addition, no later than 120 days after the Effective Date, the City will file a
19 Rejection Motion, in which it will seek authority to reject certain executory contracts and
20 unexpired leases, which may include those listed below. The City is currently unaware of any
21 other executory contracts and unexpired leases that may be included in the Rejection Motion, but
22 reserves the right to add others.

- 23 • Lease, dated as of December 27, 1974, between the City, as lessor, and
- 24 Stephens Marine, Inc., a California corporation, as lessee, as amended;
- 25 • Lease, dated as of June 21, 1988, between the City, as lessor, and Stockton
- 26 Sailing Club, a California corporation, as lessee, as amended by the First
- 27 Amendment to Lease, dated as of August 22, 1994;

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- Agreement for Purchase and Sale of Real Property, dated as of August 17, 2004, by and between the City and the County of San Joaquin; and
- Ports License Agreement (only if the City and the Ports have been unable to reach an agreement on the Ports Settlement Documents prior to 120 days after the filing of the Notice of the Effective Date).

D. Claims Arising From Rejection.

Proofs of claim arising from the rejection of executory contracts or unexpired leases must be filed with the Bankruptcy Court and served on the City no later than 28 days after the date on which notice of entry of the order approving the Rejection Motion is served on the parties to the executory contracts and expired leases subject to the Rejection Motion. Any Claim for which a proof of claim is not filed and served within such time will be forever barred and shall not be enforceable against the City or its assets, properties, or interests in property. Unless otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein shall be classified into Class 12 (General Unsecured Claims) and treated accordingly.

VII. IMPLEMENTATION AND MEANS FOR IMPLEMENTATION OF THIS PLAN

Following the Effective Date, the City will continue to operate pursuant to the City Charter, the California Constitution, and other applicable laws.

Pursuant to the Rejection Motion, the City will reject certain (i) unexpired leases and (ii) executory contracts, including, without limitation, the Ports License Agreement, if the City and the Ports have been unable to reach an agreement on the Ports Settlement Documents prior to 120 days after the Effective Date.

On the Effective Date, pursuant to the Plan, without the need to file any further motions, the City will assume, among other leases, (i) the SEB Lease Out and the SEB Lease Back; and (ii) the Arena Lease Out and the Arena Lease Back, as modified by the NPMG Arena Settlement. Further, pursuant to the NPMG Parking Settlement, the City will assign the Parking Structure Lease Out and the Parking Structure Lease Back to the Parking Authority of the City of Stockton, and the Parking Authority of the City of Stockton will assume all of the City's obligations under the Parking Structure Lease Out and the Parking Structure Lease Back. On the

1 Effective Date, pursuant to the Plan, without the need to file any further motions, the SCC 16
2 Lease shall be assumed, and any and all rights and obligations thereunder shall be assigned to the
3 Parking Authority. On the Effective Date any and all rights of the City under the SCC 16
4 Settlement, the Construction Agreement shall be assumed and assigned by the City to the Parking
5 Authority.

6 **VIII. RESERVATION OF THE CITY'S RIGHTS OF ACTION**

7 All of the City's claims, causes of action, rights of recovery, rights of offset,
8 recoupment rights to refunds, and similar rights shall be retained by the City. The failure to list in
9 the Disclosure Statement any potential or existing Right of Action retained by the City is not
10 intended to and shall not limit the rights of the City to pursue any such action. Unless a Right of
11 Action is expressly waived, relinquished, released, compromised, or settled (in this Plan or
12 otherwise), the City expressly reserves all Rights of Action for later adjudication and, as a result,
13 no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue
14 preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to
15 such Rights of Action upon or after the confirmation or consummation of this Plan or the
16 Effective Date. In addition, the City expressly reserves the right to pursue or adopt against any
17 other Entity any claims alleged in any lawsuit in which the City is a defendant or an interested
18 party.

19 **IX. DISTRIBUTIONS**

20 **A. Distribution Agent.**

21 On or after the Effective Date, the City may retain one or more agents (including
22 Rust Omni) to perform or assist it in performing the distributions to be made pursuant to this
23 Plan, which agents may serve without bond. The City may provide reasonable compensation to
24 any such agent(s) without further notice or Bankruptcy Court approval.

25 **B. Delivery of Distributions.**

26 All distributions to any holder of an Allowed Claim shall be made at the address of
27 such holder as set forth in the books and records of the City or its agents, unless the City has been
28 notified by such holder in a writing that contains an address for such holder different from the

1 address reflected in the City's books and records. All such notifications of address changes and
2 all address confirmations should be mailed to: Rust Consulting/Omni Bankruptcy, 5955 DeSoto
3 Avenue, Suite 100, Woodland Hills, CA 91367. All distributions to the Indenture Trustee shall
4 be made in accordance with the relevant indenture, as applicable.

5 **C. Distributions of Unclaimed Property.**

6 If any distribution to any holder of a Claim is returned to the City or its agent as
7 undeliverable, no further distributions shall be made to such holder unless and until the City is
8 notified in writing of such holder's then-current address. Any unclaimed distributions shall be set
9 aside and held in a segregated account to be maintained by the City pursuant to the terms of this
10 Plan. No later than 63 days after the date of the first distributions under the Plan, the City shall
11 file with the Bankruptcy Court a list of unclaimed distributions, together with a schedule that
12 identifies the name and last-known addresses of the holders of any unclaimed distributions. The
13 City shall not be required to make any further attempt to locate the holders of any unclaimed
14 distributions. Any distribution under the Plan that remains unclaimed after 91 days following the
15 date of the first distributions under the Plan (including, without limitation, because the
16 distribution made to the last known address is returned as undeliverable), shall be deemed not to
17 have been made and, together with any accrued interest or dividends earned thereon, shall be
18 transferred to and vest in the City for any use as the City sees fit. The City shall not be obligated
19 to make any further distributions on account of the Claim with respect to which such distribution
20 was made, and such Claim shall be treated as a Disallowed Claim. Nothing contained herein
21 shall affect the discharge of the Claim with respect to which such distribution was made, and the
22 holder of such Claim shall be forever barred from enforcing such Claim against the City or its
23 assets, estate, properties, or interests in property.

24 **D. Distributions of Cash.**

25 Any payment of Cash to be made by the City or its agent pursuant to this Plan
26 shall be made by check drawn on a domestic bank or by wire transfer, at the sole option of the
27 City.

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1 **E. Timeliness of Payments.**

2 Any payments or distributions to be made pursuant to this Plan shall be deemed to
3 be timely made if made within 14 days after the dates specified in this Plan. Whenever any
4 distribution to be made under this Plan shall be due on a day that is not a Business Day, such
5 distribution instead shall be made, without interest on such distribution, on the immediately
6 succeeding Business Day, but shall be deemed to have been timely made on the date due.

7 **F. Compliance with Tax, Withholding, and Reporting Requirements.**

8 The City shall comply with all tax, withholding, reporting, and like requirements
9 imposed on it by any government unit, including without limitation, any payments related to
10 CalPERS's required pension obligations, and all distributions pursuant to this Plan shall be
11 subject to such withholding and reporting requirements. In connection with each distribution
12 with respect to which the filing of an information return (such as Internal Revenue Service Forms
13 W-2, 1099, or 1042) or withholding is required, the City shall file such information return with
14 the Internal Revenue Service and provide any required statements in connection therewith to the
15 recipients of such distribution, or effect any such withholding and deposit all moneys so withheld
16 to the extent required by law. With respect to any entity from whom a tax identification number,
17 certified tax identification number, or other tax information which is required by law to avoid
18 withholding has not been received by the City, the City at its sole option may withhold the
19 amount required and distribute the balance to such entity or decline to make such distribution
20 until the information is received.

21 **G. Time Bar to Cash Payments.**

22 Checks issued by the City on account of Allowed Claims shall be null and void if
23 not negotiated within 91 days from and after the date of issuance thereof. Requests for reissuance
24 of any check shall be made directly to the City by the holder of the Allowed Claim with respect to
25 which such check originally was issued. Any claim in respect of such a voided check must be
26 made on or before the second anniversary of the Effective Date. After such date, all Claims in
27 respect of voided checks will be discharged and forever barred and the City will retain all moneys
28 related thereto.

1 **H. No De Minimis Distributions.**

2 Notwithstanding any other provision of this Plan, no Cash payment of less than
3 \$10 will be made by the City on account of any Allowed Claim.

4 **I. No Distributions on Account of Disputed Claims.**

5 Notwithstanding anything to the contrary in this Plan, no distributions shall be
6 made on account of any part of any Disputed Claim until such Claim becomes Allowed (and then
7 only to the extent so Allowed). Distributions made after the Effective Date in respect of Claims
8 that were not Allowed as of the Effective Date (but which later became Allowed) shall be deemed
9 to have been made as of the Effective Date.

10 **J. No Postpetition Accrual.**

11 Unless otherwise specifically provided in this Plan or Allowed by order of the
12 Bankruptcy Court, the City will not be required to pay to any holder of a Claim any interest,
13 penalty, or late charge accruing with respect to such claim on or after the Petition Date. This
14 provision does not apply to holders of the 2003 Fire/Police/Library Certificates, the 2004 Arena
15 Bonds, the 2004 Parking Bonds, the 2006 SEB Bonds, the 2007 Office Building Bonds, and the
16 2009 Golf Course/Park Bonds, which bonds are not themselves obligations of the City and
17 therefore are not Claims. Therefore, the holders of such bonds and certificates will retain all of
18 their rights to postpetition interest, penalties, and late charges. This provision also does not apply
19 to Assured Guaranty, as the deemed holder of the Pension Obligation Bonds Claims, which shall
20 receive interest on any payments required of the City by the Assured Guaranty Settlement
21 Documents on account of such Pension Obligation Bonds Claims, which payments are delayed by
22 a failure to satisfy or waive the conditions to the Effective Date. Any such delayed payments
23 shall accrue interest at the rate specified in the Assured Guaranty Settlement Documents.

24 **K. CalPERS Pension Plan.**

25 Except as set forth in Section IX(F), this Section IX shall not apply to the
26 CalPERS Pension Plan.

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1 **X. DISPUTED CLAIMS; OBJECTIONS TO CLAIMS; PROSECUTION OF**
2 **OBJECTIONS TO DISPUTED CLAIMS**

3 **A. Claims Objection Deadline; Prosecution of Objections.**

4 The City will have the right to object to the allowance of Claims filed with the
5 Bankruptcy Court with respect to which liability or allowance is disputed in whole or in part.
6 Unless otherwise ordered by the Bankruptcy Court, the City must file and serve any such
7 objections to Claims by not later than 182 days after the Effective Date (or, in the case of Claims
8 lawfully filed after the Effective Date, by not later than 182 days after the date of filing of such
9 Claims).

10 **B. Payments and Distributions with Respect to Disputed Claims.**

11 After the Effective Date has occurred, at such time as a Disputed Claim becomes
12 an Allowed Claim, in whole or in part, the City or its agent will distribute to the holder thereof the
13 distributions, if any, to which such holder is then entitled under this Plan. Such distributions, if
14 any, will be made as soon as practicable after the date that the order or judgment of the
15 Bankruptcy Court allowing such Disputed Claim becomes a Final Order (or such other date as the
16 Claim becomes an Allowed Claim), but in no event more than 63 days thereafter. Unless
17 otherwise specifically provided in this Plan or Allowed by order of the Bankruptcy Court, no
18 interest will be paid on Disputed Claims that later become Allowed Claims.

19 **XI. EFFECT OF CONFIRMATION**

20 **A. Discharge of the City.**

21 Pursuant to section 944, upon the Effective Date, the City will be discharged from
22 all Debts of the City and Claims against the City other than (i) any Debt specifically and
23 expressly excepted from discharge by this Plan or the Confirmation Order, or (ii) any Debt owed
24 to an entity that, before the Confirmation Date, had neither notice nor actual knowledge of the
25 Chapter 9 Case. The rights afforded in the Plan and the treatment of all holders of Claims,
26 whether such Claims are Impaired or Unimpaired under the Plan, will be in exchange for and in
27 complete satisfaction, discharge, and release of all Claims of any nature whatsoever arising on or
28 before the Effective Date, known or unknown, including any interest accrued or expenses

1 incurred thereon from and after the Petition Date, whether against the City or any of its
2 properties, assets, or interests in property. Except as otherwise provided herein, upon the
3 Effective Date, all Pre-Confirmation Date Claims will be and shall be deemed to be satisfied,
4 discharged, and released in full, be they Impaired or Unimpaired under this Plan. For the
5 avoidance of doubt, as provided in Class 15 herein, nothing in the Plan discharges, releases, or
6 impairs obligations of the City under the CalPERS Pension Plan, and CalPERS and the CalPERS
7 Pension Plan Participants retain all of their rights and remedies under applicable nonbankruptcy
8 law with respect to the CalPERS Pension Plan.

9 Notwithstanding any other provision of this Plan or the Confirmation Order, the
10 City’s obligations pursuant to the Contracts For Loan Guarantee shall remain extant and
11 enforceable and not subject to discharge pursuant to section 944; *provided, however*, that the City
12 retains all defenses to the enforceability of any such obligations under applicable nonbankruptcy
13 law.

14 **B. Injunction.**

15 Except as otherwise expressly provided in this Plan, all entities who have held,
16 hold, or may hold Pre-Confirmation Date Claims shall be permanently enjoined from and after
17 the Confirmation Date from: (i) commencing or continuing in any manner any action or other
18 proceeding of any kind with respect to any such Pre-Confirmation Date Claim against the City or
19 its property; (ii) enforcing, attaching, collecting, or recovering by any manner or means any
20 judgment, award, decree, or order against the City or its property with respect to such Pre-
21 Confirmation Date Claims; (iii) creating, perfecting, or enforcing any lien or encumbrance of any
22 kind against the City or its property; and (iv) asserting any right of setoff, subrogation, or
23 recoupment of any kind against any obligation due to the City with respect to any such Pre-
24 Confirmation Date Claim, except as otherwise permitted by section 553. For the avoidance of
25 doubt, nothing in the Plan enjoins CalPERS or any CalPERS Pension Plan Participant with
26 respect to the CalPERS Pension Plan.

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1 **C. Term of Existing Injunctions or Stays.**

2 Unless otherwise provided, all injunctions or stays provided for in the Chapter 9
3 Case pursuant to sections 105, 362, or 922, or otherwise, and in existence on the Confirmation
4 Date, will remain in full force and effect until the Effective Date.

5 **D. Exculpation.**

6 Except with respect to obligations specifically arising pursuant to or preserved in
7 this Plan, including but not limited to the Insurance Policies, no Exculpated Party shall have or
8 incur, and each Exculpated Party is hereby released and exculpated from, any claim, obligation,
9 cause of action or liability for any claim in connection with or arising prior to or on the Effective
10 Date for any act taken or omitted to be taken in connection with, or related to, (i) the
11 administration of the Chapter 9 Case, (ii) the negotiation, pursuit, confirmation, solicitation of
12 votes for, consummation or implementation of the Plan, (iii) the administration of the Plan or
13 property to be distributed under the Plan, (iv) the AB 506 process, (v) any document, release,
14 contract, or other instrument entered into in connection with, or relating to, the Plan or the
15 settlements referenced within the Plan or (vi) any other transaction contemplated by, or entered
16 into, in connection with the Plan; *provided, however*, that nothing in this Section XI(D) shall be
17 deemed to release or exculpate any Exculpated Party for its willful misconduct or gross
18 negligence. In all respects, each Exculpated Party shall be entitled to reasonably rely upon the
19 advice of counsel with respect to its duties and responsibilities pursuant to the Plan.

20 **E. Releases Among Releasing Parties and Released Parties.**

21 EFFECTIVE AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE
22 CONSIDERATION PROVIDED BY EACH OF THE RELEASED PARTIES, THE
23 ADEQUACY OF WHICH IS HEREBY CONFIRMED, TO THE FULLEST EXTENT
24 PERMISSIBLE UNDER APPLICABLE LAW, (i) THE CITY AND EACH OF ITS RELATED
25 PERSONS (COLLECTIVELY, THE "**CITY RELEASING PARTIES**") SHALL, AND SHALL
26 BE DEEMED TO, COMPLETELY, CONCLUSIVELY, ABSOLUTELY,
27 UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASE, WAIVE, VOID,
28 EXTINGUISH, AND DISCHARGE EACH AND ALL OF THE RELEASED PARTIES (AND

1 EACH SUCH RELEASED PARTY SO RELEASED SHALL BE DEEMED FOREVER
2 RELEASED, WAIVED AND DISCHARGED BY THE CITY RELEASING PARTIES) AND
3 THEIR RESPECTIVE PROPERTIES AND RELATED PERSONS; AND (ii) EACH OF NCFG,
4 ASSURED GUARANTY, AMBAC, THE INDENTURE TRUSTEE IN ALL ITS CAPACITIES
5 (EXCEPT IN ITS CAPACITY AS THE 2009 GOLF COURSE/PARK BOND TRUSTEE)
6 (COLLECTIVELY WITH THE CITY RELEASING PARTIES, THE “RELEASING
7 PARTIES”) SHALL, AND SHALL BE DEEMED TO, COMPLETELY, CONCLUSIVELY,
8 ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASE,
9 WAIVE, VOID, EXTINGUISH, AND DISCHARGE THE CITY (AND THE CITY SHALL BE
10 DEEMED FOREVER RELEASED, WAIVED AND DISCHARGED BY SUCH RELEASING
11 PARTIES), OF AND FROM ANY AND ALL OF THE FOLLOWING: CLAIMS, CAUSES OF
12 ACTION, LITIGATION CLAIMS, AVOIDANCE ACTIONS AND ANY OTHER DEBTS,
13 OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, REMEDIES, JUDGMENTS, AND
14 LIABILITIES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, THE AB 506
15 PROCESS AND THE ELIGIBILITY CONTEST), WHETHER KNOWN OR UNKNOWN,
16 FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, FIXED OR
17 CONTINGENT, MATURED OR UNMATURED, EXISTING AS OF THE EFFECTIVE DATE
18 OR THEREAFTER ARISING, IN LAW, AT EQUITY, WHETHER FOR TORT, CONTRACT,
19 OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION,
20 TRANSACTION, EVENT OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING
21 OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR
22 RELATED IN ANY WAY IN WHOLE OR IN PART TO THE CITY OR ITS ASSETS AND
23 PROPERTY, THE CHAPTER 9 CASE, THE DISCLOSURE STATEMENT, THIS PLAN OR
24 THE SOLICITATION OF VOTES ON THIS PLAN THAT SUCH RELEASING PARTY
25 WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY
26 OR COLLECTIVELY) OR THAT ANY HOLDER OF A CLAIM OR EQUITY INTEREST OR
27 OTHER ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT FOR OR ON
28 BEHALF OF SUCH RELEASING PARTY (WHETHER DIRECTLY OR DERIVATIVELY)

1 AGAINST ANY OF THE RELEASED PARTIES OR THE CITY, AS APPLICABLE;
 2 *PROVIDED, HOWEVER*, THAT THE FOREGOING PROVISIONS OF THIS RELEASE
 3 SHALL NOT OPERATE TO WAIVE OR RELEASE (i) ANY CAUSES OF ACTION, CLAIMS
 4 OR AGREEMENTS EXPRESSLY SET FORTH IN AND/OR PRESERVED BY THIS PLAN
 5 OR ANY PLAN SUPPLEMENT, INCLUDING BUT NOT LIMITED TO THE INSURANCE
 6 POLICIES; AND/OR (ii) THE RIGHTS OF SUCH RELEASING PARTY TO ENFORCE THIS
 7 PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, AND OTHER
 8 AGREEMENTS OR DOCUMENTS DELIVERED UNDER OR IN CONNECTION WITH
 9 THIS PLAN OR ASSUMED PURSUANT TO THIS PLAN OR ASSUMED PURSUANT TO
 10 FINAL ORDER OF THE BANKRUPTCY COURT. THE FOREGOING RELEASE SHALL
 11 BE EFFECTIVE AS OF THE EFFECTIVE DATE WITHOUT FURTHER NOTICE TO OR
 12 ORDER OF THE BANKRUPTCY COURT, ACT OR ACTION UNDER APPLICABLE LAW,
 13 REGULATION, ORDER, OR RULE OR THE VOTE, CONSENT, AUTHORIZATION OR
 14 APPROVAL OF ANY PERSON.

15 **F. Good Faith Compromise.**

16 Pursuant to Bankruptcy Rule 9019, to the extent applicable, and in consideration
 17 for the distributions and other benefits provided under this Plan, the provisions of this Plan,
 18 including the exculpation and release provisions contained in this Article XI, constitute a good
 19 faith compromise and settlement of all Claims, causes of action or controversies relating to the
 20 rights that a holder of a Claim may have with respect to any Claim against the City, any
 21 distribution to be made pursuant to the Plan on account of any such Claim and any and all Claims
 22 or causes of action of any party arising out of or relating to the AB 506 Process or the Eligibility
 23 Contest. The entry of the Confirmation Order constitutes the Bankruptcy Court’s approval, as of
 24 the Effective Date, of the compromise or settlement of all such Claims or controversies and the
 25 Bankruptcy Court’s finding that all such compromises or settlements are in the best interests of
 26 the City and the holders of Claims, and are fair, equitable, and reasonable.

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1 **XII. RETENTION OF AND CONSENT TO JURISDICTION**

2 Following the Effective Date, the Bankruptcy Court shall retain and have
3 exclusive jurisdiction over any matter (i) arising under the Bankruptcy Code and relating to the
4 City, (ii) arising in or related to the Chapter 9 Case or this Plan, and (iii) otherwise for the
5 following:

6 1. to resolve any matters related to the assumption, assumption and assignment, or
7 rejection of any executory contract or unexpired lease to which the City is a party or with respect
8 to which the City may be liable, and to hear, determine and, if necessary, liquidate any Claims
9 arising therefrom;

10 2. to enter such orders as may be necessary or appropriate to implement or
11 consummate the provisions of this Plan, and all other contracts, settlement agreements,
12 instruments, releases, exculpations, and other agreements or documents related to this Plan;

13 3. to determine any and all motions, adversary proceedings, applications, and
14 contested or litigated matters that may be pending on the Effective Date or that, pursuant to this
15 Plan, may be instituted by the City after the Effective Date or that are instituted by any holder of a
16 Claim before or after the Effective Date concerning any matter based upon, arising out of, or
17 relating to the Chapter 9 Case, whether or not such action initially is filed in the Bankruptcy
18 Court or any other court;

19 4. to ensure that distributions to holders of Allowed Claims are accomplished as
20 provided herein;

21 5. to hear and determine any objections to Claims or to proofs of Claim filed, both
22 before and after the Effective Date, including any objections to the classification of any Claim,
23 and to allow, disallow, determine, liquidate, classify, estimate, or establish the priority of or
24 secured or unsecured status of any Claim, in whole or in part;

25 6. to enter and implement such orders as may be appropriate in the event the
26 Confirmation Order is for any reason stayed, revoked, modified, reversed, or vacated;

27 7. to issue such orders in aid of execution of this Plan, to the extent authorized by
28 section 1142(b);

1 8. to consider any modifications of this Plan, to cure any defect or omission, or to
2 reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation
3 Order;

4 9. to the extent that the City elects to bring such matters before the Bankruptcy Court,
5 to hear and determine all applications for awards of compensation for services rendered and
6 reimbursement of expenses incurred prior to the Effective Date;

7 10. to hear and determine all disputes or controversies arising in connection with or
8 relating to this Plan or the Confirmation Order or the interpretation, implementation, or
9 enforcement of this Plan or the Confirmation Order or the extent of any Entity's obligations
10 incurred in connection with, released, enjoined, or exculpated under this Plan or the Confirmation
11 Order;

12 11. to issue injunctions, enter and implement other orders, or take such other actions as
13 may be necessary or appropriate to restrain interference by any entity with consummation or
14 enforcement of this Plan;

15 12. to determine any other matters that may arise in connection with or are related to
16 this Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release
17 or other agreement or document related to this Plan or the Disclosure Statement;

18 13. to hear any other matter for any purpose specified in the Confirmation Order that
19 is not inconsistent with the Bankruptcy Code;

20 14. to hear and determine all disputes or controversies arising in connection with or
21 relating to the terms or enforcement of any relevant agreements; and

22 15. to enter a final decree closing the Chapter 9 Case.

23 This Section XII shall not apply to any Claims, disputes, controversies, or other
24 matters arising under or in connection with the CalPERS Pension Plan.

25 **XIII. CONDITIONS PRECEDENT**

26 **A. Conditions Precedent to Confirmation.**

27 The conditions precedent to confirmation of the Plan are: (i) the entry of the
28 Confirmation Order in form and substance satisfactory to the City, and which is reasonably

1 satisfactory to Assured Guaranty, Ambac, NPFPG, and the Indenture Trustee; and (ii) the approval
2 of the State of California Department of Finance of the restructuring of the Arena Pledge
3 Agreement as described in the NPFPG Settlement.

4 **B. Conditions Precedent to Effective Date.**

5 The “effective date of the plan,” as used in section 1129, shall not occur, and this
6 Plan shall be of no force and effect, until the Effective Date. The occurrence of the Effective
7 Date is subject to the satisfaction (or waiver as set forth in Section XIII(C)) of the following
8 conditions precedent:

9 **1. Confirmation Order.** The Confirmation Order shall have been
10 entered, shall be in full force and effect, and shall be a Final Order (but the
11 requirement that the Confirmation Order be a Final Order may be waived by the City
12 at any time).

13 **2. Plan Documents.** All agreements and instruments
14 contemplated by, or to be entered into pursuant to, this Plan shall be in form and
15 substance acceptable to the City (and in the case of all agreements and instruments
16 between the City and Ambac, Assured Guaranty, NPFPG, and the Indenture Trustee,
17 acceptable to Ambac, Assured Guaranty, NPFPG, and the Indenture Trustee,
18 respectively); shall have been duly and validly executed and delivered (including, but
19 not limited to, any documents necessary to be executed on or prior to the Effective
20 Date so as to implement the Ambac Settlement, the Assured Guaranty Settlement, and
21 the NPFPG Settlement, respectively, and the satisfaction or waiver of the conditions
22 precedent to the Ambac Settlement, the Assured Guaranty Settlement, and the NPFPG
23 Settlement, respectively), or deemed executed by the parties thereto; and all conditions
24 to their effectiveness shall have been satisfied or waived.

25 **3. Authorizations, Consents, Etc.** The City shall have received
26 any and all authorizations, consents, regulatory approvals, rulings, no-action letters,
27 opinions, and documents that are necessary to implement the Plan and that are
28 required by law, regulation or order.

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4. **Timing.** The Effective Date shall occur on the first Business Day on which the conditions set forth in Section XIII(B)(1) and (B)(2) are satisfied or waived; *provided* that, unless otherwise ordered by the Bankruptcy Court, the Effective Date must occur by no later than 182 days after the Confirmation Date.

C. Waiver of Conditions to Effective Date.

The City may waive in whole or in part any condition to effectiveness of this Plan. If a condition to the occurrence of the Effective Date is the occurrence of the conditions to the effectiveness of the Ambac Settlement Agreement, the Assured Guaranty Settlement, or the NCFG Settlement, then such condition may not be waived without the prior written consent of Ambac, Assured Guaranty, or NCFG, as applicable. Any such waiver of a condition may be effected at any time, without notice or leave or order of the Bankruptcy Court and without any formal action, other than the filing of a notice of such waiver with the Bankruptcy Court.

D. Effect of Failure of Conditions.

In the event that the conditions to effectiveness of this Plan have not been timely satisfied or waived, and upon notification submitted by the City to the Bankruptcy Court, (i) the Confirmation Order shall be vacated, (ii) no distributions under this Plan shall be made, (iii) the City and all holders of Claims shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred, and (iv) all of the City's obligations with respect to the Claims shall remain unchanged and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the City or any other entity or to prejudice in any manner the rights, remedies, or claims of the City or any entity in any further proceedings involving the City.

E. No Admission of Liability.

The Plan constitutes a settlement and compromise between and among the City and various parties. The Plan shall not be deemed an admission or concession by any party with respect to any factual or legal contention, right, defense, or position taken by the City.

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1 **XIV. MISCELLANEOUS PROVISIONS**

2 **A. Dissolution of the Retirees Committee.**

3 On the Effective Date, the Retirees Committee shall be released and discharged of
4 and from all further authority, duties, responsibilities, and obligations relating to and arising from
5 and in connection with the Chapter 9 Case, and the Retirees Committee shall be deemed
6 dissolved and its appointment terminated.

7 **B. Severability.**

8 If any term or provision of this Plan is held by the Bankruptcy Court or any other
9 court having jurisdiction, including on appeal, if applicable, to be invalid, void, or unenforceable,
10 the Bankruptcy Court, in each such case at the election of and with the consent of the City, shall
11 have the power to alter and interpret such term or provision to make it valid or enforceable to the
12 maximum extent practicable, consistent with the original purpose of the term or provision held to
13 be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered
14 or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of
15 the terms and provisions of this Plan shall remain in full force and effect and shall in no way be
16 affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation
17 Order shall constitute a judicial determination and shall provide that each term and provision of
18 this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and
19 enforceable pursuant to its terms.

20 **C. Governing Law.**

21 Except to the extent that the Bankruptcy Code or other federal law is applicable, or
22 to the extent that an exhibit hereto or Plan Document provides otherwise, the rights, duties, and
23 obligations arising under this Plan shall be governed by, and construed and enforced in
24 accordance with, the laws of the State of California, without giving effect to principles of
25 conflicts of laws.

26 **D. Effectuating Documents and Further Transactions.**

27 Each of the officials and employees of the City is authorized to execute, deliver,
28 file, or record such contracts, instruments, releases, indentures, and other agreements or

1 documents and take such actions as may be necessary or appropriate to effectuate and further
2 evidence the terms and provisions of this Plan.

3 **E. Notice of Effective Date.**

4 On or before 14 days after occurrence of the Effective Date, the City or its agent
5 shall mail or cause to be mailed to all holders of Claims the Notice of the Effective Date, which
6 will inform such holders of: (a) entry of the Confirmation Order; (b) the occurrence of the
7 Effective Date; (c) the assumption and rejection of the City's executory contracts and unexpired
8 leases pursuant to this Plan, as well as the deadline for the filing of Claims arising from such
9 rejection; (d) the deadline established under this Plan for the filing of Administrative Claims; (e)
10 the procedures for changing an address of record pursuant to Section IX; and (f) such other
11 matters as the City deems to be appropriate.

12 DATED: August 8, 2014

CITY OF STOCKTON, CALIFORNIA

14 By: 
15 Kurt O. Wilson
16 City Manager

17 Submitted By:

18 ORRICK, HERRINGTON & SUTCLIFFE LLP

19 By: /s/ Marc A. Levinson
20 Marc A. Levinson
21 Jeffery D. Hermann
22 Norman C. Hile
Patrick B. Bocash
John A. Farmer

23 Attorneys for the City of Stockton

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**EXHIBIT A
TO
THE FIRST AMENDED PLAN FOR THE ADJUSTMENT OF DEBTS OF CITY OF
STOCKTON, CALIFORNIA AS MODIFIED (AUGUST 8, 2014)**

DESCRIPTION OF MARINA PROJECT REAL PROPERTY

All interests or rights in and to that certain real property situated in the County of San Joaquin, State of California, described by the assessor parcel numbers listed below:

APN: 137-010-02

APN: 137-010-03

APN: 137-010-08

APN: 137-010-06

APN: 137-260-30

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Exhibit B

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1 MARC A. LEVINSON (STATE BAR NO. 57613)
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2 NORMAN C. HILE (STATE BAR NO. 57299)
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3 PATRICK B. BOCASH (STATE BAR NO. 262763)
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400 Capitol Mall, Suite 3000
5 Sacramento, California 95814-4497
Telephone: +1-916-447-9200
6 Facsimile: +1-916-329-4900

7 Attorneys for Debtor
City of Stockton

9 UNITED STATES BANKRUPTCY COURT
10 EASTERN DISTRICT OF CALIFORNIA
11 SACRAMENTO DIVISION

13 In re:
14 CITY OF STOCKTON, CALIFORNIA,
15 Debtor.

Case No. 2012-32118

Chapter 9

**NOTICE OF ENTRY OF ORDER
CONFIRMING FIRST AMENDED
PLAN FOR THE ADJUSTMENT OF
DEBTS OF CITY OF STOCKTON,
CALIFORNIA, AS MODIFIED
(AUGUST 8, 2014)**

19
20 TO ALL CREDITORS, PARTIES IN INTEREST, PARTIES TO THE CITY'S
21 EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND THEIR ATTORNEYS OF
22 RECORD:

23 PLEASE TAKE NOTICE that on January __, 2015, the United States Bankruptcy Court
24 for the Eastern District of California entered the Order Confirming First Amended Plan For The
25 Adjustment Of Debts Of City Of Stockton, California, As Modified (August 8, 2014) (the
26 "Order" confirming the "Plan").

27 PLEASE TAKE FURTHER NOTICE that a CD containing a copy of (i) the Order,
28 including its exhibits (one of which is the Plan), and (ii) the City's Second Supplemental Plan

1 Supplement has been included with this Notice. Paper copies of the Order, its exhibits, and the
2 Second Supplemental Plan Supplement can be obtained at no cost by (i) visiting the City's
3 chapter 9 website (stocktonchapter9.com) and requesting a copy or (ii) mailing or faxing a request
4 to Rust Consulting/Omni Bankruptcy at the following address: Rust Consulting/Omni
5 Bankruptcy, 5955 DeSoto Avenue, Suite 100, Woodland Hills, CA 91367 (facsimile: 818-783-
6 2737).

7 PARTICULARLY FOR PARTIES TO THE CITY'S EXECUTORY CONTRACTS AND
8 UNEXPIRED LEASES, PLEASE TAKE FURTHER NOTICE that:

9 1. Pursuant to the Plan and the Order, the City has rejected the following contracts: (1)
10 Office Building Standby Agreement; (2) Lease, dated as of June 21, 1988, between the City, as
11 lessor, and Stockton Sailing Club, a California corporation, as lessee, as amended by the First
12 Amendment to Lease, dated as of August 22, 1994; (3) Lease, dated as of December 27, 1974,
13 between the City, as lessor, and Stephens Marine, Inc., a California corporation, as lessee, as
14 amended; and (4) Agreement for Purchase and Sale of Real Property, dated as of August 17,
15 2004, by and between the City and the County of San Joaquin.

16 2. Subject to Paragraph 3 of this Notice, the City is assuming all other executory contracts
17 and unexpired leases. The City believes that it is not in default under any such executory
18 contracts and unexpired leases. Pursuant to the Plan, any party to an assumed executory contract
19 or unexpired lease that asserts that any payment or other performance is due as a condition to the
20 assumption shall, no later than 90 days after the Effective Date of the Plan¹, file with the
21 Bankruptcy Court and serve upon counsel for the City a written statement and accompanying
22 declaration in support thereof, specifying the basis for its claim. The failure to timely file and
23 serve such a statement and declaration shall be deemed to be a waiver of any and all objections to
24 the assumption and to any claim for cure amounts of the agreement at issue.

25 3. Notwithstanding Paragraph 2 of this Notice, the agreements relating to Wells Fargo
26 Bank, National Public Finance Guaranty, Assured Guaranty Corp. and Ambac Assurance
27

28 ¹ The Plan defines the Effective Date as the first business day after the conditions specified in Section XIII of the Plan have been satisfied.

1 Corporation have been assumed pursuant to the Plan and have been modified as set forth in the
2 Plan and in the documents contained in the Second Supplemental Plan Supplement.

3 For additional information, creditors and parties in interest, including those who are
4 parties to the City’s executory contracts or unexpired leases, may contact counsel for the City,
5 Patrick Bocash, Orrick, Herrington & Sutcliffe LLP, at pbocash@orrick.com or by mail at the
6 address in the upper left hand corner of the first page of this Notice of Entry.

7
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9 Dated: January __, 2015

MARC A. LEVINSON
NORMAN C. HILE
PATRICK B. BOCASH
Orrick, Herrington & Sutcliffe LLP

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By: _____

MARC A. LEVINSON
Attorneys for Debtor
City of Stockton

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EXHIBIT H

58

FILED
FEB 27 2015
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:)
CITY OF STOCKTON, CALIFORNIA,) Case No. 12-32118-C-9
Debtor)

AMENDED¹
OPINION REGARDING CONFIRMATION AND STATUS OF CALPERS²

Before: Christopher M. Klein
Chief Bankruptcy Judge

Marc A. Levinson, Orrick, Herrington & Sutcliffe LLP, Sacramento, California, for Debtor.

Michael J. Gearin, K&L Gates LLP, Los Angeles, California, for California Public Employees' Retirement System.

James O. Johnston, Jones Day, Los Angeles, California, for Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal Fund.

¹This amended opinion results from the City's motion under Fed. R. Civ. P. 52 (incorporated by Fed. R. Bankr. P. 7052) to amend findings. The changes, which are not material to the decision to confirm the plan, place a finer point on the pencil regarding Franklin's recovery. Franklin's unsecured claim is \$30,480,190.00. The judicially-determined secured claim is \$4,052,000.00, which is being paid in full. And, Franklin receives \$2,071,435.15 from a "Reserve Fund" funded by bond proceeds and held by the indenture trustee under section 5.05 of the bond indenture. While the parties differ about how to characterize the Reserve Fund, they agree that Franklin ends up with \$6,123,435.15 (secured claim + Reserve Fund), plus nearly 1% on its \$30,480,190.00 unsecured claim. Hence, Franklin's total recovery from all sources is about 17.5% (not 12%).

²This opinion supplements this court's oral rulings rendered in open court on October 1 and 30, 2014.

1 KLEIN, Bankruptcy Judge:

2 Resolving the single objection to confirmation of the
3 chapter 9 plan of adjustment of debts by the City of Stockton
4 necessitates answering the threshold question whether, as a
5 matter of law, pension contracts entered into by the City,
6 including the pension administration contract, may be rejected
7 pursuant to Bankruptcy Code § 365. 11 U.S.C. § 365.

8 After answering that question of law in the affirmative, we
9 come to the main question: whether, as matters of law and fact,
10 the City's chapter 9 plan should be confirmed even though the
11 plan does not directly impair the City-sponsored pensions.

12 Franklin Templeton Investments ("Franklin") objects to
13 confirmation, contending that the City's failure to modify
14 pensions means that the plan (1) is not proposed in good faith
15 and (2) that Franklin's unsecured claim should be separately
16 classified so that Franklin can be deemed to be a separate, non-
17 accepting class as to which the plan may be confirmed only if,
18 with respect to Franklin, it is fair and equitable and does not
19 unfairly discriminate against it. 11 U.S.C. §§ 1122(a),
20 1129(a)(3) & 1129(b).

21 If Franklin's unsecured claim is not separately classified,
22 then the fair-and-equitable-and-not-unfairly-discriminatory
23 analysis of § 1129(b) would not apply to this plan because
24 Franklin's claim is dwarfed and out-voted in the single class of
25 unsecured claims. The value given up by retirees who accepted
26 the plan is on the order of ten times the value lost by Franklin.

27 The California Public Employees' Retirement System
28 ("CalPERS"), which by contract administers the City-sponsored

1 pensions, says that California law insulates its contract from
2 rejection and that the pensions themselves may not be adjusted.
3 Although, as will be seen, it is doubtful that CalPERS even has
4 standing to defend the City pensions from modification, CalPERS
5 has bullied its way about in this case with an iron fist
6 insisting that it and the municipal pensions it services are
7 inviolable. The bully may have an iron fist, but it also turns
8 out to have a glass jaw.

9 This decision determines that the obstacles interposed by
10 CalPERS are not effective in bankruptcy. First, the California
11 statute forbidding rejection of a contract with CalPERS in a
12 chapter 9 case is constitutionally infirm in the face of the
13 exclusive power of Congress to enact uniform laws on the subject
14 of bankruptcy under Article I, Section 8, of the U.S.
15 Constitution – the essence of which laws is the impairment of
16 contracts – and of the Supremacy Clause. U.S. CONST. art. I, § 8
17 & art. VI. Second, the \$1.6 billion lien granted to CalPERS by
18 state statute in the event of termination of a pension
19 administration contract is vulnerable to avoidance in bankruptcy
20 as a statutory lien. 11 U.S.C. § 545. Third, the Contracts
21 Clauses of the Federal and State Constitutions, as implemented by
22 California's judge-made "Vested Rights Doctrine," do not preclude
23 contract rejection or modification in bankruptcy. Finally,
24 considerations of sovereignty and sovereign immunity do not
25 dictate a different result.

26 Hence, as a matter of law, the City's pension administration
27 contract with CalPERS, as well as the City-sponsored pensions
28 themselves, may be adjusted as part of a chapter 9 plan.

1 But, when one turns to the question of plan confirmation,
2 pensions must be viewed as but one aspect of total compensation.

3 The City's plan achieves significant net reductions in total
4 compensation (including lower pensions for new employees and
5 elimination of up to \$550 million in unfunded health benefits)
6 that employees accepted in exchange for preserving existing
7 pensions.

8 All capital markets creditors, except Franklin, accepted a
9 package of restructured bond debt in impairments reflecting their
10 relative rights in collateral. Franklin did not fare as well
11 because its bargain was backed by poor collateral.

12 Viewing compensation as a whole package, and comparing those
13 net reductions with the net reductions for capital markets
14 creditors, the plan is, in law and fact, appropriate to confirm.

15
16 Jurisdiction

17 Jurisdiction is founded on 28 U.S.C. § 1334. The question
18 whether to confirm a chapter 9 plan of adjustment is a core
19 proceeding that a bankruptcy judge may hear and determine. 28
20 U.S.C. § 157(b)(2)(L).

21 The premise of Franklin's objection to confirmation is its
22 theory that the City's pensions administered by CalPERS may be
23 modified and that the plan should not be confirmed unless the
24 pensions are modified. The City's plan does not propose to
25 adjust the CalPERS pension.³ The ferocity of CalPERS' resistance

26 _____
27 ³The City's Plan of Adjustment provides with respect to its
28 local pension that it labels as "CalPERS Pension Plan":

1 to Franklin's position (and of other financial creditors who have
2 since compromised) throughout this case belies its assertion that
3 the question is moot.⁴ Since the answer to the question is
4 essential to resolve Franklin's objection, it is not moot.

5
6 I

7 Structure of City's Pensions

8 In addition to acting as the pension system for
9 employees of the State of California, CalPERS contracts with
10 California municipalities in competition with other pension
11 administrators to administer local pensions for municipalities.
12 Public Employees' Retirement Law, Cal. Gov't Code § 20460

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14
15
16 P. Class 15 - Claims of CalPERS Pension Plan Participants
17 Regarding City's Obligations to Fund Employee Pension Plan
Contributions to CalPERS under the CalPERS Pension Plan.

18 2. Treatment.

19 The City will continue to honor its obligations under the
20 CalPERS Pension Plan, and CalPERS and the CalPERS Pension
21 Plan Participants retain all of their rights and remedies
22 under applicable nonbankruptcy law. Thus, CalPERS and the
23 CalPERS Pension Plan Participants will be entitled to the
24 same rights and benefits to which they are currently
entitled under the CalPERS Pension Plan. CalPERS, pursuant
to the CalPERS Pension Plan, will continue to provide
pension benefits for participants in the manner indicated
under the provisions of the CalPERS Pension Plan and
applicable nonbankruptcy law.

25 First Amended Plan For the Adjustment of Debts of City of
26 Stockton, California, As Amended (August 8, 2014), at 43-44.

27
28 ⁴Cf. WM. SHAKESPEARE, HAMLET, act III, sc. ii ("The lady doth
protest too much, methinks.").

1 ("PERL").⁵ The Stockton-sponsored pension plan is such a plan.

2
3 A

4 The City's pension obligation is established by contract
5 between the City and its employees. The terms of the City-
6 sponsored pension conform to a template that CalPERS is willing
7 to administer by contract. The City could also select a
8 different administrator in the public or private sector or
9 establish its own administration system.

10 If one were to diagram the relevant relationships, one would
11 draw a triangle in which the corners are the City, CalPERS, and
12 City employees. There are three distinct relationships. First,
13 the City agrees with its employees to provide pensions. Second,
14 the City agrees with CalPERS that CalPERS will administer City
15 pensions by collecting payments from the City and investing those
16 funds so as to produce enough to pay the pensions, and then
17 paying on behalf of the City. Third, CalPERS promises City
18 employees that it will pay the pensions.

19 From the viewpoint of the law of contract, there are three
20 connected bilateral relationships. Two legs of the triangle are

21 _____
22 ⁵PERL § 20460 provides:

23 § 20460. Public Agency Participation

24 Any public agency may participate in and make all or
25 part of its employees members of this [CalPERS] system by
26 contract entered into between its governing body and the
27 [CalPERS] board pursuant to this part. However, a public
28 agency may not enter into the contract within three years of
termination of a previous contract for participation.

28 Cal. Gov't Code § 20460.

1 contracts: between City and employees and between City and
2 CalPERS. The third leg is a third-party beneficiary relationship
3 according to which pensioners are intended third-party
4 beneficiaries of the City's contract with CalPERS. See CalPERS'
5 Brief in Support of Stockton's Petition, Dkt. No. 711, at 5.

6
7 B

8 CalPERS does not bear financial risk from reductions by the
9 City in its funding payments because state law requires CalPERS
10 to pass along the reductions to pensioners in the form of reduced
11 pensions. Rather, it is the pensioners, present and future,
12 themselves who are at risk of loss.⁶

13 As noted, a municipality is free to establish its own self-
14 funded, self-administered pension system, commonly funded by
15 individual or group life insurance or annuity contracts.⁷ It may

16
17 ⁶It is not necessary to explore CalPERS' motivations for its
18 extraordinary legal effort in this case in defense of pensions
19 for which it bears little financial risk. For whatever reason,
20 CalPERS chose to intrude itself into this case and repeatedly (at
21 virtually every hearing) insist that it is impossible as a matter
of law to reject or modify its pension administration contract
and the related pensions. This opinion answers the question that
CalPERS kept thrusting upon the court.

22 ⁷Such a funding mechanism is recognized in PERL § 20462:

23 § 20462 Existing Pension Trust or Retirement Plan Continued

24 The governing body of a public agency that has
25 established a pension trust or retirement plan funded by
26 individual or group life insurance or annuity contracts may,
27 notwithstanding any provision of this [PERL] to the
28 contrary, enter into a contract to participate in this
[CalPERS] system, and continue the trust or plan with
respect to service rendered prior to the contract date.

1 join a county pension system or another municipality's pension
2 system. It may contract with a private entity to administer its
3 pensions. Nor does there appear to be an impediment to agreeing
4 in collective bargaining to pay into a union-administered pension
5 plan. Or, it may contract with CalPERS.

6 A municipality is entitled to shift from one pension
7 administrator to another. If it shifts away from CalPERS, it
8 cannot enter into a new CalPERS contract for three years. Cal.
9 Gov't Code § 20460.

10 The key legal point to draw from this structure is that the
11 authority of CalPERS to interject itself into the potential
12 modification of a municipal pension in California under the
13 Federal Bankruptcy Code is doubtful. As CalPERS does not
14 guaranty payment of municipal pensions and has a connection with
15 a municipality only if that municipality elects to contract with
16 CalPERS to service its pensions, its standing to object to a
17 municipal pension modification through chapter 9 appears to be
18 lacking.

19 Nevertheless, the reality is that CalPERS has captured a
20 substantial portion of the local pension servicing market in
21 California. As of June 2014,⁸ it services pensions sponsored by
22 1580 local public agencies and 1513 school districts under a
23 variety of benefit formulas with optional contract provisions.
24 Only 32 percent (552,888 employees) of its members are state
25 employees, another 31 percent (531,697 employees) are local

26
27 Cal. Gov't Code § 20462 (1st sentence).

28 ⁸CalPERS at a Glance, www.calpers.ca.gov.

1 government employees, and 37 percent (631,388 employees) are
2 school employees. But there are also large public pension plans
3 in California that CalPERS does not administer.⁹

4
5 II

6 CalPERS

7 A municipality that contracts with CalPERS is not dealing
8 with an ordinary contractual counterparty.

9
10 A

11 First, CalPERS enjoys some natural competitive advantages
12 over other local pension servicers. CalPERS pension rights are
13 "portable" in that they can be carried by an employee from one
14 CalPERS employer to another CalPERS employer. By limiting
15 pension provisions to standard features approved by CalPERS, it
16 can keep track of benefits as they accumulate, charging each
17 employer its appropriate contribution. That "portability"
18 facilitates nimble public-sector career management in California.

19
20 B

21 Second, the PERL, in the course of nearly 800 pages in the
22 California Government Code, mandates myriad non-negotiable

23
24 ⁹The U.S. Census reported that nationally the average state-
25 administered plan held \$10 billion in assets. The following
26 local plans not administered by CalPERS hold more assets than the
27 average state plan: Los Angeles County Employees (\$31 billion);
28 Los Angeles Fire and Police (\$12 billion); and San Francisco City
and County Employees (\$12 billion). ALICIA H. MUNNELL, STATE AND
LOCAL PENSIONS: WHAT NOW? 22 (Brookings Inst. 2012) ("MUNNELL")
(citing 2010 U.S. Census data).

1 provisions and practices that might otherwise be negotiable in
2 contracts with a private pension provider. A municipality that
3 wishes to contract with CalPERS must choose from a template of
4 benefit formulae and optional contract provisions acceptable to
5 CalPERS. Hence, there is less of the freedom of contract than
6 one might experience in dealing with a private pension provider.

7 Second, the CalPERS board is not typical of a private board.
8 The thirteen-member CalPERS board is selected on a political
9 basis: seven public officials or appointees thereof and six
10 persons elected by the employees participating in CalPERS.¹⁰

11
12 ¹⁰PERL § 20090 provides:

13 Composition and Continuation of Board

14 The Board of Administration of the Public Employees'
15 Retirement System is continued in existence. It consists
16 of:

17 (a) One member of the State Personnel Board, selected
18 by and serving at the pleasure of the State Personnel Board.

19 (b) The Director of Human Resources.

20 (c) The Controller.

21 (d) The State Treasurer.

22 (e) An official of a life insurer and an elected
23 official of a contracting agency, appointed by the Governor.

24 (f) One person representing the public, appointed
25 jointly by the Speaker of the Assembly and the Senate
26 Committee on Rules.

27 (g) Six members elected under the supervision of the
28 board as follows:

(1) Two members elected by the members of this system
[employees] from the membership thereof.

(2) A member elected by the active state members of
this system from the state membership thereof.

(3) A member elected by and from the active local
members of this system who are employees of a school
district or a county superintendent of schools.

(4) A member elected by and from the active local
members of this system other than those who are employees of
a school district or a county superintendent of schools.

1 The California Constitution restricts the ability of the
2 state legislature to reform the composition of the CalPERS board.
3 CAL. CONST. art. XVI, § 17(f).¹¹

4 The California Constitution also provides that the board of
5 a public pension or retirement system, be it CalPERS, a county
6 system, or a city system, has "plenary authority and fiduciary
7 responsibility for investment of moneys and administration of the
8 system" and proceeds to spell out various duties and to limit the
9 ability of the state legislature to affect investment policies.
10 CAL. CONST. art. XVI.¹²

11
12 (5) A member elected by and from the retired members of
13 this system.

14 Cal. Gov't Code § 20090.

15 ¹¹The CalPERS board (and of any other public pension board
16 with elected employee members) enjoys this protection from the
vagaries of legislative process:

17 (f) With regard to the retirement board of a public
18 pension or retirement system which includes in its
19 composition elected employee members, the number, terms, and
20 method of selection or removal of members of the retirement
21 board which were required by law or otherwise in effect on
22 July 1, 1991, shall not be changed, amended, or modified by
23 the Legislature unless the change, amendment, or
modification enacted by the Legislature is ratified by a
majority vote of the electors of the jurisdiction in which
the participants of the system are or were, prior to
retirement, employed.

24 CAL. CONST. art. XVI, § 17(f).

25 ¹²Relevant portions of Article XVI provide:

26 (a) The retirement board of a public pension or
27 retirement system shall have the sole and exclusive
28 fiduciary responsibility over the assets of the public
pension or retirement system. The retirement board shall

1 Once a municipality agrees to a CalPERS contract, the
2 CalPERS board gets into a position to block changes in the
3 municipality's pensions by saying a local change would adversely
4 affect the system.¹³ In view of the composition of the board, of
5 which elected current and retired employees comprise six
6 thirteenths (46%), one can easily imagine board opposition being
7 interposed to an amendment of a municipality's plan or
8 administrative provisions that its employees do not like.¹⁴

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10 also have sole and exclusive responsibility to administer
11 the system in a manner that will assure prompt delivery of
12 benefits and related services to the participants and their
13 beneficiaries. The assets of a public pension or retirement
14 system are trust funds and shall be held for the exclusive
15 purposes of providing benefits to participants in the
16 pension or retirement system and their beneficiaries and
17 defraying reasonable expenses of administering the system.

18 CAL. CONST. art. XVI, § 17(a).

19 (g) The Legislature may by statute continue to prohibit
20 certain investments by a retirement board where it is in the
21 public interest to do so, and provided that the prohibition
22 satisfies the standards of fiduciary care and loyalty
23 required of a retirement board pursuant to this section.

24 CAL. CONST. art. XVI, § 17(g).

25 ¹³PERL § 20461 provides:

26 Refusal of Board to Contract

27 The board may refuse to contract with, or to agree to
28 an amendment proposed by, any public agency for any benefit
provisions that are not specifically authorized by this
[PERL] and that the board determines would adversely affect
the administration of this system.

Cal. Gov't Code § 20461.

¹⁴Scholarly literature is inconclusive regarding the effect
of employees and retirees on pension boards on the likelihood

1 In effect, municipal employees are permitted indirectly to
2 participate in negotiations between a municipality and CalPERS.
3 The process of voluntarily adjusting a CalPERS pension requires
4 that the municipality, first, negotiate with its employees
5 regarding the pension and, second, run the gauntlet of also
6 satisfying the CalPERS board.

7 The PERL also operates to involve CalPERS in negotiations
8 between a municipality and its employees.¹⁵ In short, while
9

10 that Annual Required Contributions ("ARCs") will be made in full
11 (i.e., full annual funding). One view says employees and
12 retirees on boards may favor benefit expansion or higher cost-of-
13 living increases over funding. Another view says they have a
14 greater stake in the plan's success and will favor full regular
15 funding. Studies show mixed results. MUNNELL at 83-84, 101-02.

16 ¹⁵For example, PERL § 20463 provides:

17 (a) The governing body of a public agency, or an
18 employee organization, recognized under Chapter 10
19 (commencing with Section 3500) of Division 4 of Title 1,
20 that represents employees of the public agency, that desires
21 to consider the participation of the agency in this
22 [CalPERS] system or a specific change in the agency's
23 contract with this system, may ask the board for a quotation
24 of the approximate contribution to this system that would be
25 required of the agency for that participation or change.

26 (b) If the governing body of a public agency requests a
27 quotation, it shall provide each employee organization
28 representing employees that will be affected by the proposed
participation or change with a copy of the quotation within
five days of receipt of the quotation.

(c) If an employee organization requests a quotation,
the employee organization shall provide the public agency
that will be affected by the proposed participation or
change with a copy of the quotation within five days of
receipt of the quotation.

(d) The board may establish limits on the number of
quotations it will provide for each contract and the fees,
if any, to be assessed for each quotation provided. The
limits and fees established by the board shall be applied in
the same manner to a public agency or an employee

1 privity of contract may be between the municipality and CalPERS,
2 the reality of the operation of the CalPERS process has employees
3 participating in those discussions armed with the muscle of
4 employee representatives constituting 46 percent of the board.

5 Although the PERL contemplates that a municipality is free
6 to shift to a different pension administrator, the ferocity of
7 CalPERS' behavior in this case indicates that it has a policy of,
8 by overt and passive aggression, resisting attempts to make such
9 shifts. Some PERL provisions fuel that policy.

10
11 C

12 In PERL § 20487, the California legislature singled out
13 CalPERS, and no other municipal pension administrator, for
14 special protection in chapter 9 bankruptcy cases by forbidding
15 the rejection of any contract between a municipality and CalPERS
16 under 11 U.S.C. § 365. Further, PERL § 20487 purports to give
17 CalPERS a veto over any assumption or assignment of a contract
18 between it and a municipality in chapter 9.¹⁶ The efficacy of

19
20 _____
21 organization.

22 Cal. Gov't Code § 20463.

23 ¹⁶PERL § 20487 provides:

24 Notwithstanding any other provision of law, no
25 contracting agency or public agency that becomes the subject
26 of a case under the bankruptcy provisions of Chapter 9
27 (commencing with Section 901) of Title 11 of the United
28 States Code shall reject any contract or agreement between
that agency and the board pursuant to Section 365 of Title
11 of the United States Code or any similar provision of
law; nor shall the agency, without the prior written consent
of the board, assume or assign any contract or agreement

1 that section in a chapter 9 case will be addressed later in this
2 opinion.

3
4 D

5 The PERL nominally permits a municipality to shift from
6 CalPERS to another pension provider or system. Thus, CalPERS is
7 authorized to negotiate terms of a switch.¹⁷

8 Nevertheless, PERL discourages such a shift by imposing a
9 termination charge that is backed by a confiscatory statutory
10 lien. PERL § 20574.¹⁸

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12 _____
13 between that agency and the board pursuant to Section 365 of
14 Title 11 of the United States Code or any similar provision
15 of law.

16 Cal. Gov't Code § 20487.

17 ¹⁷PERL § 20573 provides:

18 Notwithstanding any other provision of law, the board
19 may negotiate with the governing board of the terminating
20 agency, or the governing board of any agency or agencies
21 which may be assuming any portion of the liabilities of the
22 terminating agency as to the effective date of termination
23 and the terms and conditions of the termination and of the
24 payment of unfunded liabilities.

25 For purposes of payment of unfunded actuarial
26 liabilities this section shall also apply to inactive
27 contracting agencies, or an inactive member category as
28 determined by the board.

Cal. Gov't Code § 20573.

¹⁸PERL § 20574 provides:

A terminated agency shall be liable to the [CalPERS]
system for any deficit in funding for earned benefits, as
determined pursuant to Section 20577, interest at the
actuarial rate from the date of termination to the date the
agency pays the system, and for reasonable and necessary

2 The PERL § 20574 termination lien operates as follows. Upon
3 termination, either voluntary or involuntary, CalPERS holds
4 accumulated contributions for the benefit of employees and
5 beneficiaries with respect to previously-credited service.¹⁹ All
6 plan assets are merged into a single termination pool that
7 CalPERS invests on a conservative basis, according to the
8 testimony of its Assistant Chief Actuary, so as to yield about

9 _____
10 costs of collection, including attorney's fees. The board
11 shall have a lien on the assets of a terminated agency,
12 subject only to a prior lien for wages, in an amount equal
13 to the actuarially determined deficit in funding for earned
14 benefits of the employee members to the agency, interest,
and collection costs. The assets shall also be available to
pay actual costs, including attorney's fees, necessarily
expended for collection of the lien.

15 Cal. Gov't Code § 20574.

16 ¹⁹PERL § 20576(a) provides:

17 (a) Upon termination of a contract, the board shall
18 hold for the benefit of the members of this [CalPERS] system
19 who are credited with service rendered as employees of the
20 contracting agency and for the benefit of beneficiaries of
21 the system who are entitled to receive benefits on account
22 of that service, the portion of the accumulated
23 contributions then held by this system and credited to or as
24 having been made by the agency that does not exceed the
25 difference between (1) an amount actuarially equivalent,
26 including contingencies for mortality fluctuations, as
27 determined by the actuary and approved by the board, the
amount this system is obligated to pay after the effective
date of termination to or on account of persons who are or
have been employed by, and on account of service rendered by
them to, the agency, and (2) the contributions, with
credited interest thereon, then held by this system as
having been made by those persons as employees of the
agency.

28 Cal. Gov't Code § 20576(a).

1 half of the rate of return realized on CalPERS' general
2 investment pools.²⁰

3 The amount of underfunding in the termination pool is
4 determined under PERL § 20577.²¹ The terminating municipality

5 _____
6 ²⁰PERL § 20576(b) provides:

7 (b) All plan assets and liabilities of agencies whose
8 contracts have been terminated shall be merged into a single
9 pooled account to provide exclusively for the payment of
10 benefits to members of these plans. Recoveries from
11 terminated agencies for any deficit in funding for earned
12 benefits for members of plans of terminated agencies, and
13 interest thereon, shall also be deposited to the credit of
14 the terminated agency pool.

15 Cal. Gov't Code § 20576(b).

16 ²¹PERL § 20577 provides:

17 If, at the date of termination, the sum of the
18 accumulated contributions credited to, or held as having
19 been made by, the contracting agency and the accumulated
20 contributions credited to or held as having been made by
21 persons who are or have been employed by the agency, as
22 employees of the agency, is less than the actuarial
23 equivalent specified in clause (1) of subdivision (a) of
24 section 20576, the agency shall contribute to this [CalPERS]
25 system under terms fixed by the board, an amount equal to
26 the difference between the amount specified in clause (1) of
27 subdivision (a) of Section 20576 and the accumulated
28 contributions. The amount of the difference shall be
subject to interest at the actuarial rate from the date of
contract termination to the date the agency pays this
system. If the agency fails to pay to the board the amount
of the difference, all benefits under the contract, payable
after the board declares the agency in default therefor,
shall be reduced by the percentage that the sum is less than
the amount in clause (1) of subdivision (a) of Section 20576
as of the date the board declared the default. If the sum
of the accumulated contributions is greater than the amount
in clause (1) of subdivision (a) of Section 20576, an amount
equal to the excess shall be paid by this system to the
contracting agency, including interest at the actuarial rate
from the date of contract termination to the date this

1 must fully fund the termination pool. As of the time of
2 termination, CalPERS calculates the difference between
3 accumulated contributions and the total amount that would be
4 required to be in the termination pool to enable CalPERS to pay
5 all then-vested benefits of the terminating municipality in full.
6 The municipality is then billed for the difference.

7 The PERL § 20574 lien enforces the debt determined under
8 PERL § 20577. It applies to all assets of the terminated
9 contracting municipality. The provision that it is "subject only
10 to a prior lien for wages" means that it jumps into line ahead of
11 all other liens.

12 The effect of shifting accumulated contributions from the
13 CalPERS general investment pool to the termination pool means
14 that a municipality that has theretofore been deemed fully funded
15 instantaneously becomes underfunded by virtue of lower projected
16 investment returns in the termination pool. Since the
17 termination pool is invested on a more conservative basis than
18 the normal pool, it produces lower yields.

19
20 2

21 Deep down, the reason for the sudden underfunding is simple.
22 Pension funding status is a measure of the extent to which assets

23
24 _____
25 system makes payment. The market value used shall be the
26 value calculated in the most recent annual closing.

27 The right of an employee of a contracting agency, or
28 his or her beneficiary, to a benefit under this system,
whether before or after retirement or death, is subject to
the reduction.

Cal. Gov't Code § 20577.

1 on hand, plus future required contributions, plus future
2 investment earnings are sufficient to pay benefits. A formula is
3 set forth in the margin.²²

4 Elementary mathematics teach that if a pension is fully
5 funded (i.e. a funding ratio of 1.0, colloquially stated in
6 percent), then the sum of the assets on hand, plus the present
7 value of future required contributions, plus the present value of
8 future investment earnings, exactly equal the present value of
9 all benefits to be paid.

10 If everything is equal where the expected rate of return on
11 future earnings is 8 percent, then a reduction in the investment
12 earning assumption from 8 percent to 3 percent causes the funding
13 ratio to drop below 100 percent. Hence, fully funded status
14 could only be restored by increasing future required
15 contributions.

16 That is what happens with the CalPERS termination lien when
17 a terminating entity's assets are shifted to the termination
18 pool. What may have been fully funded at the regular CalPERS 7.5
19 percent expected rate of return becomes underfunded at the
20 termination pool 2.98 percent expected rate of return. The
21 problem is exacerbated because the future required contributions
22 are instantly accelerated to one lump sum.

23 That lump sum liability resulting from a potential shift to
24 the termination pool, in the case of the City, is \$1.6 billion.

27 ²²Funding Ratio = (assets on hand + future required
28 contributions + future investment earnings) ÷ Benefits.

1
2 The actual analysis of the problem of the sudden descent
3 into underfunded status that has just been stated in
4 oversimplified form is much more complex because of the need to
5 place actual numbers on future benefits, future contributions,
6 and future investment returns and discount them to present value.
7 Actuaries specialize in the mind-numbing computations needed to
8 produce the basic numbers, while the appropriate discount rate
9 strays into the realm of economists.

10 There is a debate currently raging among economists over the
11 appropriate discount rate to apply in assessing the fiscal health
12 of public pensions.

13 All agree that standard financial theory requires that
14 future streams of payments be discounted to present value at a
15 rate that reflects their risk. The problem becomes determining
16 the correct discount rate.

17 In the mathematics of finance, decreasing the discount rate
18 applied to future benefits increases the present discounted value
19 of those benefits. When the value of benefits is compared with
20 the value of plan assets, the lower the discount rate, the higher
21 the contributions required to keep a plan in fully-funded status.

22 In the private sector, the discount-rate issue has been
23 largely settled by the Financial Accounting Standards Board
24 ("FASB") guidance that certain corporate bond rates be used as
25 discount rates to determine funded status of private pensions.

26 MUNNELL, at 59.

27 In the public sector, the practice is to base discount rates
28 on expected investment returns instead of rates on government

1 bonds. Therein lies controversy.

2 The Governmental Accounting Standards Board ("GASB"), which
3 sets standards of accounting and reporting for state and local
4 governments, recommends that the funded status of public pensions
5 be determined using a discount rate of 8 percent, based on
6 expected investment return on assets. MUNNELL, at 59.²³

7 Many economists disagree with GASB and argue that it is more
8 appropriate to measure funding status of public pensions using a
9 lower riskless rate of return analogous to the corporate bond
10 rates used to discount private sector pensions, such as a long-
11 term Treasury rate, instead of a higher expected long-run
12 investment return on assets. They reason that there is an
13 implicit public guarantee that assures public pensions will be
14 paid regardless of investment returns, which makes it hazardous
15 to determine funded status and make benefit promises based on
16 anticipated investment returns that may not come to pass. In lay
17 terms, they say using expected investment returns amounts to
18 counting the chickens before they hatch.

19 By way of example, when estimating the overall national
20 unfunded liability of state and local government pension plans,
21 the difference between using an assumed riskless rate of 5
22 percent and using the 8 percent GASB-recommended rate affected
23 the total aggregate unfunded liability by more than 300 percent.

24
25 ²³GASB was established in 1984 by agreement of the Financial
26 Accounting Foundation and ten national associations of state and
27 local government officials. GASB recommendations are advisory
28 but have achieved credibility among auditors and bond raters that
leads most state and local governments to comply with them; some
jurisdictions make compliance with them mandatory. MUNNELL, at
16-18. CalPERS generally complies with GASB standards.

1 MUNNELL, at 61-62.²⁴

2 CalPERS is actually more conservative than GASB in that,
3 instead of the 8 percent GASB rate, it has recently adjusted its
4 rate to 7.5 percent, based on 2.75 percent for inflation and 4.75
5 percent for investment return (net of expenses).

6 The expected return rate in the CalPERS termination pool is
7 the yield on 30-year Treasury obligations - 2.98 percent as of
8 June 30, 2012. The lower termination expected return rate leads
9 to the claim that termination of the CalPERS pension
10 administration contract for Stockton would yield a liability of
11 \$1.6 billion, even though the underfunded status for the City's
12 two pension plans is about \$211 million on an actuarial basis.

13
14 4

15 In this respect, PERL § 20577 functions as a "golden
16 handcuff" and a "poison pill." If the fully-funded municipality
17 does not terminate its CalPERS contract, then its accumulated
18 pension contributions will remain in the normal investment pool,
19 and it will remain fully funded (except to the extent that

20
21

²⁴The explanation is:

22 decreasing the discount rate increases the present
23 discounted value of future benefits and thereby the unfunded
24 liability. ... In 2010, the aggregate liability was \$3.4
25 trillion, calculated under a discount rate of 8 percent. A
26 riskless discount rate of 5 percent raises that liability to
27 \$5.2 trillion. Since actuarial assets in 2010 were \$2.6
trillion, the unfunded liability rises from \$0.8 trillion
(\$3.4 trillion less \$2.6 trillion) to \$2.6 trillion (\$5.2
trillion less \$2.6 trillion).

28 MUNNELL, at 61-62.

1 CalPERS itself may, on a global basis, be underfunded). But if
2 it terminates, then it faces a sobering termination bill that
3 renders it underfunded.

4 Here, CalPERS says the City is deemed to be in full
5 compliance with its funding obligations (underfunding of between
6 \$212 million and \$412 million due to changed CalPERS assumptions
7 about the future is being recouped by additional annual
8 payments).²⁵ But, on a termination basis, CalPERS says the City
9 would owe it about \$1.6 billion.²⁶

10 The enforcement mechanism for the termination liability is a
11 lien created by PERL § 20574. The lien arises on account of the
12 PERL § 20577 termination liability and is senior to all liens

14 ²⁵Stockton's funding status is stated in the October 2013
15 CalPERS Annual Valuation Reports as of June 30, 2012.

16 Stockton Safety Plan:

17 Entry Age Normal Accrued Liability - \$830,040,184.
18 Actuarial Value of Assets - \$685,764,728
19 Market Value of Assets - \$571,679,198
20 Unfunded Liability (Actuarial Value) - \$144,275,456
21 Unfunded Liability (Market Value) - \$258,360,986
22 Funded Ratio (Actuarial Value) - 82.6%
23 Funded Ratio (Market Value) - 68.9%

24 Stockton Miscellaneous Plan:

25 Entry Age Normal Accrued Liability - \$584,540,872
26 Actuarial Value of Assets - \$517,244,333
27 Market Value of Assets - \$431,187,495
28 Unfunded Liability (Actuarial Value) - \$67,296,539
Unfunded Liability (Market Value) - \$153,353,377
Funded Ratio (Actuarial Value) - 88.5%
Funded Ratio (Market Value) - 73.8%

Lamoureux Decl., Ex. 6 & 7.

²⁶\$1,618,321,517 to be precise: Safety Plan -
\$1,042,390,452; Miscellaneous Plan - \$575,931,065. Lamoureux
Decl., Ex. 6 & 7.

1 risk by insisting that the obligations it has undertaken be fully
2 funded. Any responsible public or private sector pension
3 administrator would insist on no less.

4 Correlatively, one would expect a well-advised pension
5 administrator's contract to provide that a consequence of
6 underfunding would be pro rata reduction of pensions. CalPERS is
7 no exception.

8 CalPERS is not liable to pay underfunded pensions in full.
9 If the terminating municipality does not pay the termination
10 liability, then "all benefits under the contract, payable after
11 the board declares the agency in default therefor, shall be
12 reduced by the percentage" of the underfunding of the termination
13 pool. Cal. Gov't Code § 20577.

14
15 6

16 The rub is that CalPERS does not bear the financial risk of
17 loss from underfunding a municipal pension. Benefits to retirees
18 are automatically reduced if a terminating municipality does not
19 pay its CalPERS bill in full. Cal. Gov't Code § 20577.

20 The automatic reduction of benefits dictated by PERL § 20577
21 when a municipality does not pay its pension bill casts a
22 different light on the CalPERS termination lien because it means
23 that CalPERS bears no financial risk of underfunding of the
24 termination pool. Rather, the individual members and their
25 beneficiaries are the ones who bear the risk of inadequate
26 funding. In effect, CalPERS is merely a servicing agent that
27 does not guarantee payment.

28 If CalPERS is not liable for the consequences of municipal

1 pension underfunding, then it follows that it is not accurate to
2 say, as Franklin argues, that CalPERS is the largest creditor of
3 the City. That obligation, if it exists, is a debt owed to past
4 and present municipal employees.

5 Rather, CalPERS is a creditor in its own right only for the
6 fees that it is permitted to charge for administering the City's
7 pensions. The real creditors are the employees, retirees, and
8 their beneficiaries who will bear the burden of any reduction in
9 the City's pensions.

10 At this juncture, the triangle of bilateral contractual
11 relationships becomes important to the analysis. The consequence
12 of rejecting the CalPERS contract would be to terminate CalPERS
13 as the administrator of the City's pensions. But that would not
14 terminate the contractual relationships between the City and its
15 employees to provide pensions. Impairing the direct employer-
16 employee pension obligations would require impairing contracts to
17 which CalPERS is not party.

18 19 III

20 Chapter 9 and Federal-State Relationship

21 The structure of the federal-state relationship, as
22 previously explained, regarding restructuring of municipal debt
23 is dictated by the U.S. Constitution. Ass'n of Retired Employees
24 of the City of Stockton v. City of Stockton (In re City of
25 Stockton, CA), 478 B.R. 8, 14-16 (Bankr. E.D. Cal. 2012)
26 ("Stockton II").
27
28

1 A

2 Constitutional Background

3 Congress has the power, exclusive of the states, to
4 legislate uniform laws on the subject of bankruptcy. U.S. CONST.
5 art. I, § 8, cl. 4.

6 The essence of bankruptcy is impairing the obligation of
7 contract. United States v. Bekins, 304 U.S. 27, 54 (1938);
8 Ashton v. Cameron Cnty. Water Improvement Dist., 298 U.S. 513,
9 530 (1936); Sturges v. Crowninshield, 17 U.S. (4 Wheat.) 122, 191
10 (1819); Stockton II, 478 B.R. at 15.

11 The states are forbidden to enact any law impairing the
12 obligation of contract. U.S. CONST., art. I, § 10, cl.1.

13 The Supremacy Clause operates to cause federal bankruptcy
14 law to trump state laws, including state constitutional
15 provisions, that are inconsistent with the exercise by Congress
16 of its exclusive power to enact uniform bankruptcy laws. U.S.
17 CONST., art. VI, cl. 2; Int'l Bhd. of Elec. Workers, Local 2376
18 v. City of Vallejo (In re City of Vallejo), 432 B.R. 262, 268-70
19 (E.D. Cal. 2010), aff'g 403 B.R. 72, 76-77 (Bankr. E.D. Cal.
20 2009); Stockton II, 478 B.R. at 16.

21 B

22 History of Chapter 9

23 As explained in prior decisions in this case, municipal debt
24 adjustment under federal bankruptcy law dates back to the 1930s.

25 After the false start disapproved in Ashton, the Supreme
26 Court held the predecessor of chapter 9 to be constitutional on
27 the theory that a state sovereign can elect to enlist the
28

1 assistance of the federal sovereign, by way of its exclusive
2 federal bankruptcy power, to impair contracts that the state is,
3 by virtue of the Contracts Clause, powerless to impair. Bekins,
4 304 U.S. at 51; Ashton, 298 U.S. at 530; Stockton II, at 17-18.

5 Before 1976, adjustment of municipal debts was essentially
6 limited to bond financing. So-called "prepackaging" was
7 mandatory. No case could be commenced unless pre-filing
8 acceptances to proposed plan treatment had been obtained from a
9 stated majority of the affected bond creditors. Thus, the law
10 focused on dealing with the problems of unanimity commonly
11 required in bond indentures, including the so-called "holdout"
12 problem in which a minority withholds its consent in an effort to
13 drive a better bargain.

14 In 1976, former chapter IX was revised to open the door to
15 restructure all municipal debts. That revision was carried
16 forward into the 1978 Bankruptcy Code as chapter 9.

17
18 C

19 Balancing State and Federal Sovereignty

20 It is always necessary to pay attention to issues of
21 sovereignty within our federal system. There is a state
22 sovereign and a federal sovereign. The ability of the federal
23 sovereign to intrude in such matters as the control of
24 subdivisions of the state sovereign is constrained by the Tenth
25 Amendment. U.S. CONST. amend. X. Congress has structured chapter
26 9 to accommodate those concerns.

State as Gatekeeper

The first step in honoring the balance between federal and state sovereignty is the requirement that only the state may authorize a chapter 9 filing by any of its municipalities. 11 U.S.C. § 109(c)(2).

This makes the state the gatekeeper and entitles it to establish prerequisites to filing. In re City of Stockton, 475 B.R. 720, 727 (Bankr. E.D. Cal. 2012) ("Stockton I").

California exercises its gatekeeping function by requiring that, before filing a chapter 9 case a California municipality must either engage in a neutral evaluation process with a mediator for a specified period or declare a fiscal emergency under specified procedures. Cal. Gov't Code § 53760.

A municipality that has satisfied California's statutory prerequisites has the state's permission to proceed through the gate into a chapter 9 case.

Bankruptcy Code §§ 903 and 904

Once a chapter 9 case has been filed in the circumstances authorized by the state, the federal Bankruptcy Code controls all proceedings in the case. Stockton I, 475 B.R. at 727-28.

The primacy of the Bankruptcy Code does not, however, mean that state sovereignty can be disregarded.

Rather, the Bankruptcy Code contains limitations designed to assure that the federal court and the federal process does not unduly intrude upon the state's power to control the exercise of

1 "political or governmental powers" of a municipality. 11 U.S.C.
2 §§ 903 & 904.

3 Neither section purports to delineate which powers are
4 "political" or "governmental"? Correlatively, what powers are
5 not included within those concepts? Neither question appears to
6 have been closely examined in prior cases.

7 Since CalPERS argues that the California statute forbidding
8 the rejection of a contract with CalPERS under 11 U.S.C. § 365 in
9 a chapter 9 case is a legitimate exercise of the state's power to
10 control the "political" or "governmental" powers of the
11 municipality, those questions need to be answered here.

12
13 a

14 The first facet of honoring the sovereignty of a state
15 within chapter 9 is Bankruptcy Code § 903, which reserves certain
16 state powers. That section provides that chapter 9 does not
17 limit or impair the "power of a state" to control a municipality
18 "in the exercise of the political or governmental powers of such
19 municipality." 11 U.S.C. § 903.²⁸

20
21 ²⁸Bankruptcy Code § 903 provides:

22 This chapter does not limit or impair the power of a
23 State to control, by legislation or otherwise, a
24 municipality of or in such State in the exercise of the
25 political or governmental powers of such municipality,
26 including expenditures for such exercise, but -

27 (1) a State law prescribing a method of composition of
28 indebtedness of such municipality may not bind any creditor
that does not consent to such composition; and

(2) a judgment entered under such a law may not bind a
creditor that does not consent to such composition.

11 U.S.C. § 903.

b

The second facet is Bankruptcy Code § 904, which limits bankruptcy court authority over the municipality. The chapter 9 court may not, without the consent of the municipality (either directly or through a plan), interfere with any of the "political or governmental powers" of the municipality, may not interfere with any municipal property or revenues, and may not interfere with municipality's use or enjoyment of any income-producing property. 11 U.S.C. § 904.²⁹

3

Section 903 is the linchpin of CalPERS' argument that the California legislature, despite the Supremacy Clause of the U.S. Constitution, can protect CalPERS from provisions of the Federal Bankruptcy Code in a chapter 9 case that the state has authorized to be filed.

a

In defending the state statutes creating the CalPERS

²⁹Bankruptcy Code § 904 provides:

Notwithstanding any power of the court, unless the debtor consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with -

- (1) any of the political or governmental powers of the debtor;
- (2) any of the property or revenues of the debtor; or
- (3) the debtor's use or enjoyment of any income-producing property.

11 U.S.C. § 904.

1 termination lien and the special CalPERS immunity from contract
2 avoidance under Bankruptcy Code § 365, CalPERS contends that the
3 § 903 power of the state to "control" a municipality in the
4 exercise of municipal "political or governmental powers" means
5 that it can "control" decisions by the City from exercising
6 Bankruptcy Code powers by dictating which contracts may not be
7 rejected or modified in the chapter 9 case.

8 Thus, CalPERS says that such an exercise of "control" is
9 implemented by PERL § 20487 prohibiting modification of a
10 contract with CalPERS to service municipal pensions. Similarly,
11 it views the PERL § 20574 termination lien as invulnerable to
12 attack in chapter 9.

13 It is noteworthy that these PERL provisions creating the
14 termination lien and the immunity from Bankruptcy Code contract
15 modification are nonuniform. They selectively protect only
16 CalPERS and CalPERS pensions. They do not apply to any other
17 California municipal pension. A California city pension system
18 created by a California municipality (e.g., Los Angeles, San
19 Diego, or Fresno) does not enjoy those CalPERS protections. Nor
20 does a California county pension system created under the so-
21 called 1937 Act or a municipal pension administered by a private-
22 sector pension servicer.

23 The PERL's special protections for the pension servicing
24 contract incidentally protect the underlying pensions in a manner
25 that forges an alliance between CalPERS and municipal employees.
26 If the City's contract with CalPERS to service its pensions could
27 be rejected, then the pensions, even if not otherwise modified,
28 could be moved to a servicer that does not enjoy the CalPERS

1 termination lien and the CalPERS immunity from Bankruptcy Code
2 § 365 contract modification.

3
4 b

5 The key to the analysis of the §§ 903 and 904 restrictions
6 is the meaning of exercise of "political or governmental powers"
7 of a municipality.

8 The phrase "political or governmental powers" suggests that
9 Congress had in mind the existence of a broader array of
10 municipal powers that are not "political or governmental."

11 For guidance, we have only the language and context of the
12 statute. To the extent that it is legitimate to consider
13 legislative history, the legislative history is opaque.

14 Two clues are provided by the language of § 904. First, the
15 need to be specific in § 904(2) about "property or revenues"
16 implies that "property or revenues" are not necessarily subsumed
17 within the concept of "political or governmental powers." 11
18 U.S.C. § 904(2). Second, the need to be specific in § 904(3)
19 about "use or enjoyment" of income-producing property implies
20 that "use or enjoyment" of income-producing property is similarly
21 not subsumed within "political or governmental powers." 11
22 U.S.C. § 904(3).

23 Since the concept of "political or governmental" powers is
24 central to both sections 903 and 904, it follows that those clues
25 in § 904 also inform the analysis of § 903.

26 Further, the abrogation of a state's sovereign immunity in
27 § 106 indirectly illuminates the meaning of "political or
28 governmental" powers in § 903. While sovereign immunity refers

1 to a multifaceted agglomeration of difficult-to-corrall doctrines,
2 it is unquestionably an incident of sovereignty.

3 The Bankruptcy Code abrogates sovereign immunity with
4 respect to, among other things, the basic bankruptcy trustee
5 avoiding powers set forth at §§ 544-549. 11 U.S.C. § 106(a)(1).
6 Those avoiding powers enable a trustee or, pursuant to § 902(5),
7 a chapter 9 municipal debtor to avoid, for example, transfers to
8 a state that qualify as preferences under § 547, fraudulent
9 transfers under § 548, and, under § 545, statutory liens in favor
10 of the state. 11 U.S.C. §§ 545, 547, and 548.

11 It is beyond cavil that § 106 applies in chapter 9 cases.
12 In the first place, all of the sections of chapter 1 of the
13 Bankruptcy Code apply in chapter 9. 11 U.S.C. § 103(f).³⁰ This
14 includes, in particular, § 106 abrogating sovereign immunity. In
15 addition, § 901 expressly makes, among other avoiding powers, the
16 avoiding powers relating to § 545 statutory liens, § 547
17 preferences, and § 548 fraudulent transfers, applicable in
18 chapter 9 cases. 11 U.S.C. § 901(a).

19 These specific provisions of the Bankruptcy Code that apply
20 in chapter 9 in a context in which the municipal debtor can avoid
21 certain liens and transfers in favor of the state, whose
22 sovereign immunity has expressly been abrogated under § 106(a),
23 indicate that § 903 "political or governmental" functions do not
24

25 ³⁰That section provides:

26 (f) Except as provided in section 901 of this title,
27 only chapters 1 and 9 of this title apply in a case under
such chapter 9.

28 11 U.S.C. § 103(f).

1 include the financial relations that are implicit in those
2 avoiding powers.

3 To be sure, however, some expenditures are reserved to state
4 control by § 903. The statutory text mentions associated
5 expenditures: "does not limit or impair the power of a State to
6 control ... a municipality ... in the exercise of the political
7 or governmental powers of such municipality, including
8 expenditures for such exercise." 11 U.S.C. § 903 (emphasis
9 supplied).

10 The question becomes what are "expenditures for such
11 exercise" as distinguished from other expenditures?

12 One clue comes from the plan confirmation requirement that
13 there be compliance with nonbankruptcy law regarding regulatory
14 and electoral approval of plan provisions that are otherwise
15 required under nonbankruptcy law. 11 U.S.C. § 943(b)(6)
16 (emphasis supplied).³¹

17 Requirements for electoral approval implicated the
18 foundation of any republican form of government – the people
19 speak through elections. As an exercise of political power,
20 state law directs the circumstances in which elections are
21

22 ³¹Section 943(b)(6) states this essential element of plan
23 confirmation:

24 (b) The court shall confirm the plan if –
25 ...
26 (6) any regulatory or electoral approval necessary
27 under applicable nonbankruptcy law in order to carry out any
28 provision of the plan has been obtained, or such provision
is expressly conditioned on such approval;

11 U.S.C. § 943(b)(6).

1 required and may allocate to municipalities responsibility for
2 funding elections.

3 Thus, for example, an important source of funding for the
4 City's chapter 9 plan now under consideration for confirmation is
5 premised on an increase in local sales tax. The compromises that
6 were achieved through mediation with the capital markets
7 creditors and the retirees contemplated additional revenue from a
8 local sales tax increase. Since California law requires a vote
9 of the people to approve local sales tax increases, the question
10 was put before the voters and approved in a duly-scheduled
11 election.

12 Similarly, regulatory approval requirements, which usually
13 are justified on police power or related power-of-government
14 theories, are § 903 "political or governmental" powers.

15 In sum, § 903 "political or governmental" powers relate to
16 basic requirements of government and political polity and exclude
17 financial and employment relations. To hold otherwise would read
18 out of the Bankruptcy Code a number of provisions that plainly
19 apply in chapter 9.

20 This conclusion leads back to CalPERS. State law does not
21 mandate pensions for municipal employees. A California
22 municipality that chooses to provide a pension (virtually all do)
23 is permitted to establish its own pension system (some do), to
24 contract with private sector pension providers (others do), to
25 participate in county-sponsored pension systems (ditto), or to
26 contract with CalPERS (many, including Stockton, do).

27 Nothing about basic state government structure or procedure
28 necessitates CalPERS. Rather, CalPERS is merely one of numerous

1 competitors in the California municipal pension market. There is
2 nothing inherently "governmental" or "political" about a CalPERS
3 municipal pension, as opposed to a municipal pension administered
4 by a different entity, within the meaning of § 903 that would
5 make the special treatment for CalPERS that is not afforded to
6 other California municipal pension providers an exercise of § 903
7 "political or governmental" powers.

8 The PERL § 20574 termination lien and the PERL § 20487
9 prohibition on rejection in chapter 9 of a municipality's CalPERS
10 pension servicing contract do not reflect the exercise of the
11 "political or governmental" powers protected by § 903.

12 Although the CalPERS statutes have been enacted through the
13 political processes, they do not relate to basic matters of
14 government and exercise of police and regulatory powers. Rather,
15 they relate to aspects of administrative terms of employment that
16 are tangential – albeit important – to government. They involve
17 financial matters that are of the character of the sort of
18 financial matters that are legitimately within the ambit of the
19 financial reorganization contemplated by chapter 9.

20 In other words, hiding behind the § 903 protection of the
21 exercise of "political or governmental" powers does not work for
22 CalPERS.

23 In order to accept the CalPERS argument that § 903 insulates
24 the PERL § 20574 termination lien from avoidance and the PERL
25 § 20487 ban on application of 11 U.S.C. § 365 to CalPERS from
26 Supremacy Clause preemption, too many chapter 9 provisions that
27 unambiguously apply to a state would have to be ignored.
28 Permitting a state to modify the federal Bankruptcy Code amounts

1 to an impermissible encroachment on the power of Congress to
2 establish uniform laws on the subject of bankruptcies. U.S.
3 CONST. art. I, § 8.

4 The "political or governmental" functions in § 903 refer to
5 basic matters of the organization and operation of government
6 that are incidents of sovereignty, but do not extend to financial
7 relations between the state and its municipalities.

8 Sovereignty as protected by the Tenth Amendment is honored
9 by the state's threshold control over whether, and under what
10 procedures, one of its municipalities may file a chapter 9 case.
11 The specialized relief in the form of the ability to cause
12 municipal contracts to be impaired under the exclusive federal
13 authority to impair contracts implemented by the Bankruptcy Code
14 is available to a state on an all-or-nothing, take-or-leave-it
15 basis. While § 903 protects the basic incidents of state
16 sovereignty – described as "political and governmental" powers –
17 from encroachment, contractual relations as between state and
18 municipality are generally outside the ambit of "political or
19 governmental" powers.

20
21 IV

22 California Law

23 Having concluded that § 903 does not give the state a blank
24 check to rewrite the federal Bankruptcy Code, several specific
25 points of California law warrant analysis.

1 A

2 California Vested Rights Doctrine

3 The California Supreme Court has construed the Contracts
4 Clause of the California Constitution to recognize an unusually
5 inflexible "vested right" in public employee pension benefits.
6 E.g., Betts v. Bd. of Admin. of Pub. Employees' Retirement Sys.,
7 21 Cal.3d 859, 863-64 (1978); Allen v. City of Long Beach, 45
8 Cal.2d 128, 131 (1955); Kern v. City of Long Beach, 29 Cal.2d
9 848, 853 (1947).

10 In contrast, the United States Supreme Court takes a less
11 rigid view of the extent of a "vested right" in retiree benefits.
12 M&G Polymers USA, LLC v. Tackett, U.S. Supreme Ct., No. 13-1010,
13 decided Jan. 26, 2015, Slip Op. at 7-14.

14 CalPERS places great reliance on the strength of a "vested
15 right" under the Contracts Clause of California Constitution,
16 which it describes as prohibiting the "unconstitutional
17 impairment" of a public pension contract. CalPERS Legal Office,
18 Vested Rights of CalPERS Members: Protecting the Pension Promises
19 Made to Public Employees, at 8-11 (July 2011).

20 The CalPERS backup position is the same argument founded on
21 the Contracts Clause of the United States Constitution. Id. at
22 12. The difference between the two positions is that the
23 California Supreme Court is the arbiter of the state
24 constitution, but the United States Supreme Court is the arbiter
25 of the federal constitution.

26 The rigidity of the California vested rights doctrine is a
27 factor behind the current pressure on public pensions in
28 California. It encourages dysfunctional strategies to circumvent

1 limitations and peculiarities in California public finance.³²

2 The fatal flaw in the "vested rights" analysis of California
3 public pensions is that neither the Contracts Clause of the

4 _____
5 ³²A useful overview of the predicament of California public
6 pensions, and of financing issues faced by the City, is provided
7 by Professor Munnell:

8 California is in trouble because a retroactive
9 expansion of benefits in the late 1990s made the state one
10 of the most generous in the nation, but, unlike Illinois and
11 New Jersey, it is not guilty of deliberately underfunding
12 its plans. Nevertheless, pension commitments are putting
13 enormous pressure on both state and local budgets in
14 California.

15 ... [paragraph omitted.]

16 Three factors – an enhanced incentive to promise
17 pensions rather than pay wages from the Proposition 13
18 property tax limitation in 1978, a big retroactive pension
19 benefit increase in 1999, and the financial collapse in 2008
20 – have created the current situation in which pension costs
21 are high, only partially funded, and set to consume in
22 increasingly large share of state and local budgets.

23 Proposition 13 gave the legislature more responsibility
24 over the financing of services and thereby shifted power
25 from the locality to the state. At the same time, it made
26 legislative action more difficult by requiring a two-thirds
27 vote to raise tax revenues. The result was budget gridlock
28 and fiscal gimmicks, such as handing out improved pensions
in lieu of pay increases. Similarly, local governments,
barred by Prop 13 from raising property taxes, often used
promises of higher pensions to get through labor
negotiations. In most – but not all – cases, however, the
benefit promises were accompanied with funding commitments.

The break with prefunding occurred in 1999 when the
governor and the legislature made up for a long freeze on
state worker pay by approving a bill that raised pension
benefits to their current high levels. The changes were
made retroactive, thereby increasing the compensation for
work done years or even decades earlier. Lawmakers accepted
CalPERS's estimates that investment returns from the booming
[1999] stock market would cover most of the costs of the
higher benefits.

MUNNELL, at 119-20.

1 California Constitution nor the Contracts Clause of the Federal
2 Constitution prevents Congress from enacting a law impairing the
3 obligation of contract. The Supremacy Clause of the Federal
4 Constitution resolves conflicts between a clear power of Congress
5 and a contrary state law in favor of Congress.

6 As explained above, so long as California authorizes its
7 municipalities to be debtors in cases under Chapter 9 of the
8 Bankruptcy Code, municipal contracts may be impaired by way of a
9 confirmed chapter 9 plan of adjustment of municipal debts.

10
11 B

12 PERL Bar to Bankruptcy Code § 365

13 CalPERS contends that § 903 authorizes California to forbid
14 the rejection of a pension servicing contract between it and a
15 municipality, which is the gravamen of PERL § 20487:

16 Notwithstanding any other provision of law, no contracting
17 agency or public agency that becomes the subject of a case
18 under the bankruptcy provisions of Chapter 9 (commencing
19 with Section 901) of Title 11 of the United States Code
20 shall reject any contract or agreement between that agency
21 and the [CalPERS] board pursuant to Section 365 of Title 11
22 of the United States Code or any similar provision of law;
23 nor shall the agency, without the prior written consent of
24 the board, assume or assign any contract or agreement
25 between that agency and the board pursuant to Section 365 of
26 Title 11 of the United States Code or any similar provision
27 of law.

28 Cal. Gov't Code § 20487.

It argues that providing such special protection for
CalPERS, but no other entity providing or servicing a California
municipal pension, is a "political or governmental" function
insulated by § 903 from interference by the bankruptcy court.

There are multiple flaws in the CalPERS theory. First, no

1 incident of state sovereignty is implicated in a contractual
2 transaction when a municipality is free to contract with private
3 sector entities as an alternative.

4 Second, PERL § 20487 merely operates to protect CalPERS in
5 its capacity as creditor with a claim based on a rejected or
6 modified contract. A competitor of CalPERS in the business of
7 servicing California municipal pensions receives no such
8 protection. As already explained, this is neither "political"
9 nor "governmental" in nature.

10 Third, honoring PERL § 20487 would be inconsistent with
11 Bankruptcy Code provisions that unambiguously apply to a state
12 that permits its municipalities to obtain chapter 9 relief. For
13 example, § 106(a)(1) abrogates sovereign immunity with respect to
14 § 944, which binds creditors to the terms of a confirmed chapter
15 9 plan and discharges the municipality from all debts not
16 perpetuated by the plan.

17 Fourth, special insulation of a state actor in a municipal
18 insolvency is contrary to chapter 9 precedent. The State of
19 Texas once permitted the Mission Independent School District to
20 file a municipal restructuring case involving bonded indebtedness
21 on the condition that in the case there be no discharge of any
22 bond owned by the State of Texas. The Fifth Circuit rejected
23 that condition as invalid. Mission Indep. School Dist. v. Texas,
24 116 F.2d 175, 178 (5th Cir. 1940), cert. denied, 313 U.S. 562
25 (1941).³³

26
27 ³³The Fifth Circuit explained:

28 The Bankruptcy Act as a law of Congress made in pursuance of

1 to the actuarially determined deficit in funding for earned
2 benefits of the employee members to the agency, interest,
3 and collection costs. The assets shall also be available to
4 pay actual costs, including attorney's fees, necessarily
5 expended for collection of the lien.

6 Cal. Gov't Code § 20574.

7 The legislative history of the 1982 enactment of PERL
8 § 20574 explains that it is premised, in part, on the possibility
9 of contract termination in a federal bankruptcy case:

10 Section 5. Grants PERS a lien against the assets of
11 public agencies who have terminated their membership in the
12 system, usually as a result of agency dissolution and
13 bankruptcy, and who have unfunded liabilities owed to PERS
14 for vested employee benefits and have no ability to pay such
15 liabilities.

16 PERS is currently only an unsecured creditor.

17 Lamoureux Direct Testimony, Ex. 13.

18 The PERL § 20574 termination lien qualifies as a "statutory
19 lien" under the Bankruptcy Code. A "statutory lien" is a lien
20 arising solely by force of a statute on specified circumstances
21 or conditions or lien for distress of rent, even if not based on
22 statute. 11 U.S.C. § 101(53).³⁴

23 By its terms, the termination lien arises solely as a result
24 of PERL § 20574 upon termination of a CalPERS pension servicing
25 contract and only if there is an "actuarially determined deficit
26

27 ³⁴Bankruptcy Code § 101(53) provides:

28 (53) The term "statutory lien" means lien arising solely
by force of a statute on specified circumstances or
conditions, or lien for distress of rent, whether or not
statutory, but does not include security interest or
judicial lien, whether or not such interest or lien is
provided by or is dependent on a statute and whether or not
such interest or lien is made fully effective by statute.

11 U.S.C. § 101(53).

1 in funding for earned benefits." PERL § 20574. Given the
2 strength of the California vested rights doctrine for municipal
3 pensions, it is quite unlikely that such a termination would
4 occur before the filing of a chapter 9 case.

5 The Bankruptcy Code authorizes the avoidance of statutory
6 liens that are not perfected or enforceable at the time of the
7 commencement of the case. 11 U.S.C. § 545(2).³⁵

8 Since Stockton had not terminated its contract with CalPERS
9 as of the commencement of its chapter 9 case, it would be legally

11
12 ³⁵Bankruptcy Code § 545 provides:

13 § 545. Statutory liens.

14 The trustee may avoid the fixing of a statutory lien on
15 property of the debtor to the extent that such lien –

16 (1) first becomes effective against the debtor –

17 (A) when a case under this title concerning the
18 debtor is commenced;

19 (B) when an insolvency proceeding other than under this
20 title concerning the debtor is commenced;

21 (C) when a custodian is appointed or authorized to take
22 or takes possession;

23 (D) when the debtor becomes insolvent;

24 (E) when the debtor's financial condition fails to meet
25 a specified standard; or

26 (F) at the time of an execution against property of the
27 debtor levied at the instance of an entity other than the
28 holder of such statutory lien;

(2) is not perfected or enforceable at the time of the
commencement of the case against a bona fide purchaser that
purchases such property at the time of the commencement of
the case, whether or not such a purchaser exists, except in
any case in which a purchaser is a purchaser described in
section 6323 of the Internal Revenue Code of 1986, or in any
other similar provision of State or local law;

(3) is for rent; or

(4) is a lien for distress of rent.

11 U.S.C. § 545.

1 impossible for a lien that had not yet arisen to be perfected or
2 enforceable as of that date.

3 The § 545 statutory lien avoidance provision applies in a
4 chapter 9 case. 11 U.S.C. § 901(a).

5 Sovereign immunity is abrogated with respect to § 545. 11
6 U.S.C. § 106(a)(1).

7 The consequence of avoidance of a statutory lien on property
8 of the estate is that the avoided transfer is preserved for the
9 benefit of the estate. 11 U.S.C. § 551.³⁶ By virtue of a
10 special chapter 9 definition, of "property of the estate" means
11 property of the debtor. 11 U.S.C. § 902(1).

12 As with the statutory lien avoidance provision, § 551
13 applies in chapter 9 cases and is the subject of an abrogation of
14 sovereign immunity. 11 U.S.C. §§ 901(a) & 106(a)(1).

15 It follows that the fixing of the CalPERS termination lien
16 would be avoidable in a chapter 9 case and the debtor
17 municipality would hold subject property free of the statutory
18 lien.

19 Despite public rhetoric in this case that has been based on
20 an uncritical assumption that the CalPERS termination lien would
21

22 ³⁶Bankruptcy Code § 551 provides:

23 § 551. Automatic preservation of avoided transfer.

24 Any transfer avoided under section 522, 544, 545, 547,
25 548, 549, or 724(a) of this title, or any lien void under
26 section 506(d) of this title, is preserved for the benefit
27 of the estate but only with respect to property of the
28 estate.

11 U.S.C. § 551.

1 be a major obstacle to dealing with CalPERS, the vulnerability of
2 that lien to avoidance under § 545 renders it a toothless tiger.

3
4 V

5 Pensions in Chapter 9

6 None of this means that public pensions can be rejected or
7 unilaterally modified willy-nilly.

8 Although the business judgment rule governs most § 365
9 contract rejections, the Supreme Court held in its 1984 Bildisco
10 decision that a higher standard applies to rejection of a
11 collective bargaining agreement. NLRB v. Bildisco & Bildisco,
12 465 U.S. 513, 527 (1984); In re G.I. Indus., Inc. v. Bendor
13 Corp., 204 F.3d 1276, 1282 (9th Cir. 2000) (business judgment);
14 Klein Sleep Prods., Inc. v. Nostas Assocs., 78 F.3d 18, 25 (2d
15 Cir. 1996) (same).

16 Under the Bildisco standard, rejection requires a finding
17 that the policy of successful rehabilitation of debtors would be
18 served by rejection. In making that finding, the court must
19 balance the interests of the affected parties – debtors,
20 creditors, employees – and must consider the consequences of the
21 alternatives on the debtor, on the value of creditors' claims and
22 any ensuing hardship and the impact on employees. The court also
23 must consider the degree of hardship faced by each party and must
24 consider any qualitative differences between the types of
25 hardship each may face. Bildisco, 465 U.S. at 527.³⁷

26
27 ³⁷The Supreme Court said:

28 Since the policy of Chapter 11 is to permit successful

1 While Congress supplanted the Bildisco analysis in chapter
2 11 cases with the enactment of § 1113 for collective bargaining
3 agreements and § 1114 for retiree benefits, neither of those
4 provisions is incorporated by § 901 into chapter 9.

5 The judicial consensus is that in chapter 9 the Bildisco
6 analysis applies to § 365 rejection of executory collective
7 bargaining agreements. Stockton II, 478 B.R. at 23; Int'l Bhd
8 of Elec. Workers, Local 2376 v. City of Vallejo (In re City of
9 Vallejo), 422 B.R. 262, 270-72 (E.D. Cal. 2010); Orange County
10 Employees' Ass'n v. County of Orange (In re County of Orange),
11 179 B.R. 177, 183 (Bankr. C.D. Cal. 1995).

12 The same considerations that led the Supreme Court to impose
13 a more stringent standard to the rejection or modification of
14 collective bargaining agreements apply to executory municipal
15 pension plans. There is no reason to believe that the Bildisco
16 standard would not apply to using chapter 9 to force changes in
17

18 rehabilitation of debtors, rejection should not be permitted
19 without a finding that that policy would be served by such
20 action. The Bankruptcy Court must make a reasoned finding on
21 the record why it has determined that rejection should be
22 permitted. Determining what would constitute a successful
23 rehabilitation involves balancing the interests of the
24 affected parties-the debtor, creditors, and employees. The
25 Bankruptcy Court must consider the likelihood and
26 consequences of liquidation for the debtor absent rejection,
27 the reduced value of the creditors' claims that would follow
28 from affirmance and the hardship that would impose on them,
and the impact of rejection on the employees. In striking
the balance, the Bankruptcy Court must consider not only the
degree of hardship faced by each party, but also any
qualitative differences between the types of hardship each
may face.

Bildisco, 465 U.S. at 527.

1 municipal pension plans.

2 But the situation is potentially different with respect to a
3 municipality's contract with a pension servicer, such as CalPERS,
4 to service the municipality's pensions. That contract is
5 essentially administrative in nature and does not govern the
6 terms of the municipal pension. It may be that the business
7 judgment rule would govern the rejection of the CalPERS contract
8 to service a municipality's pensions. If a lower-cost provider
9 were to emerge, a municipality may, as a matter of business
10 judgment, be able to shift servicers. As the City does not
11 propose to reject the CalPERS servicing contract, that question
12 can be left to another day.

13
14 VI

15 Confirmation of the Stockton Plan of Adjustment

16 This brings us to the question of confirmation of the City's
17 plan of adjustment.³⁸

18
19 A

20 At the outset, two myths inherent in the rhetoric of this
21 case need to be dispelled. Repetition of incorrect statements
22 does not make them correct.

23
24
25

26 ³⁸Specific findings of fact and conclusions of law were
27 rendered orally on the record in open court on October 30, 2014,
28 in compliance with Federal Rule of Civil Procedure 52, as
incorporated by Federal Rule of Bankruptcy Procedure 7052 and
9014. This opinion supplements those findings.

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1

First, the assertion that CalPERS is the largest creditor of the City is not correct. CalPERS in its own right is only a small-potatoes creditor for the expenses that it is entitled to charge for administering the City-sponsored pension.

The debt relevant to Franklin's rhetoric is the City's obligation to its employees to fund the City-sponsored pension. As has been explained, CalPERS must pass on to retirees the City's shortfalls in funding its City-sponsored pension, which makes CalPERS merely a pass-through conduit to the actual creditors. Cal. Gov't Code § 20577. Hence, the potential pension liability makes the employees and retirees the largest creditors of the City, not CalPERS.

2

Second, the assertion that pensions are not affected by the City's plan of adjustment incorrectly suggests that employees and retirees are not sharing the pain with capital markets creditors. To the contrary, the reality is that the value of what employees and retirees lose under the plan is greater than what capital markets creditors lose.

One result of this case is that the City terminated its program for lifetime retiree health benefits valued on the schedules at nearly \$550 million for existing retirees. Although Franklin says that sum is too high, it concedes that the value is at least \$300 million. Prospective retirees also lose that expectation and receive nothing in return. In contrast, Franklin loses about \$30 million.

1 Likewise, pension liabilities are also indirectly reduced as
2 a result of curtailed pay and curtailed future pay increases in
3 the renegotiated collective bargaining agreements.

4

5 B

6 This court's findings of fact and conclusions of law
7 addressed all of the essential elements for plan confirmation and
8 need not be repeated here. Several key points will provide
9 perspective.

10 When evaluating the financial situation of the City, it is
11 misleading to focus on comparing the situation on the day the
12 chapter 9 case was filed with the situation at the time of
13 confirmation. Any useful before-and-after view requires that one
14 take into account the effect of the effort to reduce municipal
15 costs during the several years before the case was filed. By the
16 time the case was filed, the City had been pared down to core
17 functions and been reduced to a situation in which such essential
18 services as police and fire were being operated below sustainable
19 standards. The murder rate had soared. Police responded only to
20 crimes in progress. A wrecker had to accompany fire engines on
21 emergency calls.

22 During the pre-filing mediation required by California law,
23 agreements were achieved modifying all unexpired collective
24 bargaining agreements. And there had been substantial progress
25 on a new contract to replace the expired police contract, which
26 was completed several months after the case was filed.

27 The quid pro quo for the concessions made by labor in the
28 new and modified collective bargaining agreements was the City's

1 promise not to modify pensions subject to the servicing contract
2 with CalPERS. Pensions would be neither increased nor decreased.
3 This is neither irrational nor inappropriate. Pension
4 underfunding is not a burning issue for the City, which is
5 current on its pension contribution obligations. As noted above,
6 on an actuarial basis the City's two plans are funded at 82.6
7 percent and 88.5 percent, which is below the goal of 100 percent.
8 This shortfall is primarily attributable to CalPERS' recent
9 reduction in its expected rate of investment return. Future
10 required payments to return to a better funded status are built
11 into the budget on which the plan is based; they are for a finite
12 number of years and do not support the argument that the required
13 contributions to CalPERS are on an endless upward spiral. The
14 evidence suggests that funding ratios are improving, rather than
15 deteriorating. To mandate that pensions be modified would so
16 fundamentally change the balance in the labor negotiations as to
17 unravel all of the concessions achieved.

18 During the case, there were extensive mediation sessions
19 with Bankruptcy Judge Elizabeth Perris. In addition to resolving
20 outstanding labor issues, complex agreements were hammered out
21 with all of the capital markets creditors except Franklin.
22 Payments were adjusted, terms were extended by about a decade,
23 bond debt was reduced, the City's pledge of its general revenues
24 as collateral was extinguished, and the City obtained the use of
25 such facilities as its new city hall that had been taken over by
26 creditors.

27 The ability to pay the capital markets creditors the agreed
28 amounts contemplated a tax increase that, under California law,

1 required a vote of the people. The voters of the City approved a
2 sales tax increase in the greatest amount and for the longest
3 period permitted by California law. If that tax increase had not
4 been approved, all the parties concurred that the mediated plan
5 would be dead, putting the case back to "square one."

6 Franklin differs from the other capital markets creditors in
7 that its \$35,080,000.00 in bonds were issued without equivalent
8 collateral. It turned out that the collateral was worth only
9 \$4,025,000.00, which sum is being paid in full by the City. In
10 addition, Franklin receives a "Reserve Fund" of \$2,071,435.15
11 that was established pursuant to section 5.05 of the bond
12 indenture and that is in the custody of the indenture trustee.
13 The rest is unsecured debt, to be paid the same portion of 1
14 percent as all other unsecured creditors, including the retirees
15 on their \$550 million in terminated health benefits.

16 There is no evidence suggesting that Franklin was misled
17 about the quality of its collateral when it acquired the bonds;
18 nor is there any evidence to suggest that Franklin's pricing of
19 the transaction did not reflect the greater risk being undertaken
20 in order to get a higher return.

21 It is interesting that the settlement with the other capital
22 markets creditors included an additional "sweetener" fund that
23 would become available by about 2040 if the City prospers. Part
24 of that fund was offered to Franklin and held open for Franklin
25 to join even during the confirmation hearing, but Franklin
26 refused the offer.

27 The time has come to decide the confirmation question. The
28 myriad parties in interest, save Franklin, have agreed upon a

1 consensual plan of adjustment that reflects a complex balance
2 achieved through many months of exhaustive mediation.

3 As explained in open court, this court is persuaded that no
4 better plan is likely under the circumstances. Everyone, except
5 Franklin, has made substantial concessions.

6 Franklin is receiving \$6,123,435.15 on account of its
7 secured claim and the Reserve Fund on its \$35,080,000.00 in bonds
8 that were largely unsecured. And Franklin will, on a
9 nondiscriminatory basis, receive nearly 1 percent on its
10 unsecured claim of \$30,480,190.00, the same as all other
11 unsecured creditors. While the loss of about \$30 million is
12 unfortunate for Franklin, it reflects the bargain that Franklin
13 made and the risk that it undertook. Its 17.5 percent overall
14 return is not so paltry or unfair as to undermine the legitimacy
15 of classification in the plan or the good faith of the plan
16 proponent.

17
18 Conclusion

19 Although pensions may, as a matter of law, be modified by
20 way of a chapter 9 plan of adjustment and although a CalPERS
21 pension serving contract may be rejected without fear of an
22 enforceable termination lien, the City's choice to achieve
23 savings in total compensation by negotiating salary and benefit
24 adjustments rather than modification of existing pension rights
25 is appropriate. Total compensation, of which pensions are a
26 component, has been reduced. Indeed, the City's employees and
27 retirees have surrendered more value in this chapter 9 case than
28 the capital markets creditors.

1 The plan is feasible and is in the best interests of
2 creditors. All other elements of confirmation having been
3 established, the plan will be CONFIRMED.

4 Dated: February 27, 2015



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7 UNITED STATES BANKRUPTCY JUDGE
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2 **INSTRUCTIONS TO CLERK OF COURT**
 SERVICE LIST

3 The Clerk of Court is instructed to send the attached
4 document, via the BNC, to the following parties:

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7 Sacramento CA 95814-4407

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22 Stockton, CA 95207

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EXHIBIT I

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

Bankr. No. 13-53846
Chapter 9
HON. STEVEN W. RHODES

LUCINDA DARRAH,

Appellant,

vs.

Case No. 15-cv-10036

HON. BERNARD A. FRIEDMAN

CITY OF DETROIT, MICHIGAN, et al.,

Appellees.

**OPINION AND ORDER GRANTING APPELLEE’S MOTION TO DISMISS
APPEAL AS EQUITABLY AND CONSTITUTIONALLY MOOT
PURSUANT TO FED. R. CIV. P. 12(b)(1)**

This matter is presently before the Court on the “Corrected Motion of Appellee the City of Detroit, Michigan for an order Pursuant to Fed. R. Civ. P. 12(b)(1) Dismissing Appeal as Equitably and Constitutionally Moot” [docket entry 28]. Appellant, Lucinda Darrah, has filed a brief in opposition and appellee, the City of Detroit, Michigan (“the City”), has filed a reply. Pursuant to E.D. Mich. LR 7.1(f)(2), the Court shall decide this motion without a hearing.

I. Background

After experiencing decades of financial decline, the City filed the above-captioned Chapter 9 case (“Chapter 9 Case”) on July 18, 2013, in the United States Bankruptcy Court for the Eastern District of Michigan (“the Bankruptcy Court”). This Chapter 9 Case is the largest and most complex municipal bankruptcy in U.S. history. *See In re City of Detroit*, 504 B.R. 191, 281 (Bankr. E.D. Mich. 2013) (finding that, as of July 18, 2013, the City had over \$18 billion in escalating debt,

over 100,000 creditors, and hundreds of millions of dollars of negative cash flow). The importance of this Chapter 9 Case cannot be overstated. The Bankruptcy Court found that there existed a “service delivery insolvency” such that the City did not have “the resources to provide its residents with the basic police, fire and emergency medical services that its residents need for their basic health and safety.” *Id.* at 193.

Over the course of 16 months, the City engaged in negotiations and mediation with representatives of the vast majority of its creditors, which resulted in a series of intricate and carefully woven settlements with nearly all of the City’s stakeholder constituencies. These carefully woven settlements were encompassed in the City’s Eighth Amended Plan for the Adjustment of Debts of the City of Detroit (“the Plan”), which the Bankruptcy Court confirmed on November 12, 2014, in its Order Confirming Eighth Amended Plan for the Adjustment of Debts of the City of Detroit (“Confirmation Order”) after conducting a 24-day evidentiary hearing. Appellant appeals the Bankruptcy Court’s Confirmation Order, arguing that various aspects of the treatment of pension claims under the Plan violate the Bankruptcy Code.

The “Grand Bargain” and the Global Retiree Settlement

At the heart of the confirmed Plan is the “Grand Bargain”—a carefully interlaced settlement agreement that made it possible for the City, which cannot fully fund its future pension obligations, to avoid drastic cuts to pensions. The Grand Bargain includes agreements by and between the City, the State of Michigan, certain philanthropic foundations, and the Detroit Institute of Arts (“DIA”) to provide a total of \$816 million in funding (“the Outside Funding”) to the City to finance its pension obligations (as adjusted by the Plan). In securing the Grand Bargain, the City entered into a comprehensive settlement (“the Global Retiree Settlement”) of pension, healthcare,

and other labor-related issues with employee and retiree representatives, including the official committee of retirees appointed in the Chapter 9 Case; critical unions and retiree associations; and the City's two retirement systems, the General Retirement System ("GRS") and the Police and Fire Retirement System (collectively, the "Retirement Systems").

The Retirement Systems are fiduciary trusts and legal entities separate from the City. On behalf of the City, they administer the retirement programs established by the City for City employees, retirees, and their beneficiaries. The GRS Board of Trustees administers a defined benefit pension plan ("GRS Defined Benefit Pension Plan") and a defined contribution annuity program ("the Annuity Savings Fund"). The City is the sole sponsor of each Retirement System's defined benefit pension plan and is therefore ultimately responsible for any deficiency in funding those plans. The City, however, is not responsible for funding the GRS Annuity Savings Fund.

Treatment of GRS Pension Claims Under the Plan

The Plan classifies the pension claims of members of the GRS ("GRS Pension Claims") in Class 11 of the Plan's claims.¹ Even with the \$816 million in Outside Funding negotiated through the Grand Bargain, the City did not have the resources to fully fund GRS Pension Claims over time. The Plan therefore adjusts GRS Pension Claims by providing for payment over time for approximately 60% of the \$1.879 billion underfunded portion of the GRS Defined Benefit Pension Plan (hereafter the "underfunded claims"), assuming that \$816 million is received from Outside Funding. Because the City cannot fully satisfy the underfunded claims, the Plan adjusts the future benefits of GRS members by eliminating annual cost of living increases in benefits

¹ Other pension claims are classified in Class 10. The Plan's treatment of retiree healthcare claims (which fall under "OPEB Claims") are classified in Class 12.

(“COLAs”) and imposes an across-the-board 4.5% reduction in earned pensions of GRS members. These adjustments were conditioned in part upon acceptance of the Plan by the holders of GRS Pension Claims, who were notified that if they rejected the Plan, the Outside Funding would not be available and the City would be required to reduce each GRS retiree’s pension by 27% instead of by 4.5%. Holders of Class 11 GRS Pension Claims voted 73% in favor of accepting the Plan.

ASF Recoupment

In addition to the GRS Defined Benefit Pension Plan, since 1973 the GRS has sponsored the Annuity Savings Fund (“ASF”), a supplemental retirement program that allows current City employees to invest up to seven percent of their after-tax salaries in a defined contribution retirement account. Although ASF funds are not used to fund pensions earned under the GRS Defined Benefit Pension Plan, these funds are nonetheless held in the GRS trust and are invested with the assets that the City contributed to fund the GRS Defined Benefit Pension Plan. The ASF accounts operate like a 401(k) account—employees earn interest on their contributions based on the returns from ASF account investments, which the GRS Board of Trustees determines and then credits to those ASF accounts annually. But these ASF accounts were unlike any other 401(k) account because they were treated essentially as guaranteed investment contracts. From the mid-1980s until fiscal year 2012, the GRS Trustees would credit each ASF account holder with no less than a 7.9% annual return, regardless of the actual annual return on GRS Trust Assets.

The practice of crediting ASF account holders with a guaranteed 7.9% annual return² was financed by diverting nearly \$387 million contributed by the City to the GRS Defined Benefit Pension Plan to the ASF participants’ individual defined contribution accounts. Not surprisingly,

² The City describes the illegality of this practice at length at pages 13-17 of its brief.

this diversion process contributed to the City's inability to fully fund GRS Pension Claims. Thus, in negotiating the underfunded GRS Pension Claims, the City made known to the Retiree Representatives that the City possessed various causes of action against the GRS and the GRS Trustees, under which it could, and had an obligation to, recoup those diverted payments. After months of negotiations, the City and GRS agreed to settle those causes of action as part of the Global Retiree Settlement. The parties agreed that it would be unfair to address the underfunded portion of the GRS Defined Benefit Pension Plan by reducing the pensions of all GRS participants regardless of whether and how much they participated in the ASF program. Instead, to minimize global reductions and to recover a reasonable amount of improperly diverted GRS Defined Benefit Pension Plan funds, the parties agreed as part of the Global Retiree Settlement to recapture diverted funds through an intricate ASF Recoupment program set forth in the Plan.

The ASF Recoupment program allows the City to recover approximately \$190 million of the roughly \$387 million in GRS Defined Benefit Pension Plan funds that were improperly diverted from July 1, 2003, to June 30, 2013 ("ASF Recoupment Period"). Annual recoupment is determined by the difference between the amounts earned on ASF accounts and the amounts that would have been earned had the accounts been credited with actual returns, but capped at 7.9% and with a floor against investment loss (0%). The ASF Recoupment program then recoups from each recipient of excess interest, subject to two independent caps. In each case, the total amount to be recovered is capped at 20% of the highest value of the recipient's ASF account balance during the ASF Recoupment Period. Further, the total pension benefit of ASF participants who retired as of June 30, 2014, cannot be reduced by more than a total of 20% of their annual pension benefit, including the reduction from both ASF Recoupment and the 4.5% across-the-board

reduction of all GRS pensions. The parties agreed that the process to recover the ASF Recoupment amounts would proceed as follows: (a) for current City employees who continued to maintain ASF accounts, by debiting their ASF accounts in the amount of ASF Recoupment; and (b) for those who already received a full distribution of their ASF accounts, by having their monthly pension further reduced.

The ASF Recoupment program therefore struck a balance between two opposite objectives: (1) avoiding the imposition of even greater pension cuts for those who either did not participate or participated minimally in the ASF program; and (2) minimizing, to the extent reasonable given the City's financial insolvency and inability to fully fund GRS Pension Claims, the effect of recoupment on the pensions and income of those who had participated in the ASF program. As noted by the Bankruptcy Court, ASF Recoupment is an "integral component of the City's [Global Retiree Settlement]" and is projected to recover about \$190 million, without which, the Bankruptcy Court further noted, the Plan would be required to impose a 13% across-the-board reduction in GRS pensions, rather than the confirmed 4.5% reduction. Confirmation Order at 61, 95.

Impact of the Plan

Overall, the Plan (1) eliminates approximately \$7 billion in City liabilities; (2) frees approximately \$1.7 billion in revenue over a nine-year period for reinvestment into the City's services, including directing funds to public safety services, blight remediation, and improvements to information technology and public transportation; and (3) provides for \$483 million in additional revenue and \$358 million in cost savings over the same time period.

Since the Plan became effective on December 10, 2014, the City has taken several

steps to implement it. For example, the City (1) issued \$287.5 million in bonds under the Exit Facility; (2) issued \$632 million and \$88 million in New B and C Notes, respectively; (3) irrevocably transferred all DIA assets to a perpetual charitable trust; (4) debited excess interest from all but five current ASF account holders subject to the ASF Recoupment program; (5) transferred interests of property pursuant to the Syncora Settlement and the FGIC/COP Settlement; and (6) implemented a two-year City budget. These actions provide only a brief glimpse into the numerous transactions that have occurred since the Plan's effective date.

The Instant Appeal

Appellant appeals the Bankruptcy Court's Confirmation Order, arguing that various aspects of the treatment of pension claims under the Plan violate the Bankruptcy Code. Appellant opposes the Plan's across-the-board 4.5% reduction in GRS earned pensions and its imposition of ASF Recoupment. However, appellant appears most concerned with the 4.5% reduction, as she notes "[e]ven if the court can accept the clawback of annuity, how can it accept the 4.5% reduction, elimination of COLA, and diminishment of medial coverage." Appellant's Br. at 2. For relief, appellant asks the Court to restore retiree pension and healthcare benefits to their prepetition levels.

II. Legal Standard

This Court has jurisdiction to hear appeals from "final judgments, orders, and decrees" of the Bankruptcy Court. 28 U.S.C. § 158(a)(1). The City has moved to dismiss this appeal as equitably and constitutionally moot pursuant to Fed. R. Civ. P. 12(b)(1). *See Alexander v. Barnwell Cnty. Hosp.*, 498 B.R. 550, 557 (D.S.C. 2013) (finding that a motion to dismiss an appeal of an order confirming a bankruptcy plan as equitably or constitutionally moot is properly brought pursuant to Fed. R. Civ. P. 12(b)(1)).

III. Argument

A. The Doctrine of Equitable Mootness

The doctrine of equitable mootness applies “in appeals from bankruptcy confirmations in order to protect parties relying upon the successful confirmation of a bankruptcy plan from a drastic change after appeal.” *In re United Producers, Inc.*, 526 F.3d 942, 947 (6th Cir. 2008). The doctrine promotes fairness and protects “parties’ settled expectations and the ability of a debtor to emerge from bankruptcy.” *Id.* (citing *In re Ormet Corp.*, No. 2:04-CV-1151, 2005 WL 2000704, at *4 (S.D. Ohio Aug. 19, 2005)). Equitable mootness operates on the premise that a bankruptcy plan “once implemented, should be disturbed only for compelling reasons,” *City of Covington v. Covington Landing Ltd. P’ship*, 71 F.3d 1221, 1225 (6th Cir. 1995) (internal quotation marks and citation omitted), and is “grounded in the notion that, with the passage of time after a judgment in equity and implementation of that judgment, effective relief on appeal becomes impractical, imprudent, and therefore inequitable,” *In re United Producers, Inc.*, 526 F.3d at 947 (quoting *MAC Panel Co. v. Va. Panel Corp.*, 283 F.3d 622, 625 (4th Cir. 2002) (internal quotation marks omitted)). The equitable mootness doctrine therefore prevents a creditor, or any party for that matter, from overturning an order of the Bankruptcy Court—most often a confirmation order—if the requested relief would unravel complex and interwoven restructuring agreements or would require the undoing of transactions that are “extremely difficult to retract.” *In re Ormet Corp.*, 355 B.R. 37, 41 (S.D. Ohio 2006).

The doctrine of equitable mootness has been applied to a Chapter 9 bankruptcy appeal in only two cases—neither of which originated from courts within the Sixth Circuit. *See In re City of Vallejo, CA*, 551 F. App’x 339, 339 (9th Cir. 2013) (affirming the Bankruptcy Appellate

Panel’s order dismissing Chapter 9 appeals as equitably moot); *Barnwell Cnty. Hosp.*, 498 B.R. 550, 559 (D.S.C. 2013) (dismissing Chapter 9 appeal as equitably and constitutionally moot). While it is true that “[e]quitable mootness is most commonly applied to avoid disturbing [Chapter 11] plans of reorganization,” *In re Fontainebleau Las Vegas Holdings, LLC*, 434 B.R. 716, 742 (S.D. Fla. 2010), this doctrine has been applied in other contexts, such as in Chapter 7 appeals, *see, e.g., In re McDonald*, 471 B.R. 194, 196-97 (E.D. Mich. 2012) (applying an equitable mootness analysis to a Chapter 7 appeal),³ and in Chapter 11 liquidation proceedings, *see, e.g., In re BGI, Inc.*, 772 F.3d 102, 108-09 (2d Cir. 2014) (finding “no principled reason” why the doctrine of equitable mootness should not also apply in Chapter 11 liquidation proceedings where “substantial interests may counsel in favor of preventing tardy disruption of a duly developed, confirmed, and substantially consummated plan”).⁴

A survey of the case law discussing and applying the doctrine underscores the notion that equitable mootness “is not limited to appeals of orders confirming [Chapter 11] reorganization

³ *See also In re Shawnee Hills, Inc.*, 125 F. App’x 466, 469-70 (4th Cir. 2005) (applying equitable mootness doctrine to a Chapter 7 appeal); *In re Health Co. Int’l*, 136 F.3d 45, 48-49 (1st Cir. 1998) (same); *In re Fitzgerald*, 428 B.R. 872, 881-82 (B.A.P. 9th Cir. 2010) (same); *In re Carr*, 321 B.R. 702, 706-07 (E.D. Va. 2005) (noting that the equitable mootness doctrine applies with equal force to a Chapter 7 liquidation of a bankruptcy estate as it does to a Chapter 11 reorganization).

⁴ *See also In re President Casinos, Inc.*, 409 F. App’x 31, 31-32 (8th Cir. 2010) (affirming district court’s decision that Chapter 11 liquidation appeal was equitably moot); *In re Centrix Fin. LLC*, 355 F. App’x 199, 201-02 (10th Cir. 2009) (remanding Chapter 11 liquidation appeal to district court with instructions to apply equitable mootness analysis); *In re Superior Offshore Int’l, Inc.*, 591 F.3d 350, 353-54 (5th Cir. 2009) (conducting an equitable mootness analysis in a Chapter 11 liquidation appeal).

plans,”⁵ has “been applied in a variety of [bankruptcy chapter] contexts,”⁶ and should be “accorded broad reach.”⁷ As the case law illustrates, the doctrine is not concerned with the specific chapter under which the debtor’s case was brought. Rather, what matters is whether hearing the bankruptcy appeal could unravel the debtor’s plan and disturb the reliance interests created by it. Because the underlying equitable considerations of promoting finality and good faith reliance on a judgment applies with equal force to a Chapter 9 bankruptcy appeal, the Court sees no reason why the doctrine should not be applied to avoid disturbing a Chapter 9 plan of adjustment.

Appellant effectively asks the Court to adopt the decision in *Bennett v. Jefferson Cnty.*, 518 B.R. 613 (N.D. Ala. 2014),⁸ where the court held that the doctrine of equitable mootness is inapplicable to appeals of orders confirming Chapter 9 plans of adjustment. The Court will not adopt the holding or rationale in *Jefferson County*, as it finds the discussion regarding the differences between the underlying policy objectives of Chapter 9 and Chapter 11 bankruptcies to be particularly problematic.

In deciding to exempt Chapter 9 bankruptcies from the equitable mootness doctrine, the *Jefferson County* court found that the underlying policy objectives of a Chapter 9 bankruptcy do not align as closely with the purpose of the equitable mootness doctrine as that of a Chapter 11

⁵ *In re PC Liquidation Corp.*, No. CV-06-1935(SJF), 2008 WL 199457, at *5 (E.D.N.Y. Jan. 17, 2008).

⁶ *In re Arcapita Bank B.S.C. (c)*, Nos. 13 Civ. 5755 (SAS) & 13 Civ. 5756(SAS), 2014 WL 46552, at *2 (S.D.N.Y. Jan. 6, 2014).

⁷ *In re BGI, Inc.*, 772 F.3d at 109.

⁸ Appellant asks the Court to “incorporate[] the legal analysis of Calvin Grisby who is representing the ratepayers of Jefferson County, Alabama” and directs the Court to his briefs and notes. Appellant’s Resp. at 3.

bankruptcy. That court found that a Chapter 11 corporate reorganization is concerned with efficiency and “preserving going concerns and maximizing property available to satisfy creditors,” *id.* at 635, whereas a Chapter 9 bankruptcy is concerned not with future profit, but with “continued provision of public services.” *Id.* at 636. The court went on to conclude that “[t]hese major differences in the purposes of Chapter 9 and Chapter 11 reorganizations alter analysis of whether equitable considerations should factor into this court’s decision to hear the [Chapter 9] appeal” because although the doctrine “requires a weighing of finality and good faith reliance against competing interests that underlie the right of a party to seek review of a bankruptcy court order . . . , [i]n the case of a Chapter 9 reorganization plan—finality and reliance may be required to yield to the Constitution and interest of the public in the provision of governmental services.” *Id.* (internal citations and quotation marks omitted).

The Court agrees with appellee that the interests of the City, its over 100,000 creditors, and its nearly 700,000 residents in relying on a final judgment cannot be marginalized and dismissed in the broad brush manner adopted by the *Jefferson County* court. If the interests of finality and reliance are paramount to a Chapter 11 private business entity with investors, shareholders, and employees, then these interests surely apply with greater force to the City’s Chapter 9 Plan, which affects thousands of creditors and residents. The Court will therefore apply an equitable mootness analysis to the instant appeal.

B. Application

The Sixth Circuit applies the equitable mootness doctrine using a three-part test: “(1) whether a stay has been obtained; (2) whether the plan has been ‘substantially consummated’; and (3) whether the relief requested would affect either the rights of parties not before the court or

the success of the plan.” *In re United Producers*, 536 F.3d at 947-48 (internal citation omitted).⁹

1. Existence of a Stay

“When an appellant does not obtain a stay of the implementation of a confirmation plan, the debtor will normally implement the plan and reliance interests will be created.” *In re United Producers, Inc.*, 526 F.3d at 948. The failure to obtain a stay will therefore “count against the appellant in determining whether an appeal should be denied on equitable mootness grounds,” *id.* (citing *In re Manges*, 29 F.3d at 1040), but is “not necessarily fatal to the appellant’s ability to proceed,” *City of Covington*, 71 F.3d at 1225-26.

Appellant does nothing to explain her failure to obtain, let alone seek, a stay of the Confirmation Order. However, it appears that the Bankruptcy Court docketed one of appellant’s filings as a concurrence in another appellant’s motion for a stay of that order. Because “[a] stay not sought, and a stay sought and denied, lead equally to the implementation of the plan of reorganization,” *United Producers, Inc.*, 526 F.3d at 948, the fact that appellant concurred in a motion that unsuccessfully sought a partial stay in this matter is of no consequence and does not weigh in favor of appellant’s position. Accordingly, appellant’s failure to obtain a stay weighs in favor of granting the City’s motion to dismiss.

2. Substantial Consummation

The Bankruptcy Code defines “substantial consummation” as:

(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the

⁹ Appellant’s response lacks relevant argument on each of the equitable mootness factors. To the extent appellant asks the Court to apply the legal analysis in the briefs used in the *Jefferson County* appeal to the instant appeal, the Court declines to do so. Appellant’s request to incorporate briefs from a completely unrelated Chapter 9 appeal is inappropriate.

successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (c) commencement of distribution under the plan.

11 U.S.C. § 1101(2). Although the definition of “substantial consummation” is ordinarily used as a statutory measure “to determine whether a bankruptcy court may modify or amend a [Chapter 11] reorganization plan, *In re United Producers*, 526 F.3d at 948 (citing § 1127), “[t]he standard has been adopted in the equitable mootness analysis to determine the extent to which the plan has progressed,” *Id.* (citing *In re Manges*, 29 F.3d at 1040-41). “If a plan has been substantially consummated there is a greater likelihood that overturning the confirmation plan will have adverse effects on the success of the plan and on third parties.” *Id.* This Chapter 11 standard therefore serves as a “yardstick . . . as to when finality concerns and the reliance interests of third parties upon the plan as effectuated have become paramount to a resolution of the dispute between the parties on appeal.” *In re Manges*, 29 F.3d at 1040-41.

Appellant does not provide any argument in her response or brief as to whether the Plan has been substantially consummated. Instead, appellant engages in a lengthy, but irrelevant, discussion criticizing the performance of the Emergency Manager and the City’s involvement in the Detroit Water and Sewerage Department and the new Joe Louis Arena. *See* Appellant’s Resp. at 5-8. In contrast, the City argues that the Plan has been substantially consummated and notes numerous major transfers and transactions that have been effectuated pursuant to the Plan, including (1) the State of Michigan’s disbursement of \$194.8 million to the City’s Retirement Systems; (2) the DIA’s and other philanthropic organizations’ disbursement of \$23 million to the Retirement Systems; (3) the City’s issuance of \$287.5 million in Financial Recovery Bonds, \$632 million in New B Notes, and \$88 million in New C Notes; (4) the City’s irrevocable transfer of its right, title,

and interest in DIA assets to a perpetual charitable trust; (5) the Retirement Systems' implementation of pension plan modifications, including pension and COLA reductions and ASF Recoupment; and (6) the substantial completion¹⁰ of ASF Recoupment of current account holders, which has resulted in \$58.5 million in recaptured funds. *See* Appellee's Mot. at 28-31. The City and other entities have also resumed or initiated management of substantially all of the property dealt with by the Plan, as demonstrated by (1) Kevyn D. Orr's resignation as Emergency Manager, which restored day-to-day management of the City to the Mayor and City Council; (2) Governor Richard D. Snyder's decision to remove the City from financial emergency status and end receivership; (3) the City's implementation of \$1.7 billion program in Reinvestment Initiatives, of which \$8.4 million went to the Detroit Police Department, \$3.8 million to the Detroit Fire Department, \$3.5 million for blight remediation, and \$1.9 million to the City's Income Tax Division to upgrade information technology; (4) the establishment of the Great Lakes Water Authority and two VEBAs to provide healthcare benefits to City retirees; and (5) appointment of the Michigan Financial Review Commission to review the City's finances. *See id.* at 31-33. Finally, the City notes that it has substantially completed numerous payments and distributions under the Plan, including (1) \$55 million in cash to holders of allowed Class 7 claims; (2) \$17 million in New B Notes for distribution to holders of allowed Limited Tax General Obligation Bond Claims; (3) \$280 million in Restructured UTGO Bonds to holders of allowed Class 8 Claims; (4) \$88 million in New C Notes to the COP Trustee for the benefit of settling claims with Class 9 claimants; and (5) \$493 million in New B Notes to the VEBAs to satisfy Class 12 claims. *See id.* 34-35.

¹⁰ On January 2, 2015, ASF excess amounts were debited from 5,278 of 5,283 current ASF account holders. Appellee's Mot. at 30 n.17. The City notes in its motion that debits from the remaining five accounts failed for technical reasons and will be re-attempted. *Id.*

As these many transfers, transactions, and actions demonstrate, implementation of the Plan has been set into motion and has been substantially consummated, especially as it relates to GRS Pension Claims. Since the effective date, pensions have been reduced, COLAs have been eliminated, ASF Recoupment has recaptured nearly all diverted funds from current ASF account holders, and ASF Recoupment for non-current ASF account holders has taken effect by further adjusting GRS Pensions. Thus, this factor weighs in favor of granting the City's motion to dismiss.

3. Rights of Third Parties and Success of the Plan

“Even when a plan has been substantially consummated, it is ‘not necessarily . . . impossible or inequitable for an appellate court to grant effective relief.’” *In re United Producers, Inc.*, 526 F.3d at 949 (quoting *In re Manges*, 29 F.3d at 1042-43). This is because the “most important factor [a] court must consider is ‘whether the relief requested would affect either the rights of parties not before the court or the success of the plan.’” *Id.* (quoting *In re Am. HomePatient, Inc.*, 420 F.3d 559, 564 (6th Cir. 2005)). This question “‘require[s] a case-by-case judgment regarding[] the feasibility or futility of effective relief should a litigant prevail.’” *Id.* (quoting *In re AOV Indus., Inc.*, 792 F.2d 1140, 1147-48 (D.C. Cir. 1986)). In assessing the feasibility of granting relief, the court must “consider[] the nature of the relief requested and whether it amounts to a piecemeal revision of the plan or a wholesale rewriting of it.” *Id.* (citing *In re Manges*, 29 F.3d at 1042) (“We must evaluate [actions taken pursuant to the Plan], many of which appear irreversible, against the backdrop of the relief sought—nothing less than a wholesale annihilation of the Plan.”). Essentially, the Court must decide whether appellant presents a “plausible argument that the implementation of [her] suggested changes to the confirmation plan would not require any of the actions undertaken pursuant to the plan to be reversed.” *In re United Producers, Inc.*, 526 F.3d at 950.

Appellant asks the Court to restore retiree pension and healthcare benefits to their prepetition levels, but provides no argument that doing so would not affect the success of the Plan. If the City were to unimpair approximately \$1.9 billion in GRS Pension Claims, such unimpairment would “produce a ‘perverse’ outcome—‘chaos in the bankruptcy court’ from a plan in tatters and/or significant ‘injury to third parties.’” *In re Semcrude, L.P.*, 728 F.3d 314, 320 (3d Cir. 2013) (quoting *In re Phila. Newspapers, LLC*, 690 F.3d 161, 168 (3d Cir. 2012)). The relief appellant requests—sending the City back to square one to keep pensions and healthcare benefits intact—would require “nothing less than a wholesale annihilation of the Plan.” *In re Manges*, 29 F.3d at 1043. Any suggestion to the contrary simply cannot be credited.

As the City notes in its motion, the Global Retiree Settlement sought to ensure that payment of GRS Pension Claims would be made at a specified level and that to achieve this level, the State and the DIA Funding Parties would need to contribute \$816 million to the City. This Grand Bargain was contingent on the confirmation of the Plan and the implementation of the Global Retiree Settlement, which relies on ASF Recoupment. Exempting pensions from the Plan would therefore unravel the Grand Bargain, which could cause (1) the State to commence measures to recover the State’s contribution and (2) the DIA Funding Parties to withhold hundreds of millions of dollars in funding not yet disbursed to the City. Appellee’s Reply at 4. Further, appellant’s requested relief would disrupt ASF Recoupment by removing \$190 million in necessary cost savings. By losing \$190 million in ASF Recoupment proceeds and \$816 million in Outside Funding, the City would be incapable of (1) satisfying its obligations to creditors under the Plan and (2) implementing \$1.7 billion in Reinvestment Initiatives. In a Plan described by Martha E.M. Kopacz, the court-appointed independent feasibility expert, as having “little space remaining on the

continuum of reasonableness,” where “[i]t is not realistic or prudent to believe that the City could take on any additional plan obligations and remain within the continuum . . . necessary to establish feasibility,” it is simply unrealistic to credit appellant’s suggestion that her requested relief would not hinder the success of the Plan. Tr. of 11/7/2014 Hr’g at 54:13-14. Simply put, unimpairing GRS Pension Claims would not only threaten the success of the Plan, it would cast the City into a renewed financial emergency.

Further, reversing the Plan would negatively affect countless third parties who have justifiably relied on the Plan. Equitable mootness has particular force when “[r]eversal of the Confirmation Order . . . would require the invalidation of thousands of good-faith transfers made pursuant to the Plan,” *In re Eagle-Picher Indus., Inc.*, 172 F.3d 48 (6th Cir. 1998), and “unraveling the plan ‘would work incalculable inequity to many thousands of innocent third parties who have extended credit, settled claims, relinquished collateral and transferred or acquired property in legitimate reliance on the unstayed order of confirmation,’” *In re United Producers, Inc.*, 526 F.3d at 951 (quoting *In re Public Serv. Co.*, 963 F.2d 469, 475 (1st Cir. 1992)). This reliance interest is heightened when, as here, the plan “reflects a highly integrated settlement among various constituencies.” *HNRC Dissolution, Co.*, No. Civ.A.04-158 HRW, 2005 WL 1972592, at *9 (E.D. Ky. Aug. 16, 2005).

The record from the Bankruptcy Court reveals that appellant’s requested relief would negatively affect the success of the Plan and harm innocent third parties. Although appellant makes light of these consequences, the record before the Court, as described above, establishes that various parties have come to rely upon the Plan such that unraveling it would throw the City into financial chaos. Thus, the third factor of the equitable mootness analysis weighs in favor of granting the

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing exhibits with the Clerk of the Court for the Bankruptcy Appellate Panel for the Ninth Circuit by using the appellate CM/ECF system on October 1, 2015, which will automatically serve all parties of record who are registered CM/ECF users. I further certify that parties of record to this appeal who are not CM/ECF users have consented in writing to electronic service, and that I have served these parties via email.

October 1, 2015

/s/ Marc A. Levinson
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Counsel for Debtor-Appellee