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11 Attorneys for Defendant
 City of Stockton, California

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

16 In re:
 17 CITY OF STOCKTON, CALIFORNIA,
 18 Debtor.
 19
 20 WELLS FARGO BANK, NATIONAL
 ASSOCIATION, FRANKLIN HIGH YIELD
 21 TAX-FREE INCOME FUND, AND
 FRANKLIN CALIFORNIA HIGH YIELD
 22 MUNICIPAL FUND
 23 Plaintiffs,
 24 v.
 CITY OF STOCKTON, CALIFORNIA,
 25 Defendant.
 26

Case No. 12-32118
 Chapter 9
 Adv. No. 13-02315
 OHS-1

**DEFENDANT CITY OF STOCKTON'S
 MOTION FOR JUDGMENT TO BE
 ENTERED IN FAVOR OF
 PLAINTIFFS**

Date: April 7, 2014
 Time: 1:30 p.m.
 Dept: Courtroom 35
 Judge: Hon. Christopher M. Klein

1 Defendant City of Stockton, California (“City”), debtor in the above-captioned case and
2 defendant in the above captioned adversary proceeding (“Adversary”), hereby moves by this
3 “Motion” for an order dispensing with the major issues in the Adversary and directing entry of a
4 judgment in favor of Plaintiffs and against the City in the form, content and manner described
5 herein.

6 INTRODUCTION

7 Plaintiffs seek a declaration that the subject 2009 transaction is a financing transaction
8 rather than a lease transaction. The City believes that such a conclusion would be incorrect on
9 both the facts and the law. But the City also believes that were the relief granted, the effect on the
10 City’s plan of adjustment would not have a material detrimental impact upon the City or its
11 creditors than were the Court to conclude that the leases at the heart of the transaction are indeed
12 leases. So rather than continue to spend valuable time and resources on a battle over form, the
13 City in this pleading agrees that Plaintiffs can have their sought after declaration with the
14 understanding that this concession is made solely to move the case more quickly and efficiently
15 towards confirmation of a plan of adjustment, and with the full reservation of rights that such
16 concession has no precedential effect or impact on any other transaction involving the City or any
17 related agency.

18 JURISDICTION AND VENUE

19 1. The Court has jurisdiction over this motion and the relief requested herein
20 pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C.
21 § 157. Venue for the motion is proper in this court pursuant to 28 U.S.C. §§ 1408 and 1409.

22 RELIEF REQUESTED

23 2. As a means of eliminating or at least minimizing the costs, counsel and other
24 professional fees and time the City will be required to devote to defending the allegations in the
25 Adversary that also relate to the treatment of Plaintiffs’ claims in the proposed plan, the City
26 requests entry of an order directing that judgment be entered in favor of Plaintiffs, and against the
27 City, with respect to the principal relief sought by Plaintiffs herein, namely that the “Golf
28 Course/Park Lease Out” and the “Golf Course/Park Lease Back” (as identified in the City’s

1 Answer and in and in the relevant excerpts from the City's disclosure statement attached hereto as
2 Exhibit A) "are not unexpired lease(s) of real property within the meaning, scope and operation of
3 sections 365 and 502(b)(6) of the Bankruptcy Code" (*see*, Complaint, paras. (1) and (2) of the
4 prayer for relief), but instead constitute a disguised secured transaction wherein the City is an
5 obligor, Wells Fargo Bank, acting as the bond trustee ("**Bond Trustee**") under the Indenture of
6 Trust dated as of September 1, 2009 (the "**Indenture**") for the bonds identified in the complaint
7 herein, acting as the assignee of the City's Financing Authority, is the secured creditor, the
8 obligation is to repay the amounts set forth in the Golf Course Lease Back, and the collateral
9 consists of the right to possession and operation of the properties identified in the City's Answer
10 ("**Answer**") [Adv. Dkt. No. 13] and in Exhibit A, as the "**Golf Course/Park Properties**". In
11 conceding such judgment, the City neither admits nor agrees that the Golf Course/Park Lease Out
12 or the Golf Course/Park Lease Back, or any similar lease/leaseback transactions to which the City
13 is a party, are disguised financings, and fully reserves its rights on issues such as the nature and
14 extent of the Bond Trustee's claims in this case.

15 **BACKGROUND**

16 3. The City filed its petition for chapter 9 relief on June 28, 2012. Dkt. No. 1. On
17 April 1, 2013, the Court delivered its oral ruling that the City had established its eligibility for
18 bankruptcy protection, and entered its order for chapter 9 relief later that day. Dkt. No. 845. On
19 June 12, 2013, the Court issued a written Opinion Regarding Chapter 9 Order For Relief,
20 elaborating on its reasons for its ruling. *In re City of Stockton*, 493 B.R. 772 (Bankr. E.D. Cal.
21 2013). Dkt. No. 950.

22 4. On November 15, 2013, the City filed its First Amended Plan For The Adjustment
23 Of Debts Of City Of Stockton, California (November 15, 2013) (the "**Plan**"). Dkt. No. 1204. On
24 November 21, 2013, the City filed its Modified Disclosure Statement With Respect To First
25 Amended Plan For The Adjustment Of Debts Of City Of Stockton, California (November 15,
26 2013) (the "**Disclosure Statement**"). Dkt. No. 1215. On November 22, 2013, the Court entered
27 its Order (1) Approving Modified Disclosure Statement With Respect To First Amended Plan For
28 The Adjustment Of Debts Of City Of Stockton, California (November 15, 2013); (2) Setting

1 Confirmation Procedures; And (3) Scheduling Filing Dates And The Confirmation Hearing (the
2 **Order**). Dkt. No. 1220.

3 5. By virtue of the Order, the City is now proceeding to confirmation of the Plan with
4 the confirmation hearing date scheduled for May 12, 2014.

5 6. The transaction giving rise to the dispute herein is described in detail in the
6 Disclosure Statement. Relevant excerpts of the Disclosure Statement are set forth in Exhibit "A"
7 attached hereto. Defined terms used herein and not defined herein have the same meaning as in
8 the Disclosure Statement.

9 7. On October 14, 2013, Plaintiffs commenced the Adversary by filing their
10 **Complaint**. Dkt. No. 1181.

11 8. By the Complaint, Plaintiffs seek, inter alia, a declaration that the Golf
12 Course/Park Lease Out and the Golf Course/Park Lease Back: "in economic substance, constitute
13 a secured financing transaction by which the City borrowed more than \$30 million in proceeds of
14 the Bonds."¹ Complaint, para. 59. Specifically, Plaintiffs request that the Court enter a judgment
15 declaring that the Golf Course/Park Lease Back and the Golf Course Lease Out "is not an
16 unexpired lease of real property within the meaning, scope and operation of sections 365 and
17 502(b)(6) of the Bankruptcy Code." Complaint, prayer for relief, paras. (1) and (2).

18 9. Plaintiffs ask that the Court declare: "that the claims arising under the [Golf
19 Course/Park Lease Out and the Golf Course/Park Lease Back], . . . are allowed claims secured by
20 a valid, perfected and enforceable security interest in and lien upon the [Golf Course/Park
21 Properties] and such other collateral as set forth in the Indenture." Complaint, para. 61.

22 10. The Complaint also requests the Court to value the collateral for the secured loan
23 sought by Plaintiffs and in the alternative, to determine the claim for administrative rent should

24 ¹ The Bond Trustee is already a party to a \$35 million secured loan transaction collateralized by an assignment of the
25 Golf Course/Park Leases – The Trust Indenture for the Bonds sets forth the terms of that secured loan transaction in
26 great detail. The problem for the Plaintiffs is that the borrower and only obligor for that secured loan is the Stockton
27 Public Financing Authority, a joint powers authority created in 1990. See definition 82 of the Plan. The City itself
28 has no obligation to repay the Bonds. Rather, its obligation is to pay rent to the Financing Authority under the Golf
Course/Park Lease Back. Plaintiffs desire to assert a \$35 million claim against the City and have apparently chosen
the recharacterization relief sought by the Complaint to obtain that claim directly against the City. Perhaps it would
be more appropriate to characterize the relief really desired by the Plaintiffs as adding the City as an additional
obligor with liability to repay the Bonds.

1 the Golf Course/Park Leases be determined by this Court to be true leases. Complaint, paras. 69
2 – 82.

3 11. In the Answer, the City admitted the basic facts relating to the transactions, denied
4 the recharacterization allegations, and raised the contentions that, (i) any such recharacterized
5 secured loan transaction would be an illegal and unenforceable loan under California law that
6 prohibits cities from entering into obligations payable from future fiscal year revenues without
7 two-thirds voter approval, which was not obtained here, and (ii) to the extent that Plaintiffs seek
8 to claim a lien upon not just the Golf Course/Park Leases but also the underlying real property,
9 such a lien upon municipal property is prohibited as a matter of California statutory and
10 constitutional law², and (iii) Ninth Circuit law governing attempts to recharacterize the legal
11 nature of transactions mandate that the court look to state law, which means in this case the
12 *Offner-Dean* line of cases which under California law provides that properly structured
13 lease/leaseback transactions are true leases under California law.³

14 12. The City believes that: (i) the Golf Course/Park Leases are true leases; (ii) the
15 other lease/leaseback transactions undertaken by the Financing Authority are also true leases; and
16 (iii) no basis in fact or law exists to recharacterize the Golf Course/Park Leases as secured loan
17 transactions. The City further believes that: (iv) if the legal nature of the Golf Course/Park
18 Leases were recharacterized to be a secured loan transaction, the resulting recharacterized secured
19 loan would be illegal and unenforceable under California law; (v) the possessory interest in the
20 Golf Course/Park Properties would be the collateral for the recharacterized secured loan; (vi) such
21 possessory interest has no value as collateral to the Plaintiffs; (vii) there is no basis for
22 determining that the collateral for the recharacterized secured loan is the fee simple interest in the
23

24 ² See Answer ¶47.

25 ³ Answer ¶54 provides: “The City denies, generally and specifically, each and every allegation of ¶ 54 of the
26 Complaint. Further answering ¶ 54 of the Complaint, the current state of the law in the Ninth Circuit is that
27 bankruptcy courts must look to state law in order to re-characterize transactions. *See Official Comm. of Unsecured*
28 *Creditors v. Hancock Park Capital II, L.P. (In re Fitness Holdings Int'l)*, 714 F.3d 1141 (9th Cir. 2013). Plaintiffs
have failed to provide notice of a claim that California law would mandate re-characterizing the Golf Course/Park
Lease Out as a secured loan transaction, and in fact, the law in California does not support such a re-characterization.
See City of Los Angeles v. Offner, 19 Cal.2d 483 (1942), *Dean v. Kuchel*, 35 Cal.2d 444 (1950) and *Rider v. City of*
San Diego, 18 Cal. 4th 1035 (1998). Having stated no legal basis to support its side of the dispute, no claim for relief
is stated.”

1 Golf Course/Park Properties; and (viii) to the extent the collateral for the recharacterized secured
2 loan is determined to be such fee simple interest, the lien upon the fee simple interest is
3 unenforceable under California law. As a result, the City firmly believes that the Plaintiffs should
4 fail in their efforts to recharacterize the legal nature of the Golf Course/Park Leases.

5 13. However, resisting the recharacterization relief requested by the Plaintiffs would
6 require the City to continue to devote time, effort and professional fees, and would involve the
7 risk that the resolution of the recharacterization relief would prolong the evidentiary hearing on
8 confirmation of the Plan and possibly delay confirmation. The City sees little downside to
9 Plaintiffs prevailing on their recharacterization allegations as long as the City is able to preserve
10 its positions set forth above and in the Answer.

11 14. Therefore, the City is willing to concede judgment to Plaintiffs on the
12 recharacterization claims – that is that the Golf Course/Park Leases are “not an unexpired lease of
13 real property within the meaning, scope and operation of sections 365 and 502(b)(6) of the
14 Bankruptcy Code” (Complaint prayer for relief, paras. (1) and (2)) and that the claims of
15 Plaintiffs arising under the Golf Course/Park Leases are secured by a security interest in and lien
16 upon the right to possession and operation of the Golf Course/Park Properties and the other
17 collateral set forth in the Indenture (see, Complaint prayer for relief, paras. (3) and (4)), as long as
18 such concession is limited by a full reservation of rights by the City as to the consequences of the
19 Golf Course/Park Leases being treated as a secured financing, including, without limitation, the
20 nature and extent of the resulting claims, liens and security interests of the Plaintiffs, the fact that
21 such concession of judgment is not an admission that any other similar transactions with any
22 other parties are not true leases, and that the judgment entered against the City shall have no
23 precedential effect upon any other transactions. All such rights and claims reserved by the City,
24 to the extent disputed by Plaintiffs, can later be resolved outside of the Adversary.

25 15. Such concession would mean that Plaintiffs would receive the primary relief
26 requested in the Complaint, that Plaintiffs have a claim (albeit disputed) directly against the City
27 for the amount of approximately \$35 million rather than the \$10.4 million landlord claim of the
28 Financing Authority (assigned as collateral to the Bond Trustee) that is capped under section

1 502(b)(6) of the Bankruptcy Code.

2 16. In view of the foregoing, the City believes that the relief requested herein is
3 appropriate, legally justified, and in the best interests of the City and its creditors.

4 **CONCLUSION**

5 WHEREFORE, the City respectfully requests that the Court enter an order that judgment
6 be entered against the City and in favor of Plaintiffs, with the full reservation of rights set forth
7 above, and in the form set forth as Exhibit "B" hereto.

8
9 Dated: March 27, 2014

MARC A. LEVINSON
Orrick, Herrington & Sutcliffe LLP

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By: /s/ Marc A. Levinson
MARC A. LEVINSON
Attorneys for Debtor and Defendant
City of Stockton, California

1 **EXHIBIT A TO DEFENDANT CITY OF STOCKTON'S MOTION FOR**
2 **JUDGMENT TO BE ENTERED IN FAVOR OF PLAINTIFFS**

3 **(Excerpt from Disclosure Statement of the Discussion of the 2009 Bond Issue and**
4 **Related Leases)**

5 g. **2009 Golf Course/Park Leases.**

6 (i) *Financial Instruments Involved.*

7 The financial instruments involved in this transaction are the Stockton Public Financing
8 Authority Lease Revenue Bonds, 2009 Series A (Capital Improvement Projects), issued on
9 September 9, 2009, in the aggregate principal amount of \$35,080,000 (the "**2009 Golf**
10 **Course/Park Bonds**"). Wells Fargo is the indenture trustee (together with any successor trustee,
11 the "**2009 Golf Course/Park Bond Trustee**") under the Indenture of Trust, dated as of
12 September 1, 2009, by and between the Financing Authority and the 2009 Golf Course/Park Bond
13 Trustee. A reserve fund exists for the 2009 Golf Course/Park Bonds with a balance as of
14 September 1, 2013, of \$904,380.81 (the "**2009 Golf Course/Park Bond Reserve Fund**"). The
15 funds in the 2009 Golf Course/Park Bond Reserve Fund are pledged to support repayment of the
16 2009 Golf Course/Park Bonds. The 2009 Golf Course/Park Bonds are not insured; however,
17 Franklin is the sole holder of the bonds.

18 (ii) *Leased Properties.*

19 As described in more detail below, the properties that are involved in this transaction are
20 Oak Park, the Van Buskirk Golf Course, and the Swenson Golf Course (as defined below, the
21 "**Golf Course/Park Properties**"). In order to facilitate the financing to be provided by the 2009
22 Golf Course/Park Bonds, the City, as owner of the Golf Course/Park Properties, leased the
23 properties to the Financing Authority, pursuant to a site and facility lease dated as of
24 September 1, 2009, for a term ending on September 1, 2038, with a possible extension of the term
25 to the date upon which the 2009 Golf Course/Park Bonds are paid in full. Pursuant to section 510
26 of the City Charter, the term of the lease cannot extend for more than 55 years or to August 31,
27 2064 (the "**Golf Course/Park Lease Out**"). The City contemporaneously leased the properties
28 back from the Financing Authority for the same number of years pursuant to the terms of the

1 Lease Agreement dated as of September 1, 2009 (the "**Golf Course/Park Lease Back**"). Thus,
2 the City is the lessor and the Financing Authority is the tenant under the Golf Course/Park Lease
3 Out transaction, and the Financing Authority is the lessor and the City is the tenant in the Golf
4 Course/Park Lease Back transaction.

5 As tenant under the Golf Course/Park Lease Out, the Financing Authority paid rent for the
6 entire lease term in a lump sum payment in the amount of \$1.00. Pursuant to the terms of the
7 Golf Course/Park Lease Back, the Financing Authority agreed to provide the net proceeds of the
8 2009 Golf Course/Park Bonds (with gross proceeds equal to \$35,080,000) to the City for the
9 purpose of financing various capital projects. As tenant under the Golf Course/Park Lease Back,
10 the City agreed to make payments, including certain semi-annual rental payments in varying
11 amounts (\$2,415,838 fiscal year 2012-13, \$2,923,119 for fiscal year 2013-14, \$2,926,332 for
12 fiscal year 2014-15, etc.) (the "**Golf Course/Park Lease Back Rental Payments**"). The
13 Financing Authority assigned to the 2009 Golf Course/Park Bond Trustee its rights under the
14 Golf Course/Park Lease Back, including the rights to enforce the lease after default by the City,
15 and including the stream of Golf Course/Park Lease Back Rental Payments from the City, to
16 support the repayment of the 2009 Golf Course/Park Bonds. No other revenues or assets are
17 pledged to support the repayment of the 2009 Golf Course/Park Bonds, the repayment obligation
18 is non-recourse to the Financing Authority, and the 2009 Golf Course/Park Bonds are payable
19 solely from the Golf Course/Park Lease Back Rental Payments. A default occurred on March 1,
20 2012 in the payment by the City of amounts due under the Golf Course/Park Lease Back.

21 The subject properties consist of three separate properties, each of which continues to be
22 owned by the City (subject to the Golf Course/Park Lease Out to the Financing Authority and the
23 Golf Course/Park Lease Back from the Financing Authority) (as described below, the "**Golf**
24 **Course/Park Properties**").

25 (a) **Oak Park.**

26 This property is a public park of approximately 61.2 acres, bounded on the east by Union
27 Pacific railroad tracks, on the north by East Fulton Street, on the south by East Alpine Street, and
28 on the west by North Sutter and Alvarado Streets. This park features group picnic areas, 20 picnic

1 tables, two tot lots, 15 barbecue pits, and four restrooms. In addition, Oak Park features 11 tennis
2 courts; two regulation softball fields; the Billy Hebert Field; a 6,000 seat, regulation professional
3 minor league baseball field (renovated in 2002); a multi-use field; a community swimming pool
4 complex with changing facilities; and an approximately 13,875-square-foot ice-rink facility with
5 seating for 350. A one-story senior center of approximately 5,000 square feet, which is available
6 for rental to the public is also located at Oak Park.

7 (b) **Swenson Golf Course.**

8 This property was opened in 1952 and is located on approximately 219 acres at 6803
9 Alexandria Place. Swenson Golf Course features a classic championship 18-hole, par 72 course;
10 a nine-hole executive, par three course; a 15-station driving range; two putting greens and a
11 practice bunker; and paved cart paths. Also located on this property is a clubhouse, an
12 approximately 2,000-square-foot pro shop, an approximately 5,000-square-foot maintenance and
13 storage facility, and an approximately 2,500-square-foot café with seating.

14 (c) **Van Buskirk Golf Course.**

15 This property was opened in 1962 and is located on approximately 214.0 acres at 1740
16 Houston Avenue. The Van Buskirk Golf Course features a classically designed par 72, 18-hole
17 course, an all-grass driving range with 15 stations, two practice greens, and partially paved cart
18 paths. Also located on this Property is a clubhouse, an approximately 2,000-square-foot pro shop,
19 an approximately 5,000-square-foot maintenance and storage facility, and an approximately
20 2,500-square-foot cafe with seating. The Van Buskirk real property is subject to a senior
21 reversionary interest, and if it were to be converted from a public recreational use it may revert to
22 private parties.

23 All three properties are zoned for their current use, and it would be unlikely that the
24 zoning could be changed for commercial development, even assuming that commercial
25 development of any of the properties would be economically viable given Stockton's current real
26 estate market. As owner of the fee interest in the property, the City would have to approve any
27 application for a zoning change.
28

1 (iii) *Operating Revenue Shortfalls Experienced for the Golf*
 2 *Course/Park Properties.*

3 The Golf Course/Park Properties generate revenues, but these revenues have historically
 4 been short of the amounts necessary to cover operating expenses.

5 The table below lists revenues, expenses, and operating deficits for the two golf courses:⁴

	FY 2010-11 Actual (\$)	FY 2011-12 Unaudited Actual (\$)	FY 2012-13 Projected (\$)
Revenues			
Swenson Golf Course	1,126,374	1,260,192	1,073,415
Van Buskirk Golf Course	532,091	597,066	495,366
Expenses			
Swenson Golf Course	1,195,093	1,390,097	1,289,120
Van Buskirk Golf Course	802,591	816,755	702,248
Operating Deficit			
Swenson Golf Course	(68,719)	(129,905)	(215,705)
Van Buskirk Golf Course	(270,500)	(219,689)	(206,882)

13
 14 Operating deficits for Oak Park are difficult to calculate with precision because revenues
 15 for certain facilities, such as the pool, the softball fields, and the senior center, are pooled with
 16 revenues from related City facilities. For the past three years, however, these operating deficits
 17 are estimated to be approximately \$400,000 per year.

18 As a result, each of the properties generates no revenues at all to service the debt
 19 obligations of the 2009 Golf Course/Park Bonds. Instead, the City has historically utilized certain
 20 unpledged revenues and made expenditures from the General Fund to cover the operating
 21 shortfalls of the Golf Course/Park Properties and to pay debt service on the 2009 Golf
 22 Course/Park Bonds.

23 (iv) *Lease Rejection by City.*

24 The City has determined that it cannot afford to pay the debt service on the 2009 Golf
 25 Course/Park Bonds from General Fund revenues or from other unpledged revenues. As a result,
 26 the City has decided to reject the Golf Course/Park Lease Out and the Golf Course/Park Lease

27 ⁴ Data from "Community Services Department, Golf – 481, 2013-14 Adopted Budget," in *City of Stockton 2013-*
 28 *2014 Annual Budget* (2013) at H-23, available at [http://www.stocktongov.com/files/2013-](http://www.stocktongov.com/files/2013-2014_Adopted_Budget.pdf)
2014_Adopted_Budget.pdf.

1 Back under section 365(a).

2 The practical consequences of such lease rejection are difficult to predict. As a result of
3 the rejection by the City of the Golf Course/Park Lease Out, the 2009 Golf Course/Park Bond
4 Trustee, as the nominal tenant pursuant to the assignment from the Financing Authority of all of
5 the rights of the Authority under the Golf Course/Park Lease Out, may have the option under
6 section 365(h) to take possession of the Golf Course/Park Properties for the balance of the term of
7 the Golf Course/Park Lease Out so long as the rent is paid and other amounts to be paid by it
8 under the Golf Course/Park Lease Out are paid (and the City reserves its rights to contest or place
9 limitations upon such election), or to treat the rejection of the Golf Course/Park Lease Out as a
10 termination of the same and thereby allow possession and control of the Golf Course/Park
11 Properties to remain with the City. Should the 2009 Golf Course/Park Bond Trustee succeed in
12 taking possession and control of the Golf Course/Park Properties from the City, the City would be
13 relieved of the obligation under the Golf Course/Park Lease Back to pay for expenses associated
14 with the Golf Course/Park Properties, including utilities, insurance, and maintenance expenses, all
15 of which would instead be borne by the 2009 Golf Course/Park Bond Trustee. The rent under the
16 Golf Course/Park Lease Out was paid in a lump sum from the proceeds of the 2009 Golf
17 Course/Park Bonds, so no further rent would be due and owing.

18 The City would have an interest, however, in ensuring that the Golf Course/Park
19 Properties are run in a responsible, safe and professional manner.

20 The actual decision will likely be made by Franklin, as the current holder of the 2009 Golf
21 Course/Park Bonds, or its successor(s) should Franklin transfer ownership of the bonds. Franklin
22 would have at least these options: (1) treat the rejection as a breach of the lease, make a claim for
23 damages for breach of lease, and allow possession and control of the Golf Course/Park Properties
24 to remain with the City (and the City would then need to make the decision of whether to
25 continue to operate the Golf Course/Park Properties and underwrite the operating losses or close
26 the Golf Course/Park Properties and pay for the closure, maintenance, security and other holding
27 costs); (2) attempt to exercise the option under section 365(h) to take over possession and either
28 operate the Golf Course/Park Properties (and underwrite the operating deficits, likely in the hope

1 that such operating deficits can be converted into operating profits), or hold the Golf Course/Park
2 Properties without operating them (and underwrite the closure, maintenance, security and other
3 holding costs) in order to sell the rights to the remaining term of the Golf Course/Park Lease Out
4 to a third party. Although theoretically possible, the City believes it is unlikely that Franklin
5 would decide to enter into possession of the Golf Course/Park Properties for the balance of the
6 term of the Golf Course/Park Lease Out and shut the properties down, which would obligate
7 Franklin to pay all of the closure, maintenance, security and other holding costs of the Golf
8 Course/Park Properties without realizing any revenue at all from the operation of the properties.

9 The City is party to executory contracts with vendors, managers and operators of services
10 and facilities located at the Golf Course/Park Properties (e.g., the Golf Courses are operated by a
11 management company, as is the ice rink, etc.). Should the City not be in a position to continue to
12 operate the Golf Course/Park Properties (because Franklin is successful in causing the 2009 Golf
13 Course/Park Bond Trustee to take over possession), the City will likely reject the executory
14 contracts related to the properties. However, if the City remains in possession and control of the
15 properties, the City will likely re-negotiate such contracts or may assume such executory
16 contracts.

17 At this time the City does not know whether the 2009 Golf Course/Park Bond
18 Trustee/Franklin would decide to attempt to enter into possession (which the City may contest or
19 attempt to impose conditions upon). When the City is in a position to make such decisions, the
20 City will decide to reject, assume or renegotiate executory contracts with such vendors and other
21 parties.

22 Should the 2009 Golf Course/Park Bond Trustee/Franklin decide to and be successful in
23 taking possession of the Golf Course/Park Properties from the City, at the end of the term of the
24 Golf Course/Park Lease Out, possession, custody and control of the Golf Course/Park Properties
25 will revert to the City as the owner of the Golf Course/Park Properties.

1 (v) *Limits/Restrictions Upon the Right of the Golf Course/Park*
2 *Bond Trustee/Franklin to Take Over Possession of the Golf Course/Park Properties.*

3 As a result of the lease/leaseback transaction described herein, the City is currently in
4 possession, custody and control of the Golf Course/Park Properties, but section 365(h) may
5 provide the Golf Course/Park Bond Trustee/Franklin the right to enter into possession and control
6 of the Golf Course/Park Properties. However, the Golf Course/Park Lease Out states in section 5
7 thereof, entitled "Purpose": "The Authority shall use the Site and the Facility solely for the
8 purpose of leasing the Site and the Facility to the City, pursuant to the Lease Agreement . . ."
9 Thus, the Golf Course/Park Bond Trustee/Franklin (having succeeded to the rights of the
10 Authority by assignment) may not have any rights to the Golf Course/Park Properties other than
11 to lease them to the City, and specifically may not have the right to operate the Golf Course/Park
12 Properties for their own account. The City is still considering the merits of such an argument.

13 Further, the Golf Course/Park Bond Trustee/Franklin is not currently in possession of the
14 Golf Course/Park Properties and if they wished to invoke section 365(h), the changeover in
15 possession and control from the City to the Golf Course/Park Bond Trustee/Franklin would not be
16 nearly as straightforward and uncomplicated as the typical situation in which a commercial tenant
17 merely remains in possession of its existing leased premises. The City would have an ongoing
18 and continuing interest in ensuring that the golf courses and the park would continue to be
19 operated in a responsible, safe and professional manner so as not to endanger the citizens of
20 Stockton and not let the properties go into disrepair or worse, abandonment. Finally, the Golf
21 Course/Park Properties are subject to use restrictions that mandate that the properties be used only
22 for the existing activities and uses.

23 Franklin disputes the foregoing characterization of its rights and remedies in respect to the
24 2009 Golf Course/Park Bonds, including the alleged limits or restrictions upon its right to possess
25 and use the Golf Course/Park Properties.

1 (a) Rather Than Maintaining the Status Quo, a Takeover by
2 Franklin Would Interrupt the Status Quo and Require Planning, Transition, and Coordinated
3 Implementation

4 Should the Golf Course/Park Bond Trustee/Franklin decide, for some reason, to take over
5 the operations at the Golf Course/Park Properties, there will be a fairly massive change to the
6 operations of the Golf Course/Park Properties. In order to plan for such a takeover, and in the
7 absence of agreement with the Golf Course/Park Bond Trustee/Franklin on such issues, the City
8 would request that the Court enter an order outlining a process and timelines for the decision-
9 making process (e.g., when would the Golf Course/Park Bond Trustee/Franklin need to make a
10 final decision about whether to take over such operations? When would the changeover of
11 possession occur? Which vendors would the Golf Course/Park Bond Trustee/Franklin like to
12 retain and which vendors would they terminate (assuming they could even do so)?), as well as
13 protections for the City to ensure the responsible, safe and professional operation of the facilities
14 throughout the years of the Golf Course/Park Lease Out term (liability insurance satisfactory to
15 the City would need to be maintained, adequate measures for security at all three facilities would
16 need to be in place or in prospect, measures to ensure that access to all three facilities by members
17 of the public would not be interrupted, changeover in billing arrangements for utilities such as
18 water, gas, electricity, and telephone would need to be in place, arrangements with any new
19 vendors would need to be in place, arrangements satisfactory to the City for the maintenance and
20 upkeep and replacement of obsolete or non-functional equipment located at the facilities and
21 maintenance and capital improvements of the facilities themselves would need to be in place,
22 arrangements for allowing City personnel to access infrastructure and other public facilities
23 located on the subject properties would need to be in place, etc.). The City would want to be
24 protected from the uncertainty of not knowing when or if the Golf Course/Park Bond
25 Trustee/Franklin would decide to enter into possession of the Golf Course/Park Properties. The
26 City would want protection from Franklin attempting to provide the public with the idea that the
27 City and the citizens of the City would lose access to and the use of the Golf Course/Park
28 Properties unless Franklin's payment demands are met. The City would want protection from
Franklin taking possession of the Golf Course/Park Properties to simply cease operations at the

1 facilities, or worse, operate the facilities in an unsafe manner or allow the facilities to fall into
2 disrepair and neglect. And, the City would want protection from the chaos and public confusion
3 that could result if there are not guidelines and timetables for the transition from City-operated
4 properties to privately-operated properties.

5 **(b) The Golf Courses Must Continue to Be Operated as Golf**
6 **Courses, and Oak Park Must Continue to Be Operated as a Park**

7 Should the Golf Course/Park Bond Trustee/Franklin decide, for some reason, to take over
8 the operations at the Golf Course/Park Properties, the current usage of the facilities could not be
9 altered by the Golf Course/Park Bond Trustee/Franklin, to say, construction of residential housing
10 or construction of office or retail buildings.

11 Van Buskirk Golf Course, Swenson Golf Course, and Oak Park are all designated "Parks
12 and Recreation" by the 2035 Stockton General Plan. According to the General Plan, "Allowed
13 Uses" under the Parks and Recreation designation include "City and county parks, golf courses,
14 marinas, community centers, public and quasi-public uses, and other similar and compatible
15 uses". Pages 3-7 of the Goals and Policies Report, December 2007.

16 These three properties are designated PF (Public Facilities) by the Stockton Development
17 Code (Zoning Ordinance). The PF Zoning District includes not just parks, but City facilities
18 throughout the City. As such, the list of permissible land uses is somewhat broader, with
19 provisions for auditoriums, libraries, and similar civic uses. However, very few of these land uses
20 are permitted without a discretionary permit from either the Community Development Director or
21 the Planning Commission. With each discretionary permit, the review authority must make a
22 written finding that the request is consistent with the General Plan. Referring back to the "Parks
23 and Recreation" General Plan designation and its limited list of acceptable uses, the review
24 authority would be precluded from making this finding for any proposed non-conforming use
25 and, therefore, could not approve any of these additional uses. Instead, the only permissible uses
26 would be those listed in the General Plan.

1 In addition, the Van Buskirk Golf Course is subject to a restrictive condition upon title
2 providing that if the property is not used for public purposes, the property reverts to the prior
3 owner of the property.

4 (vi) *Adversary Proceeding*

5 On October 14, 2013, the 2009 Golf Course/Park Bond Trustee, Franklin High Yield Tax-
6 Free Income Fund, and Franklin California High Yield Municipal Fund commenced an adversary
7 proceeding against the City by filing a Complaint for Declaratory Relief in the Bankruptcy Court.
8 [Dkt. No. 1181, commencing Adversary Case 13-2315] (the “**Franklin Re-characterization**
9 **Adversary Proceeding**”). In this complaint, the plaintiffs seek a declaration: (1) that the Golf
10 Course/Park Lease Out and the Golf Course/Park Lease Back are not in fact true leases of
11 nonresidential real property under section 365 and therefore cannot be rejected by the City; (2)
12 that their claims with respect to the Golf Course/Park Lease Out and the Golf Course/Park Lease
13 Back are instead secured claims under section 506(a) secured by an interest in the Golf
14 Course/Park Properties; and (3) in the alternative, if the Bankruptcy Court concludes that the
15 Golf Course/Park Lease Out and the Golf Course/Park Lease Back are in fact true leases under
16 section 365, that all rent payable under them from the Petition Date through the effective date of
17 rejection is an administrative expense payable under sections 365(d)(3) and 503.

18 The City believes that there is no merit to the Franklin Re-characterization Adversary
19 Proceeding and plans to vigorously defend the same. The City further believes that even if the
20 plaintiffs are successful in re-characterizing the Golf Course/Park Lease Out transaction as a
21 secured loan obligation, the security for such loan would be the remaining term of the leasehold
22 interest in the Golf Course/Park Properties, and that such leasehold interest has little or no value.
23 As discussed above, given the current zoning and use restrictions, the subject properties would
24 need to be operated, after foreclosure on the leasehold interests by the plaintiffs, as golf courses
25 and a park, which operations have historically been cash flow negative, that is, subsidized by the
26 City because the direct costs of the operations far exceed the gross revenues generated by the
27 Golf Course/Park Properties.

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**EXHIBIT B TO DEFENDANT CITY OF STOCKTON'S MOTION FOR
JUDGMENT TO BE ENTERED IN FAVOR OF PLAINTIFFS**

(Form of Judgment)

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11 Attorneys for Defendant
 City of Stockton, California

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

16 In re:
 17 CITY OF STOCKTON, CALIFORNIA,
 18 Debtor.
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 20 WELLS FARGO BANK, NATIONAL
 ASSOCIATION, FRANKLIN HIGH YIELD
 21 TAX-FREE INCOME FUND, AND
 FRANKLIN CALIFORNIA HIGH YIELD
 22 MUNICIPAL FUND
 23 Plaintiffs,
 v.
 24 CITY OF STOCKTON, CALIFORNIA,
 25 Defendant.
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Case No. 12-32118
 Chapter 9
 Adv. No. 13-02315
 OHS-1
**JUDGMENT IN FAVOR OF
 PLAINTIFFS**

1 Defendant City of Stockton, California (“City”), debtor in the above-captioned case and
2 defendant in the above captioned adversary proceeding (“Adversary”), filed its Motion For
3 Judgment To Be Entered In Favor Of Plaintiffs (“Motion”) [Adv. Dkt. No. ___], on March 26,
4 2014, wherein the City seeks to have judgment entered in favor of Plaintiffs and against the City.
5 The Court has ordered that the Motion should be granted and that judgment is to be entered in
6 favor of Plaintiffs and against the City in the form, content and manner described in the Motion
7 and set forth herein.

8 JUDGMENT

9 It is hereby **ORDERED, ADJUDGED** and **DECREED**:

10 The “Golf Course/Park Lease Out” and the “Golf Course/Park Lease Back” (as
11 identified in the Motion) are not unexpired leases of real property within the meaning, scope and
12 operation of sections 365 and 502(b)(6) of the Bankruptcy Code, but instead constitute a
13 disguised secured transaction wherein the City is an obligor, Wells Fargo Bank, acting as the
14 bond trustee under the Indenture of Trust dated as of September 1, 2009, for the bonds identified
15 in the complaint herein, acting as the assignee of the City’s Financing Authority, is the secured
16 creditor, the obligation is to repay the amounts set forth in the Golf Course Lease Back, and the
17 collateral consists of the right to possession and operation of the properties identified in the
18 Motion as the Golf Course/Park Properties.

19 Nothing in this Judgment shall be construed as an admission or agreement of the City that
20 the Golf Course/Park Lease Out or the Golf Course/Park Lease Back are disguised financings, as
21 opposed to true leases.

22 Nothing in this Judgment shall be construed as an admission or agreement of the City, or a
23 finding by this Court, that any other lease/leaseback transactions to which the City is a party,
24 whether or not such transactions could be considered similar to those at issue in this proceeding,
25 are disguised financings, as opposed to true leases, and this Judgment shall have no precedential
26 effect upon any other transactions.

1 Nothing in this Judgment shall be construed as an admission or agreement of the City or
2 Plaintiffs, or a finding by this Court, regarding additional issues arising as a consequence of the
3 transaction being treated as a secured financing rather than a true lease.

4 Count Five of the Complaint, for Declaratory Relief (Alternative Claim For
5 Administrative Rent), is dismissed with prejudice. The balance of the claims for relief asserted in
6 the Complaint in this Adversary are dismissed without prejudice to Plaintiffs reasserting those
7 claims for relief in the main case, and this Adversary shall forthwith be closed.

8 The parties shall bear their own costs.
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