

6

1 MARC A. LEVINSON (STATE BAR NO. 57613)
 malevinson@orrick.com
 2 ORRICK, HERRINGTON & SUTCLIFFE LLP
 400 Capitol Mall, Suite 3000
 3 Sacramento, California 95814-4497
 Telephone: +1-916-447-9200
 4 Facsimile: +1-916-329-4900

5 ROBERT M. LOEB (Admitted pro hac vice)
 (District of Columbia Bar No. 997838)
 6 rloeb@orrick.com
 7 ORRICK, HERRINGTON & SUTCLIFFE LLP
 Columbia Center
 8 1152 15th Street
 Washington, D.C. 20005
 9 Telephone: +1-202-339-8475
 10 Facsimile: +1-202-339-8500

11 Attorneys for Debtor
 City of Stockton

12 BRADFORD J. DOZIER (STATE BAR NO. 142061)
 13 ATHERTON & DOZIER
 305 N. El Dorado St., Suite 301
 14 Stockton, California 95202
 Telephone: +1-209-948-5711

15 Attorney for Creditor
 16 Michael A. Cobb

17 UNITED STATES BANKRUPTCY COURT
 18 EASTERN DISTRICT OF CALIFORNIA
 19 SACRAMENTO DIVISION

21 In re:
 22 CITY OF STOCKTON, CALIFORNIA,
 Debtor.

Case No. 2012-32118
 D.C. No. OHS-15
 Chapter 9

**JOINT STIPULATION OF MATERIAL
 FACTS UNDERLYING OBJECTION
 OF CREDITOR MICHAEL A. COBB**

Date: May 7, 2014
 Time: 9:30 a.m.
 Dept: C
 Judge: Hon. Christopher M. Klein

1 Debtor the City of Stockton, California (the “City”), and Creditor Michael A. Cobb
2 (“Cobb”), through their respective counsel, hereby stipulate as follows.

3 1. Andrew C. Cobb, the father of Creditor Michael A. Cobb, was the owner of a
4 parcel of land located at 4218 Pock Lane in Stockton, California, San Joaquin County Assessor’s
5 Parcel Number 179-180-07 (the “Parcel”).

6 2. On August 10, 1998, the Stockton City Council issued Resolution No. 98-0353
7 determining that the public necessity required the condemnation of a strip of land across the
8 Parcel for purposes of building a public road. Attached hereto as Exhibit A is a true and correct
9 copy of Stockton City Council Resolution No. 98-0353.

10 3. In conformance with the procedures set forth in California Civil Procedure Code
11 § 1255.010, the City had an expert appraiser conduct an appraisal of the strip of land for purposes
12 of determining the amount of compensation believed to be just, and produce a summary of the
13 basis for the appraisal. The appraisal valued the land at \$90,200.00. On October 23, 1998,
14 consistent with § 1255.010, the City deposited that amount with the California State Treasurer
15 Condemnation Deposits Fund. Attached hereto as Exhibit B is a true and correct copy of the
16 City’s Notice of Deposit of Just Compensation -- Action in Eminent Domain.

17 4. On October 23, 1998, the City initiated eminent domain proceedings in the
18 Superior Court of California, County of San Joaquin (the “Eminent Domain Action”) to condemn
19 a permanent easement over the strip of land. Attached hereto as Exhibit C is a true and correct
20 copy of the City’s complaint in the Eminent Domain Action.

21 5. On December 1, 1998, the Superior Court issued an Order for Prejudgment
22 Possession -- Action in Eminent Domain in favor of the City. That order found that the City “has
23 made a deposit of the probable just compensation and filed a Summary of the Basis for Appraisal
24 Opinion, both of which meet the requirements of Code of Civil Procedure section 1255.010.”
25 Attached hereto as Exhibit D is a true and correct copy of the Superior Court’s Order for
26 Prejudgment Possession -- Action in Eminent Domain.

27 6. On October 17, 2000, the Stockton City Council issued Resolution No. 00-0505
28 recognizing that the planned road over the Parcel had been completed and accepting that

1 improvement. Attached hereto as Exhibit E is a true and correct copy of Stockton City Council
2 Resolution 00-0505.

3 7. In November 2000, Michael A. Cobb, owner of the Parcel by operation of state
4 probate and trust succession following the death of Andrew C. Cobb, withdrew the City's deposit
5 of probable just compensation in the amount of \$90,200.00, subject and pursuant to California
6 Civil Procedure Code § 1255.260.

7 8. On July 2, 2007, Michael A. Cobb sent, by check of good and available funds, the
8 sum of \$90,200.00 to the California State Treasurer Condemnation Deposits Fund. On October
9 24, 2007, the California State Treasurer returned that amount to Cobb. On December 6, 2007,
10 Cobb tendered the sum of \$90,200.00 by way of a cashier's check to the attorneys for the City.
11 On December 10, 2007, the City returned the tendered check. On May 15, 2008, the attorneys for
12 Cobb advised the attorneys for the City that Cobb had deposited the sum into an interest-bearing
13 trust account. On May 21, 2008, the attorneys for the City indicated that the City had no interest
14 in the amount. Attached hereto as Exhibit F are true and correct copies of the correspondence of
15 the California State Treasurer and attorneys for the City and for Cobb verifying the foregoing
16 facts stated in this paragraph 8.

17 9. On October 9, 2007, the Superior Court in the Eminent Domain Action dismissed
18 that action because it had not been brought to trial within five years of its commencement.
19 Attached hereto as Exhibit G is a true and correct copy of the Superior Court's order dismissing
20 the action.

21 10. On March 14, 2008, Cobb initiated an action in the Superior Court of the State of
22 California, County of San Joaquin (the "Inverse Condemnation Action"), seeking relief pursuant
23 to a claim of inverse condemnation. Attached hereto as Exhibit H is a true and correct copy of
24 Cobb's complaint in the Inverse Condemnation Action.

25 11. On July 11, 2008, Cobb filed his First Amended Complaint in the Inverse
26 Condemnation Action, again seeking relief based only upon a claim of inverse condemnation.
27 Attached hereto as Exhibit I is a true and correct copy of Cobb's First Amended Complaint in the
28 Inverse Condemnation Action.

1 12. The City demurred to Cobb's First Amended Complaint. On September 11, 2008,
2 the Superior Court sustained the City's demurrer on the ground that the inverse condemnation
3 claim was time-barred. Attached hereto as Exhibit J is a true and correct copy of the Superior
4 Court's Order Sustaining Defendant City of Stockton's Demurrer to First Amended Complaint
5 for Inverse Condemnation.

6 13. On September 8, 2008, Cobb filed his Second Amended Complaint in the Inverse
7 Condemnation Action, adding claims to quiet title, declaratory relief, and ejectment. Attached
8 hereto as Exhibit K is a true and correct copy of Cobb's Second Amended Complaint in the
9 Inverse Condemnation Action.

10 14. The City demurred to Cobb's Second Amended Complaint. On November 24,
11 2008, the Superior Court sustained the City's demurrer as to all claims. The Superior Court
12 concluded, *inter alia*, that the inverse condemnation claim was barred by the statute of
13 limitations, and that the quiet title and ejectment claims were barred by the doctrine of
14 intervening public use. The Superior Court granted Cobb leave to amend his complaint with
15 respect to all but his inverse condemnation claim. Attached hereto as Exhibit L is a true and
16 correct copy of the Superior Court's Order Sustaining Defendant City of Stockton's Demurrer to
17 the Second Amended Complaint.

18 15. On December 23, 2008, Cobb filed his Third Amended Complaint advancing
19 claims of quiet title, ejectment, trespass, and declaratory relief. Attached hereto as Exhibit M is a
20 true and correct copy of Cobb's Third Amended Complaint in the Inverse Condemnation Action.

21 16. The City demurred to Cobb's Third Amended Complaint. On April 3, 2009, the
22 Superior Court sustained the City's demurrer as to all claims. It found, *inter alia*, that Cobb's
23 quiet title, ejectment, and trespass claims were barred by the doctrine of intervening public use.
24 The Superior Court dismissed the action without leave to amend. Attached hereto as Exhibit N is
25 a true and correct copy of the Superior Court's Order Sustaining Defendant City of Stockton's
26 Demurrer to Third Amended Complaint.

27 17. On June 15, 2009, Cobb appealed the Superior Court's dismissal of the Inverse
28 Condemnation Action to the California Court of Appeal, Third District. In his briefing, he

1 challenged the dismissal of only his inverse condemnation claim on statute of limitation grounds.
2 Cobb did not appeal the dismissal of the quiet title, ejectment, trespass, or declaratory relief
3 claims.

4 18. On January 26, 2011, the Court of Appeal reversed the Superior Court's decision
5 with respect to Cobb's inverse condemnation claim, finding that it is not barred by the statute of
6 limitations. The Court of Appeal stated in its written decision that "plaintiff's only challenge is to
7 dismissal of the inverse condemnation claim." Attached hereto as Exhibit O is a true and correct
8 copy of the Court of Appeal's decision.

9 19. On June 28, 2012, the City petitioned for bankruptcy under chapter 9. Dkt. No. 1.

10 20. On August 16, 2013, Cobb filed a Proof of Claim in the chapter 9 case. Cobb
11 listed the total amount of his claim as \$4,200,997.26, consisting of \$1,540,000.00 as the principal
12 of his claim; \$2,282,997.26 as interest on the principal of his claim; \$350,000.00 as attorney's
13 fees and litigation expenses; \$13,000.00 as costs of suit; and \$15,000.00 as real estate taxes,
14 maintenance costs, and insurance costs. Cobb did not indicate on his Proof of Claim that the
15 claim was secured or that the claim was entitled to priority under 11 U.S.C. § 507(a). Attached
16 hereto as Exhibit P is Cobb's Proof of Claim.

17 21. On November 15, 2013, the City filed the First Amended Plan for the Adjustment
18 of Debts of City of Stockton, California. The City designated 19 classes of claims. Cobb's claim
19 was included in Class 12 as a General Unsecured Claim. Dkt. No. 1204.

20 22. On February 3, 2014, the City filed its Memorandum of Law in Support of
21 Confirmation of the First Amended Plan. Dkt. No. 1243.

22 23. On February 11, 2014, Cobb filed the Objection of Creditor Michael A. Cobb to
23 Plan and Confirmation Thereof. Dkt. No. 1261.

24
25
26
27
28

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

Dated: May 6, 2014

MARC A. LEVINSON
ROBERT M. LOEB
Orrick, Herrington & Sutcliffe LLP

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

Dated: May 6, 2014

BRADFORD J. DOZIER
Atherton & Dozier

By: /s/ Bradford J. Dozier
BRADFORD J. DOZIER
Attorney for Creditor
Michael A. Cobb