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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re) Case No. 12-32118-C9
) Chapter 9
City of Stockton, California)
) DCN: JD-1
Debtor.)
) Date: December 10, 2014
) Time: 11:00 a.m.
) Judge: Hon. Christopher Klein
) Courtroom: 35, 501 I Street, 6th Floor
) Sacramento, CA 95814

**POLICE UNIONS’ OPPOSITION TO FRANKLIN’S MOTION FOR STAY PENDING
APPEAL OF CONFIRMATION ORDER**

Stockton Police Officers Association (“SPOA”) and Stockton Police Managers Association (collectively, the “Police Unions”) oppose the Motion for Stay Pending Appeal of Confirmation Order filed by Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal Fund (collectively, “Franklin”), because a stay would unfairly delay, and in some individual cases entirely eliminate, half of the bankruptcy settlement between the City and SPOA.

This Opposition is supported by the Declaration of Kathryn Nance, President of SPOA, submitted herewith.

1 **I. Statement of Facts¹**

2 During the past three years, during the lead-up to the bankruptcy and during the pendency
3 of the bankruptcy, SPOA Members have suffered from increased job stress and increased overtime
4 – meaning less time with their families – due to inadequate staffing levels in the Department.
5 They have suffered anxiety over their job tenure and taken dramatic cuts in compensation and
6 benefits. Their working conditions have deteriorated, not only because of inadequate staffing, but
7 also because many experienced officers have left, resulting in a decline in the average level of
8 experience. All of these issues have resulted directly or indirectly from the City’s financial
9 difficulties.

10 SPOA Members have also been very worried about possible loss of their CalPERS
11 pensions, especially when Franklin Municipal Funds (“Franklin”) asserted that the Plan could not
12 be confirmed because the Plan did not impair pensions. Franklin is, presumably, intending to raise
13 this issue on appeal as well.

14 Some of the anxiety felt by SPOA Members was relieved when the City’s Plan of
15 Adjustment was confirmed on October 30, 2014. It is inevitable, however, that the SPOA
16 Members’ bankruptcy-related concerns will return if a stay of the confirmation order pending
17 appeal is issued.

18 The tension will cause SPOA Members to continue questioning whether they should just
19 seek a job somewhere else that doesn’t have the problems that the City of Stockton has. Because
20 of Stockton’s high crime levels compared to most other communities in California, Stockton
21 police officers have experience that makes them highly desirable in the marketplace. Most SPOA
22 Members could easily obtain a job with another law enforcement agency. Indeed, many have
23 already left the City’s employment due to the concerns outlined above, even though they may have
24 had to uproot their families to do so.

25 A stay pending appeal will also directly and very negatively affect SPOA Members and
26 what they expect to receive on account of their claims in the bankruptcy.

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28 ¹ Based entirely on the Declaration of Kathryn Nance, President of SPOA, submitted herewith.

1 A few months after the bankruptcy case was filed, SPOA and the City entered into a
2 Memorandum of Understanding, approved in December 2012 and signed February 13, 2013,
3 covering the period July 1, 2012 through June 30, 2014 (the “Current MOU”).² The Current
4 MOU is, at least in part, contingent upon confirmation and effectiveness of a Plan incorporating it.
5 The Plan that has been confirmed does incorporate it, but the Plan has not yet become effective, so
6 SPOA members have not yet received what they bargained for.

7 SPOA Members asserted \$13 million of claims in the bankruptcy, resulting from the City’s
8 pre-petition breach of the previous MOU. The Current MOU provides for settlement of these
9 claims by giving each SPOA Member 44 hours of paid time off. To be eligible to take the time
10 off, an SPOA Member had to have been on the payroll during at least part of the period July 1,
11 2010 to July 1, 2012, and the Member must still be on the payroll when he or she takes the paid
12 time off.

13 The 44 hours of paid time off to be granted to each SPOA Member under the settlement
14 are granted during certain time periods. Twenty-two hours were granted in fiscal year 2012-2013,
15 but the other 22 hours are “contingent upon confirmation of the Plan and on the Plan becoming
16 effective.” These 22 hours are to be granted in two chunks: 11 hours “in the fiscal year of
17 approval of the Plan” and 11 hours “in the fiscal year after approval of the Plan.”³

18 If a stay pending appeal is issued, the Plan will not become effective until the appeals
19 process is completed. As a result, SPOA Members will not receive their remaining 22 hours of
20 bargained-for paid time off until some later date, possibly several years in the future. Such a long
21 delay will further demoralize and anger the membership. They are likely to feel that half of their
22 bargained-for compensation under the Plan has become illusory.

26 ² A copy of the Current MOU is Exhibit A to the Declaration of Kathryn Nance, submitted
27 herewith.

28 ³ The bankruptcy settlement is contained in Section 23 of the Current MOU, beginning on page
55.

1 This concern is especially true for SPOA Members who, for whatever reason, may wish to
2 leave or retire from City employment. They will lose the rest of their bargained-for settlement of
3 paid time off altogether, because it must be taken while they are still employed at the City.

4 The Current MOU expired six months ago. SPOA and the City are in negotiations for a
5 new MOU to cover the period starting July 1, 2014. If a stay pending appeal is granted,
6 effectively canceling the second half of what SPOA Members were supposed to receive for their
7 bankruptcy claims, there will be demands for other accommodations to compensate the Members.

8 **II. Argument**

9 The United States District Court for this District has clearly set forth the standards for
10 granting a stay pending appeal in a bankruptcy case:

11 “An appellant seeking a discretionary stay pending appeal under Bankruptcy Rule
12 8005 must prove: (1) appellant is likely to succeed on the merits of the appeal;
13 (2) appellant will suffer irreparable injury; (3) no substantial harm will come to
14 appellee; and (4) the stay will do no harm to the public interest.” *Universal Life*
15 *Church v. United States*, 191 B.R. 433, 444 (E.D. Cal. 1995), citations omitted.
16 “The party moving for a stay has the burden on each of these elements.” *In re*
17 *Shenandoah Realty Partners, L.P.*, 248 B.R. 505, 510 (W.D. Va. 2000). “Movant's
failure to satisfy one prong of the standard for granting a stay pending appeal
dooms the motion.” *In re Deep*, 288 B.R. 27, 30 (N.D.N.Y. 2003), citations
omitted; accord *In re Pon*, No. C-93-2745 MHP, 1994 U.S. Dist. LEXIS 2559, at
*6 (N.D. Cal., February 25, 1994).

18 *In re Irwin*, 338 B.R. 839, 843 (E.D. Cal. 2006)

19 The test is a four-prong test, and the appellant must establish all four prongs – not just one
20 or two. In this case, Franklin is not able to establish even one of the four prongs, much less all of
21 them.

22 For reasons with which the Court is very familiar, Franklin is not at all likely to succeed on
23 the merits of the appeal. The issues raised by Franklin were fully briefed by all parties during the
24 confirmation process and this Court held a six-day trial and heard extensive arguments before
25 confirming the City’s Plan of Adjustment. There is no need to rehash the arguments; the Court is
26 as well-equipped as anyone to know that Franklin’s arguments are weaker than the City’s and that
27 Franklin is unlikely to succeed on appeal.

1 Failure to establish this one prong of the four-prong test already dooms Franklin's motion
2 for a stay pending appeal, but Franklin is also unable to establish any of the other three prongs.

3 The second prong is irreparable injury to Franklin. According to Franklin's own
4 projections, even without impairment of the CalPERS contract and the City's pension obligations
5 to its retirees, former employees, and current employees, "the City will have sufficient future
6 resources with which it can make payments that will provide Franklin with a reasonable recovery
7 over time even if the Plan is consummated."⁴ Thus, if no stay is issued, Franklin will *not* be
8 irreparably harmed, because, based on Franklin's own argument, the City will have the ability to
9 pay Franklin more money – up to payment in full of Franklin's approximately \$31 million
10 unsecured claim – if the appellate court requires it. Accordingly, there is no need to protect
11 Franklin during its appeal by issuing a stay, and the second of the four prongs is not satisfied.

12 The third prong is no substantial harm to the appellee (the City) from the issuance of a
13 stay. In fact, however, the City will be harmed in a number of ways by failure to exit bankruptcy
14 with a confirmed and effective plan. Among other things, the City's ability to attract and retain
15 quality employees, and particularly police officers, will be adversely affected by the continued
16 uncertainty about the City's future and, in particular, the future of CalPERS benefits for the City's
17 employees. Stockton police officers, with their experience in one of the state's highest-crime
18 cities, are very attractive to other law enforcement agencies and can easily move elsewhere. The
19 hemorrhaging the Police Department has already experienced could easily continue if a stay is
20 granted.

21 The City will also be harmed by having to negotiate alternative compensation to police
22 officers for 22 hours of post-confirmation paid time off to which the City previously agreed,
23 which compensation will be rendered nearly worthless if a stay pending appeal is granted because
24 those 22 hours will not be granted to the officers until the Plan becomes effective. A delay of
25 possibly years makes *half* of the City's negotiated bankruptcy settlement with SPOA essentially
26 meaningless, and there will be demands for a substitute for that half of the settlement.

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28 ⁴ Motion, page 11, lines 9-11.

1 Because there will be substantial harm to the City from a stay pending appeal, Franklin has
2 not established the third prong of the test.

3 The fourth prong is no harm to the public interest. Here, once again, Franklin has failed to
4 establish the point. The public interest will be significantly harmed if the City fails to exit
5 bankruptcy. Many creditors, including the City's retirees, a number of whom still reside in
6 Stockton, will not be paid until the Plan becomes effective. Franklin argues that the City could
7 make payments to creditors even if the Plan doesn't become effective, but there is certainly no
8 guarantee that this will happen, and the City, notably, has not made such payments up to now
9 except to a very small subset of creditors.

10 If effectiveness of the Plan is delayed by a stay pending appeal, the City's police officers
11 will not receive half of their bargained-for compensation for their bankruptcy claims until some
12 indefinite time in the future. For many of them, who may retire or leave in the meantime, that day
13 will never come. They have already been waiting three years to receive compensation for the
14 City's pre-petition breach of collective bargaining agreements with the Police Unions. It is unfair
15 to them – and to other creditors who will have to wait to be paid – to delay their partial recovery
16 under the Plan any longer.

17 Not only the City, as a municipal entity, but the public who reside and work in Stockton
18 will be damaged if a stay pending appeal makes the City's difficulties in attracting and retaining
19 quality police officers continue into the indefinite future. The public's safety is compromised by
20 an understaffed and inexperienced police force. The people of Stockton deserve to have their City
21 exit bankruptcy and start its recovery now, not months or years from now.

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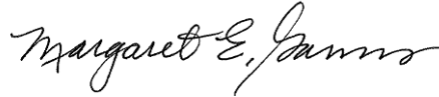
III. Conclusion

Franklin needs to establish four things to be entitled to a stay pending appeal. It has not established even one. Franklin is *not* likely to success on the merits of its appeal; Franklin will *not* be irreparably harmed if no stay is granted; the City *will* suffer substantial harm; and there *will* be harm to the public interest. The Motion, therefore, should be denied.

Respectfully submitted,

Dated: November 25, 2014

PARKINSON PHINNEY



By: _____

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and Stockton Police Managers Association