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

I. PRELIMINARY STATEMENT AND BACKGROUND

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

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

[1] *See* Trial Ex. Nos. 1376, 3060, and 3061; Dkt. Nos. 1150 and 1645.

Indeed, Franklin's showing is so half-hearted that one wonders whether the purpose of its motion is not actually to obtain a stay, but rather simply to satisfy its "burden *to seek* a stay if post-appeal transactions could render the appeal moot." *In re Gotcha Int'l L.P.*, 311 B.R. 250, 255 (B.A.P. 9th Cir. 2004) (emphasis added) (citing *In re Filtercorp, Inc.*, 163 F.3d 570, 576-577 (9th Cir. 1998)). Whether Franklin's perfunctory motion sufficiently checks this box is a question for another day and another court. But it comes nowhere close to justifying a stay that would forestall for years the City's emergence from bankruptcy while Franklin continues to litigate over the treatment of its unsecured claim. The motion should therefore be denied.

II. STANDARD GOVERNING FRANKLIN'S MOTION

Generally, "[a] stay is not a matter of right …. It is instead an exercise of judicial discretion." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (internal quotation marks omitted). That discretion is guided by four factors, which mirror in large part the traditional standard that applies to a motion for preliminary injunctive relief: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* at 426; *In re Blixseth*, 509 B.R. 701, 705-06 (Bankr. D. Mont. 2014). Franklin bears the burden on each and every one of these factors. *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012). "[F]ailure to satisfy one prong of the standard for granting a stay pending appeal dooms the motion." *In re Irwin*, 338 B.R. 839, 843 (Bankr. E.D. Cal. 2006).

Franklin correctly identifies the four relevant factors at the outset of its motion, but it misstates how they apply. It asks the Court to apply a "flexible, 'sliding-scale' test," Franklin Mot. 11, and it maintains that "[w]here it can be shown that the movant is more likely than not to prevail on the merits, the movant then need only show a possibility of irreparable harm." Franklin Mot. 4 (emphasis in original) (citing *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983)). That erroneous statement of the law is perhaps why the stay motion is top heavy with discussion of the merits—it hopes that will excuse its paltry showing on the other factors.

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

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

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

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

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A. Franklin Has Not Demonstrated a Likelihood of Irreparable Harm

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

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

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

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

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

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

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

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

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

[2] Franklin even goes so far as to claim that spending over two years in bankruptcy "has been quite beneficial to the City." Franklin Mot. 4. As amply demonstrated by the evidence adduced by the City at the eligibility hearing, at the confirmation trial, and in the declarations filed contemporaneously herewith, the City's ongoing bankruptcy has, 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.

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

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

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

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

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

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

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[4] Declaration of Kathryn Nance in Opposition to Franklin's Motion for Stay Pending Appeal of Confirmation Order ("Nance Decl.").

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

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

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

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[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.").
[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.").
[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.").

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

C. The Public Interest Supports Denial of a Stay

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

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

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

[8] *See* Trial Ex. No. 3033 at 19 (interest on delinquent payments under the Assured Guaranty Settlement), 169 (interest on delinquent payments under the NPFG Arena Settlement), 235, and 273 (interest on delinquent payments under the NPFG Parking Settlement).

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

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

D. Franklin's Appeal Is Unlikely to Succeed on the Merits

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

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

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

[9] Franklin suggests that its appeal "raises several legal questions, or mixed questions of law and fact" without 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.

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

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

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

California law if the City were to terminate its relationship with CalPERS, 10/30/14 Tr. at 18-25; (4) the nature of Franklin's treatment under the Plan, 10/30/14 Tr. at 30-31; (5) the continuing operations of the City, 10/30/14 Tr. at 34; (6) the City's successful efforts to raise taxes through two ballot initiatives to among the highest rates in California and its neighboring cities , 10/30/14 Tr. at 34; and (7) the likely cost of dismissing the chapter 9 case, 10/30/14 Tr. at 41. And after living with this case for 28 months, this Court again "looked long and hard at the history of this case and the responses that have been made and considered the alternatives" before rendering the key finding that "the Plan is in the best interest of creditors and feasible." 10/30/14 at 41. Cast in this light, there is no ambiguity: The Court found that the City's financial projections are sound, that the City has done all it can to negotiate mutually acceptable arrangements with creditors and raise revenues to pay them, and that the City's proposed plan of adjustment is far better than any alternative any party has placed before it.[10]

In any event, Franklin has forfeited this argument. Where a party believes that a court has not made specific findings under Rule 52(a), it may move the court under Rule 52(b) to "make additional findings." A party that "fail[s] to move the district court to amend its findings or make additional findings," however, "cannot [on appeal] complain of the lack of specificity in the finding." *Hollinger v. U.S.*, 651 F.2d 636, 641 (9th Cir. 1981). This Court gave Franklin every opportunity to file a Rule 52(b) motion, 10/30/14 Tr. at 44-45, and, indeed, Franklin *did* file one in tandem with this motion. But it deliberately decided to seek additional findings only on one very specific matter. It did not request additional findings with respect to the other issues. "[I]f a party is not willing to give a trial judge the benefit of suggested findings and conclusions, he is not in the best of positions to complain that the findings made and conclusions stated are incomplete." *Reliance Fin. Corp. v. Miller*, 557 F.2d 674, 681-682 (9th Cir. 1977) (quoting *Evans v. Suntreat Growers & Shippers*, 531 F.2d 568, 570 (Temp. Emer. Ct. App. 1976)). Franklin cannot sandbag its way into a stay by holding back appellate issues that it can and should raise.

[10] To the extent Franklin faults the Court for failing to specifically reject what it views as contrary evidence, Franklin Mot. 6-7, it misunderstands Rule 52(a). A court need not "make findings asserting the negative of each issue of fact raised." *Carr*, 200 F.2d at 255.

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

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

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

[11] Franklin continues to speak out of both sides of its mouth on this issue. It baldly claims that it is "the only material 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.

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

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

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

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

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

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

IV. CONCLUSION

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

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