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 8

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

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

Case No. 2012-32118
 D.C. No. OHS-17
 Chapter 9

**MOTION FOR ORDER APPROVING
 STIPULATION FOR ORDER
 PURSUANT TO 11 U.S.C. § 365(d)(4)
 FURTHER EXTENDING TIME
 WITHIN WHICH TO ASSUME OR
 REJECT 2009 LEASE AGREEMENT**

Date: February 25, 2014
 Time: 9:30 a.m.
 Dept: Courtroom 35
 Judge: Hon. Christopher M. Klein

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 23 Pursuant to § 365(d)(4) of title 11 of the United States Code (the “Bankruptcy Code”)¹,
 24 the City of Stockton, California (the “City”), the debtor in the above-captioned case, moves (by
 25 this “Motion”) for entry of an order approving the stipulation attached hereto as Exhibit A
 26 (“Stipulation”), by and between the City, Franklin California High Yield Municipal Fund and

27 ¹ All references to code sections are to the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, unless otherwise
 28 specified.

1 Franklin High Yield Tax-Free Income Fund (collectively “Franklin Advisers, Inc.” or “Franklin”)
 2 and Wells Fargo Bank National Association (“Wells Fargo”) as Indenture Trustee (the City,
 3 Franklin and Wells Fargo are herein collectively, the “Stipulating Parties”), the parties in interest
 4 to a lease/leaseback transaction, extending by 125 days the time under § 365(d)(4)(B)(ii) within
 5 which the City must assume or reject an unexpired lease agreement relating to nonresidential real
 6 property .

7 **JURISDICTION AND VENUE**

8 The Court has jurisdiction over this motion and the relief requested pursuant to 28 U.S.C.
 9 §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157. Venue for the
 10 motion is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

11 **BACKGROUND**

12 The opinion regarding the City’s eligibility for chapter 9 relief demonstrates that the Court
 13 is intimately familiar with the complex facts of the City’s bankruptcy case. *See In re City of*
 14 *Stockton, Cal.*, 493 B.R. 772 (Bankr. E.D. Cal. 2013). Accordingly, the City has omitted the
 15 customary background description of the events leading to and following the City’s petition for
 16 relief and instead focuses this Motion on the background relevant to the City’s unexpired leases
 17 of nonresidential real property.

18 Prior to filing its petition for relief on June 28, 2012, the City had entered into six
 19 transactions involving leases/leaseback financings to fund various public capital improvements.
 20 In each transaction, the City entered into a number of lease agreements relating to nonresidential
 21 real property that requires the City to pay rent for the use and occupancy of the subject real
 22 property.² One such agreement, which relates to Franklin, is described in the following chart,
 23 although it should be noted that unlike all other such transactions involving the City, the Franklin
 24 agreement is not covered by bond insurance; all such bonds are owned by Franklin.

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26 _____
 27 ² Although described as lease transactions in the relevant documents, it could be argued that certain of these
 28 transactions should be classified as secured loan transactions. Such transactions are included in this motion only in
 an abundance of caution in the event that such transactions are classified as true leases. As set forth herein, the
 Stipulating Parties reserve all rights with respect to these issues.

Lease Agreement	Real Party or Parties in Interest	Indenture Trustee
Lease Agreement, dated as of September 1, 2009, by and between the Stockton Public Financing Authority (the "Authority"), as lessor, and the City, as lessee, relating to Stockton Public Financing Authority Lease Revenue Bonds, 2009 Series A (Capital Improvement Projects)("2009 Lease Agreement")	Franklin	Wells Fargo

While each of the City's various lease agreements³ differs from the others in some respects, the various financings and their leases share the same fundamental structure: To accomplish each transaction, the City leased nonresidential real property to either the Authority or to the Redevelopment Agency of the City of Stockton (the "Agency") (each a "PFA"), and the PFA subleased the property back to the City. The PFA then assigned its right to receive rental payments (along with certain other rights relevant to the enforcement of remedies) under the applicable lease agreement to a trustee. Finally, the PFA issued bonds, or the trustee issued certificates of participation ("COPs"), and transferred the proceeds to the City for expenditure on capital improvements.

Payment of the principal of and interest on the bonds and COPs is made through the applicable trustee, pursuant to, inter alia, the terms of the related indenture or trust agreement, from the proceeds of rental payments received from the City pursuant to the terms of the applicable lease agreement and related assignment.⁴

Pursuant to § 365(d)(4)(A), which is incorporated into chapter 9 cases by § 901(a), the City was initially required to decide whether to assume or reject its unexpired leases of nonresidential property within 120 days of the entry of the order for relief. The Court's entry of its order for relief on April 1, 2013 [Dkt. No. 843] triggered the 120-day period, giving the City until July 30, 2013, to assume or reject its unexpired leases of nonresidential real property.

³ Copies of the relevant documents were attached as exhibits to the Declaration Of Vanessa Burke In Support Of City Of Stockton's Motion For Order Pursuant To 11 U.S.C. § 365(d)(4) Extending Time Within Which The City Must Assume Or Reject Unexpired Leases Of Nonresidential Real Property [Dkt. Nos. 984-87].

⁴ The descriptions of the transaction structure are included in this Motion for summary purposes only. In the event of any inconsistency between such descriptions and the relevant underlying documents, the underlying documents shall control.

1 Section 365(d)(4)(B) allows bankruptcy courts to extend the initial 120-day period, in the first
2 instance upon a motion for cause brought by the debtor to extend the deadline by 90 days, and in
3 all subsequent instances upon the prior written consent of the respective lessors.

4 On July 5, 2013, the City moved, by its Revised And Amended Motion For Order
5 Pursuant To 11 U.S.C. § 365(d)(4) Extending Time Within Which The City Must Assume Or
6 Reject Unexpired Leases Of Nonresidential Real Property [Dkt. No. 993] (“For Cause Extension
7 Motion”) for a 90-day extension under § 365(d)(4)(B)(i). Neither Franklin nor any other party in
8 interest opposed such motion. On July 24, 2013, the Court granted the For Cause Extension
9 Motion, establishing a new deadline of October 28, 2013 for the City to assume or reject its leases
10 of nonresidential real property. *See* Order Pursuant To 11U.S.C. § 365(d)(4) Extending The Time
11 Within Which The City Must Assume Or Reject Unexpired Leases Of Nonresidential Real
12 Property [Dkt. No. 1033] (“For Cause Extension Order”). All subsequent extensions of this
13 deadline could be made only upon the prior written consent of the individual lessors. *See*
14 § 365(d)(4)(B)(ii).

15 On October 14, 2013, the City moved, by its Motion For Order Approving Stipulation For
16 Order Pursuant To 11 U.S.C. § 365(d)(4) Further Extending Time Within Which To Assume Or
17 Reject 2009 Lease Agreement [Dkt. No. 1146] (“First Stipulated Extension Motion”), for a 120-
18 day extension under § 365(d)(4)(B)(ii). On October 16, 2013, upon prior written consent of
19 Franklin and Wells Fargo, the Court granted the First Stipulated Extension Motion, establishing a
20 new deadline of February 25, 2014 for the City to assume or reject the 2009 Lease Agreement.
21 *See* Order Approving Stipulation For Order Pursuant To 11 U.S.C. § 365(d)(4) Further Extending
22 Time Within Which To Assume Or Reject 2009 Lease Agreement [Dkt. No. 1155] (“First
23 Stipulated Extension Order”).

24 **RELIEF REQUESTED AND BASIS THEREFORE**

25 By this Motion, the City seeks an order pursuant to § 365(d)(4)(B)(ii) approving the
26 attached Stipulation to extend the time within which the City must assume or reject the 2009

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1 Lease Agreement by 125 days, from February 25, 2014, through and including June 30, 2014
2 (i.e., the last day of the City's fiscal year).

3 On November 15, 2013, the City filed the First Amended Plan For The Adjustment Of
4 Debts Of City Of Stockton, California [Dkt. No. 1204] (the "Plan"). In the Plan, the City takes
5 the position that the 2009 Lease Agreement is a "lease" within the meaning of § 365, and seeks to
6 reject it. Plan at 44. The Plan also contemplates that any claim for rejection of the 2009 Lease
7 Agreement is subject to the damage limitation provisions of § 502(b)(6). *Id.* at 13.

8 Franklin disputes such characterization and proposed treatment, maintaining that the 2009
9 Lease Agreement is, in economic substance, a financing instead of an unexpired lease of
10 nonresidential real property within the meaning of §§ 365 or 502(b)(6). On October 14, 2013,
11 Wells Fargo and Franklin commenced an adversary proceeding against the City by filing a
12 Complaint for Declaratory Relief in the Bankruptcy Court. [Dkt. No. 1181, commencing
13 Adversary Case 13-2315] (the "Complaint" commencing the "Adversary Proceeding"). The
14 Complaint seeks, among other things, a declaration regarding the true nature of the 2009 Lease
15 Agreement.

16 The Stipulating Parties agree that in light of the status of this case, including the
17 commencement of the Adversary Proceeding and the filing of the Plan by the City, a further
18 extension of the time for the City to assume or reject the 2009 Lease Agreement is both
19 appropriate and in the best interest of all interested parties.

20 **COMPLETE RESERVATION OF RIGHTS**

21 This Motion requests no relief other than the extension of time for the City to assume or
22 reject the 2009 Lease Agreement. Each of the Stipulating Parties reserves all rights, defenses and
23 arguments other than those solely with respect to the extension of the time within which the City
24 must assume or reject such agreement. The rights reserved by the Stipulating Parties include, but
25 are not limited to, any issues raised in the Adversary Proceeding (except any issues relating to the
26 extension described in the Stipulation), and all rights, defenses and arguments as to whether the
27 2009 Lease Agreement constitutes a "lease" within the contemplation of § 365. Moreover, none
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1 of the Stipulating Parties in interest waives any rights, defenses and arguments by virtue of any
2 failure to seek payment under the 2009 Lease Agreement during the periods prior to the
3 assumption or rejection of the 2009 Lease Agreement, and there shall be no implication drawn
4 from or prejudice resulting from any party's failure to seek such payment.

5 **CONCLUSION**

6 For the foregoing reasons, the City requests that the Court enter an order approving the
7 attached stipulation to extend the time within which the City must assume or reject the 2009
8 Lease Agreement by 125 days, through and including June 30, 2014, and granting such other and
9 further relief as the Court deems proper.

10 Dated: February 6, 2013

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

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14 By: /s/ Marc A. Levinson
15 MARC A. LEVINSON
16 Attorneys for Debtor
17 City of Stockton
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Exhibit A

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9 UNITED STATES BANKRUPTCY COURT
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**STIPULATION FOR ORDER
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 REJECT 2009 LEASE AGREEMENT**

Date: February 25, 2014
 Time: 9:30 a.m.
 Dept: Courtroom 35
 Judge: Hon. Christopher M. Klein

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 23 The City of Stockton, California (the “City”), the debtor in the above-captioned chapter 9
 24 bankruptcy case, Franklin California High Yield Municipal Fund and Franklin High Yield Tax-
 25 Free Income Fund (collectively “Franklin”), and Wells Fargo Bank National Association (“Wells
 26 Fargo”) as Indenture Trustee with respect to the Stockton Public Financing Authority Lease
 27 Revenue Bonds, 2009 Series A (Capital Improvement Projects) (collectively, the “Stipulating
 28 Parties”), by and through their respective attorneys of record, seek an order approving the

1 following stipulation (this “Stipulation”) extending the time under Bankruptcy Code
 2 § 365(d)(4)(B)(ii) within which the City must assume or reject the 2009 Lease Agreement (as
 3 defined below).

4 **RECITALS**

5 **A. The City’s Lease/Leaseback Financings**

6 Prior to filing its petition for relief on June 28, 2012, the City had entered into six
 7 transactions involving leases/leaseback financings to fund various public capital improvements.
 8 In each transaction, the City entered into a number of agreements, entitled lease agreements,
 9 relating to nonresidential real property. The agreement that relates to Franklin is described in the
 10 following chart:

Agreement	Real Party or Parties in Interest	Indenture Trustee
Lease Agreement, dated as of September 1, 2009, by and between the Stockton Public Financing Authority, as lessor, and the City, as lessee, relating to Stockton Public Financing Authority Lease Revenue Bonds, 2009 Series A (Capital Improvement Projects) (the “2009 Lease Agreement”)	Franklin	Wells Fargo

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 18 **B. Prior Extensions Of The Deadline To Assume Or Reject**

19 Pursuant to Bankruptcy Code § 365(d)(4)(A), which is incorporated into chapter 9 cases
 20 by Bankruptcy Code § 901(a), the City was initially required to decide whether to assume or
 21 reject its alleged unexpired leases of nonresidential property within 120 days of the entry of the
 22 order for relief. The Court’s entry of its order for relief on April 1, 2013 [Dkt. No. 843] triggered
 23 the 120-day period, giving the City until July 30, 2013, to assume or reject its alleged unexpired
 24 leases of nonresidential real property. Bankruptcy Code § 365(d)(4)(B) allows the Court to
 25 extend the period during which the City may assume or reject such agreements, in the first
 26 instance upon a motion for cause brought by the City to extend the deadline by 90 days, and in all
 27 subsequent instances upon the prior written consent of the respective lessors.

1 On July 5, 2013, the City moved, by its Revised And Amended Motion For Order
2 Pursuant To 11 U.S.C. § 365(d)(4) Extending Time Within Which The City Must Assume Or
3 Reject Unexpired Leases Of Nonresidential Real Property [Dkt. No. 993] (“For Cause Extension
4 Motion”) for a 90-day extension under § 365(d)(4)(B)(i). On July 24, 2013, the Court granted the
5 For Cause Extension Motion, establishing a new deadline of October 28, 2013 for the City to
6 assume or reject its leases of nonresidential real property. *See* Order Pursuant To 11 U.S.C.
7 § 365(d)(4) Extending The Time Within Which The City Must Assume Or Reject Unexpired
8 Leases Of Nonresidential Real Property [Dkt. No. 1033] (“For Cause Extension Order”). All
9 subsequent extensions of this deadline could be made only upon the prior written consent of the
10 individual lessors. *See* § 365(d)(4)(B)(ii).

11 On October 14, 2013, the City moved, by its Motion For Order Approving Stipulation For
12 Order Pursuant To 11 U.S.C. § 365(d)(4) Further Extending Time Within Which To Assume Or
13 Reject 2009 Lease Agreement [Dkt. No. 1146] (“First Stipulated Extension Motion”), for a 120-
14 day extension under § 365(d)(4)(B)(ii). On October 16, 2013, upon prior written consent of
15 Franklin and Wells Fargo, the Court granted the First Stipulated Extension Motion, establishing a
16 new deadline of February 25, 2014 for the City to assume or reject the 2009 Lease Agreement.
17 *See* Order Approving Stipulation For Order Pursuant To 11 U.S.C. § 365(d)(4) Further Extending
18 Time Within Which To Assume Or Reject 2009 Lease Agreement [Dkt. No. 1155] (“First
19 Stipulated Extension Order”).

20 **C. The Current Dispute Regarding The Characterization Of The 2009**
21 **Agreement**

22 On November 15, 2013, the City filed the First Amended Plan For The Adjustment Of
23 Debts Of City Of Stockton, California [Dkt. No. 1204] (the “Plan”). In the Plan, the City takes
24 the position that the 2009 Lease Agreement is a “lease” within the meaning of § 365, and seeks to
25 reject it. Plan at 44. The Plan also contemplates that any claim for rejection of the 2009 Lease
26 Agreement is subject to the damage limitation provisions of § 502(b)(6). *Id.* at 13.

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1 Franklin disputes such characterization and proposed treatment, maintaining that the 2009
2 Lease Agreement is, in economic substance, a financing instead of an unexpired lease of
3 nonresidential real property within the meaning of §§ 365 or 502(b)(6). On October 14, 2013,
4 Wells Fargo and Franklin commenced an adversary proceeding against the City by filing a
5 Complaint for Declaratory Relief in the Bankruptcy Court. [Dkt. No. 1181, commencing
6 Adversary Case 13-2315] (the “Complaint” commencing the “Adversary Proceeding”). The
7 Complaint seeks, among other things, a declaration regarding the true nature of the 2009 Lease
8 Agreement.

9 The Stipulating Parties agree that in light of the status of this case, including the
10 commencement of the Adversary Proceeding and the filing of the Plan by the City, a further
11 extension of the time for the City to assume or reject the 2009 Lease Agreement is both
12 appropriate and in the best interest of all interested parties.

13 Accordingly, the Stipulating Parties hereby stipulate and agree as follows:

14 **STIPULATION**

15 A. The Stipulating Parties agree that the time within which the City must
16 assume or reject the 2009 Lease Agreement under Bankruptcy Code § 365(d)(4) should be
17 extended by 125 days, from February 25, 2014, through and including June 30, 2014 (i.e., the last
18 day of the City’s fiscal year).

19 B. The consent of Franklin and Wells Fargo satisfies Bankruptcy Code
20 § 365(d)(4)(B)(ii).

21 C. In entering into this Stipulation, each of the Stipulating Parties reserves all
22 rights, defenses and arguments other than those solely with respect to the extension of the time
23 within which the City must assume or reject the 2009 Lease Agreement. The rights reserved by
24 the Stipulating Parties include, but are not limited to, any issues raised in the Adversary
25 Proceeding (except any issues relating to the extension described in the Stipulation), and all
26 rights, defenses and arguments as to whether the 2009 Lease Agreement constitutes a “lease”
27 within the contemplation of § 365. Moreover, none of the Stipulating Parties waive any rights,
28

1 defenses and arguments by virtue of any failure to seek payment under the 2009 Lease Agreement
2 during the periods prior to the assumption or rejection of the 2009 Lease Agreement, and there
3 shall be no implication drawn from or prejudice resulting from any party's failure to seek such
4 payment.

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6 Dated: February 6, 2014

ORRICK, HERRINGTON & SUTCLIFFE LLP

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/s/ Marc A. Levinson
Marc A. Levinson
Attorneys for the City of Stockton

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11 Dated: February 6, 2014

JONES DAY

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/s/ James O. Johnston
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Attorneys for Franklin Advisers, Inc., Franklin
California High Yield Municipal Fund, and Franklin
High Yield Tax-Free Income Fund

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18 Dated: February 6, 2014

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