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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re CITY OF STOCKTON, CALIFORNIA, Debtor.	Case No. 12-32118 Chapter 9 DC No. OHS-15 Date: October 1, 2014 Time: 10:00 a.m. Dept. C Courtroom 35

SUPPLEMENTAL MEMORANDUM OF THE STOCKTON POLICE OFFICERS ASSOCIATION AND STOCKTON POLICE MANAGERS ASSOCIATION[1] IN SUPPORT OF CONFIRMATION OF THE CITY'S FIRST AMENDED PLAN OF ADJUSTMENT, AS MODIFIED[2]

This Supplemental Memorandum is submitted in response to the Court's request, at the July 8, 2014, hearing, for additional briefing addressing (a) whether the City's relationship with CalPERS[3] is an executory contract that can be rejected, notwithstanding the provision of the PERL[4] prohibiting rejection;[5] (b) whether the lien on all of the City's assets, which arises, under

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[1] Collectively, the "Police Unions."

[2] The "Plan." The most recent version available on the docket as of the filing of this memorandum is #1535. The Police Unions have been served with a more recent version, modified as of August 8, 2014.

[3] California Public Employees' Retirement System.

[4] California Public Employees' Retirement Law, Cal. Gov. Code § 20000 et seq.

the PERL,[6] upon termination of the CalPERS relationship unless the City pays the termination liability in full, is avoidable under 11 USC § 545; and (c) assuming that the CalPERS relationship is a contract that could be rejected, and that the lien could be avoided, whether the Plan is nevertheless confirmable in its present form.

The answers to the first two questions are both "no," for reasons to be discussed in detail in the brief being submitted by CalPERS itself. It is unnecessary to reach those issues, however, because the City has not proposed to make any changes to its relationship with CalPERS and because there are overwhelming economic and practical reasons not to do so. Thus, even assuming that the CalPERS relationship is a rejectable executory contract, and, further, that the lien that would result from termination of the relationship would be avoidable, the Plan should still be confirmed.

Keeping the CalPERS relationship intact is integral to the City's settlements with several creditor contingencies, especially the Retirees' Committee and the City's nine unions, including the two Police Unions. Under state law – and equally, under bankruptcy law if the Court were to rule that the relationship is an executory contract – the CalPERS contract could not be altered *in part*. If the City's relationship with CalPERS were terminated or rejected, the City would have to renegotiate *all* of its settlements with the unions and the Retirees' Committee, wasting many more months and many more millions of dollars.

Termination of the CalPERS relationship, via rejection or otherwise, would also create a major incentive for employees with vested CalPERS benefits to leave for another CalPERS-affiliated agency within six months of termination, exacerbating an already critical police staffing situation in Stockton, where a large percentage of the police force is now comprised of inexperienced officers and the City already has difficulty hiring new officers quickly enough to compensate for rising attrition.

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[5] Cal. Gov. Code § 20487.

[6] Cal. Gov. Code § 20574.

1. <u>The City's decision to leave the CalPERS relationship unaltered is a wise exercise of its sound business judgment.</u>

For purposes of this brief, the Police Unions will *assume*, without conceding the issue but without further discussion, that the relationship between CalPERS and the City is an executory contract to which 11 U.S.C. §365 would apply and that CalPERS' asserted lien on all assets to secure the termination liability is avoidable under 11 U.S.C. § 545.

As a practical matter, whether or not the CalPERS relationship is an "executory contract" does not significantly affect the City's exercise of its business judgment to keep the relationship in place and unaltered. If the relationship is an "executory contract," 11 U.S.C.§ 365 would give the City only two options: to "assume," or comply with its obligations in all respects going forward; or to "reject," which would result in termination of the City's relationship with CalPERS. Under the PERL, the same is true. Unless the City complies with its statutory and contractual obligations in all respects, CalPERS has the right to terminate the relationship.[7]

As for the lien on all the City's assets, which arises upon termination, that lien would make it completely impossible for the City to alter the CalPERS relationship and also to reorganize its other debts – unless the lien is avoidable in bankruptcy. But even assuming that the lien is avoidable, the City's decision to keep the CalPERS relationship intact is a sound one.

a. <u>There is no viable alternative to CalPERS for the City to provide retirement benefits to its current employees.</u>

The Court has indicated that the City may have other options for providing retirement benefits to its employees, including creating its own pension plan, contracting with a private provider, or joining San Joaquin County's "1937 Act" pension plan.

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[7] Transcript of proceedings May 14, 2014, testimony of David Lamoureux ("Lamoureux testimony"), page 176, lines 12-14; page 181, lines 11-22.

For the convenience of the Court and other parties, the cited portions of transcripts and declarations cited in this brief are being filed and served in a separate document.

Expert witness Kim Nicholl testified that setting up an independent plan would take at least six months, more likely a year, and require the hiring of an actuary and legal counsel, the creation of a pension administration system (and hiring of employees to staff it), appointment of a board of trustees, and so on.[8] All of these costs are currently borne by CalPERS, and although Stockton of course pays its share of the costs, that share is far lower than the cost of a stand-alone system would be, because those costs are shared with the State of California and most of the municipalities, school districts, counties, water districts, and other local agencies in the state.[9] Thus, from an administrative point of view alone, a stand-alone plan would cost Stockton more than CalPERS does.

Additionally, a brand-new stand-alone plan would be compelled to invest more cautiously because it would not have the huge fund built up over decades that CalPERS has. A more conservative investment strategy means a lower rate of return (in exchange for a lower risk of loss), meaning that to support the same level of benefits, a higher contribution from the City and/or its employees is required.[10] This is a second way that a stand-alone system would cost Stockton more than CalPERS does.

The time needed to set up a stand-alone plan is also a huge problem. During the six months to a year it would take to set it up, the entire reorganization process would be on hold, at great cost to the City; employees would be more likely to leave unless and until they were certain

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[8] Transcript of proceedings June 4, 2014, testimony of Kim Nicholl ("Nicholl testimony"), pages 20-21.

[9] Lamoureux testimony, page 160, line 21 through page 161, line 7 (CalPERS has "over 1.7 million members" and "administer[s] pension benefits for all of the employees of the State of California, also for all of the … non-teaching school employees … and all of the [employees of] the contracting agencies …"); page 186, lines 21-24 (there are "roughly about 1600 separate contracting agencies," not including "over 2000" school districts, "and all of the State agencies."

[10] Nicholl testimony, page 26, line 19 through page 27, line 16 ("the discount rate for the Stockton stand-alone pension plan would need to be … lower than [the CalPERS discount rate] … [T]he lower the discount rate, … the less that this pension plan can earn on investments to pay for benefits. As a result, … the contributions toward the benefits need to be greater to make up for that difference.")

the new benefits would be just as good as CalPERS, and prospective employees would be less likely to accept jobs with the City.

The only apparent advantage of a stand-alone plan – which disappears upon close consideration – is that the City could default on all pension obligations to retired employees and to departed employees with vested benefits, persons who are not currently "adding value." But leaving aside the obvious negative political and moral repercussions of such a move, the fact remains that it is not possible to drastically reduce the pensions of those individuals without simultaneously doing the same to current employees with vested CalPERS benefits – basically, everyone who has been working for the City for more than a year. If, as projected by Ms. Nicholl and Mr. Lamoureux, all vested benefits were cut approximately 60% upon the City's termination of its CalPERS relationship,[11] then just to have any chance of retaining its experienced employees, the City would need very quickly to establish and make operational a system to replace the slashed CalPERS benefits – yet another huge cost of a stand-alone system.

Similar issues rule out joining San Joaquin County's "1937 Act" plan. For one thing, the County has to agree. Administrative costs would presumably be higher than for CalPERS because it is a smaller system and has fewer members among whom to spread the cost. Most significantly, it appears that the PERL does not even permit such a switch unless the County agrees to take on *all* CalPERS obligations to members – not just its obligations to those members that are still employed at Stockton.[12]

[11] Nicholl testimony, page 17, line 17 ("benefits would be cut by approximately 60 percent"; Lamoureux testimony, page 180, lines 19-21 ("the board would be faced with the decision to potentially reduce the benefits by an amount of 57.2 percent").

[12] Cal. Gov't Code §20585(c): "All liability of this system with respect to members and retired persons under the contract shall cease and shall become the liability of the county system as of the date of termination specified in the agreement." The Police Unions expect that this issue will be covered in more detail in CalPERS' brief.

The third defined-benefit option turns out to be strictly theoretical. In reality, there simply are no private companies offering to serve as a "plug-and-play" pension administrator for a municipality.[13]

One other theoretical option exists, but it would be disastrous. The City could move to a defined contribution, rather than defined benefit, type of plan. This type of plan shifts all of the risk to the employee. Each employee has a separate fund, and each employee's fund separately has to accumulate enough over the employee's working career to pay for that employee's retirement, no matter how long he or she lives or how badly his or her investments may perform. Because these risks would not be shared with 1.7 million others (as they are currently with the 1.7 million CalPERS members), higher contributions would be required to ensure that an employee does not outlive his/her benefits.[14] As a result, employees strongly prefer defined benefit plans. Changing to a defined contribution plan would put Stockton at a severe disadvantage in the job market, especially for police officers.

Currently, the labor market for police officers is very much a seller's market. Agencies throughout the State of California are currently hiring police officers in large numbers. Experience in a high-call-volume jurisdiction like Stockton makes Stockton officers particularly desirable candidates for employment elsewhere. As a result, further cuts to the police compensation package through impairing the CalPERS benefits will likely terminate the ability of the City to marshal an effective police force.

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[13] Nicholl testimony, page 22, lines 4-21 ("I'm not aware of any third-party administrators that administer public sector pension plans. And the reason is that … private sector pension plans look pretty similar to each other … but in the public sector, pension plans are all across the board").

[14] Nicholl testimony, page 37, line 10 through page 38, line 19 ("in a defined contribution plan, all the risks of the plan have been shifted from the employer to the employee and those risks include investment risks … [A]s an individual, you don't know how long you are going to live. So you will have to basically assume that you will achieve maximum life expectancy and you manage your money that way, which as you can imagine would be a challenge.")

b. Both current employees and prospective new hires strongly prefer CalPERS to any other pension plan because of its "portability" feature.

Both Kim Nicholl and David Lamoureux testified about the "portability" or "reciprocity" feature of CalPERS, which allows a member to move between employers with no change to their pension benefits, as long as each employer participates in CalPERS or has a reciprocity agreement with CalPERS. This feature is very attractive, because CalPERS pensions are based on pay during the last year worked, or average pay during the last few years worked, depending on the formula selected by the agency in question.[15] Final pay is, of course, usually higher than pay in earlier years, due to inflation, increased seniority, and in some cases higher job categories.

Thus, an employee coming to Stockton from another CalPERS-affiliated city knows that the portion of his or her pension that is based on years worked at the other city will be a percentage of final pay *at Stockton*, rather than final pay at the other city, which may have been many years before retirement. Similarly, an employee leaving Stockton knows that the portion of his/her pension that is based on the years at Stockton will be a percentage of final pay *at the final employer*, rather than final pay at Stockton, possibly many years earlier.[16]

If Stockton were to terminate its CalPERS relationship, by contrast, the Stockton-related portion of members' CalPERS benefits would *not only* be slashed by approximately 60%, as discussed above, but additionally the final pay applicable to lateral hires who came to Stockton from a CalPERS agency would be frozen at their final pay from the previous employer and would not increase with their increases in pay while working at Stockton, making it much more difficult for Stockton to attract lateral hires. Negotiating a reciprocity agreement with CalPERS following termination of the CalPERS relationship would likely be difficult or impossible.[17]

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[15] For simplicity, any of these formulae will be referred to simply as "final pay."

[16] Lamoureux testimony, page 184, line 18 to page 185, line 19 (reciprocity makes it "much easier for employees to change employment to go from one employer to the next, knowing that at least, from a pension benefit perspective, the salary they get with that new employer will also apply to all benefits earned in the past.")

[17] Nicholl testimony, page 28, line 15 through page 29, line 8 ("I think it would be unlikely that CalPERS would allow reciprocity with the City of Stockton's new pension plan.")

c. Any Attempt to Reject the CalPERS "contract" creates a strong incentive for experienced employees to leave within six months, in order to retain their classic member status and the better benefits that entails.

California enacted the Public Employees' Pension Reform Act ("PEPRA") in 2013. Kim Nicholl testified that PEPRA divides CalPERS members into two categories: "classic members" and "new members." Benefits for classic members are significantly more generous than those for new members, and new members have to pay more toward their own pensions than classic members do.[18] The biggest difference, for police officers, is that classic members are entitled to the "3% at 50" pension package, while new members get one of three lower available packages, even the most generous of which – the "2.7% at 57" package – would force them to work seven years longer than a classic member for a lower pension.[19]

New members are those who became members on or after January 1, 2013; members hired earlier are classic members, at least initially. A classic member retains that status when moving from one agency to another, as long as the new agency is also a CalPERS-affiliated employer (or one with a reciprocity agreement with CalPERS) and there is a gap of less than six months between jobs. But if there is a gap of more than six months between employment at one agency with a CalPERS relationship or reciprocity, and the next such job, the employee becomes a "new member" at the new job, with the lower benefits and higher deductions that entails.[20]

Under PEPRA, therefore, if Stockton were to terminate its CalPERS relationship without a reciprocity agreement already in place, current employees would have a strong incentive to leave within six months to ensure that they would retain classic member status at the next and subsequent jobs; if they stayed for more than six months, they would never have another

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[18] Nicholl testimony, page 13, lines 21-23.

[19] "3% at 50" and "2.7% at 57" are, of course, shorthand for more complex entitlements. If an individual on the 3% at 50 program retires at 49, he or she is entitled to a slightly a slightly lower percentage of final pay, and if he or she retires at 51, a slightly higher percentage. The full definitions are found at Cal. Gov't Code §§ 21362.2 and 7522.25.

[20] Nicholl testimony, page 31, line 23 through page 32, line 5.

opportunity to be a classic member of CalPERS, with the 3% at 50 benefit.[21] And a reciprocity agreement with CalPERS, after Stockton had terminated and breached by not paying the termination liability, is very unlikely.[22]

These considerations apply with special force to police officers, who because of the physical demands of their job generally retire at 50 or 55 and are unable to obtain other jobs afterwards at the same pay levels. They depend for many years on their pensions. If Stockton terminated its CalPERS relationship, any police officer hired before January 1, 2013, would be foolish to stay at Stockton longer than six months after the termination, rather than moving to another agency as a classic member where the higher benefits, and lower contribution rates, could be maintained.

Moreover, as dramatically demonstrated by Ms. Nicholl's testimony and chart, if Stockton terminated its CalPERS relationship, a member's CalPERS pension would be much more adversely affected if the member stayed at Stockton than if he or she moved to another CalPERS-affiliated agency, and the longer the employee waited to move, the more the pension would be affected.[23]

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[21] *Id.*

[22] Nicholl testimony, page 28, line 18 through page 29, line 8.

[23] Nicholl testimony, page 35, line 17 through page 36, line 6. Four scenarios were discussed, in each case with the same final pay, years of service, age at retirement, and so on. For the first scenario, it was assumed that Stockton never terminated its relationship with CalPERS, and the employee never left Stockton's employ until retirement. In that scenario, the employee's eventual pension would be $49,000. In the other three scenarios, Stockton terminated the CalPERS relationship. If the employee left Stockton for another CalPERS agency within six months, his or her eventual CalPERS pension would be $39,360; if the employee left after more than six months, the eventual pension would fall to $27,880; while if he or she never left at all, it would be a mere $6,560.

d. Police pay has already been cut dramatically. It is already very difficult to hire new police officers quickly enough to replace those who leave. Any further cuts, especially to CalPERS benefits, will make it nearly impossible to maintain public safety.

Stockton Chief of Police Eric Jones has submitted four declarations over the course of the bankruptcy case, each emphasizing the difficulty the Department is having in reaching budgeted staffing levels because of low pay levels as well as the severe crime problems resulting from understaffing and the exodus of experienced officers, leaving the Department with far too many rookies and jeopardizing public safety.[24]

Although the City has 365 budgeted positions for sworn police officers, which would increase to 485 budgeted positions if those were filled, the Department as of April 2014 had only been able to fill 351 of those positions.[25] Hiring has only barely outpaced attrition: from January 2012 to March 2014, 134 officers were hired while 104 – nearly a third of the total – left.[26] Stockton has far less than the recommended staffing level of 2.0 officers per 1,000 population.[27]

Chief Jones testified that "The Stockton Police Department is not competitive in the marketplace with other police departments, and this is drastically affecting our retention and recruitment."[28] Pay has already been cut approximately 20-30%,[29] and Chief Jones says that

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[24] Declaration of Eric Jones filed June 30, 2012 (docket #30, "1st Jones Declaration"); Declaration of Eric Jones filed February 15, 2013 (docket #710, "2nd Jones Declaration"); Declaration of Eric Jones filed March 31, 2014 (docket #1311, "3rd Jones Declaration"); Declaration of Eric Jones filed April 21, 2014 (docket #1364, "4th Jones Declaration").

[25] 4th Jones Declaration, page 2, line 27 through page 3, line 12.

[26] 4th Jones Declaration, page 3, lines 3-5.

[27] 1st Jones Declaration, Exhibit A (Braga report), page 26 ("prior empirical research studies suggest that officer-to-population rations should be about 2.0 per 1,000 residents"); 3rd Jones Declaration, page 7, lines 21-24 ("Dr. Anthony Braga … recommended the City reach 2.0 officers per 1,000 residents. This figure is almost double our current officer per 1,000 ratio"); 4th Jones Declaration, page 3, lines 14-20 ("even at the level of 485 police officers, the offer-per-thousand-resident ratio would be only 1.6").

[28] 4th Jones Declaration, page 3, lines 18-20.

[29] 4th Jones Declaration, page 3, line 26.

"most officers … continue to tell me that if the Department's CalPERS contract is broken, they will depart to another agency."

Even apart from the number of officers, the cuts in pay and benefits have changed the demographics of the Department, with experienced officers leaving and being replaced by rookies. "There has been a mass exodus of experienced officers since 2008,"[30] while the percentage of Stockton police officers with less than one year of experience more than doubled between 2008 and 2012.[31] Among other things, the increase in the percentage of rookies in the Department was associated with a 400% increase in shootings directed at Stockton police officers.[32] Inexperienced officers are also more likely to make mistakes that result in criminal cases being thrown out.[33]

e. <u>Termination of the CalPERS relationship would result in a huge termination liability that would have to be dealt with somehow.</u>

Whether the PERL's provisions for assessment of termination liability govern, or the Bankruptcy Code's provisions on executory contracts, clearly CalPERS – with the obligation to pay its members' pensions going forward – would have a large claim in this bankruptcy case if the City's contract were rejected or terminated. Termination liability that could be assessed under the PERL has been estimated at $1.6 billion, far larger than any other claim in this case.[34] Moreover, under the PERL, the claim would be secured by all of the City's assets, although for purposes of this brief, without conceding the issue, the Police Unions have assumed such lien could be avoided under 11 U.S.C. § 545.

An attempt to treat the CalPERS relationship as an executory contract and to reject it would, at a minimum, result in extensive litigation over the amount of CalPERS' rejection

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[30] 2nd Jones Declaration, page 8, lines 21-22.

[31] 2nd Jones Declaration, page 8, line 28 through page 9, line 1.

[32] 2nd Jones Declaration, page 8, lines 11-12.

[33] 2nd Jones Declaration, page 8, lines 13-17.

[34] Nicholl testimony, page 15, lines 17-18.

damages and whether or not the termination liability is secured or not, delaying the City's emergence from chapter 9 and costing more money the City would prefer to spend on services to City residents rather than on lawyers, consultants, and expert witnesses..

2. <u>The City's decision to assume the contract with CalPERS is not discriminatory to Franklin.</u>

Franklin disingenuously characterizes CalPERS as a "creditor" who is being paid 100% of its claim, while Franklin and others receive a much lower percentage. In reality, however, the relationship between the City and CalPERS is more complex, and most of the financial damage of a rejection would fall on Stockton's retirees and employees rather than on CalPERS itself.

CalPERS has not yet paid all the vested benefits of its members who spent part or all of their working years at Stockton, and it will not pay those benefits in full if Stockton defaults. While CalPERS will retain some risk if the contract is terminated, it has the ability to eliminate the lion's share of its own risk by reducing future benefits to members who spent part or all of their working years at Stockton.[35]

Once the amount of this "underfunding" is actuarially determined, CalPERS can reduce the Stockton-related portion of the pensions of all CalPERS members who ever worked for the City of Stockton, whether they are retirees, former employees now working elsewhere, or current employees.[36] These members are the parties who would be most severely damaged by rejection. Although they will receive 100% of their CalPERS pensions under the Plan, they have taken major cuts elsewhere.

Most Stockton retirees were also entitled to health care benefits, which have been eliminated entirely; the estimated amount of these benefits was $545 million. The Retirees'

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[35] Lamoureux testimony, page 180, lines 9-22. See also discussion in Section 1(a), *supra*. The reduction is based on the difference between the actuarially-determined future value of funds contributed by Stockton and its employees and on hand at termination, given the expected future returns on investment of those funds, and the actuarially-determined amount of the future benefits to be paid, as well as the timing of those future investment returns and benefit payments.

[36] *Id.*

Committee and the City negotiated a settlement, now incorporated in the Plan, allowing the elimination of their health care benefits in exchange for, and contingent upon, retention of their CalPERS pensions. Current employees, including the Police Unions' members, have also had their future retiree health care benefits eliminated as part of the settlement incorporated in the Plan.

Police officers have also taken 20-30% cuts in compensation, some of which was illegally and unilaterally done prior to the bankruptcy filing. These claims were eliminated, at no cash cost to the City, in exchange for 44 hours of time off per officer, but the settlement is expressly contingent upon the City's continuing its relationship with CalPERS and complying with all of its duties thereunder.

Cuts to police officer pay valued at approximately $13 million were made illegally, outside the required mediation process for public employee unions, prior to bankruptcy filing. A waiver of these claims is part of the current Memorandum of Understanding ("MOU") with SPOA incorporated in the Plan, but the claims, and the related litigation, would be back on the table if the City breached the MOU by terminating its relationship with CalPERS.

Under the settlement incorporated in the Plan, police officers also now contribute 9% of their pay to CalPERS, a contribution that was previously made by the City itself.

Additionally, the City has taken a number of steps to reduce pension costs, including introducing a lower tier of benefits for new hires, eliminating various categories of police officer pay, such as education allowance, master officer pay, and longevity pay, that are part of the final pay used to calculate a retired officer's pension benefits, and requiring current police officers to pay a much higher proportion of the CalPERS contributions than previously.

Thus, the real parties in interest who would be economically hurt by a cut in CalPERS pensions – the retirees and the current employees, including the police – have already made very significant concessions as part of the plan process. The City negotiated long and hard with the Retirees' Committee and with each of its unions, and reached the best deals it was able to reach. Further cuts to police pay would cripple the City's ability to attract and retain competent officers and exacerbate an already very difficult public safety situation.

3. <u>Rejection of the CalPERS "contract" would set back the reorganization process by a year or more, at great cost, and would be unlikely to result in significant savings.</u>

The agreements reached by the City with nine unions and the Retirees' Committee would be breached by an attempt to treat the CalPERS relationship as an executory contract and to reject it. Thus, mediation with each of these groups would have to begin again from square one. The City, the Retirees' Committee, and the unions have already spent many months reaching the settlements that are incorporated in the Plan; all that effort would be thrown away if the City were to breach its agreements with each of these constituencies to keep the CalPERS relationship unaltered. The eventual resulting deals are unlikely to be significantly better than what was agreed the first time around, and many months (and millions of dollars in attorneys' fees) will have been wasted in reaching the new agreements.

Most significantly, if the City were to terminate the CalPERS relationship and then renegotiate the settlements with the unions and the Retirees' Committee, not only is it likely that the new settlements would leave the City no better off than before, but the City would be faced with a huge termination claim from CalPERS, and such claim would be unsecured at best and secured by all of the City's assets at worst. Thus, it is extremely unlikely that the City would be able to pay more to its general unsecured creditors, including Franklin, than under the current Plan.

4. <u>Conclusion</u>

The City has made a wise choice to keep the CalPERS relationship unaltered. The marketplace in which Stockton competes for employees – particularly police officers – is highly competitive, with advertised openings for police officers, for example, increasing significantly during the last two years. A strong, safe, and portable CalPERS pension is the industry standard. There is no alternative available that even comes close to offering the benefits that CalPERS offers. Stockton is already struggling to attract and retain police officers; a difficult situation would become effectively impossible if the City's relationship with CalPERS were terminated.

Even the current discussions about the *potential* rejection of the CalPERS "contract" is causing safety employees to seriously consider their options.

In recognition of the effective impossibility of terminating its relationship with CalPERS, the City has taken other steps to reduce its pension costs, including cuts to salaries (upon which pensions are based) and requiring police officers to contribute 9% of their pay to CalPERS, a contribution previously made by the City. The City has also drastically cut other claim categories such as retiree health care to compensate.

The settlement with the Police Unions incorporated in the Plan will fall apart completely if the City is forced to terminate its relationship with CalPERS – and the same is true of the City's settlements with its other seven unions and the Retirees' Committee. Moreover, a brand-new claim for approximately $1.6 billion would arise in favor of CalPERS, which would at best share in the distributions to unsecured creditors, vastly diluting that pool. Termination of the City's relationship with CalPERS would set this reorganization back months or even years, at huge cost to the City, its residents, employees, and creditors, and would not be likely to result in any savings that could be used to increase what Franklin will receive.

The Plan was proposed in good faith, does not discriminate unfairly against Franklin, and meets all other requirements for confirmation. The Police Unions therefore request that this Court confirm the Plan.

Respectfully submitted,

Dated: August 11, 2014

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