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

11
12 In re:
13 CITY OF STOCKTON, CALIFORNIA,
14 Debtor.

Case No. 2012-32118

D.C. No. 15

Chapter 9

**BRIEF OF AMICUS CURIAE
INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS IN SUPPORT OF
CONFIRMATION OF STOCKTON’S
PLAN OF ADJUSTMENT**

Date: October 1, 2014
Time: 10:00am
Dept.: Courtroom 35
Judge: Hon. Christopher M. Klein

20 **I. INTRODUCTION**

21 This brief is filed on behalf of the International Association of Fire Fighters (hereinafter
22 “IAFF”), *amicus curiae*, in support of the creditors Stockton Professional Fire Fighters, Local
23 456 and in support of the proposed Plan of Adjustment (“Plan”) of the City of Stockton (“City”).

24 The IAFF is an organization representing more than 300,000 professional fire fighters,
25 paramedics, and other emergency responders in the United States and Canada. More than 3,200
26 IAFF affiliates protect the lives and property of over 85 percent of the continent’s population in
27 nearly 6,000 communities in every state in the United States and in Canada. The IAFF’s local
28

1 affiliates represent fire fighters throughout California with respect to collective bargaining over
 2 the terms and conditions of employment including compensation issues. The IAFF is familiar
 3 with the issues in this case, and consistent with its interest and capacity as an advocate for
 4 professional fire fighters, paramedics, and emergency responders in California and across the
 5 United States, and due to its extensive expertise and knowledge, the IAFF believes that it will
 6 provide a unique perspective to this Court regarding the issues herein.

7 Ensuring that the pension benefits that public employees have been promised are
 8 protected is an extremely important issue for fire fighters. Fire fighters risk their health and
 9 safety to protect the general public. In many jurisdictions, especially including California, fire
 10 fighters accept these risks based on the understanding that they will be compensated now and in
 11 the future through their pension benefits. An attempt to unilaterally alter those benefits through
 12 the Chapter 9 municipal bankruptcy process runs afoul of the California Constitution and
 13 California state law. As this case may have a precedential effect, the IAFF has a substantial
 14 interest in ensuring that the Chapter 9 municipal bankruptcy process is not used as a method for
 15 circumventing California's strong pension protections and that fire fighters continue to receive
 16 those pension benefits they have been promised in return for their service to the people of
 17 California.

18 **II. ARGUMENT**

19 **A. The Plan Meets the Requirements of 11 U.S.C. § 943(b) and Should Be** 20 **Confirmed**

21 The IAFF respectfully requests that the Court confirm the Plan of Adjustment as it has
 22 been proposed, without any impairment of the City's pension obligations. As has been made
 23 overwhelmingly clear in the briefs filed in support of the Plan by the City and the employee and
 24 retiree groups, rejection of the Plan and impairment of the City's pension obligations would be
 25 devastating to the City's long-term economic health and its ability to retain and recruit
 26 personnel.¹ Should the City be required to impair its pension obligations and terminate its

27 ¹ See, e.g., City's Supp. Brief in Support of Confirmation of the First Am. Plan of Adjustment (Dkt. No. 1657) at 27
 28 (*hereinafter* "City Brief") ("During the two years of this bankruptcy case, businesses have been reluctant to invest
 in Stockton and the City has struggled with hiring and retaining personnel."); Mem. of Stockton Emps. Ass'n re:

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1 relationship with CalPERS, it will struggle mightily to retain its current employees and attract
2 new ones, particularly because California’s Public Employee’s Pension Reform Act of 2013
3 would incentivize current employees to find another job within six months in order to preserve a
4 certain level of benefits in the CalPERS system.² In addition, this Plan was arrived at after
5 lengthy negotiation and mediation between all parties, and rejection of the Plan would require
6 that process to start over again, leaving the City and its employees in a state of uncertainty, and
7 ultimately costing the City (and its creditors) more money.

8 **1. The Plan is in the “Best Interests of Creditors” and is “Feasible”**

9 Under 11 U.S.C. § 943(b), the court “shall confirm the plan” so long as certain conditions
10 are met. As is explained in greater detail in the briefs filed by the City, CalPERS, and the various
11 employee groups, the Plan meets those conditions.

12 One of the only standards in Section 943(b) that grants the court any discretion is the
13 requirement that the “plan is in the best interests of creditors and is feasible.” 11 U.S.C. §
14 943(b)(7). The “best interests” standard is “generally regarded as requiring that a proposed plan
15 provide a better alternative for creditors than what they already have.” *See In re Pierce County*
16 *Hous. Auth.*, 414 B.R. 702, 718 (Bankr. W.D. Wash. 2009) (*quoting In re Mount Carbon Metro.*
17 *Dist.*, 242 B.R. 18, 34 (Bankr. D. Colo. 1999)). However, the only “alternative” available in a
18 Chapter 9 case is dismissal. *Mount Carbon*, 242 B.R. at 34. The briefs filed in this Court in
19 support of confirmation of the Plan make it clear that dismissal of the case would *not* provide a
20 better alternative for the creditors.

21 In addition to being in the best interest of creditors — *which this Plan is* — a plan must
22 also be “feasible.” 11 U.S.C. § 943(b)(7). In Chapter 9, “this requires a practical analysis of
23 whether the debtor can accomplish what the plan proposes and provide governmental services.”

24 Impairment of Contracts and in Support of Stockton’s Plan of Adjustment (Dkt. No. 1650) at 5 (*hereinafter*
25 “Employees’ Brief”) (Withdrawal from CalPERS and rejection of MOUs “would invite costly and disruptive
26 chaos with regard to 1) the City’s relationship with its employees, 2) its ability to carry out the operations of the
27 City, and 3) its ability to propose a feasible plan of adjustment”); Supp. Mem. of the Stockton Police Officer’s
28 Ass’n and Stockton Police Mgrs. Ass’n in Support of Confirmation of the City’s First Am. Plan of Adjustment
(Dkt. No. 1659) at 13 (*hereinafter* “Police Brief”) (“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.”).

² *See, e.g.*, Police Brief at 8-9; Employees’ Brief at 10.

1 *Mount Carbon*, 242 B.R. at 40. The City’s brief clearly sets forth the practical decisions the City
2 made that led to its proposal of the Plan, and why the Plan must be confirmed in order for the
3 City to even be able to provide governmental services. *See, e.g.*, City Brief at 3 (“In order to
4 remain a viable, livable community, Stockton must be able to attract and retain qualified
5 employees to provide City services and to maintain public health and safety.”). In fact, based on
6 the harm that leaving CalPERS would do to the City and its ability to retain and recruit
7 employees, it is possible — *even likely* — that any plan that impairs the City’s pension
8 obligations would be *infeasible*.

9 **2. The Court Need Not Reach the Question of the Impairment of**
10 **Pension Obligations**

11 The Plan fulfills all the requirements of § 943(b) and thus, the Court must confirm it. *See,*
12 *e.g., Pierce County Hous. Auth.*, 414 B.R. at 715. (“If these standards are met, the bankruptcy
13 court must confirm the plan.”). With the Plan confirmed, the Court need not reach the question
14 of whether the City’s pension obligations could *theoretically* be impaired in municipal
15 bankruptcy. Doing so, in fact, would violate the prohibition on federal courts issuing advisory
16 opinions. *See, e.g., In re Frye*, 2009 Bankr. LEXIS 4556, 27-28 (B.A.P. 9th Cir. Apr. 7, 2009)
17 (“One such limitation on the jurisdiction of Article III courts, and derivatively, bankruptcy
18 courts, is that a dispute may not be adjudicated if there is not a ‘controversy’ sufficient to confer
19 jurisdiction.”); *Earth Island Inst. v. Ruthenbeck*, 459 F.3d 954, 961 (9th Cir. 2006) (“Courts must
20 refrain from deciding abstract or hypothetical controversies and from rendering impermissible
21 advisory opinions with respect to such controversies.”). Ultimately, because the Plan, as is,
22 meets all the Chapter 9 requirements for confirmation, the IAFF respectfully requests that the
23 Court not address the question of impairment of pension obligations.

24 **B. Municipalities in Chapter 9 Bankruptcy Are Still Controlled by State Law**

25 Should the Court choose to address the question of the City’s pensions, however, it is
26 clear that a municipality cannot impair its pension obligations — *which are protected by state*
27 *law* — by way of the Chapter 9 process. There is an inherent tension in municipal bankruptcy
28 between the supremacy of the Bankruptcy Code and the protections offered to the states by the

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1 Tenth Amendment. In light of that tension, “any federal debt relief legislation affecting
2 municipalities must be sufficiently narrow in scope to avoid intrusion by the federal courts on
3 the sovereign power of the states.” *In re Pauls Valley Hosp. Auth.*, 2013 Bankr. LEXIS 5510, 8
4 (Bankr. W.D. Okla. July 18, 2013) (quoting *In re Richmond Unified Sch. Dist.*, 133 B.R. 221,
5 224 (Bankr. N.D. Cal. 1991)).

6 Section 903 of Chapter 9 demonstrates that narrow scope by expressly protecting a
7 state’s right to control its own municipalities. Section 903 states that Chapter 9:

8 ...does not limit or impair the power of a State to control, by
9 legislation or otherwise, a municipality of or in such State in the
10 exercise of the political or governmental powers of such
11 municipality, including expenditures for such exercise...

12 11 U.S.C. § 903. On its face, therefore, Section 903 explicitly preserves a state’s power over its
13 own municipalities, even while in bankruptcy.

14 Some bankruptcy courts have held that when a state authorizes its municipalities to file
15 for bankruptcy, “it declares that the benefits of chapter 9 are more important than state
16 control....” *In re Vallejo*, 403 B.R. 72, 74 (Bankr. E.D. Cal. 2009). However, state authorization
17 is a prerequisite to municipal bankruptcy. 11 U.S.C. § 109(c)(2). It cannot, therefore, follow that
18 authorization under Section 109(c)(2) means that a state has relinquished control over its
19 municipalities.³ If that were the case, there would be no reason for Section 903 to have been
20 drafted in the first place.⁴ There would be no need to reinforce a state’s unlimited control in
21 Chapter 9 if that power vanishes the moment that a municipality is authorized to file a petition.

22 A fundamental rule of statutory construction is to avoid an interpretation that “renders
23 other provisions of the same statute inconsistent or meaningless.” *Bayview Hunters Point Cmty.
Advocates v. Metro. Transp. Comm’n*, 366 F.3d 692, 700 (9th Cir. 2004). If state control is ceded

24 ³ Earlier in this case, the Court noted that “[t]he foundation [of Chapter 9’s Constitutionality]
25 involves multiple levels of consent.” *In re City of Stockton*, 478 B.R. 8, 20 (Bankr. E.D. Cal.
26 2012) (addressing 11 U.S.C. § 904).

27 ⁴ CalPERS’s Constitutional brief shows that the legislative history makes it clear that
28 Congress intended for a state’s laws to continue to control during municipal bankruptcy.
CalPERS Mem. Regarding Constitutional, Statutory, and Preemption Arguments Supporting
the Enforceability of the Pub. Emps.’ Retirement Law in Chapter 9 (Dkt. No. 1663) at 6-8
(*hereinafter* “CalPERS Const. Mem.”).

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1 at the moment of authorization, then Section 903 is rendered utterly meaningless. Such a
2 construction is to be avoided.

3 Therefore, even though the City has filed a Chapter 9 petition, Section 903 ensures that
4 California law still governs. In particular, California’s strong pension protections still govern.
5 Under California law, a vested contractual right to pension benefits accrues upon the acceptance
6 of employment by a public employee. *See Abbot v. City of San Diego*, 332 P.2d 324, 328 (Cal.
7 Dist. Ct. App. 1958). Any changes to an employee’s pension must be accompanied by equivalent
8 advantages. *See Allen v. Long Beach*, 287 P.2d 765, 767 (Cal. 1955); *see also Int’l Ass’n of*
9 *Firefighters v. City of San Diego*, 667 P.2d 675, 679 (Cal. 1983) (finding “well-settled” the idea
10 that “a pension right may not be destroyed, once vested”).

11 California’s pension protections do not just protect individual rights; they act as limits
12 and controls on municipal action. For example, in order to prevent the impairment of CalPERS
13 pensions, California has determined that a municipality cannot reject a contract with CalPERS
14 while in bankruptcy. Cal. Gov’t Code § 20487. Section 903 stands for the proposition that
15 California’s strong pension protections remain in force when one of its municipalities enters
16 Chapter 9 bankruptcy. Section 903 means that the City remains bound by California law; it
17 cannot take any actions that would impair its pension obligations.

18 **C. California Law Does Not Authorize Cities in Chapter 9 Bankruptcy to Reject**
19 **Pension Obligations**

20 This Court has previously held that “[a] state cannot rely on the § 903 reservation of state
21 power to condition or to qualify, i.e. to ‘cherry pick,’ the application of the Bankruptcy Code
22 provisions that apply in chapter 9 cases *after such a case has been filed.*” *In re City of Stockton*,
23 478 B.R. 8, 16 (Bankr. E.D. Cal. 2012) (emphasis added). However, even if the Court rejects the
24 arguments made above and instead chooses to read Section 903 narrowly, the City still cannot
25 terminate its relationship with CalPERS. This Court has also previously acknowledged that “a
26 state may control prerequisites for consenting to permit one of its municipalities (which is an
27 arm of the state cloaked in the state’s sovereignty) to file a chapter 9 case.” *Id.* at 17. Even under
28 a narrow reading of Section 903, the state still has the power to set limitations on a

1 municipality's ability to enter into bankruptcy.

2 This is because, as noted above, under Chapter 9, a municipality is eligible to file for
3 bankruptcy only if it doing so is "specifically authorized" by state law. 11 U.S.C. § 109(c)(2).
4 The form that states' authorization takes varies widely. For example, Georgia does not permit
5 municipalities to seek bankruptcy at all. *See In re Hosp. Auth. of Charlton County*, 2012 Bankr.
6 LEXIS 3042, 8-9 (Bankr. S.D. Ga. July 3, 2012). Iowa limits Chapter 9 to municipalities whose
7 insolvency is "a result of a debt involuntarily incurred," and specifically prohibits the discharge
8 of debt due to a collective bargaining agreement. *See* Iowa Code § 76-16A. Oregon only permits
9 irrigation and drainage districts to file for bankruptcy. *See* ORS § 548.705.

10 California requires that a municipality undergo a neutral evaluation process or declare a
11 fiscal emergency before it is authorized to file a Chapter 9 provision. Cal. Gov. Code 53760 *et*
12 *seq.* The state sets forth detailed parameters for those preconditions. *Id.* California also requires
13 that:

14 Notwithstanding any other provision of law, no [municipality] that
15 becomes the subject of a case under the bankruptcy provisions of
16 Chapter 9 ... shall reject any contract or agreement between that
17 [municipality] and [CalPERS] pursuant to Section 365 of Title 11
18 of the United States Code or any similar provision of law....

19 Cal. Gov. Code § 20487. This provision prohibits a municipality in bankruptcy from terminating
20 its relationship with CalPERS through the use of certain bankruptcy procedures. Along with
21 Section 53760, this provision is one of only a handful of provisions in the California Code that
22 specifically mention Chapter 9 bankruptcy.⁵

23 California clearly intended Section 20487 to be a limitation on its authorization to file a
24 Chapter 9 bankruptcy petition. In fact, CalPERS's brief demonstrates that the California
25 Legislature considered Section 20487 to be such a prerequisite. *See* CalPERS Const. Mem. at 29

26 ⁵ Cal. Gov. Code § 63049.67 makes school districts which have accepted certain bonds ineligible for Chapter 9.
27 Cal. Ed. Code §§ 41325-26 state that a school district which is insolvent and requires an emergency
28 apportionment from the state shall appoint an administrator, which has the power to file a Chapter 9 petition, if
necessary. Like the authorization statute and Section 20487, these statutes are examples of California setting its
own parameters for municipal bankruptcy. In fact, Section 63049.67 makes it clear that California did not place
all of its limitations on municipal bankruptcy in one central authorization statute.

1 (citing legislative history of Section 20487 referencing the state’s authority to require
2 “preconditions for filing a Chapter 9 bankruptcy”).

3 Because Section 20487 is a specific limitation on a municipality’s rights in bankruptcy, it
4 differs from the general labor laws which other bankruptcy courts in this state have found not to
5 apply in Chapter 9 cases. *See, e.g., In re Vallejo*, 403 B.R. at 77. In *Vallejo*, the court found that
6 “incorporating state substantive law into Chapter 9 to amend, modify or negate substantive
7 provisions” of Chapter 9 would violate the supremacy of the Bankruptcy Code. *Id.* But the
8 Bankruptcy Code itself permits states to create their own forms of authorization. *Cf. In re*
9 *Applebaum*, 422 B.R. 684, 689 (B.A.P. 9th Cir. 2009) (“[T]here are many instances in the
10 Bankruptcy Code where Congress either has deferred to state law or has expressly and
11 affirmatively incorporated state law into the bankruptcy scheme.”). Section 109(c)(2), by its own
12 terms, imagines different methods of authorization: “... by State law, *or* by a governmental
13 officer or organization empowered by State law to authorize such entity to be a debtor ...”
14 (emphasis added). As one of California’s requirements for Chapter 9 authorization, Section
15 20487 does not violate the supremacy of the Bankruptcy Code, but instead can be incorporated
16 into it.

17 Compliance with section 20487 is a prerequisite for California’s authorization to file a
18 Chapter 9 petition. California municipalities must abide by it while in bankruptcy. A California
19 municipality that violates Section 20487 and rejects its contract with CalPERS would no longer
20 be authorized to be a debtor under Chapter 9. The legislative history of Chapter 9 makes it clear
21 that “withdrawal of State consent at any time will terminate the case.” H.R. REP. NO. 94-686.
22 Therefore, if the City were to violate Section 20487 and terminate its relationship with CalPERS,
23 the case could be terminated.

24 **D. Section 943(b)(4) Prohibits the Confirmation of A Plan that Violates State**
25 **Law**

26 Finally, even if this Court chooses not to read Section 20487 as a prerequisite to
27 authorization to file for bankruptcy, any plan that alters the City’s obligations to CalPERS could
28 not be confirmed. One of Chapter 9’s requirements for plan confirmation is that a debtor shall

