

5

1 John T. Hansen (CA34639)
2 jhansenlaw101@gmail.com
3 101 Howard Street, Suite 310
4 San Francisco, California 94105
5 Tel: 415-444-6684
6 Fax: 415-957-1777

7 Attorney for Stockton City Employees Association,
8 Stockton Professional Firefighters – Local 456 and
9 Operating Engineers Local No. 3

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

13 CITY OF STOCKTON, CALIFORNIA

14 Debtor,

15 Case No: 2012-32118

16 Chapter 9

17 **STATEMENT IN SUPPORT OF PLAN OF
18 ADJUSTMENT OF THE CITY OF
19 STOCKTON AND IN RESPONSE TO THE
20 OBJECTIONS OF FRANKLIN**

21 Date: May 12, 2014
22 Time: 10:00 a.m.

23 The Stockton City Employees Association, Stockton Professional Firefighters – Local
24 456 and Operating Engineers Local No. 3 (“Unions”) submit this statement in support of the
25 Plan of Adjustment (“Plan”) proposed by the City of Stockton (“City”) and in response to the
26 Objection to the Plan filed by Creditors Franklin California High Yield Municipal Fund and
27 Franklin High Yield Tax-Free Income Fund (“Franklin”). The three Unions represent a majority
28 of the organized employees of the City. Each of the Unions has entered into a Memorandum

5

1 of Understanding with the City regarding the compensation and terms of employment of their
2 members, extending (during and after the chapter 9 case the City's collective bargaining
3 agreements entered into between the City and each union prior to commencement of the
4 chapter 9 case. The City's plan will assume these executory agreements.

5 Included in the agreements between the City and the Unions are provisions relating to
6 retirement benefits of the employee members of the Unions. The retirement benefits were
7 bargained for in good faith by all parties and represent a part of the compensation of the
8 employee members. In turn the City has entered into an agreement pursuant to California
9 statutory law with the California Public Employees Retirement System (CalPERS) to
10 administer the City's retirement benefits, including the retirement benefits included in the
11 Unions' members compensation per the agreements referred to above. It is important to note
12 that none of the organized employees has a direct contractual agreement with either the City
13 or CalPERS for their retirement benefits.
14

15 Franklin has objected to the Plan to the extent it assumes the City's obligations to
16 CalPERS, but it has not objected to the assumptions of the agreements between the City and
17 the Unions. Notwithstanding the apparent inconsistency in Franklin's selective objection to the
18 Plan as it affects retirement benefits, the Unions will demonstrate that the City's Plan is in the
19 best interest of creditors.
20

21 The principal confirmation requirements of a plan of adjustment in chapter 9 are that the
22 plan is in the best interests of creditors and is feasible.¹ 11 U.S.C. § 943(b)(7). The chapter 9
23 best interests of creditors test is not defined in the Bankruptcy Code, but it has been
24

25
26 ¹ The Unions will not address the feasibility issue, as the City undoubtedly will do so in
27 considerable detail.

5

1 interpreted by the courts to mean that the plan is at least equal to other alternatives available
2 to creditors. See, 6 *Collier on Bankruptcy*, ¶ 943.03[7][a]. pp. 943-26-7 (16th Ed.). Franklin
3 has not proposed an alternative to the City's Plan that provides a better alternative for
4 creditors, because its argument that the City should modify the retirement benefits of its
5 employees and breach its agreement with CalPERS is not a favorable alternative for the
6 reasons discussed below.²

7
8 Moreover, in determining whether a plan is equal to (or better) than alternatives that
9 might be proposed, the Court should consider the relationship between the City and its various
10 constituents and evaluate how they would fare under any proposed alternative. Among those
11 constituents are the City's employees and their recognized bargaining units. Any alternative
12 plan that adversely affects those constituents may indeed prove not be in the best interests of
13 the City's creditors.

14
15 The relationship between a California municipality and its employees, especially with
16 regard to compensation and benefits, is largely controlled by statute and interpretative court
17 decisions that provide broad protections of employees. With respect to pensions, the leading
18 California Supreme Court decision is *Allen v. City of Long Beach*, 43 Cal. 2nd 128, 287 P. 2nd
19 765 (1955). There the Court said the following at page 131:

20 "To be sustained as reasonable, alterations of employees' pension rights must bear
21 some reasonable relation to the theory of a pension system and its successful
22 operation, and changes to a pension plan which result in disadvantage to employees
23 should be accompanied by comparable new advantages."

24
25
26 ² The Unions also will not address the issues related to the City's relationship with
27 CalPERS, but they note that CalPERS has contended that any attempt by the City to renege
28 on its obligations to CalPERS would trigger a large immediately due withdrawal obligation.

5

1 Accord: *Betts v. Board of Administration*, 21 Cal. 3rd 859, 863-4 (1978).

2 In other words, the California Supreme Court treated pension rights as akin to the way
3 property rights are treated under the Bankruptcy Code; as for example in 11 U.S.C. § 361
4 defining adequate protection for an interest in property. Among other things, § 361 requires an
5 additional or replacement lien to the extent of a decrease in the value of the interest in property
6 while the automatic stay is in effect; or granting an entity the indubitable equivalent of the
7 entity's interest in the property. Those requirements are comparable to what the California
8 Supreme Court requires regarding any alteration of pension rights to the detriment of
9 employees; *i.e.*, a municipality cannot diminish pension rights without substituting something
10 equivalent to the lost benefits
11

12 Thus, the City was adhering to well established California law and the expectations of
13 its employees pursuant thereto in honoring its pension obligations. While Franklin may argue
14 that the Bankruptcy Code trumps California law, that is not so clear in the case of pension
15 rights. If put to the test of deciding the issue, the California Supreme Court may well hold that
16 vested pension rights are property rights under California law, and the Bankruptcy Code does
17 not trump property rights. See, *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555
18 (1935).
19

20 There are other good reasons, aside from legal considerations, why it is in the best
21 interests of creditors for the City to honor its obligations to its employees. In order for the City
22 to successfully implement its Plan, it will need the commitment of a highly qualified workforce.
23 Altering pension benefits of the employees would seriously impact the morale of the workforce,
24 and would likely result in a significant "brain drain," especially as the economy of California
25 continues to improve and other municipalities increase their hiring. For example, when the
26

5

1 City of San Jose placed an initiative on the ballot in order to reduce its employees' pension
2 benefits, there was an alarming exodus of public safety employees. Favro, M. "Pension
3 Reform Fear: SJPD Resignation, *NBC Bay Area on the Rise*," Friday, June 8, 2012.
4 Downloaded on March 28, 2014 from [http://www.nbcbayarea.com/news/local/Pension-Reform-
5 Fear-SJ-Resignation-on-the-Rise-158213725.html](http://www.nbcbayarea.com/news/local/Pension-Reform-Fear-SJ-Resignation-on-the-Rise-158213725.html). (Attached as Exhibit 1.)

6 No employer was ever placed at a disadvantage with its competition by treating its
7 employees with the dignity and respect they deserve, including honoring promises made to the
8 employees who, based on the assumption those promises would be kept, have provided
9 valued services to their employer that cannot be recouped. Stockton will need to maintain its
10 competitive position vis-a-vis other municipalities if it is to retain the workforce it needs to
11 successfully implement its Plan.

12
13 For all the above reasons, the Unions urge the Court to confirm the City's Plan as being
14 in the best interests of creditors, because, among other reasons, it also is in the best interests
15 the employees and residents of the City.

16 Respectfully submitted,

17
18 /s/John T. Hansen

19 John T. Hansen

20 Attorney for Stockton City Employees
21 Association, Professional Firefighters – Local
22 No 456, and Operating Engineers, Local No. 3
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28