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

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

Case No. 12-32118 (CMK)  
Chapter 9  
Adv. Proceeding No. 13-02315-C  
OHS-1

16 WELLS FARGO BANK, NATIONAL  
ASSOCIATION, FRANKLIN HIGH  
17 YIELD TAX-FREE INCOME FUND,  
AND FRANKLIN CALIFORNIA HIGH  
18 YIELD MUNICIPAL FUND,

19 Plaintiffs.

20 v.

21 CITY OF STOCKTON, CALIFORNIA,  
22 Defendant.

**(A) OBJECTION OF FRANKLIN  
HIGH YIELD TAX-FREE INCOME  
FUND AND FRANKLIN  
CALIFORNIA HIGH YIELD  
MUNICIPAL FUND TO MOTION  
TO SHORTEN NOTICE ON  
DEFENDANT CITY OF  
STOCKTON'S MOTION FOR  
JUDGMENT TO BE ENTERED IN  
FAVOR OF PLAINTIFFS; AND**  
**(B) REQUEST FOR TELEPHONIC  
STATUS CONFERENCE**

Date: April 7, 2014  
Time: 1:30 p.m.  
Dept: C, Courtroom 35  
Judge: Hon. Christopher M. Klein

1 Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal  
2 Fund (collectively, "Franklin") hereby (a) object to the *Motion To Shorten Notice On Defendant City*  
3 *Of Stockton's Motion For Judgment To Be Entered In Favor Of Plaintiffs* [Adv. Pro. Docket No. 30]  
4 (the "Motion to Shorten"); and (b) request that the Court schedule a telephonic status conference to  
5 address the briefing and scheduling of a hearing on the *Defendant City Of Stockton's Motion For*  
6 *Judgment To Be Entered In Favor Of Plaintiffs* [Adv. Pro. Docket No. 28] (the "Motion for  
7 Judgment").

### 8 **Background**

9 Late last Thursday afternoon (March 27), without any prior notice or warning to Franklin, the  
10 City filed the Motion for Judgment, by which it claims to seek a judgment in favor of Franklin in this  
11 adversary proceeding. Concurrently, the City filed the Motion to Shorten, requesting that the Court  
12 set a hearing on the Motion for Judgment for April 7, just 11 days later.

13 In seeking to justify emergency relief, the City invoked Local Bankruptcy Rule 9014-1(f)(3)  
14 for the proposition that the Court may "shorten notice of the hearing on the Motion for Judgment  
15 from 14 days to 11 days,"<sup>1</sup> and that Franklin would not be prejudiced if the notice period were  
16 "shortened by three days" because the Motion for Judgment "merely seeks to give plaintiffs the  
17 relief that they have requested in their complaint in the adversary proceeding."<sup>2</sup>

18 On Sunday (March 30), Franklin informed the City that the required notice period for the  
19 Motion for Judgment – which seeks dispositive relief in the adversary proceeding – was a minimum  
20 of 28 days (not 14). Franklin further explained that the City's effort to shorten time by 17 days  
21 would be prejudicial because, in fact, the Motion for Judgment does not "give plaintiffs the relief  
22 that they have requested in their complaint" but instead would result in dismissal of a majority of the  
23 pending claims for relief.<sup>3</sup>

24 On Monday (March 31), the City acknowledged that it "referenced the wrong local rule" in  
25 the Motion to Shorten, but refused to move the proposed April 7 hearing date or otherwise provide

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26 <sup>1</sup> Motion to Shorten at 2.

27 <sup>2</sup> Motion to Shorten at 2-3.

28 <sup>3</sup> See Exhibit A (attached without exhibit).

1 proper notice of the hearing.<sup>4</sup> Instead, at 9:35 p.m. on Monday, the City filed an *Errata On Notice*  
2 *Of Hearing* on the Motion to Shorten [Adv. Pro. Docket No. pending], noting that “the City  
3 mistakenly cited to Local Bankruptcy Rule 9014-1(f)(2)” and that the City actually “seeks to shorten  
4 time from 28 days to 11 days.”<sup>5</sup>

5 **Shortened Time On The Motion For Judgment Is Not Appropriate**

6 The City was correct to rescind its citation to Local Rule 9014-1(f)(2). By its express terms,  
7 that Rule “shall not be used for a motion filed in connection with an adversary proceeding.” As a  
8 consequence, as the City now acknowledges, the operative rule is Local Rule 9014-1(f)(1), which  
9 requires 28 days’ notice of the Motion for Judgment.

10 The City nevertheless seeks to truncate that 28-day notice period to 11 days, citing Local  
11 Rule 9014-1(f)(3), which provides that, “[i]n appropriate circumstances and for good cause shown,  
12 the Court may order that the amount of notice of a hearing on a motion be shortened to fewer than  
13 fourteen (14) days.” This request is inappropriate for two reasons.

14 First, the provisions of Local Rule 9014-1(f)(3) appear not to apply to motions in adversary  
15 proceedings, because the Rule is premised on the availability of Local Rule 9014-1(f)(2)’s truncated  
16 “alternative” 14-day notice procedure. Otherwise, the authorization in Local Rule 9014-1(f)(3) for  
17 the Court to shorten notice “to fewer than fourteen (14) days” would make no sense. Moreover,  
18 shortening time to a period of less than 14 days – as the City seeks – would violate the express  
19 command that Local Rule 9014-1(f)(2) “shall not be used for a motion filed in connection with an  
20 adversary proceeding.”

21 Second, in any event, these are not “appropriate circumstances” and the City has not shown  
22 “good cause” for the requested shortened notice on the Motion for Judgment. Of course, shortened  
23 notice would not be an issue if the City truly sought “to give plaintiffs the relief they have requested  
24 in their complaint.” Unfortunately, that is not actually what the City seeks to accomplish. To the  
25 contrary, while the Motion for Judgment would result in judgment in favor of the plaintiffs in respect

26 <sup>4</sup> See Exhibit B. The City also indicated that its counsel “will follow up with you tomorrow on the substantive  
27 portions of your letter. It may be that we can come to an agreement regarding disposition of all or part of the  
Adversary Proceeding.” *Id.* To date, there has been no such “follow up.”

28 <sup>5</sup> Errata at 1.

1 of Count 1 of the complaint, it would prejudice Franklin's pursuit of the other Counts in the  
2 complaint and in fact is highly objectionable.

3 Specifically, in Counts 2, 3, and 4 of the complaint, Franklin seeks in part (a) a declaration  
4 that the agreements at issue give rise to an allowed claim secured by a valid, perfected and  
5 enforceable security interest in and lien upon certain property (Counts 2 and 3), and (b) a  
6 determination of the value of the collateral that secures that claim (Count 4). By the Motion for  
7 Judgment and the proposed form of Judgment accompanying it, the City apparently seeks dismissal  
8 without prejudice of those Counts while maintaining the right to object to and dispute the very  
9 secured claim that is the subject of this adversary proceeding, which the City proposes "can later be  
10 resolved outside of the" adversary proceeding.<sup>6</sup>

11 This is not "a judgment in favor of plaintiffs." It is a motion to dismiss, and it is without  
12 merit. Without cataloging the entirety of Franklin's objection to the Motion for Judgment (which  
13 Franklin will brief when scheduled appropriately), the entire purpose of this adversary proceeding is  
14 to determine the nature, extent and allowability of the plaintiffs' secured claim against the City.  
15 Such a determination is inextricably intertwined with confirmation of the City's proposed plan of  
16 adjustment, which is the reason why the Court ordered that the confirmation hearing and the trial in  
17 this adversary proceeding take place concurrently and that all pre-trial and pre-hearing procedures be  
18 coordinated and conducted on the same schedule.

19 The City clearly is not willing to stipulate to judgment in Franklin's favor with respect to the  
20 allowability, nature, extent and value of the secured claim at issue in Counts 2, 3 and 4. To the  
21 contrary, the City expressly states that such claim is "disputed" and the City demands a "full  
22 reservation of rights" with respect to that claim.<sup>7</sup> The City thus seeks dismissal of those Counts and  
23 suggests that they "can later be resolved outside of the" adversary proceeding, apparently at some  
24 date after the confirmation hearing.<sup>8</sup> The proposed Judgment accompanying the Motion for  
25 Judgment expressly so provides: "The balance of the claims for relief asserted in the Complaint in

26 <sup>6</sup> Motion for Judgment at 6.

27 <sup>7</sup> Motion for Judgment at 6.

28 <sup>8</sup> Motion for Judgment at 6.

1 this Adversary are dismissed without prejudice to Plaintiffs reasserting those claims for relief in the  
2 main case, and this Adversary shall forthwith be closed.”<sup>9</sup>

3 This attempt to bifurcate and delay resolution of issues respecting the allowability, nature and  
4 extent of Franklin’s secured claim is inappropriate. Those issues bear directly on the confirmability  
5 of the City’s proposed plan (which, among other things, provides no proposed treatment of any such  
6 secured claim), and the adversary proceeding must continue on the coordinated schedule ordered by  
7 the Court long ago. Indeed, trial is just six weeks away, fact discovery is now closed, expert reports  
8 have been filed, and pre-trial briefs are due in a week, on April 7, the very day that the City seeks to  
9 have the Court rule upon the Motion for Judgment.<sup>10</sup>

10 Franklin is happy to stipulate to judgment in its favor on Count 1 of the complaint. The  
11 remainder of the relief requested in the Motion for Judgment is inappropriate and objectionable and  
12 should be heard and determined on a schedule that gives Franklin an appropriate time for response.  
13 In light of the foregoing, and the fact that pretrial briefs in the adversary proceeding are due on  
14 Monday, April 7, Franklin requests that the Court schedule a telephonic status conference this week  
15 to address the scheduling of a hearing on the Motion for Judgment.

16 Dated: April 1, 2014

JONES DAY

17  
18 By:           /s/ Joshua D. Morse            
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20 Joshua D. Morse  
21 Charlotte S. Wasserstein

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24 *Yield Municipal Fund*

25 <sup>9</sup> Motion for Judgment, Ex. B at 3.

26 <sup>10</sup> It is curious that the City acted without ever mentioning that it would like to discuss a consensual stipulation and  
27 waited to file the Motion for Judgment until one day after Franklin submitted its expert reports last Wednesday,  
28 including expert testimony establishing that Franklin’s secured claim has a value of nearly \$15 million. This  
attempt to delay once Franklin had “shown its hand” speaks to the City’s motives in delaying the Court’s  
consideration of the pending issues in this adversary proceeding.