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7 Attorneys for Party in Interest California Public Employees' Retirement System

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

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

Case No. 2012-32118
 DC No. SLF-1
 Chapter 9

**REDACTED VERSION OF DOCKET
 NUMBER 910 DECLARATION OF
 MICHAEL J. GEARIN IN SUPPORT
 OF CALPERS' MOTION TO
 DISQUALIFY WINSTON &
 STRAWN LLP**

Date: July 2, 2013
 Time: 9:30 a.m.
 Place: United States Courthouse
 Dept. C, Courtroom 35
 501 I Street
 Sacramento, CA 95814

21 I, Michael J. Gearin, hereby declare:

22
 23 1. I am an attorney with K&L Gates LLP ("K&L Gates") representing Party in Interest
 24 California Public Employees' Retirement System ("CalPERS") in certain bankruptcy matters,
 25 including this above referenced Chapter 9 proceeding involving the City of Stockton, and another
 26 Chapter 9 proceeding styled as *In re: City of San Bernardino, California*, Central District of
 27 California, Riverside Division, Case No. 6: 12-bk-28006-MJ (collectively referred to as the "Chapter
 28 9 Cases"). I make this declaration in support of the CalPERS' Motion to Disqualify Winston &

1 Strawn LLP ("Winston"). Except as to those matters as set forth on information and belief, I have
2 personal knowledge of the facts set forth herein and if called as a witness I could testify competently
3 to such facts.

4 2. I am one of the K&L Gates' partners primarily responsible for the representation of
5 CalPERS in the Chapter 9 Cases, along with Michael Lubic of our Los Angeles office. In that role,
6 Mr. Lubic and I have supervisory responsibility for other partners and associates working on the
7 representation, and have extensive contact with members of K&L Gates' team for the Chapter 9
8 Cases. The K&L Gates legal team consists of attorneys from multiple offices including offices in
9 California, Washington, Illinois, Massachusetts and North Carolina. Several of K&L Gates' attorneys
10 from our Charlotte, North Carolina office have performed significant legal services for CalPERS in
11 the Chapter 9 Cases, including services performed by partner Felton E. Parrish, who based upon my
12 observations and his time records worked approximately 366 hours, associate Nathan Lebioda, who
13 worked approximately 86 hours, and associate William Petraglia, who worked approximately 53
14 hours.

15 3. As described in greater detail below and in the Declaration of Sean M. Jones, I have been
16 informed and believe that Mr. Parrish has left K&L Gates, and taken a position at Winston, effective
17 as of April 23, 2013. I am informed and believe that Mr. Lebioda and Mr. Petraglia have also
18 announced their intentions to take positions offered to them at Winston. I have personally reviewed
19 our firm's time records for the services associated with the above described attorneys in the Chapter 9
20 Cases. As is the case with most law firms, attorneys at K&L Gates keep records of the time they
21 expend in providing services to clients by logging a description of the nature of the services and the
22 amount of time into the firm's billing software system. K&L Gates' policy requires attorneys to
23 record their time daily no later than the business day following the date of provision of services. The
24 billing records of each attorney are accumulated into specific client matter numbers which provide
25 the basis for the bills which are eventually sent to clients. The billing records constitute business
26 records which are kept in the ordinary course of K&L Gates' business. The billing software allows
27 one to produce summaries of time records by individual attorney. I asked our accounting department
28 to produce summaries of time records for all services provided by Mr. Parrish, Mr. Lebioda and

1 Mr. Petraglia on the chapter 9 cases. A redacted version of the time records relating to the services
2 performed for CalPERS in the Chapter 9 Cases by Mr. Parrish, Mr. Lebioda and Mr. Petraglia is
3 attached hereto as Exhibit 1.

4 4. On or about April 15, 2013, Jo Ann Brighton, who was at that time a partner in K&L
5 Gates' Charlotte office, informed me that she intended to resign from K&L Gates to join Winston.
6 At that time, Ms. Brighton had been a co-lead in K&L Gates' Restructuring and Insolvency practice
7 group. She had minimal involvement in the Chapter 9 Cases and our work for CalPERS, having
8 billed only 0.8 hours on the Chapter 9 Cases.

9 5. Unlike Ms. Brighton, Mr. Parrish was a K&L Gates partner who has been an integral part
10 of the core K&L Gates team in the CalPERS representation. He was a key lieutenant in the CalPERS
11 Chapter 9 team and I worked with him extensively in matters related to the Chapter 9 Cases.
12 Mr. Parrish, at my direction and that of Mr. Lubic, researched and drafted numerous memoranda
13 relating to various issues in the Chapter 9 Cases. He drafted multiple pleadings and inserts for
14 pleadings in the San Bernardino case. He participated extensively in multiple conference calls related
15 to particular matters on which he worked and participated in a number of team-wide status and
16 strategic planning conference calls. My review of his time records discloses that he participated in at
17 least eight of our weekly conference calls in which our K&L Gates CalPERS team discussed critical
18 issues and strategy and reported on progress of initiatives we were working on for CalPERS. He was
19 on at least one conference call with me and other members of the Chapter 9 team on December 15,
20 2012 for which he billed 1.7 hours, speaking directly to CalPERS general counsel, Peter Mixon
21 regarding strategic decisions involving the draft of CalPERS reply in connection with its motion for
22 relief from stay in the San Bernardino case. Over the course of the next two days, Mr. Parrish billed
23 more than 14 hours drafting the reply and communicated directly with Mr. Mixon regarding the draft
24 of that brief. In connection with the Chapter 9 Cases, Mr. Parrish sent or received hundreds of
25 emails, including those regarding strategic planning for CalPERS. Mr. Parrish also supervised the
26 work of the two Charlotte associates – Mr. Petraglia and Mr. Lebioda – with regard to their work on
27 the Chapter 9 Cases, including review of their research and work product. While almost all of
28 Mr. Parrish's time was billed to the San Bernardino billing number, the large majority of

1 Mr. Parrish's work in the Chapter 9 Cases concerned core strategies and arguments that are relevant
2 to both the City of Stockton and City of San Bernardino cases. For example, Mr. Parrish was the
3 principal author of at least four research memoranda three of which were generally applicable to both
4 cases and one of which, while addressing specific issues relevant to San Bernardino, could also have
5 relevance to Stockton. Since Fall 2012, Mr. Parrish performed the following services related to the
6 Chapter 9 Cases, which I have generally described by categories. As previously indicated, he billed
7 approximately 366 hours on matters for CalPERS in performing these services:

- 8 • Research and draft memorandum re: automatic stay and application to CalPERS
9 remedies.
- 10 • Research and draft motion and reply for relief from automatic stay in San
11 Bernardino case.
- 12 • Participate in team-wide conference calls on particular subjects as well as weekly
13 status and case strategy calls.
- 14 • Research and draft memorandum re: CalPERS's options in the bankruptcy court.
- 15 • Research and draft memorandum re: CalPERS's set-off rights.
- 16 • Research and draft memoranda re: administrative claims and legislative history re:
17 same.
- 18 • Research and draft inserts for San Bernardino eligibility brief.
- 19 • Research and draft memorandum re: San Bernardino eligibility.
- 20 • Research and draft memoranda re: treatment of private pensions in bankruptcy.
- 21 • Research and draft memorandum re: administrative expenses.
- 22 • Research re: ERISA issues in bankruptcy.
- 23 • Research and draft response to motion to reject collective bargaining agreement in
24 San Bernardino case.
- 25 • Research and draft memorandum re: insurance premiums as administrative
26 expenses.
- 27 • Supervise the work of William Petraglia and Nathan Lebioda on the Chapter 9
28 Cases.

- 1 • Multiple Conferences with Nathan Lebioda and William Petraglia regarding their
2 work on the Chapter 9 Cases.
- 3 • Participation in at least nineteen (19) conference calls related to the Chapter 9
4 Cases.
- 5 • Participation in numerous emails and correspondence including written
6 communications with CalPERS' General Counsel, Peter Mixon.
- 7 • Telephonic attendance at court hearing on December 21, 2012 in the City of San
8 Bernardino case.

9 6. Additionally, Mr. Lebioda, one of the associates in K&L Gates' Charlotte office, was
10 supervised by Mr. Parrish. Mr. Lebioda billed 85.8 hours to the Chapter 9 Cases, and generally
11 performed the following tasks:

- 12 • Research and draft memorandum re: automatic stay in Chapter 9 cases.
- 13 • Participate in conference calls with litigation team re: specific matters.
- 14 • Research and draft memorandum re: legislative history and automatic stay.
- 15 • Research and draft insert re: preemption issues for reply re: relief from automatic
16 stay.
- 17 • Research and draft memorandum re: administrative expenses in municipal
18 bankruptcies.
- 19 • Research re: grounds to challenge Chapter 9 bankruptcy petitions.
- 20 • Research and draft memorandum re: rejection of collective bargaining agreements.
- 21 • Participation in emails and conferences with other members of the K&L Gates
22 Chapter 9 team.

23 7. Likewise, Mr. Petraglia, another associate in K&L Gates' Charlotte office, was also
24 supervised by Mr. Parrish. Mr. Petraglia billed 53.3 hours to the Chapter 9 Cases, and generally
25 performed the following tasks:

- 26 • Research and draft memorandum re: administrative priority of private pensions.
- 27 • Research and draft memorandum email re: statutory interpretation.
- 28 • Participation in emails and conferences with other members of the K&L Gates
Chapter 9 team.

1 8. During the period April 15 through April 21, 2013, I had communications with
2 Ms. Brighton in which we discussed the conflict issues which would result from her leaving K&L
3 Gates and joining Winston. I initially learned that Ms. Brighton was planning to join Winston in a
4 telephone conversation on April 15, 2013 with K&L Gates Administrative Partner for the Charlotte
5 office, Sean M. Jones. Later that day, I called another K&L Gates partner in the Charlotte office,
6 J. Michael Booe, who was the co-lead of the Restructuring and Bankruptcy group in the Charlotte
7 office as I was concerned that he to might be considering leaving the firm. Mr. Booe and I spoke
8 about whether Mr. Parrish might be considering leaving K&L Gates and Mr. Booe indicated that he
9 had made efforts to persuade Mr. Parrish to stay. Mr. Booe and I spoke about the fact that
10 Ms. Brighton had done some work on the CalPERS matters. I expressed my concerns to Mr. Booe
11 that if Felton Parrish was planning to go to Winston, that he had extensive involvement in the
12 Chapter 9 Cases, and I was sure that would be a problem for CalPERS. Within an hour of my
13 conversation with Mr. Booe, Ms. Brighton emailed me, requesting that I call her cell phone. I did
14 call Ms. Brighton that afternoon. In our conversation, Ms. Brighton inquired as to whether her prior
15 representation of CalPERS would be viewed as a disqualifying conflict of interest by CalPERS.
16 Ms. Brighton indicated that she had worked very little on the CalPERS matters and held no
17 information that could be viewed as confidential. Based upon my role in the case, I knew that to be
18 true. I indicated to her that given her limited involvement and her representation to me that she held
19 no confidential information that I did not believe the conflict would be objectionable to CalPERS, but
20 that I would need to inquire with the client.

21 9. I do not have authority to waive any conflict on behalf of CalPERS. Such authority
22 resides with Peter Mixon, General Counsel of CalPERS.

23 10. During our conversation of April 15, 2013, Ms. Brighton and I went on to discuss
24 whether Ms. Brighton intended to recruit other lawyers, including Mr. Parrish, to Winston.
25 Ms. Brighton adamantly denied to me that she would have any involvement in recruiting Mr. Parrish
26 or other lawyers from K&L Gates to join Winston as she did not wish to "burn any bridges" with K&
27 L Gates. I subsequently learned in a conversation with my partner Charles Dale that she had
28 informed Mr. Dale a few days earlier that she intended to take the entire bankruptcy group from

1 Charlotte's offices to Winston with her including Mr. Parrish. I informed Ms. Brighton in our call of
2 April 15 that Mr. Parrish had much more extensive involvement in the CalPERS representation than
3 she and that he certainly held extensive client confidences, such that CalPERS' view of his joining
4 Winston would likely be very different from that of Ms. Brighton's joining the adverse firm. We
5 discussed the importance of the Chapter 9 Cases to CalPERS, the high degree of sensitivity of the
6 confidences that Mr. Parrish held and the contentiousness of the disputes between CalPERS and
7 Winston's client National. I made it very clear to Ms. Brighton that if Mr. Parrish chose to join
8 Winston, his access to CalPERS confidential information would not be a conflict that I thought could
9 or would be waived.

10 11. On the morning of Saturday, April 20, 2013, Ms. Brighton and I met for breakfast at the
11 American Bankruptcy Institute's Annual Conference. This was after she had resigned from K&L
12 Gates. Ms. Brighton indicated at that point that she had been announcing her intention to join
13 Winston at the conference and asked whether I would assist in making a request to CalPERS for a
14 waiver such that Winston would not risk disqualification in the Chapter 9 Cases due to her joining the
15 Winston firm. Ms. Brighton did not suggest that Mr. Parrish would be joining Winston or request a
16 consent with respect to Mr. Parrish at the breakfast meeting. I do not recall discussing Mr. Parrish or
17 the Charlotte associates at all at our breakfast meeting.

18 12. During the week of April 15, after I learned that Ms. Brighton intended to leave K&L
19 Gates, I sought to reach Mr. Parrish on several occasions, among other things, to ascertain whether he
20 was considering leaving K&L Gates and if so, to try to persuade him to stay. Among the issues I had
21 intended to discuss with him were the CalPERS confidences that he held. While Mr. Parrish and I
22 exchanged voice mails, we did not ever speak during that timeframe.

23 13. On Sunday, April 21, 2013, Ms. Brighton emailed to me a letter from Winston partner
24 Thomas Cottingham dated April 19, 2013. A true and correct copy of this letter is attached hereto as
25 Exhibit 2 and incorporated herein by reference. The letter informed me of Winston's offer of
26 employment to Ms. Brighton, subject to clearing conflicts. It said nothing about Winston's plans to
27 employ Mr. Parrish or any other attorneys from K&L Gates' Charlotte office. The letter requested
28 that CalPERS acknowledge that it would not seek to disqualify Winston from its representation of

1 National in the Chapter 9 Cases due to Winston's employment of Ms. Brighton.

2 14. On Monday afternoon April 22, 2013, Felton Parrish sent an email to me informing me
3 that he too had received an offer of employment from Winston. A true and correct copy of that email
4 is attached hereto as Exhibit 3, incorporated herein by reference.

5 15. Attached to Mr. Parrish's email was a letter dated April 22, 2013 from Thomas
6 Cottingham to Peter Mixon, who is our principal client contact at CalPERS. A true and correct copy
7 of this letter is attached hereto as Exhibit 4, incorporated herein by reference. Mr. Parrish requested
8 that I forward the letter to Mr. Mixon.

9 16. I have been informed by my Charlotte partners and Mr. Parrish confirmed that he
10 resigned from K&L Gates effective April 22, 2013.

11 17. On Wednesday April 24, 2013, I sent a letter to Mr. Cottingham responding to the
12 April 22 Winston Letter. A true and correct copy of my April 24 letter is attached hereto as
13 Exhibit 5, incorporated herein by reference. In this letter, I explained why CalPERS would be willing
14 to provide consent for Mr. Brighton to be employed at Winston, but not as to Mr. Parrish. My
15 April 24 letter to Mr. Cottingham confirms that CalPERS would not seek to disqualify Winston from
16 representing parties in the Chapter 9 Cases on account of Ms. Brighton's employment, conditioned
17 upon proper screening and certain other representations from Ms. Brighton. I obtained authority
18 from my client to communicate that position as to Winston's employment of Ms. Brighton. My
19 April 24 letter also informed Winston of CalPERS' position that, in light of Mr. Parrish's significant
20 involvement in the Chapter 9 Cases while at K&L Gates, CalPERS would seek to disqualify Winston
21 if Mr. Parrish became associated with Winston. As of that point in time, neither Ms. Brighton nor
22 anyone from Winston had informed me that they were going to be making offers to Mr. Petraglia or
23 Mr. Lebioda, or to secretaries who were familiar with the Chapter 9 Cases, and I had received no
24 communications from Winston about those other lawyers or staff. I have not received a response
25 from Ms. Brighton that confirms her agreement to the conditions under which CalPERS provided its
26 consent, as set forth in my April 24, 2013 letter. I have likewise not received any agreement from
27 Winston accepting those terms.

28 18. On Thursday, April 25, 2013, I received a call from Ms. Brighton. She expressed

1 surprise at the content of my letter of April 24 to Mr. Cottingham. She said that I had told her during
2 breakfast that "K&L Gates" would not seek to disqualify Winston because that is not the way we do
3 business. I told her that K&L Gates was not the decision maker here, it was the client. She admitted
4 that our conversation at breakfast on Saturday April 20, 2013 was before there had been any
5 indication that Felton was to receive an offer from Winston and that I had told her that the consent
6 decision was the client's. She indicated that she did not mention Felton during our breakfast because
7 he had not yet received an offer. I told her that there was nothing personal involved, that this was a
8 client decision on matters that were obviously important to both CalPERS and National. I told her
9 that I was very surprised that Winston would solicit Felton during ongoing litigation when they knew
10 the import of the cases and knew the level of Felton's involvement. I said that the matters were now
11 between Winston and CalPERS and that she and I would not have any further discussions about them
12 over the phone.

13 19. On April 29, 2013, Winston partner Lawrence Desideri sent a letter to me disputing the
14 extent of Mr. Parrish's involvement in K&L Gates' representation of CalPERS and arguing that an
15 ethical screen of Mr. Parrish and Ms. Brighton eliminates any basis for disqualifying Winston. A true
16 and correct copy of this letter is attached hereto as Exhibit 6, incorporated herein by reference. That
17 letter falsely characterizes the involvement of Mr. Parrish in the representation of CalPERS, and
18 unless Mr. Parrish has breached confidences, Mr. Desideri could have no personal knowledge of the
19 specific nature or extent of the services performed by Mr. Parrish.

20 20. As I understand and am informed by the Declaration of Sean M. Jones, Winston has also
21 recently extended offers of employment to two secretaries, Debbie Vitelli and Jane Butler, and to
22 K&L Gates bankruptcy associates Nathan Lebioda and William Petraglia. The two Charlotte
23 associates were significantly involved in the CalPERS representation while at K&L Gates. No one
24 from Winston has ever communicated with me about whether or not CalPERS would consent to the
25 employment of Mr. Lebioda or Mr. Petraglia. On May 13, 2013, I was informed that Mr. Lebioda
26 and Mr. Petraglia had accepted offers of employment with Winston and would be joining the
27 Winston firm on May 20, 2013.

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1 21. After Mr. Parrish's departure from K&L Gates, at the request and direction of one of my
2 partners, IT personnel retrieved Mr. Parrish's emails on the K&L Gates computer system. We
3 discovered that Mr. Parrish was having communications on April 22, 2013 with Winston's office
4 administrator, regarding sending correspondence directly to our client representative, Peter Mixon, at
5 CalPERS, and regarding arrangements for Winston to retrieve "a few boxes" at K&L Gates' offices.
6 Copies of seven pages of these emails and an attachment referenced in the email, from K&L Gates'
7 system, reflecting these communications are attached hereto collectively as Exhibit 7.

8 22. At the request and direction of one of my partners, our IT Staff retrieved emails from
9 K&L Gates' computer system that were sent or received by Mr. Parrish regarding the Chapter 9
10 Cases. Attached hereto collectively as Exhibit 8, and incorporated herein by reference, is a redacted
11 copy of multiple emails dated October 8, 2012, October 18, 2012, December 16, 2012, January 10,
12 2013, January 13, 2013, and January 18, 2013 to or from Felton Parrish's personal email address
13 identified as feltonparrish@hotmail.com which were routed through his office email at K&L Gates.
14 We have redacted these emails as they contain client confidential information or work product. The
15 emails confirm that Mr. Parrish used his personal email account to send and receive research and
16 memoranda pertaining to the CalPERS representation, including communications with me,
17 Mr. Lubic, Mr. Petraglia, Mr. Lebioda, Mr. Ryan (also of our office), and even communications with
18 our client's General Counsel, Peter Mixon. The fact that he used his personal email account to send
19 and receive such communications and work product raises concerns that he may still have electronic
20 access to some of the client work he did and the client communications with CalPERS while at K&L
21 Gates.

22 23. On May 13, 2013, I received a letter from Thomas Cottingham at Winston, addressing
23 Winston's hiring of Mr. Petraglia and Mr. Lebioda. Attached hereto as Exhibit 9 is a true and correct
24 copy of that May 13, 2013 letter. The letter asserts that Winston has hired these two associates, and
25 that they will be joining the Winston firm "in the near future." The letter asserts that Winston will
26 establish screening procedures that "are in compliance with ABA Model Rule of Professional
27 Conduct Rule 1.10."

1 24. On May 14, 2013, I sent a written response to Mr. Cottingham on behalf of my client
2 CalPERS, setting forth CalPERS response with respect to Winston's handling of the hiring of these
3 associates, and the conflict situation into which Winston has placed itself. Attached hereto as
4 Exhibit 10 is a true and correct copy of my May 14, 2013 letter to Mr. Cottingham.

5 25. On May 17, 2013, I received in the afternoon a letter from Lawrence Desideri, on behalf
6 of Winston, apparently in response to Exhibit 10 (my letter of May 14, 2013), described in the
7 preceding paragraph. A true and correct copy of Mr. Desideri's May 17 letter is attached hereto as
8 Exhibit 11. I have not responded to Mr. Desideri's letter, as the disputed issues pertaining to
9 disqualification of Winston are now being handled by The Sall Law Firm, A Professional
10 Corporation, on behalf of CalPERS. CalPERS strongly disagrees with the position taken by Winston,
11 and had already filed its Motion to Disqualify Winston in the bankruptcy of San Bernardino,
12 California on May 17, 2013, prior to my return to my office from a court appearance and my review
13 and forwarding of Exhibit 11.

14 26. The Court is fully aware of the extent of the disagreement between National and the other
15 Capital Markets Creditors and CalPERS in this case. As the Court commented in its ruling on the
16 City's eligibility, the Capital Markets Creditors have had CalPERS in their cross hairs over a number
17 of issues since the inception of the case. As is reflected in [REDACTED] communication [REDACTED]
18 [REDACTED] which was produced to CalPERS [REDACTED],
19 [REDACTED]
20 [REDACTED]. CalPERS has defended itself and has vigorously contested the assertions of the Capital
21 Markets Creditors that they are being treated unfairly and a multitude of other legal and factual points
22 throughout the case. These issues are core to the resolution of the case, and absent a settlement
23 between the Capital Markets Creditors and the City, will be contested in the plan confirmation
24 process that the City has now commenced. Mr. Parrish, Mr. Petraglia and Mr. Lebioda have
25 represented CalPERS with respect to these contested matters for many months.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3
4 Dated: May 20, 2013

By: /s/ Michael J. Gearin

Michael J. Gearin

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