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Save Our Sonoma Roads*

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re:)	BAP No.: EC-14-1550
CITY OF STOCKTON,)	Bankr. No. 12-32118
CALIFORNIA,)	
)	Chapter 9
<i>Debtor,</i>)	MOTION FOR LEAVE TO
)	FILE BRIEF <i>AMICUS</i>
)	<i>CURIAE</i>
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FRANKLIN HIGH YIELD TAX-)	
FREE INCOME FUND AND)	
FRANKLIN CALIFORNIA HIGH)	
YIELD MUNICIPAL FUND,)	
)	
<i>Appellants, v.</i>)	
)	
CALIFORNIA PUBLIC)	
EMPLOYEE’S RETIREMENT)	
SYSTEM,)	
<i>et al.,</i>)	
)	
<i>Appellees.</i>)	
)	
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Pursuant to Rule 29 of the Federal Rules of Appellate Procedure and Rule 8017 of the Federal Rules of Bankruptcy Procedure, Save Our Sonoma Roads (“SOSroads”) requests leave to file the accompanying brief *amicus curiae*. In support of this request, SOSroads states as follows:

SOSroads supports Franklin High Yield Tax Free Income Fund and Franklin California High Yield Municipal Fund's ("Franklin Funds") appeal of the confirmation of the *First Amended Plan For The Adjustment Of Debts Of City Of Stockton, California, As Modified (August 8, 2014), In re City of Stockton, California*, No. 12-32118 (Bankr. E.D. Cal. Aug. 8, 2014), ECF No. 1645; Order Confirming the Plan, *In re City of Stockton, California*, No. 12-32118 (Bankr. E.D. Cal. Feb. 4, 2015), Appellants' App. ER 224-303; Amended Opinion Regarding Confirmation and Status of CalPERS, *In re City of Stockton, California*, No. 12-32118 (Bankr. E.D. Cal. Feb. 27, 2015), Appellants' App. ER304-61.

SOSroads respectfully submits that its perspective would aid this Court in resolving the pension fund issues in this case. The failure to impair pension funds in this case is likely to have direct effects on the delivery of public services, specifically road conditions, within Sonoma County. While Sonoma County is not technically bankrupt, it has been able to meet its current cash obligations during the past decade only by failing to maintain its deteriorating road system. It is a prime example of service delivery insolvency where out-of-control pension liabilities are strangling the delivery of public services. SOSroads is well-positioned to provide a unique insight into the real-world consequences likely to flow from the Court's decision, not only in Sonoma County but throughout California. SOSroads believes that the accompanying brief will provide the

perspective of how runaway pension costs are tearing the social fabric of local jurisdictions in California and why a bankruptcy court's refusal to impair them adds to the dysfunction in local governance throughout California. Pursuant to Circuit Advisory Committee Note to Rule 29-1 of the Rules of the United States Court of Appeals for the Ninth Circuit, SOSroads has endeavored to avoid duplication of argument in its proposed brief with Franklin Funds' brief.

Anticipating that the City of Stockton ("Stockton") may oppose this motion as it did in the court below, SOSroads notes that this case is related to similar insolvency problems throughout California. The recent municipal bankruptcies in San Bernardino, Detroit and Vallejo have been subjects of intense national press scrutiny and commentary because they raise the most fundamental issues of local governance in our time. As noted in the amicus brief, Warren Buffet, the wisest investor of our time, warns that many public entities have promised pensions that they cannot afford. A commission recently found that "the biggest threat to the long-term fiscal stability of [Los Angeles is] the crushing cost of pensions and worker benefits."¹ If pensions are not impaired in bankruptcy proceedings the ability of many local governments to function will be called into question.

¹ Adam Nagourney, *Report Finds Los Angeles at Risk of Decline*, NEW YORK TIMES (Apr. 9, 2014), available at http://www.nytimes.com/2014/04/10/us/report-finds-a-los-angeles-in-decline.html?_r=0.

Elected officials approved super-charged pensions following negotiations between senior employees and more junior employees. Everyone in this process profits from the pension benefits that drove Stockton to bankruptcy. Those senior employees and elected officials then proposed a plan of adjustment that protects their personal pensions – as clear an example of conflict of interest as one could find. What is lacking in this case is the perspective of the needs of the 99% of residents who are not employed by the municipality. Their basic services, including road maintenance, are starved by unsustainable pension obligations. While SOSroads members do not reside in Stockton, if the plan of adjustment is confirmed public employee unions in Sonoma County will have a stronger hand in labor negotiations secure in the knowledge that even if Sonoma County were in a Chapter 9 proceeding their pensions would be safe. In this regard SOSroads provides an otherwise lacking perspective of users of services provided by local governments throughout the 9th Circuit.

This court has broad discretion to entertain the perspective of an amicus brief. The Ninth Circuit allows an amicus to participate in an appeal where a “unique perspective” is offered. *In re Heath*, 331 B.R. 424, 430 (B.A.P. 9th Cir. 2005). In the Seventh Circuit “[a]n amicus brief should normally be allowed . . . when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Ryan v.*

Commodity Futures Trading Comm'n, 125 F.3d 1062, 1063 (7th Cir. 1997). Then-Judge Alito, acting as a single judge on a motion to file an amicus brief, ruled that an amicus need only show “(a) an adequate interest, (b) desirability, and (c) relevance.” *Neonatology Assocs., P.A. v. Comm’r of Internal Revenue*, 293 F.3d 128, 131 (3d Cir. 2002). He emphasized that

an amicus may provide important assistance to the court. Some amicus briefs collect background or factual references that merit judicial notice. Some friends of the court are entities with particular expertise not possessed by any party to the case. Others argue points deemed too far-reaching for emphasis by a party intent on winning a particular case. Still others explain the impact a potential holding might have on an industry or other group.

Id. at 132 (internal quotation marks omitted).²

This court should entertain the perspective of SOSroads, which brings to the court a unique perspective and information that can be of assistance. The implications of the impairment issue are enormous. They are exemplified by the situation in Sonoma County where a large portion of the county road system is in such disrepair that much of it may deteriorate to gravel or dirt. SOSroads brings to the attention of this court the real world effects on a county that is failing to

² See also *Toussaint v. McCarthy*, 801 F.2d 1080, 1106 n.27 (9th Cir. 1986), *cert. denied*, 481 U.S. 1069 (1987), *on remand*, *Toussaint v. Rowland*, 711 F. Supp. 536 (N.D. Cal. 1989), *aff’d in part, vacated in part, rev’d in part*, *Toussaint v. McCarthy*, 926 F.2d 800 (9th Cir. 1990) (ruling that “[j]ustice would not be served by ignoring the amicus’ arguments.”).

maintain the vast majority of its infrastructure because of out-of-control pension liabilities.

These problems affect individuals. One member of SOSroads suffered excruciating pain when she broke her leg and an ambulance had to navigate a dirt road *en route* to the hospital.³ An ambulance bearing another member took twice as long to get to the hospital when an ambulance avoided a pot-holed road. These difficulties are destined to get worse. As the roads continue to deteriorate the response time will increase for medical assistance, fire crews and sheriffs because emergency vehicles will travel much more slowly on dirt and gravel than paved roads. The longer response times can contribute to the death of a heart attack victim who might have lived, the unnecessary loss of a home from a fire, or a mortal injury by a home intruder. Members frequently report having to replace wheel rims (not tires) on their vehicles. One member hit a pothole that deployed the passenger airbag and caused thousands of dollars of damage to her vehicle.⁴

The economist Herb Stein famously stated that anything that could not go on forever would eventually stop, and his wisdom applies to unsustainable pension

³ Letter from Ken and Karen Adelson to Sonoma County Board of Supervisors (Oct. 29, 2011) (excerpt), available at <http://sosroads.org/index.php/sos-roads-announcements/letters>.

⁴ Jonathan Weber & Tim Reid, *In California wine country, bumpy roads tell tale of fiscal woe*, REUTERS (May 29, 2013), available at <http://www.reuters.com/article/2013/05/29/us-usa-pensions-sonoma-idUSBRE94S0GP20130529>.

obligations. Pension impairment need not affect all employees or retirees. It might be restricted to claw backs or spiking (boosting retirement pay by adding unused sick leave, vacation time, compensatory time, etc. to the pension formula) and “air time.” Adjustments could be made to the benefits for politicians who approved irresponsible and self-dealing pension decisions. Impairing pensions would send a signal to public officials that their handcuffs have been removed during labor negotiations. Public employees all too often believe that the fiscal condition of their local entity will never impact their pensions, no matter how onerous those super-charged pensions may have been on the delivery of government services.

For the foregoing reasons, and in light of its substantial interest in this case, SOSroads respectfully requests leave of this Court to file this brief *amicus curiae*.

DATED: March 30, 2015

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Save Our Sonoma Roads

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Bankruptcy Appellate Panel for the Ninth Circuit by using the appellate CM/ECF system on March 30, 2015.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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