

1 STEVEN H. FELDERSTEIN (State Bar No. 056978)  
JASON E. RIOS (State Bar No. 190086)  
2 JENNIFER E. NIEMANN (State Bar No. 142151)  
FELDERSTEIN FITZGERALD  
3 WILLOUGHBY & PASCUZZI LLP  
400 Capitol Mall, Suite 1750  
4 Sacramento, CA 95814  
Telephone: (916) 329-7400  
5 Facsimile: (916) 329-7435

6 Attorneys for the Official Committee of Retirees

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

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

CASE NO.: 12-32118-C-9

DCN: OHS-15

14 **OFFICIAL COMMITTEE OF**  
15 **RETIREE’S RESPONSE TO FRANKLIN**  
16 **FUND’S OBJECTIONS TO**  
17 **CONFIRMATION OF THE CITY OF**  
18 **STOCKTON’S AMENDED PLAN OF**  
19 **ADJUSTMENT**

Date: October 1, 2014  
Time: 10:00 a.m.  
Judge: Hon. Christopher M. Klein  
Courtroom: 35, Department C

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21 **I. Fairness and Equity Support Confirmation of the Plan.**

22 The Official Committee of Retirees (the “Committee”) continues to support confirmation  
23 of the City of Stockton’s Amended Plan of Adjustment, as Modified (August 8, 2014) (the  
24 “Plan”) and submits that the Plan should be confirmed, as presented, without impairment of  
25 pensions, for all of the reasons set forth in the Committee’s Memorandum in Support of  
26 Confirmation (“Committee Brief”, Dkt. No. 1655). Franklin Fund’s post-trial brief opposing  
27 confirmation does not dispute (i) that the Plan already imposes significant hardship on City’s  
28 retirees (the “Retirees”) and substantial benefits to the City from the loss of the retirees’ health

1 benefits that are the subject of the Retiree Health Benefit Claims<sup>1</sup> (the “Retiree Health Benefits”),  
2 (ii) the significant additional hardships that impairment of pensions would impose on the  
3 Retirees, or (iv) that denial of confirmation would put the City’s negotiated compromises  
4 developed through judicially supervised mediation at risk, thereby jeopardizing the City’s ability  
5 to successfully and promptly emerge from bankruptcy.

6 Franklin Fund instead complains that it is being treated unfairly because it failed to reach  
7 a compromise with the City, as all other major creditors did. While other creditors will receive  
8 recoveries on certain claims of between 52% to 100% (according to Franklin Fund), Franklin  
9 Fund, having failed to compromise, stands to receive less than 1% of its general unsecured  
10 claim—the same treatment provided for other claims in Class 12, including the Retiree Health  
11 Benefit Claims totaling approximately \$545,000,000. Franklin Fund’s objections about the  
12 treatment provided for other creditors ignores that Franklin Fund itself will receive 100% of its  
13 secured claim in cash on the effective date. (See Plan, Dkt. 1645, Class 20). Franklin Fund  
14 further suggests that the City’s decision not to impair pensions should be grounds for denial of  
15 confirmation but does not establish that impairing pensions would result in any greater  
16 distributions to Franklin, or any better outcome for the City and its creditors, saying instead that,  
17 “It cannot get any worse for Franklin.” (FF Brief p. 52:21).

18 What Franklin Fund appears to have wanted all along is stated in the third theme of its  
19 opposition, that the City will have ample funds to pay Franklin’s claims (secured and unsecured)  
20 in full. (FF Brief p. 37:6-7). Read as a whole and in the context of this case, where all other  
21 major creditor groups have compromised through meditation, Franklin Fund continues to assert  
22 that the City should pay it 100% of its secured and unsecured claims. While the Committee is not  
23 privy to the negotiations between the City and Franklin Fund, the City has demonstrated its  
24 willingness to compromise through the Plan. One can only deduce from the absence of a  
25 compromise and Franklin’s contention that the City can pay its claims in full, that Franklin Fund  
26 is demanding that either its claims be paid in full or the Court should force the City to “blow up”

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27 <sup>1</sup> Capitalized terms not defined herein shall have the meaning as defined by the Plan.  
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1 the City's Plan of adjustment, that was negotiated with all other major creditors, and propose a  
2 new plan that impairs pensions. As detailed in the many briefs filed in support of the Plan, that  
3 would result in devastating losses to the City, its employees, its retirees, and its Creditors from  
4 termination of the City's relationship with CalPERS. Thus, Franklin Fund attempts to turn the  
5 fair and equitable<sup>2</sup> doctrine on its head by claiming that the City must meet the demands of a  
6 single hold-out creditor or suffer irreparable harm that would result from impairment of  
7 pensions.<sup>3</sup>

8 The Court should not set aside the City's good faith judgment regarding the management  
9 of its governmental affairs and preservation of its pensions for employees and retirees in aid of  
10 Franklin Fund's demand that it be paid in full. The Court instructed the parties at the beginning  
11 of this case to participate in the mediation before Judge Perris. The Court should not throw away  
12 the Plan support the City obtained from multiple creditor groups that have been carefully  
13 balanced through mediation for one hold-out creditor that asserts that the City can pay its entire  
14 claim in full.

## 15 **II. The City's Separate Classification and Treatment of Claims is Appropriate.**

16 Franklin Fund acknowledges, as it must, that separate classification and treatment of  
17 claims is appropriate. Indeed, the Plan provides to pay Franklin Fund 100% of its secured claim  
18 in cash on the effective date, while at the same time substantially impairing the Retiree Health  
19 Benefits Claims by paying less than 1% of those claims. Franklin Fund does not object to the  
20 separate classification and treatment of its secured claim, nor does it say that it is receiving too  
21 much in payment of 100% of its secured claim or that some of the over \$4 million that will be

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22 <sup>2</sup> As explained in the Committee's Memorandum in Support of Confirmation the Plan, the "fair  
23 and equitable" and "unfair discrimination" standards in Section 1129(b)(1) are inapplicable here  
24 since Section 1129(b)(1) applies to classes that have not accepted a plan. Here, the Plan has been  
accepted by Class 12, which includes Franklin Fund's general unsecured claim.

25 <sup>3</sup> The Committee acknowledges that Franklin Fund attempts to suggest alternatives and benefits  
26 to the City from termination of CalPERS and pensions. However, the briefs filed in support of  
27 the Plan, including the City's supplemental brief (Dkt. No. 1657), CalPERS's Supplemental Brief  
28 (Dkt. No. 1662), and the Committee Brief, as well as the evidence at the confirmation trial, show  
that those alternatives are not feasible and that the impairment of pensions would harm all  
interested parties, including the hold-out creditor Franklin Fund.

1 paid to Franklin Fund for its secured claim should instead be paid to the Retiree Health Benefit  
2 Claims that will be paid less than 1%, just like Franklin Fund's general unsecured claim. Yet,  
3 Franklin Fund objects to the separate classification of the Claims of CalPERS and the CalPERS  
4 Pension Plan Participants in Class 15.

5 As explained in the Committee's Memorandum in Support of Confirmation, even  
6 assuming *arguendo* that pension rights can be modified<sup>4</sup>, the City's separate classifications and  
7 treatment of claims are appropriate in this case, and any classification objection should be denied.  
8 Separate classification of claims is appropriate where there are reasonable nondiscriminatory  
9 reasons for the separate classification and where the legal character of the claims are not  
10 substantially similar. *In re Johnston*, 21 F.3d 323 (9<sup>th</sup> Cir. 1994). Here, the Retiree Health  
11 Benefit Claims and the retirees' claims related to the pensions involve separate claims with  
12 separate and distinct interests. (See DTD T. Zadroga-Haase, Ex 3071 ¶ 2). For example, a  
13 substantial amount of the City's pension obligations to its Retirees on account of their pension  
14 rights have already been funded. This means that at least a portion of the pension rights are  
15 covered by monies held in trust for the City's retirees and employees to which the retirees have a  
16 property right as well as a contract right. Moreover, as explained in the Committee's  
17 Memorandum in Support of Confirmation, unlike the City's pay-as-you-go and self-funded  
18 Retiree Health Benefits, the City's pension obligations involve substantial rights and obligations  
19 with a third party, CalPERS, that are governed by and subject to a comprehensive statutory  
20 scheme (the California Public Employee Retirement Law, Government Code §§ 20000, et seq.,  
21 the "PERL"). In addition to the PERL, the City's pension obligations are also included in  
22 current and past Memoranda of Understanding that affect pension obligations of employees and

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23 <sup>4</sup> Franklin Fund incorrectly relies on provisions in the PERL regarding reduced CalPERS pension  
24 payments from a terminated agency pool as proof that pensions can be impaired. The error in  
25 Franklin Fund's analysis is that the PERL only addresses the reduction of CalPERS's payment  
26 obligations. The City itself remains obligated to pay all pension benefits under its MOU's and the  
27 vested rights of employees and retirees. As noted in the Committee's Supplemental Brief in  
28 Support of Confirmation, the Committee asserts that these vested rights include deferred  
compensation and property rights, not just contract rights, under California law (Committee Brief,  
pp. 8-9). Moreover, Section 943(4) requires that the Plan provisions comply with applicable law  
and California's Labor Code provides that an employer's failure to meet its pension obligations is  
unlawful. See Cal. Labor Code §227.

1 retirees, as well as other employment terms that raise numerous additional legal, governmental,  
2 and business issues. While the City' Plan does not assume the CalPERS Pension Plan under  
3 Section 365, it clear from the evidence that the City's obligations to CalPERS cannot be  
4 unilaterally modified. Thus, the City's determination to leave pensions unimpaired is akin to  
5 assumption of an executory contract so that the City can continue to enjoy the benefits of its  
6 CalPERS Pension Plan and its collective bargaining agreements. Assumption of executory  
7 contracts requires, not just allows, payment of all obligations under the agreement. 11. U.S.C. §  
8 365. The City has shown a compelling business and governmental interest in preserving the  
9 CalPERS Pension Plan and preservation of pensions is appropriate just as assumption of an  
10 executory contract would be appropriate. These differences, and others, are more than sufficient  
11 to support the City's separate classification of its pension obligations to CalPERS and Retirees.

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13 **III. Franklin Fund's Inflammatory References to "Pension Spiking" Should Not  
Affect Confirmation of the City's Plan.**

14 Franklin Fund begins its brief with reference to "years of 'pension spiking' and unfunded  
15 promises of lavish benefits" without any citation to evidence. (FF Brief p. 1:17-18.) Later,  
16 Franklin Fund attempts to support this assertion by citing to a transcription of a YouTube  
17 interview with Kathy Miller, the City's Vice Mayor. (FF Brief p. 42, fn. 128.) The Court should  
18 not accept Franklin Fund's unfair characterizations regarding pensions for several reasons,  
19 including (i) the City has not sought to impair pensions or challenge the propriety of pensions and  
20 the issue of "pension spiking" has not been litigated, (ii) the Committee was not even formed  
21 until after the YouTube transcription was submitted at the eligibility hearing, and the Committee  
22 would present evidence to rebut claims of "pension spiking" if the matter were ever put at issue,  
23 (iii) Ms. Miller's YouTube comments do not identify a single instance of actual "pension  
24 spiking", (iv) when called to testify at the eligibility phase, Ms. Miller testified (as opposed to  
25 commenting on YouTube), that she was not aware of any pension abuse (Elig. Trans. 3/27/13, p.  
26 391:4-10.), (v) Franklin Fund does not cite to any evidence of even one actual example of any  
27 retiree's pension as the product of "pension spiking," or the amount that any one pension was  
28 increased by "pension spiking," let alone retirees in general, (vi) the actual evidence shows, as

1 noted in the Committee’s Supplemental Brief, that the retirees’ pensions are quite modest with  
2 many pensions less than \$24,000 per year. (Committee Brief, Dkt. No. 1655, p. 5:7-12.) The  
3 confirmation hearing simply was not about pension spiking and Franklin Fund’s unfounded and  
4 inflammatory references to “lavish benefits” should not affect the Court’s confirmation of the  
5 City’s Plan.

6 **IV. Conclusion**

7 Franklin Fund’s objections should be denied and the Plan confirmed. The Plan is the  
8 product of extensive negotiations and compromise with many groups, including the 2,400 retirees  
9 represented by the Committee, and has been accepted by Class 12. The Plan appropriately and  
10 separately classifies claims and treatment, including full payment of Franklin Fund’s own secured  
11 claim. Franklin Fund, having elected not to compromise, should not be permitted to “blow up”  
12 the City’s Plan to satisfy its demand that the City pay Franklin Fund’s secured and unsecured  
13 claims in full or pursue a plan proposing to impair pensions. Even if pensions can be impaired,  
14 the evidence overwhelmingly demonstrates that doing so in this case would cause unnecessary,  
15 undue, and irreparable harm to the Retirees, to the City, to employees, to creditors, to the City’s  
16 ability to emerge from bankruptcy, and to the City’s residents. The Court should approve the  
17 City’s sound and good faith business judgment in preserving pensions unimpaired, and confirm  
18 the City’s Plan as the best plan for all creditors under the circumstances of this chapter 9 case.

19 Dated: September 18, 2014

FELDERSTEIN FITZGERALD  
WILLOUGHBY & PASCUZZI LLP

By: /s/ Jason E. Rios  
STEVEN H. FELDERSTEIN  
JASON E. RIOS  
Attorneys for the Official Committee of Retirees

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