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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: JD-1

**OFFICIAL COMMITTEE OF
14 RETIREE’S OPPOSITION TO
15 FRANKLIN’S MOTION FOR STAY
16 PENDING APPEAL OF
CONFIRMATION ORDER**

17 Date: December 10, 2014

18 Time: 11:00 a.m.

Judge: Hon. Christopher M. Klein

Courtroom: 35, Department C

19
20 The Official Committee of Retirees (the “Committee”) opposes Franklin’s Motion for
21 Stay Pending Appeal of Confirmation Order (the “Stay Motion”). The Committee submits that
22 the Court’s confirmation of the City of Stockton’ First Amended Plan for the Adjustment of
23 Debts, as Modified (August 8, 2014) (the “Plan”) was carefully reasoned and amply supported by
24 the facts and law. The City should not be precluded from implementing the Plan on the Effective
25 Date¹ and imposing a stay pending appeal would irreparably harm the retirees by delaying

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28 ¹ Capitalized terms not defined herein shall have the meaning as defined by the Plan.

1 payment of the \$5.1 million aggregate amount to the Retiree Health Benefit Claimants, which is
2 to be paid on the Effective Date as provided in the Plan.

3 **I. Irreparable Harm to Retirees From Stay**

4 Franklin wrongly asserts that there is little risk of harm if a stay is imposed (Stay Motion
5 p. 4:6-7) and that any harm that might arise would come only in the form of delay (Stay Motion p.
6 11:12). Franklin once again fails to comprehend or at least acknowledge the significant financial
7 and personal hardships that the City's Retirees have endured as a result of the City's termination
8 of the retirees' health benefits in this bankruptcy case. As already summarized by the Committee
9 in its supplemental brief filed in support of the Plan on August 11, 2014 (Dkt. No. 1655), this
10 case began by the City unilaterally and greatly reducing and then terminating the Retiree Health
11 Benefits that had been earned over many years of service by Retirees to the City. As the Court is
12 well aware, the Association of Retired Employees of the City of Stockton ("ARECOS"), and
13 others, filed an adversary complaint and an application for a temporary restraining order to stop
14 the City from unilaterally reducing and then terminating those hard-earned health benefits. (Adv.
15 Proc. Case No. 12-02302). In support of its application for a temporary restraining order,
16 ARECOS filed numerous declarations from individual Retirees detailing the financial and
17 personal hardship that would result from the City's termination of the Retirement Health Benefits,
18 as well as the economic benefits that the Retirees had already given up through the collective
19 bargaining process in exchange for the City's promise to provide the Retirees with lifetime
20 Retiree Health Benefits. (See e.g. Dkt. No. 1655 p.2-5 and evidence cited therein).

21 To address these claims, the Plan provides in its treatment of Class 12 that on the
22 Effective Date, the City will pay the Retiree Health Benefit Claimants an aggregate amount of
23 \$5,100,000 (the "Health Benefit Payments") in full satisfaction of the Allowed Retiree Health
24 Benefit Claims. Prompt payment of the Health Benefit Payments to retirees is very important to
25 the retirees, who have limited income and high costs for replacement insurance. Their needs for
26 immediate payment are explained in the declarations filed with this opposition that were made by
27 Wayne Klemin, Jeanette Schenck, and Brenda Tubbs, which detail current hardships related to
28 the City's termination of their health insurance. For example, Mr. Klemin's declaration explains

1 that he has medical conditions that require care and that his premiums and deductibles for his
2 replacement insurance total approximately 44% of his annual pension income. (Klemin Decl.,
3 ¶¶6-7). Similarly, Ms. Schenck explains that the monthly premiums for replacement coverage for
4 her and her husband total approximately 88% of her annual pension income and that her husband
5 has medical conditions that require care. As a result, she has only approximately \$266 from her
6 monthly pension income for living expenses after paying for her health care benefits, which
7 requires that she meet her expenses from other sources. (Schenck Decl., ¶¶5-6). And Ms. Tubbs
8 further explains that her replacement premiums and deductibles total as much as 31% of her
9 \$20,170.80 annual pension income. (Tubbs Decl., ¶¶5-6.) These declarations, which are
10 representative of the circumstances of the retirees generally that lost their health insurance, also
11 explain that the City's prompt payment of the City's Health Benefit Payments is important to
12 them in meeting their health insurance expenses. (See Milnes Decl., ¶7, stating that the
13 declarations are representative of the circumstances of hundreds of retirees and that many more
14 declarations from individual retirees could be submitted to the Court detailing similar
15 circumstances.)

16 Thus, while Franklin may not acknowledge the continuing hardship that the retirees will
17 suffer if a stay is granted, the Court should recognize the substantial importance of prompt
18 payment of the Health Benefit Payments to the individual retirees. The Retirees have already
19 suffered the City's unilateral reduction and then termination of their health benefits in the two
20 years since this case was filed and should not have to wait longer. Franklin's appeal could take
21 more than a year and the retirees, who as a group are more senior in their years, need their
22 payments now while they can make a real difference.

23 **II. The Classification of Claims in the Plan is Appropriate.**

24 Franklin boldly asserts that this Court will be reversed on appeal as a result of Franklin's
25 challenges, including Franklin's dissatisfaction with its classification. The Committee will not
26 address all of those challenges since the City will ably defend its confirmed Plan, but it does wish
27 to reiterate the Committee's statements and arguments in support of the Plan's classification of
28 claims since the Committee and the City have already briefed this issue. (Committee Reply In

1 Support of Confirmation (Dkt. No. 1703) filed September 18, 2014 pp. 3-5; Committee's
2 Supplemental Brief in support of the Plan (Dkt. No. 1655) filed on August 11, 2014 pp. 7-8). In
3 lieu of restating those arguments here to avoid repetition, the Committee notes that those briefs
4 explain how the City's separate classification of claims, including Franklin's own secured claim
5 for over \$4 million, the Retiree Health Benefit Claims and the City's obligations to the retirees
6 and CalPers with respect to the CalPERS Pension Plan was appropriate and that the City more
7 than adequately demonstrated that it had reasonable and legitimate reasons for its classification of
8 claims and that the classification of claims was appropriate based upon the legal character and
9 similarities (or differences) of the claims. See *In re Johnston*, 21 F.3d 323 (9th Cir. 1994); *In re*
10 *Loop 76, LLC*, 465 B.R. 525, 536 (B.A.P. 9th Cir. 2012). Among the factors supporting the City's
11 reasonable justifications and classifications are (i) the separate and distinct interests of the Retiree
12 Health Benefit Claims, the retiree pension claims, and the other classified claims, (ii) the
13 involvement of CalPERS and the California Public Employee Retirement Law, Government Code
14 §§ 20000, et seq., the "PERL") for pension claims but not Retiree Health Benefit Claims, and (iii)
15 the City's compelling business and governmental interest in preserving the CalPERS Pension
16 Plan and preservation of pensions which is appropriate just as assumption of an executory
17 contract would be appropriate. For further detail, the Committee refers to the Court to the briefs
18 cited above.

19 The Committee also seeks to help the Court avoid confusion that could arise from a
20 misstatement in Franklin's Stay Motion regarding classification. Franklin incorrectly asserts that
21 the City gerrymandered Franklin's claim into a class whose other members (the retirees) had
22 committed to vote to accept the Plan due to the promise of unimpaired pensions. (Stay Motion, p.
23 7:16-18). This statement misstates the Retirees Settlement. As stated in the Plan's definition of
24 the Retirees Settlement (Plan Definition 165), the Retirees Settlement constituted an agreement
25 between the Committee and the City regarding the terms of the Plan that the City would propose.
26 The Committee is comprised of 13 retirees and does not act to bind the individual votes of the
27 approximately 2,500 retirees. Instead, the Committee agreed to support the Plan proposed in
28 conformance with the Retirees Settlement, which was not limited to unimpairment of pensions

1 and it did not bind or commit any retirees to vote in favor of the Plan. (See Trial Exhibit 2044.)
2 It's true, as noted by the Committee in its confirmation briefs, that the retirees did vote
3 overwhelmingly in support of the Plan. (See Decl. of Catherine Nownes-Whitaker Regarding
4 Tabulation and Certification of Ballots, Dkt. No. 1268). But they were not bound to do so, and
5 Franklin's assertions regarding the Retirees Settlement and voting are incorrect.

6 **III. Conclusion**

7 The Court's confirmation of the Plan was well supported by the facts and law and in the
8 best interest of the City and its creditors. A stay of the Plan would unfairly result in irreparable
9 harm to the retirees who have already suffered significant financial and personal hardships. The
10 Court should deny Franklin's request for a stay pending appeal and allow the City to move
11 forward with implementation of its Plan and payment of the Health Benefit Payments on the
12 Effective Date.

13 Dated: November 25, 2014

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