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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-11

14 **OFFICIAL COMMITTEE OF**
15 **RETIREE’S MEMORANDUM IN**
16 **SUPPORT OF CONFIRMATION OF**
17 **THE CITY OF STOCKTON’S FIRST**
18 **AMENDED PLAN OF ADJUSTMENT**

19 Date: May 12, 2014
Time: 9:30 a.m.
Judge: Hon. Christopher M. Klein
Courtroom: 35, Department C

20 The Official Committee of Retirees (the “Committee”) submits this memorandum to
21 express its support for confirmation of the City of Stockton’s First Amended Plan of Adjustment
22 (November 15, 2013) (the “Plan”).

23 **I. The Retiree Settlement**

24 The Committee participated in extensive mediation negotiations with the City that resulted
25 in the Retiree Settlement provided in the Plan. (Plan, Definition 156.) The Retiree Settlement
26 provides that the Committee would support confirmation of the Plan consistent with the
27 settlement, including (i) the treatment provided for the Retiree Health Benefit Claims in Class 12
28 of the Plan, (\$5.1 million to be distributed pro-rata among approximately 1,100 Retiree Health

1 Benefit Claims totaling approximately \$545,000,000, resulting in a percentage distribution of
2 approximately 0.935% of each Retiree Health Benefit Claim)¹ and (ii) the unimpairment of
3 retirees pension benefits as CalPERS Pension Plan Participants as provided in Class 15 of the
4 Plan.

5 The Committee supports confirmation of the Plan even though the Retiree Health Benefit
6 Claimants stand to lose hundreds of millions of dollars in health benefit coverage that was earned
7 and promised to them over many years of dedicated service and the retirees will receive less than
8 the cost of premiums for one year for replacement health insurance coverage for most retirees on
9 account of their Retiree Health Benefit Claims. (See [www.coveredca.com\shopandcompare\.](http://www.coveredca.com/shopandcompare/))
10 The retirees will retain their rights to their pensions as unimpaired under the Plan, as there are
11 substantial justifications for doing so. For example, even assuming that pension rights could be
12 modified, a substantial amount of the City's pension obligations to retirees on account of their
13 pension rights have already been funded and, unlike the City's self-funded health benefits, the
14 City's pensions obligations involve substantial rights and obligations with a third party, CalPERS.
15 Thus, the retirees' retention of their pensions should not obscure the real and substantial
16 magnitude of the retirees' losses from confirmation of the Plan. That being said, the Committee
17 supports confirmation of the Plan due to the reality of the City's financial circumstances,
18 notwithstanding the substantial sacrifices and losses of retirees that will result from the Plan as a
19 necessary solution to the City's financial troubles. And the City's retirees agree. The Retirees
20 have voted overwhelmingly to accept the plan. (Decl. of Catherine Nownes-Whitaker Regarding
21 Tabulation and Certification of Ballots, Dkt. No. 1268.)

22 **II. The Retiree Health Benefit Claims Should Not Be Discounted to Present**
23 **Value.**

24 Franklin Fund wrongly asserts that the Retiree Health Benefit Claims must be discounted
25 to present value. (Franklin's Summary Objection, III(E)(1).)

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27 ¹ See Class 12 Treatment at Section IV(M)(2) of the Plan, Unsecured Claim Payout Percentage at
28 Definition 185 of the Plan, and the City's Amended List of Creditors and Claims Pursuant to 11
U.S.C. §§ 924 and 925 (Retiree Health Benefit Claims) (Dkt. 1150).

1 First, the City's Amended List of Creditors and Claims Pursuant to 11 U.S.C. §§ 924 and
2 925 (Retiree Health Benefit Claims) (Dkt. 1150) schedules the Retiree Health Benefit Claims as
3 undisputed. Pursuant to Bankruptcy Code Sections 501, 502(a), 924 and 925, these Retiree
4 Health Benefit Claims are deemed allowed in the scheduled amount unless objections to the
5 claims are filed. While the Committee, the City, and Franklin Fund continue to discuss the
6 potential for Franklin Fund's objection to confirmation to proceed without the filing of 1,100
7 individual claim objections, no stipulation has yet been reached.

8 Second, Bankruptcy Code Section 502(b) provides for allowance of objected claims after
9 notice and hearing in "the amount of such claim in lawful currency of the United States as of the
10 filing date of the petition", subject to certain exceptions set forth in Section 502(b)(1) through (9).
11 As explained in *In re Oakwood Homes Corp.*, 449 F.3d 588, 597 (3d Cir. 2006), "amount" means
12 the accelerated amount of the claim as of the petition date without discounting to present value.
13 In *In re Oakwood Homes*, the Court of Appeals upheld the objections of an indenture trustee for a
14 group of bondholders to the discounting of the bondholders' claims to present value and held that
15 the bondholders' claims should be allowed in the full accelerated amount of their claims.

16 Of course, as explained in *In re Oakwood*, the Bankruptcy Code does provide for
17 discounting to present value in certain circumstances. For example, when determining the
18 "value" of claims or payments, as opposed to the "allowance" of claims, the Bankruptcy Code
19 calls for a present value determination. *Id.*, See e.g. 11 U.S.C. §§ 1129(a)(7), (9), and (15);
20 1129(b)(2); 1173(a)(2); 1225(a)(4) and (5); 1325(a)(4) and (5); 1328(b)(2). The application of
21 present value to determine "value" has long been established in the application of these sections.
22 For example, when an undersecured creditor makes an 1111(b) election, the total payments
23 required on account of the creditor's "allowed" claim must have a "value" of at least the present
24 value of the creditor's interest in the collateral. See *In re Weinstein*, 227 B.R. 284, 294 (B.A.P.
25 9th Cir. 1998). And the expressly provided exceptions in Section 502(b)(1) through (9) also
26 include instances where the general rule of acceleration of the amount owed is not applied.
27 Another instance where the Bankruptcy Code provides an exception to the general standard for
28 acceleration of debt when allowing claims lies in the express exceptions set forth in Section 502.

1 For example, Section 502(b)(6) calculates a claim for damages resulting from termination of a
2 real property lease “without acceleration”, and 502(b)(7) provides for calculation of certain
3 claims arising from termination of an employment contract “without acceleration.” Thus, the
4 Bankruptcy Code provides for present valuation where that discount is required (i.e. in the
5 Sections providing for determination of “value” and the exceptions within Section 502) but no
6 such provision is made for general allowance of claims, including the Retiree Health Benefit
7 Claims. If Retiree Health Benefit Claims must be discounted to present value, then all claims
8 must be discounted to present value, which would render meaningless the Bankruptcy Code’s
9 express provisions regarding the value of a claim and the exceptions included within Section
10 502(b). It would also result in a double discounting of claims since claims would be discounted
11 to present value for allowance and then discounted to present value again when the code sections
12 requiring valuation are applied. Accordingly, Franklin Fund’s suggestion that Retiree Health
13 Benefit Claims must be discounted to present value improperly expands the exceptions of Section
14 502(b), ignores the Code’s distinction between allowance and valuation and improperly deflates
15 the value of Retiree Health Benefit Claims.

16 The Committee acknowledges that *In re Oakwood*, involved an interest-bearing claim,
17 which one could attempt to distinguish from the Retiree Health Benefit Claims. But there is no
18 reason to treat the Retiree Health Benefit Claims differently. As recently explained by the
19 Bankruptcy Court in *In re Gretag Imaging*, 485 B.R. 39, 46 (Bankr. D. Mass. 2013), allowance of
20 non-interest bearing claims should not be made by a different set of rules and the reasons for
21 allowing interest-bearing claims as provided in *In re Oakwood* applies equally to interest-bearing
22 and non-interest-bearing claims. Moreover, to categorize the Retiree Health Benefit Claims as
23 non-interest bearing claims would be a mistake since retirees would be entitled to interest on a
24 judgment for damages for the loss of retiree health benefits outside of bankruptcy. Allowing
25 Retiree Health Benefit Claims differently depending upon whether a prepetition judgment was
26 obtained would be improper and superimpose different standards for allowing claims depending
27 on the status of enforcement that is not provided in the Bankruptcy Code.

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1 The Committee urges the Court not to follow the cases cited by Franklin Fund. Those
2 cases wrongly misapply Bankruptcy Code sections governing classification of claims in the
3 claims allowance analysis (e.g. *Dugan v. Pension Ben Guar. Corp. (In re Rhodes, Inc.)*, 382 B.R.
4 550, 556 (Bankr. N.D. Ga. 2008) misapplying section 1123(a)(4)) or that improperly expand the
5 exceptions of Section 502(b) to swallow the rule (e.g. *Thompson v. Credit Union Fin. Group*, 453
6 B.R. 823 (W.D. Mich. 2011); *Pereira v. Nelson (In re Trace Int'l Holdings, Inc.)*, 284 B.R. 32
7 (Bankr. S.D.N.Y. 2002) which involved rejected employment contracts), or are inconsistent with
8 the requirements of the Bankruptcy Code as explained above.

9 Accordingly, the Committee submits that the amounts of the Retiree Health Benefit
10 Claims as set forth in the City's Amended List of Creditors and Claims should not be discounted
11 to present value and should not be a basis for denying confirmation of the Plan.

12 **III. Conclusion**

13 The Committee supports confirmation of the Plan as in the best interest of the City and its
14 creditors.

15 Dated: March 31, 2014

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17 By: /s/ Jason E. Rios
18 JASON E. RIOS
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