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1 MARC A. LEVINSON (STATE BAR NO. 57613)
 malevinson@orrick.com
 2 NORMAN C. HILE (STATE BAR NO. 57299)
 nhile@orrick.com
 3 JOHN W. KILLEEN (STATE BAR NO. 258395)
 jkilleen@orrick.com
 4 ORRICK, HERRINGTON & SUTCLIFFE LLP
 400 Capitol Mall, Suite 3000
 5 Sacramento, California 95814-4497
 Telephone: (916) 447-9200
 6 Facsimile: (916) 329-4900

7 Attorneys for Debtor
 City of Stockton

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

13 In re:
 14 CITY OF STOCKTON, CALIFORNIA,
 15 Debtor.

Case No. 2012-32118
 DC No. OHS-3
 Chapter 9

16 **MEMORANDUM OF POINTS AND**
 17 **AUTHORITIES IN SUPPORT OF**
 18 **DEBTOR'S EMERGENCY MOTION**
 19 **FOR AN ORDER PURSUANT TO 11**
 20 **U.S.C. §§ 102 AND 105(a) AND**
 21 **BANKRUPTCY RULES 2002(m) AND**
 22 **9007 LIMITING NOTICE AND**
 23 **PERMITTING DEBTOR TO**
 24 **ESTABLISH AND MAINTAIN A**
 25 **PUBLICLY AVAILABLE INTERNET-**
 26 **ACCESSED WEBSITE IN LIEU OF**
 27 **NOTICE TO CERTAIN PARTIES**

Date: Friday, July 6, 2012
 Time: 10:00 a.m.
 Place: United States Courthouse
 Dept. A, Courtroom 28
 501 I Street
 Sacramento, CA 95814

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1 The City of Stockton, California (the “City”), the debtor in the above-captioned case,
2 submits this memorandum of points and authorities in support of its motion for entry of an order
3 establishing notice procedures for this chapter 9 case (“Motion”), and respectfully represents as
4 follows.

5 **I. FACTS**

6 **A. General Background.**

7 The City has been grappling with massive budget deficits for the past several years. The
8 collapse of the housing market in California’s Central Valley and the Great Recession, among
9 other factors, have significantly decreased General Fund revenues while, despite undertaking
10 severe cost-saving measures, the City’s operational costs have remained flat or increased.

11 In each of the past three springs, the City has projected that it would operate at a deficit of
12 over \$20 million during the following fiscal year. To close these gaps, the City has depleted
13 reserves, re-negotiated labor contracts and unilaterally imposed compensation reductions when
14 negotiation was unsuccessful, cut jobs, reduced or eliminated services, missed bond payments,
15 deferred payouts to retiring employees, and otherwise used every tool at its disposal to avoid
16 insolvency. Despite these efforts, the City has no remaining reserves and is facing an operating
17 shortfall of almost \$26 million in the budget for fiscal year 2012-13, which begins July 1, 2012.
18 The City’s deficit is projected to grow to \$47 million per year within three years, in large part due
19 to the continuing stagnation in General Fund revenues, caused by the poor housing market and
20 economy, and by increasing costs the City cannot unilaterally reduce without consequences.

21 Confronted with this fundamental imbalance, in late February 2012, the City entered the
22 new state-mandated “neutral evaluation process” in an attempt to resolve its outstanding debts
23 consensually, without the need for a chapter 9 case. From that time until the filing of its chapter
24 9 petition, with the assistance of an expert mediator, the City and many of its creditors worked
25 diligently and in good faith to identify solutions acceptable to all parties that would prevent
26 General Fund insolvency in the short term and provide a structure for the long term that would
27 return the City to financial health and reestablish General Fund cash reserves. However, the City
28 and its creditors were unable to reach either a short or a longer-term agreement. Faced again with

1 insolvency, and out of time to reach a deal before fiscal year 2012-13 started, the City had no
2 option other than to seek bankruptcy relief. Accordingly, on June 28, 2012, the City filed its
3 chapter 9 petition in the United States Bankruptcy Court for the Eastern District of California,
4 Sacramento Division.

5 **B. Proposed Notice Procedures.**

6 Bankruptcy Rule 2002(a) provides that unless otherwise ordered by the court, notice of
7 certain matters must be given to all of a chapter 9 debtor's creditors and other parties in interest.
8 *See* Fed. R. Bankr. P. 2002(a). Other provisions of the Bankruptcy Code and Bankruptcy Rules
9 state that notice of specified matters must be given only to designated entities who are entitled to
10 notice and to any other entities that the court may direct receive notice. It would be impractical
11 and it would impose a large administrative and economic burden to require the City, the Clerk of
12 this Court or moving parties to mail notices for every hearing and proposed action in this case to
13 the approximately 6,000 persons listed on the City's creditor matrix filed contemporaneously with
14 the petition.

15 As further discussed below, the Bankruptcy Code, the Bankruptcy Rules and the Local
16 Rules of this Court provide the Court with authority to establish the notice procedures proposed in
17 the Motion. The City believes that such procedures will streamline the bankruptcy process and
18 reduce the costs of providing notice. Accordingly, as permitted by Bankruptcy Rules 2002(i) and
19 2002(m), the City proposes that the Court enter an order, effective as of the Petition Date:

- 20 a. limiting the number of parties upon whom notice must be served;
- 21 b. providing an alternative means of access to this Court's docket and to relevant
22 documents via a website maintained on the City's webpage at the City's expense;
- 23 and
- 24 c. designating the manner of service with respect to all matters for which the
25 Bankruptcy Code and the Bankruptcy Rules authorize the Court to designate or
26 limit the parties entitled to notice and the manner of service, including matters
27 subject to Bankruptcy Rules 2002, 4001, 6006, or 7004.

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1 **C. Proposed Notice Parties.**

2 The City proposes that, with respect to all matters or proceedings other than those
3 described in Bankruptcy Rule 2002(a)(5) & (7), (b) and (f), as applicable, the Court order that
4 notice need be served upon only the following parties (the “Special Notice Parties”). The City
5 requests that such service be made via email or the CM/ECF system, when possible, and
6 otherwise by U.S. Mail or overnight delivery:

7 a. The Office of the United States Trustee, as follows:

8 Antonia G. Darling, Assistant U.S. Trustee
9 U.S. Department of Justice, Office of the U.S. Trustee
10 501 I Street, Suite 7-500
11 Sacramento, CA 95814-2322
12 Email: Antonia.Darling@usdoj.gov

11 b. The City Attorney, as follows:

12 John M. Luebberke, City Attorney
13 Office of the City Attorney
14 City of Stockton – City Hall
15 425 North El Dorado Street, 2nd Floor
16 Stockton, CA 95202
17 Email: John.Luebberke@stocktongov.com

15 c. The City’s chapter 9 counsel, as follows:

16 Marc A. Levinson, Esq.
17 Orrick, Herrington & Sutcliffe LLP
18 400 Capitol Mall, Suite 3000
19 Sacramento, CA 95814
20 Email: malevinson@orrick.com

20 and

21 Norman C. Hile, Esq.
22 Orrick, Herrington & Sutcliffe LLP
23 400 Capitol Mall, Suite 3000
24 Sacramento, CA 95814
25 Email: nhile@orrick.com

23 and

24 John W. Killeen, Esq.
25 Orrick, Herrington & Sutcliffe LLP
26 400 Capitol Mall, Suite 3000
27 Sacramento, CA 95814
28 Email: jkilleen@orrick.com

1 d. Counsel for any committee appointed under section 1102 of the Bankruptcy Code
2 (as made applicable in this case by section 901), or, absent and prior to the appointment of any
3 such committee, to each of the creditors included on the list of creditors holding the twenty
4 largest unsecured claims as filed by the City;

5 e. The Indenture Trustees for the City's bondholders, as follows:

6 Union Bank, N.A.
7 c/o BetteJean McCole, Vice President
8 Special Assets Department
9 445 South Figueroa Street, Suite 403
10 Los Angeles, CA 90071
11 Email: BetteJean.McCole@unionbank.com

12 and

13 Union Bank, N.A.
14 c/o Robert B. Kaplan, Esq.
15 c/o Nick De Lancie, Esq.
16 Jeffer Mangels Butler & Mitchell LLP
17 Two Embarcadero Center, Fifth Floor
18 San Francisco, CA 94111
19 Email: RKaplan@jmbm.com
20 Email: NDeLancie@jmbm.com

21 and

22 Wells Fargo Bank
23 c/o Gavin Wilkinson, Vice President
24 625 Marquette Avenue, 11th Floor
25 Minneapolis, MN 55479
26 Email: gavin.wilkinson@wellsfargo.com
27 lucinda.hurska-claey@wellsfargo.com

28 and

29 Wells Fargo Bank
30 c/o William W. Kannel, Esq.
31 c/o Richard H. Moche, Esq.
32 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
33 One Financial Center
34 Boston, MA 02111
35 Email: wkannel@mintz.com
36 Email: rmoche@mintz.com

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Dexia Credit Local
c/o Jim Barry
c/o David L. Bernstein, Esq.
445 Park Avenue
New York, NY 10022
Email: jim.barry@dexia-us.com
Email: david.bernstein@dexia-us.com

and

Dexia Credit Local
c/o Neil Rust, Esq.
c/o Roberto J. Kampfner, Esq.
White & Case LLP
633 West Fifth Street, Suite 1900
Los Angeles, CA 90071-2007
Email: nrust@whitecase.com
Email: rkampfner@whitecase.com

f. The City's Bond Insurers, as follows:

National Public Finance Guarantee Corporation
c/o John Jordan, Managing Director – Portfolio Surveillance
113 King Street
Armonk, NY 10504
Email: john.jordan@nationalpfg.com

National Public Finance Guarantee Corporation
c/o Larry A. Larose, Esq.
Winston & Strawn LLP
200 Park Avenue
New York, NY 10166
Email: llarose@winston.com

National Public Finance Guarantee Corporation
c/o Richard Lapping, Esq.
Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5802
Email: rlapping@winston.com

National Public Finance Guarantee Corporation
c/o Sarah Trum, Esq.
Winston & Strawn LLP
1111 Louisiana Street, 25th Floor
Houston, TX 77002
Email: strum@winston.com

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Optinuity Alliance Resources Corporation
c/o Matthew A. Cohn
c/o Gary Saunders, Esq., Deputy General Counsel, Director & Assistant Secretary
Special Situations Group
113 King Street
Armonk, NY 10504
Email: matthew.cohn@optinuityar.com
Email: gary.saunders@optinuityar.com

Assured Guaranty
c/o Holly Horn
c/o Kevin Lyons
c/o Terence Workman
31 West 52nd Street
New York, NY 10019
Email: hhorn@assuredguaranty.com
Email: klyons@assuredguaranty.com
Email: tworkman@assuredguaranty.com

Assured Guaranty
c/o Eric D. Tashman, Esq.
Sidley Austin LLP
555 California Street
San Francisco, CA 94104
Email: etashman@sidley.com

Assured Guaranty
c/o Jeffrey E. Bjork, Esq.
Sidley Austin LLP
555 West Fifth Street
Los Angeles, CA 90013
Email: jbjork@sidley.com

g. CalPERS, as follows:

California Public Employees Retirement System
c/o Gina Ratto, Esq., CalPERS' Deputy Counsel
Lincoln Plaza North
400 Q Street, Room N3340
Sacramento, CA 95814
Email: gina_ratto@calpers.ca.gov

California Public Employees Retirement System
c/o Robert S. McWhorter, Esq.
Nossamen LLP
915 L Street, Suite 100
Sacramento, CA 95814
Email: rmcwhorter@nossamen.com

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h. Counsel for SPMA, as follows:

Stockton Police Management Association
c/o Dee Contreras, Esq.
Goyette & Associates, Inc.
2366 Gold Meadow Way, 2nd Floor
Gold River, CA 95670
Email: dee@goyette-assoc.com
deecon45@aol.com

i. The Labor Representative for the SPMA, as follows:

Stockton Police Management Association
c/o David Swim
Goyette & Associates, Inc.
11344 Coloma Road, Suite 145
Gold River, CA 95670
Email: swim@goyette-assoc.com

j. Counsel for SPOA, as follows:

Stockton Police Officers' Association
c/o Donna Parkinson, Esq.
Parkinson Phinney
400 Capitol Mall, Suite 2560
Sacramento, CA 95814
Email: donna@parkinsonphinney.com

Stockton Police Officers' Association
c/o Alan C. Davis, Esq.
Davis and Reno
22 Battery Street, Suite 1000
San Francisco, CA 94111
Email: AlanD3370@aol.com

Stockton Police Officers' Association
c/o David E. Mastagni, Jr., Esq.
Mastagni, Holstedt, Amick, Miller & Johnsen
1912 I Street
Sacramento, CA 95811-3151
Email: dave@mastagni.com
davidm@mastagni.com

k. Counsel for SFMU, as follows:

Stockton Fire Management Unit
c/o Christopher E. Platten, Esq.
c/o Mark Renner, Esq.
Wylie, McBride, Platten & Renner
2125 Canoas Garden Avenue, Suite 120
San Jose, CA 95125
Email: cplatten@wmpirlaw.com
Email: mrenner@wmpirlaw.com

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- i. Counsel for IAFF, as follows:

International Association of Firefighters Local 456
c/o Christopher E. Platten, Esq.
c/o Mark Renner, Esq.
Wylie, McBride, Platten & Renner
2125 Canoas Garden Avenue, Suite 120
San Jose, CA 95125
Email: cplatten@wmpirlaw.com
Email: mrenner@wmpirlaw.com

- m. Counsel for SMMSLU, as follows:

Stockton Mid-Management/Supervisory Level Unit
c/o Dee Contreras, Esq.
Goyette & Associates, Inc.
2366 Gold Meadow Way, 2nd Floor
Gold River, CA 95670
Email: dee@goyette-assoc.com
deecon45@aol.com

- n. The Labor Representative for SMMSLU, as follows:

Stockton Mid-Management/Supervisory Level Unit
c/o Kim Gillingham
Goyette & Associates, Inc.
11344 Coloma Road, Suite 145
Gold River, CA 95670
Email: kim@goyette-assoc.com

- o. Counsel for SCEA, as follows:

Stockton City Employees' Association
c/o Joseph W. Rose, Esq.
Rose Law Firm P.C., Attorneys at Law
11335 Gold Express Drive, Suite 135
Gold River, CA 95670
Email: joerose@joeroselaw.com

- p. OE3, as follows:

Operating Engineers Local 3
c/o Joe Santella, Business Representative for O & M and Water Supervisory
1620 South Loop Road
Alameda, CA 94502
Email: jsantella@oe3.org

Operating Engineers Local 3
Public Employee Division, Stockton
c/o Michael Eggener, Business Representative for Trades and Maintenance
1916 North Broadway
Stockton, CA 95205
Email: meggener@oe3.org

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- q. ARECOS, as follows:
Association of Retired Employees of the City of Stockton
c/o Dwane Milnes, President
1620 Lucerne Avenue
Stockton, CA 95203
Email: dwane.milnes@sbcglobal.net

Steven Felderstein, Esq.
Jake Rios, Esq.
Felderstein Fitzgerald Willoughby & Pascuzzi LLP
400 Capitol Mall, Suite 1450
Sacramento, CA 95814
Email: sfelderstein@ffwplaw.com
Email: jrios@ffwplaw.com
- r. Franklin Advisers, as follows:
Franklin Advisers, Inc.
c/o J. Matthew Gowdy, Esq., Associate General Counsel
One Franklin Parkway
San Mateo, CA 94403
Email: mgowdy@frk.com
- s. Counsel for Franklin Advisers, as follows:
Franklin Advisers, Inc.
c/o James O. Johnston, Esq.
Jones Day
555 South Flower Street, 50th Floor
Los Angeles, CA 90071
Email: jjohnston@jonesday.com
- t. Counsel for HUD, as follows:
United States Department of Housing and Urban Development
c/o Matthew J. Troy, Esq.
United States Department of Justice
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
Email: matthew.troy@usdoj.gov
- u. The HJTA, as follows:
Howard Jarvis Taxpayers Association
c/o Patrick Samsell
c/o James Watson
921 11th Street, Suite 1201
Sacramento, CA 95814
Email: patsamsell@patsamsell.com

1 v. Counsel for the PJC, as follows:

2 Price Judgment Creditors
3 c/o Hilton S. Williams, Esq.
4 c/o Thomas A. Counts, Esq.
5 Paul Hastings LLP
6 50 Second Street, 24th Floor
7 San Francisco, CA 94105
8 Email: hiltonwilliams@paulhastings.com
9 Email: tomcounts@paulhastings.com

10 and

11 Price Judgment Creditors
12 c/o Kristina Burrows, Esq.
13 California Rural Legal Assistance, Inc.
14 145 E. Weber Avenue
15 Stockton, CA 95202
16 Email: kburrows@crla.org

17 and

18 Price Judgment Creditors
19 c/o Deborah A. Collins, Esq.
20 California Affordable Housing Law Project of the Public Interest Law Project
21 449 15th Street, Suite 301
22 Oakland, CA 94612
23 Email: dcollins@pilpca.org

24 and

25 Price Judgment Creditors
26 c/o S. Lynn Martinez, Esq.
27 Western Center on Law & Poverty
28 3701 Wilshire Boulevard, Suite 208
Los Angeles, CA 90010
Email: slmartinez@wclp.org
shaffner@wclp.org

w. Creditors and parties in interest who file with the Court and properly serve on the City's chapter 9 counsel (see subparagraph d, above) a request for special notice;
and

x. Any party against whom direct relief is sought by motion, application or otherwise, such as the nondebtor party to an executory contract or unexpired lease being assumed or rejected.

The City requests that the Court require that notice shall be sufficient only if served upon the Special Notice Parties in the manner set forth above, unless a different manner of service is

1 specifically requested in a paper filed with the Court and served upon the Special Notice Parties
2 at least ten days prior to such service.

3 The filing of any pleading in this case, other than a proof of claim, on behalf of one of the
4 Special Notice Parties, via the CM/ECF system, shall constitute that party's consent to receive all
5 future notice through the CM/ECF system; provided, however, that such party may request that
6 notice be sent by first class mail to a specified address, or by electronic mail to a specified
7 address, by both filing with the Court and serving on the City's chapter 9 counsel a request for
8 alternative service and/or change of address so stating. Counsel for any of the parties listed
9 above, if counsel is added or other counsel is substituted in their place, may report this
10 substitution by both filing with the Court and serving on the City's chapter 9 counsel a request for
11 special notice. Counsel making such a request shall receive future service through the CM/ECF
12 system; provided however, that such counsel may, in the request for special notice, request
13 additional service by first class mail at any address.

14 To the extent that the foregoing is inapplicable, any party filing or causing the filing of a
15 motion, complaint, response, objection, notice, application, request, or other paper in this
16 bankruptcy case, shall be deemed to have consented to receive effective notice at the address
17 appearing on such paper, and notice sent to that address shall be deemed to have been brought to
18 the attention of such party.

19 Other than as set forth above, and unless otherwise required by Bankruptcy Rule 7004(h)
20 or order of the Court, all notices in this case shall be provided by first class mail.

21 Unless otherwise ordered by the Court, the limitation on notice proposed by this Motion
22 shall not apply to those matters or proceedings referred to in Bankruptcy Rule 2002(a)(5) & (7),
23 (b) and (f), as applicable. Such matters or proceedings shall be noticed in accordance with the
24 Bankruptcy Rules. Additionally, the City already has filed its "Application for an Order (1)
25 Directing and Approving Form of Notice; and (2) Setting Deadline for Filing Objections to
26 Petition" setting forth proposed procedures for providing the notice required pursuant to section
27 923 of the Bankruptcy Code.

28

1 **D. Alternative Notice to Notice Parties.**

2 Although the City believes that the form and manner of notice outlined in this Motion
 3 satisfies the requirements of the Bankruptcy Code and the Bankruptcy Rules, the City also
 4 proposes to establish and maintain a publicly available Internet-accessed website (the “City’s
 5 Bankruptcy Website”) through the City’s current webpage at <http://www.stocktongov.com> that
 6 provides, without limitation, general information concerning the chapter 9 case, including the
 7 case docket, access to certain filings, answers to frequently asked questions and other general
 8 information concerning significant matters in the case.

9 **II. ARGUMENT**

10 **A. The Bankruptcy Rules Authorize the Court to Regulate Notice Requirements.**

11 Bankruptcy Code § 102(1) provides that where the Bankruptcy Code provides for an
 12 action to occur “after notice and a hearing,” such action may occur “after such notice as is
 13 appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in
 14 the particular circumstances” 11 U.S.C. § 102(1)(A). The Court has additional broad
 15 authority under section 105(a) of the Bankruptcy Code to implement section 102(1)(A) by
 16 establishing appropriate notice procedures not inconsistent with express provisions of the
 17 Bankruptcy Code.

18 Bankruptcy Rule 9007 grants the Court general authority to regulate notice. Fed. R.
 19 Bankr. P. 9007 (“When notice is to be given under these rules, the court shall designate, if not
 20 otherwise specified herein, the time within which, the entities to whom, and the form and manner
 21 in which the notice shall be given.”). The Bankruptcy Rules further provide that “[t]he court may
 22 from time to time enter orders designating the matters in respect to which, the entity to whom,
 23 and the form and manner in which notices shall be sent except as otherwise provided by these
 24 rules.” Fed. R. Bankr. P. 2002(m). The City submits that the notice procedures outlined herein
 25 comport with Bankruptcy Rule 2002(i), which requires that notice of all matters must be provided
 26 to official committees.¹

27
 28 ¹ The City notes that pursuant to Bankruptcy Code § 1102(a)(1), made applicable in chapter 9 cases by § 901(a), the United States Trustee may not appoint an official committee until after the entry of an order for relief.

1 **B. The Proposed Notice Procedures Will Minimize the Administrative Burden That**
2 **Would Otherwise Burden the City without Diminishing Creditor Participation in the**
3 **Case.**

4 The City expects that numerous creditors and parties in interest will file notices requesting
5 service in this case, and that the City and other parties may file frequent and potentially
6 voluminous pleadings during the course of the case. Given that the City has in excess of five
7 thousand creditors or potential creditors, the burdens and costs of copying and mailing,
8 overnighting or otherwise serving paper copies of all filings would impose a heavy administrative
9 and economic burden upon the City, but would not appreciably enhance the quality of notice
10 provided to interested parties in this case. Moreover, constant mass mailings will divert the
11 City's limited resources from the paramount objective of adjusting the City's obligations,
12 permitting it to achieve a sustainable and balanced budget, and thus permitting the City to serve
13 its residents in the short run as well as in the long run. It is well within this Court's authority to
14 implement the procedures outlined herein. The proposed notice procedures will mitigate the
15 burdens set forth above, without diminishing creditor participation in the administration of this
16 case.

17 Although the City believes that the form and manner of notice outlined in the Motion
18 satisfies the requirements of the Bankruptcy Code and the Bankruptcy Rules, as noted above, the
19 City also proposes to establish and maintain a publicly available Internet-accessed website with
20 live links to pleadings and other documents, (i.e., the City's Bankruptcy Website). All material
21 information pertinent to the case will be posted on the City's Bankruptcy Website, thus serving
22 not only the interests of creditors and other parties in interest, but providing valuable information
23 to the public at large as well.

24 **III. CONCLUSION**

25 WHEREFORE, the City respectfully requests that the Court enter an order: (i) limiting the
26 parties upon whom notice must be served; (ii) permitting the City to provide an alternative means
27 of access to this Court's docket and to relevant documents via a website maintained on the City's
28 webpage at the City's expense; (iii) designating the manner of service with respect to all matters

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