2012-02302
FILED
July 10, 2012
CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
0004333178

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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

In re: CITY OF STOCKTON, CALIFORNIA, Debtor.	Case No. 12-32118 Chapter 9
ASSOCIATION OF RETIRED EMPLOYEES OF THE CITY OF STOCKTON, a nonprofit California corporation, SHELLEY GREEN, PATRICIA HERNANDEZ, REED HOGAN, GLENN E. MATTHEWS, PATRICK L. SAMSELL, ALFRED J. SIEBEL, BRENDA JO TUBBS, TERI WILLIAMS, on Behalf of Themselves and Others Similarly Situated, Plaintiffs, vs. CITY OF STOCKTON, CALIFORNIA, Defendant.	Adv. No. COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This case presents a matter of great urgency. For years, the City of Stockton ("City") promised most of its employees that their compensation package included payment by the City of health insurance premiums during retirement, gradually extending this benefit beyond age 65 as a supplement to Medicare. Despite this promise, in connection with its bankruptcy, the City has announced plans to immediately terminate payment of health insurance premiums for many of its retired employees, and to force still others to absorb large portions of premium payments in order to maintain health insurance coverage until July 2013, at which point the City will terminate their premium payments as well. While a few retirees can afford to purchase their own health insurance, many cannot. Further, the City has created a perilous "Catch 22" for its retirees who are under 65 and have pre-existing medical conditions: they must either try to pay the high premiums necessary to stay on the City's health plan, or attempt to buy health insurance on the open market. For many retirees neither option is possible: they are on modest, fixed incomes and simply cannot afford the City's premiums, and no health plan will take on elderly patients with pre-existing ailments.

2. This action seeks a temporary restraining order and declaratory and injunctive relief to stop the City from cutting health insurance premium payments for its retired employees. Termination of these health benefits is unlawful because the benefits are a form of deferred compensation which the City's retirees have already earned; therefore, the retirees have a vested right to these benefits protected by the contract clauses of the United States and California Constitutions. Moreover, if the City is permitted to terminate retiree health benefits as planned, it will immediately endanger the lives of scores of elderly and ill retirees and their dependents who are financially unable to purchase health insurance. This Court's intervention is desperately needed to forestall preventable, imminent harm.

3. The City's obligation to honor its retired employees' vested rights cannot be extinguished in bankruptcy. And even if this Court could eventually approve a plan of adjustment that permitted the City to escape from some portion of its obligations to retirees, the

City has no authority to unilaterally eliminate retiree health benefits *before confirmation of the plan by this Court*.

4. If the Court permits the City to impose its plan before confirmation it will cause severe and irreparable injury and possibly even death. For some of these individuals, the premiums for the City's health plan literally would cost from *30 to 80 percent of their annual incomes*. Some of these individuals have acute or chronic conditions that require frequent medical attention, and they would perish without regular medical attention and insurance to fund it. Still others may be currently hospitalized, or otherwise so ill that they are not even aware that their health benefits have ended, or are incapable of making alternate plans for themselves. For these retirees, it is not exaggeration to say that the City's plan has placed their very lives in imminent danger. Additionally, many of these retirees who are under 65 have no protection against denial of insurance coverage or discrimination based on pre-existing conditions if they attempt to obtain alternate insurance.

5. The City could have avoided these impacts had it listened to the pleas of its retirees and taken the time to carefully consider its plan. But it did neither. Plaintiffs respectfully ask that this Court declare the proposed changes unlawful and enjoin their implementation.

PARTIES

6. This action is brought on behalf of members of the Association of Retired Employees of the City of Stockton ("ARECOS"), and Shelley Green, Patricia Hernandez, Reed Hogan, Lewis Patrick Samsell, Alfred Seibel, Brenda Jo Tubbs, Teri Williams, and Glenn E. Matthews, Jr. ("Representative Plaintiffs"), and hundreds of other retired City of Stockton ("City") employees who are similarly situated (collectively "Class Plaintiffs"), to stop the City's unilateral reduction or removal of health insurance benefits to retirees that the City promised and for which Class Plaintiffs exchanged their labor (the "Retiree Health Benefit").

7. Plaintiff ARECOS is a California nonprofit corporation representing over 500 City of Stockton retirees and their spouses and dependents regarding a wide range of issues, including retiree health benefits. ARECOS' officers and directors are volunteers who work in

the interests of City of Stockton retirees. ARECOS' purposes include advocating for the interests of its members with respect to their pension and health benefits, and disseminating information relating to those benefits and legislative actions relating thereto.

8. ARECOS and its members have engaged in research, study, public education and limited discussion with the City regarding the City's termination of the Retiree Health Benefit. ARECOS participated as an "Interested Party" on behalf of City of Stockton retirees in the Neutral Evaluation Process under Government Code Section 53760.3. Members of ARECOS are retired employees of the City of Stockton almost all of whom depend on the health benefits provided by the City and are interested in those health benefits and any changes thereto. ARECOS and its members are beneficially interested in ensuring that the City provides retirees the health benefits to which they are entitled and on which they depend to care for themselves and their families. ARECOS' members will suffer substantial injury if the City is allowed to terminate the Retiree Health Benefit.

9. Representative Plaintiff Patricia Hernandez is a resident of Stockton, California. Ms. Hernandez worked for the City from November 1986 to June 2010. As of the date of this filing, Ms. Hernandez is 57 years old. As a result of the City's elimination of the Retiree Health Benefit, the City will stop paying 100% of Ms. Hernandez' health insurance premium as of July 1, 2012, and will stop paying even the limited stipend for Ms. Hernandez's health insurance premium as of July 1, 2013. The City's cuts will force Ms. Hernandez to pay premiums which amount to 80% of her annual net income. Ms. Hernandez's husband is disabled. He is an amputee, and is on dialysis. He is also diabetic and has heart issues. Ms. Hernandez is a breast cancer survivor (6 years). She is afraid to go to the doctor because she has not reached her deductible and is concerned about medication co-pays. Given these pre-existing conditions, it will be virtually impossible for the Hernandezes to obtain other insurance. Even if an insurer is willing to consider insuring them, it would be cost-prohibitive. Paying such a large amount of income toward health insurance will pose a serious financial strain on the Hernandezes.

10. Representative Plaintiff Reed Hogan is a resident of Sacramento, California. Mr. Hogan worked for the City from January 1995 to June 2011. As of the date of this filing, Mr.

Hogan is 62 years old. As a result of the City's elimination of the Retiree Health Benefit, the City will stop paying 100% of Mr. Hogan's health insurance premium as of July 1, 2012, and will stop paying even the limited stipend for Mr. Hogan's health insurance premium as of July 1, 2013. The City's cuts will force Mr. Hogan to pay premiums which amount to 29% of his annual net income. Mr. Hogan's spouse also relies on the Retiree Health Benefit. Mr. Hogan has a thyroid condition and very high cholesterol which require regular monitoring. His wife has a thyroid condition which requires regular monitoring by a medical specialist. Both of these medical conditions require expensive medications on a regular basis. Given these pre-existing conditions, it will be virtually impossible for the Hogans to obtain other insurance. Even if an insurer is willing to consider insuring them, it would be cost-prohibitive. Paying such a large amount of income toward health insurance will pose a serious financial strain on the Hogans.

11. Representative Plaintiff Lewis Patrick Samsell is a resident of Stockton, California. Mr. Samsell worked for the City from November 1986 to February 2000. As of the date of this filing, Mr. Samsell is 69 years old. As a result of the City's elimination of the Retiree Health Benefit, the City will stop paying 100% of Mr. Samsell's health insurance premium as of July 1, 2012, and will stop paying even the limited stipend for Mr. Samsell's health insurance premium as of July 1, 2013. The City's cuts will force Mr. Samsell to pay premiums which amount to 12% of his annual net income. Mr. Samsell's spouse also relies on the Retiree Health Benefit. Mr. Samsell has had type II diabetes for the past 15 years and recently has been diagnosed as being in stage 2/stage 3 of kidney disease. He regularly sees an endocrinologist, cardiologist and nephrologist. He takes 5 prescription medications, and without the City plan would spend more than $4,700 out of pocket on prescription medications. His wife is also on several medications. Given the Samsells' pre-existing conditions, it will be virtually impossible for them to obtain other insurance. Even if an insurer is willing to consider insuring the Samsells, it would be cost-prohibitive. Paying such a large amount of income toward health insurance will pose a serious financial strain on the Samsells. Mr. Samsell and his spouse each filed an administrative claim against the City on November 28, 2011 and Mr. Samsell filed an

administrative claim again on July 6, 2012 regarding the City's elimination of the Retiree Health Benefit.

12. Representative Plaintiff Alfred Seibel is a resident of Stockton, California. Mr. Seibel worked for the City from February 1975 to April 2006. As of the date of this filing, Mr. Seibel is 60 years old. As a result of the City's elimination of the Retiree Health Benefit, the City will stop paying 100% of Mr. Seibel's health insurance premium as of July 1, 2012, and will stop paying even the limited stipend for Mr. Seibel's health insurance premium as of July 1, 2013. The City's cuts will force Mr. Seibel to pay premiums which amount to 51% of his annual net income. Mr. Seibel's spouse also relies on the Retiree Health Benefit. Mr. Seibel takes 9 prescriptions daily. He suffers from GERD, bleeding ulcers, irritable bowel syndrome, high blood pressure, high cholesterol, high triglycerides, hypo-thyroid, dislocated collar bone, osteoarthritis, enlarged lymph nodes from chemicals used at work, a herniated disc in his lower back after an injury at work, enlarged prostate and clinical depression. Mr. Seibel also has an unidentified mass on the right bronchial tube that must be X-rayed annually. Mr. Seibel's wife takes 5 prescriptions daily. She has permanent locked jaw and is on a very restrictive diet. She needs to be on a special diet that the Seibels already cannot afford. Ms. Seibel has Tic-DAL-La-Rue (a form of epilepsy), colitis and rheumatoid arthritis. She takes female hormones due to having a hysterectomy at age 28. Ms. Seibel also has hypo-thyroid and has to take pain medications and muscle relaxers to prevent her jaw from getting worse. At this time, her doctors have talked to her about a feeding tube. Given the Seibels' pre-existing conditions, it will be virtually impossible for them to obtain other insurance. Even if an insurer is willing to consider insuring the Seibels, it would be cost-prohibitive. Paying such a large amount of income toward health insurance will pose a serious financial strain on the Seibels. Mr. Seibel filed an administrative claim against the City on July 6, 2012.

13. Representative Plaintiff Brenda Jo Tubbs is a resident of Stockton, California. Ms. Tubbs worked for the City from March 1988 to July 2009. As of the date of this filing, Ms. Tubbs is 58 years old. As a result of the City's elimination of the Retiree Health Benefit, the City will stop paying 100% of Md. Tubbs' health insurance premium as of July 1, 2012, and will

stop paying even the limited stipend for Ms. Tubbs' health insurance premium as of July 1, 2013. The City's cuts will force Ms. Tubbs to pay premiums which amount to 29% of her annual net income. Ms. Tubbs suffers from chronic medical conditions which make her unable to work. She takes 14 prescriptions for various illnesses. In April, she had a total hip replacement for which she has physical therapy 3 times a week and she needs to follow-up with her surgeon in July. Ms. Tubbs also sees a liver doctor, lung doctor and heart doctor regularly and she has a very old, severely torn rotator cuff injury that cannot be cured. She receives cortisone shots for the rotator cuff injury. Her co-payments for her medications recently increased significantly and she has bills totaling more than $5,000 for her recent hospital stay. Given Ms. Tubbs' pre-existing conditions, it will be virtually impossible for her to obtain other insurance. Even if an insurer is willing to consider insuring Ms. Tubbs, it would be cost-prohibitive. Paying such a large amount of income toward health insurance will pose a serious financial strain on Ms. Tubbs.

14. Representative Plaintiff Teri Williams is a resident of Jackson, California. Ms. Williams worked for the City from 1975 to June 2011. As of the date of this filing, Ms. Williams is 55 years old. As a result of the City's elimination of the Retiree Health Benefit, the City will stop paying 100% of Ms. Williams' health insurance premium as of July 1, 2012, and will stop paying even the limited stipend for Ms. Williams' health insurance premium as of July 1, 2013. The City's cuts will force Ms. Williams to pay premiums which amount to 32% of her annual net income. Ms. Williams has two dependents and is the sole provider for her family. Her income is limited and the Williams' house is in foreclosure. She had an unforeseen surgery and has seen an increase in co-payment costs. She also had to pay for the emergency room visits of her daughter, who is not on the City plan. Paying such a large amount of income toward health insurance will pose a serious financial strain on the Williams.

15. Representative Plaintiff Glenn E. Matthews, Jr. is a resident of Linden, California. Mr. Matthews worked for the City from July 1991 to August 2009. As of the date of this filing, Mr. Matthews is 61 years old. As a result of the City's elimination of the Retiree Health Benefit, the City will stop paying 100% of Mr. Matthews' health insurance premium as of July 1, 2012,

and will stop paying even the limited stipend for Mr. Matthews' health insurance premium as of July 1, 2013. The City's cuts will force Mr. Matthews to pay premiums which amount to more than 38% of his annual net income. Mr. Matthews' dependent also relies on the Retiree Health Benefit. His wife receives Medicare, but even with such coverage, her drug costs for her Multiple Sclerosis total over $8,000 a year and her monthly costs for injections alone is $4,000 a month. Given Ms. Matthews' pre-existing condition, it will be virtually impossible for the Matthews to obtain other insurance. Even if an insurer is willing to consider insuring the Matthews, it would be cost-prohibitive. Paying such a large amount of income toward health insurance will pose a serious financial strain on the Matthews.

16. Representative Plaintiff Shelley Green is a resident of Lodi, California. Ms. Green worked for the City from June 2003 to December 2009. As of the date of this filing, Ms. Green is 62 years old. As a result of the City's elimination of the Retiree Health Benefit, the City will stop paying Ms. Green's health insurance premium as of July 1, 2012. The City's cuts will force Ms. Green to pay premiums which amount to 9.3% of her annual net income. Ms. Green's spouse has a serious heart failure condition for which he is being treated at Stanford Medical Center. He has been hospitalized a total of 63 days since July 9, 2011, and has been worked up as a heart transplant patient. He suffered brain bleed (arteriovenous malformation and arteriovenous fistula) in September 2011 and had to be transferred to Stanford by helicopter where he was in neuro-intensive care for several days and had a resection of the brain in December 2011. In February 2012 he was diagnosed with bladder cancer which although successfully treated, has postponed his heart transplant opportunity. He is on numerous medications for his heart condition. The medical bills are very high and Ms. Green is at risk of losing everything if the City eliminates her Retiree Health Benefit. Given Mr. Green's pre-existing conditions, it will be virtually impossible for the Greens to obtain other insurance. Even if an insurer is willing to consider insuring them, it would be cost-prohibitive. Ms. Green filed an administrative claim against the City dated July 7, 2012.

17. At all times relevant to this Complaint, Defendant City of Stockton is and was a municipal corporation formed under the laws of the State of California. The City maintains a self-insured health care benefits system for current and retired City of Stockton employees.

GENERAL ALLEGATIONS

History of Stockton's Retiree Health Benefit

18. In 1980, the City began providing medical benefits to members of the Stockton Police Officers Association who retired from City service. The benefit included payment of the entire premium for a retired employee and his or her dependent until the retiree reached age 62, but not to exceed seven years. The City extended a retiree health benefit to various unions throughout the 1980s and increased the maximum age through which retiree health benefits would be available to age 65. By 1991, the City had extended the Retiree Health Benefit to all City employees through numerous MOUs and City Council resolutions approving those MOUs and benefits, and had added a Medicare supplement benefit for many unions.

19. The MOUs typically described the City as paying "a premium" or "all premiums" for health insurance benefits for retirees until age 65. These terms have always been understood by the City to require the City to pay the entire premium for health insurance for all qualifying retirees and their spouses or one dependent. Indeed, until 2011, the City consistently paid the entire premium for health insurance for each of its qualifying retirees and one dependent or spouse. Retiree health benefits were also continued by the City for the surviving spouse of a retiree.

20. The Retiree Medical Benefit was extended as a supplement to Medicare *after* age 65 in the following timeline stated in the City's adopted GASB 45 Report for June 30, 2011:

January 1, 1985	Management & Confidential, Mid-Management and Supervisory, and Law Department
January 1, 1990	Police Management
January 1, 1996	Fire
January 1, 1997	SCEA, Trades and Maintenance, and Fire Management (based on MOU between City and Fire Management)
August 1, 1998	Police

21. Employees hired after March 31, 1986 were enrolled in Medicare but those hired before that date were not. For some of the retirees who had not qualified for Medicare upon retirement, the City began also paying the Part A Medicare premium (or in the alternative at the City's choice, continuing City medical benefits as primary coverage). This benefit was extended to Police and Fire union members. The City provides following timeline in the City's adopted BASB 45 Report for June 30, 2011, for the benefit available to employees retiring after the dates shown below:

January 1, 1996	Fire
January 1, 1997	Fire Management
July 1, 2006	Police and Police Management

Because some of the retirees did not qualify for Medicare themselves or through a spouse, part of the rationale for extending the Retiree Medical Benefit beyond age 65 was that the City had not participated in Medicare prior to 1986. The city had saved money by not having to enroll employees in Medicare prior to March 31, 1986 and continued to save money thereafter on employees hired prior to that date. The existence of the savings and the fact that some retirees would not be eligible for Medicare was part of the reason for the expansion of health benefits beyond age 65.

22. In January 1993 the City changed its medical benefits in order to align them more closely with industry standards and to reduce costs. Any employee who had retired prior to that date was continued on what was called the "Original Plan," while all current employees and those who retired from that date forward received the benefits in the "Modified Plan." The City's unions agreed to give up 20% of their annual cost of living increases in exchange for securing the "Modified Plan" for City employees and future retirees, with the 20% helping to fund the Modified Plan's annual cost increases.

23. A few changes were made in the Modified Plan in the following years that improved benefits. However, the City did not reduce benefits in the Modified Plan because City officials believed that the benefits received by retirees at the time of their retirement were vested and so could not be changed unilaterally by the City. This understanding—that retiree benefits

vest upon retirement and cannot be changed thereafter—was also the reason the City continued existing retirees on the Original Plan, while adopting the Modified Plan for current employees and future retirees.

24. Whenever the City made changes in benefits, including changes in third party administrators, employee unions had the opportunity to meet and confer in a negotiation process with the City regarding the changes if they so desired. However, the City's retirees were not represented by unions, and the retirees had already completed their end of the employment contract. For this reason, the City believed that it could not reduce the benefits it offered to retirees after retirement.

Stockton's Retiree Health Benefit Is a Lifetime Health Benefit

25. The City repeatedly told its employees that the Retiree Medical Benefit was a benefit that qualifying employees would enjoy for the rest of their lives. Until at least July 3, 2007, the City provided every retiree with a letter upon retirement that summarized their retiree benefits. The letter described the Retiree Medical Benefit and said "[t]his is a lifetime benefit for both you and your spouse," or "[t]his lifetime benefit is provided to both you are your spouse." A true and correct copy of one such letter from the City to a retiree is attached hereto as Exhibit B.

26. The Stockton City Council also reviewed and/or accepted numerous Comprehensive Annual Financial Reports ("CAFR") that described the Retiree Medical Benefit as a lifetime benefit. Every CAFR for the City of Stockton from at least June 30, 2001 through June 30, 2006 describes Post Retirement or Post Employment Health Care Benefits as follows: "This is a lifetime benefit provided to the retired employee and his or her eligible spouse." Similarly, the June 30, 2007 through June 30, 2010 CAFRs state: "This is a lifetime benefit provided to the retired employee and his or her eligible dependent." Similarly, the MOU with the Trades and Maintenance Unit for the period from 2006-2008 (Operation Engineers, Local 3, AFL-CIO) states: "This lifetime benefit is provided to the employee and the employee's spouse."

Unions Made Numerous Wage Concessions in Exchange for Continuing the Benefit

27. The City's unions made numerous wage concessions in order to maintain benefits under the Modified Medical Plan. In December, 1996 the San Joaquin Public Employees Association ("SJPEA") and in March, 2000 the Stockton City Employees Association ("SCEA"), the successor to the SJPEA, agreed to terms of compensation to be included in the MOUs for the period 1997 through 2008 that included a lower wage than the unions would have otherwise agreed to in exchange for the City continuing to pay all of the premium for medical benefits for employees and their dependents and continuing unchanged the benefits included in the Modified Medical Plan incorporated as a part of the MOU. The lower wages were also intended to provide savings for the City that would assist in offsetting the cost of providing lifetime medical benefits to retirees.

28. The savings from lower wages were achieved by the City in the following way:

- Starting in January 1, 1994, annual wages increases through January 1, 1996 were to be 80% of the change in the Consumer Price Index during the previous year, with the wage increase not to exceed 4%.
- Starting in January 1, 1995, annual wage increases through January 1, 2008 were to be 80% of the change in the Consumer Price Index during the previous year, with the wage increase not to be less than 2.5% nor more than 6%.

29. The other employee groups made similar wage concessions in exchange for the City continuing to pay the entire health premiums and maintaining the level of benefits provided in the Modified Medical Plan. The Mid-Management/Supervisory unit agreed to annual wage increases that, beginning January 1, 1996, were to be 80% of the change in the Consumer Price Index during the previous year, with the wage increase not to exceed 4%. Starting January 1, 1997 annual wage increases through 2008 were to be 80% of the change in the Consumer Price Index during the previous year, with the wage increase not to be less than 2.5% nor more than 6%.

30. The Stockton Police Officers Association agreed that new employees starting January 1, 1994 would start at a salary level approximately 5% lower than was previously the

case. This "six step" pay plan added the lower step at the beginning of what was a "five step" pay plan. Beginning January 1, 1999 the six step pay plan was changed to a nine step plan with each new employee now beginning approximately an additional 15% lower in pay.

31. In addition to the added steps in the pay plan, the Police MOU provided that from Calendar Year 1996 through Calendar Year 1998 annual wage increases were to be 80% of the change in the Consumer Price Index during the previous year, with the wage increase not to exceed 4%. Beginning in January 1, 1999 annual wage increases through 2009 were to be 80% of the change in the Consumer Price Index during the previous year, with the wage increase not to be less than 2.5% nor more than 6%. Police wages were also to be adjusted in 2002, 2006 and 2008 if a salary survey warranted additional adjustment.

32. The Fire MOU provided that effective Calendar Year 1996 newly hired firefighters would be paid 15% less as a starting salary than previous newly hired employees. This was accomplished by implementing an eight step salary plan to replace a five step plan. An additional lower salary step was added effective July 1, 2003 to create a nine step salary plan comparable to the one in the Police Department.

33. The Fire employee MOU also provided that salary increases from Calendar Year 1997 through 2000 would be 80 % of the change in the Consumer Price Index during the previous year, with the wage increase not to be less than 2.5% nor more than 6%. For the following years there were various salary surveys and other means of salary adjustment.

34. These concessions reached further than an employee's base wage. Overtime and other benefits may be tied to an employee's wage level, and would also decrease as a consequence of lower wages negotiated in an effort to preserve employee and retiree benefits.

35. Critically, when unions accepted lower wages in order to secure benefits, the result was that many employee's received a lower wage in their last year of employment. The last year of employment provides the basis for calculating a retired employee's annual pension payments. Accordingly, not only did employees accept lower wages in exchange for the Retiree Health Benefit and other benefits, *but they also received a lower pension for the rest of their life*. The City benefited from this concession: not only did the City save money on the lower wages,

but the City also paid less to the California Public Employees' Retirement System ("CalPERS") in annual pension payments because the City's pension payments to CalPERS are based on the wages being paid.

Changes to the Retiree Health Benefit

36. After maintaining the level of benefits offered under the Modified Medical Plan for nearly two decades, effective July 1, 2010, the City implemented an increase in the yearly deductible to be paid by retirees participating in the Modified Medical Plan and an increase in the co-pay for drugs. These changes were relatively minor. The deductible increased from $150 to $200 for an individual and from $450 to $500 for a Family. Co-pay for Prescription Drug coverage was similarly small.

37. In 2011, the City adopted major changes in the Modified Medical Plan that were projected to save the City 30% per year on medical costs. There were corresponding changes in co-pay, deductible and prescription drug provisions. Neither the changes in 2010 nor the changes in 2011 were made with any attempt by the City to meet with retirees to obtain agreement for the changes.

38. When the City made the changes in 2011 to the Modified Medical Plan, the City asserted at a June 2011 Council meeting that the unilateral changes were authorized by the following language that has been in the Modified Medical Plan since its inception in January 1993:

> Section 6.17. Amendment and Termination. In order that the Plan may carry out its obligation to maintain within the limits of its resources, a program dedicated to providing good benefits for all Employees, the City reserves the right, at any time to amend either the amount or condition with respect to any benefits payable, and to terminate the Plan.

39. The City asserted that Section 6.17 gave it the right to make unilateral changes to retiree health benefits, including requiring retirees to pay their own premiums and ending the Retiree Medical Benefit altogether for existing retirees. However, the City had never interpreted it that way in the 18 years since the language was added to the Modified Medical Plan in 1993. Further, the author of Section 6.17, former City Manager Dwane Milnes, has declared in a sworn statement that Section 6.17 was neither intended nor understood to give the City the broad

unilateral power that the City claimed in 2011. Rather, Section 6.17 was intended and understood to allow the City to change third-party administrators and make other administrative changes without having to engage in the meet and confer process with the unions. This true meaning was conveyed to employee unions who subsequently agreed to inclusion of the language after reassurance regarding its meaning. Former labor negotiators have declared in sworn statements that they understood Section 6.17 to have this limited meaning during labor negotiations between the City and the unions. Indeed, from 1993 until 2010, the City made no changes to benefits offered under the Modified Medical Plan without consulting with the employee unions, and never once reduced benefits offered to retirees under the Modified Medical Plan.

The City Unilaterally Imposes a Plan to Terminate the Retiree Medical Benefit

40. On June 28, 2012, the City declared bankruptcy. The previous day, the City Council adopted a "Pendency Plan," under which it would unilaterally terminate premium payments under the Retiree Health Benefit as of July 1, 2012, for all retirees who had been employed with the City for less than ten years—the Short Term Retirees—and provide only a limited stipend for health insurance premiums for Long Term Retirees, with all premium payments for health insurance benefits to be terminated completely as of July 1, 2013. By letter of June 27, 2012, the City instructed retirees that they must pay their own premium by July 30, 2012 (with or without help by the City's stipend), "or your medical coverage will be cancelled, retroactive to July 1, 2012." (Exhibit A at 3.) The City provided this notice only days before this change was to take effect.

41. The stipend provided to Long Term Retirees could be applied only "to coverage under a City sponsored plan, not any other individual or group plan." (See Exhibit A at 1.) But the premium payments to stay on the City sponsored plan are extremely expensive: for retirees under 65, the premiums are $875.92 per month for a retiree alone, $1,576.66 for a retiree and spouse, and $2,102.22 per month for a family. (Exhibit A at 2.) For Long-Term Retirees, these high premiums are somewhat mitigated by the City's limited stipend, depending on the length of service. (Exhibit A at 2.) However, the Pendency Plan provides very limited premium relief for

those who have served less than 20 years for the City, and *no* premium relief for those who served less than 10 years, the Short Term Retirees.

42. For the Short Term Retirees of limited means, and for anyone who cannot afford the City's expensive premiums, the outlook is grim. These individuals cannot afford to pay the City's high premiums—which represent anywhere from 30 to 80 percent of their incomes. To be sure, some may be able to obtain private health insurance at a reasonable price. However, of course, many have pre-existing medical conditions that may preclude them from purchasing private health insurance, or make some insurance unattainable as a practical matter. For those under 65, no law presently allows them to obtain guaranteed issue insurance if they have a pre-existing medical condition. For some, the choice literally is this: health insurance on the one hand, or rent, food, or mortgage payments on the other.

43. The City's termination of premium payments violated its retirees' vested rights to the Retiree Health Benefit. The City repeatedly, and expressly, committed to paying the premium for that benefit, and its commitment to do so was explicitly approved on numerous occasions by the Council, and was also implied by the City's practice of paying these premiums for over twenty years. Further, retirees' rights to and under the Retiree Health Benefit are clear and unambiguous: the City promised to pay the premium for its retirees' (and spouses') health insurance for life. Not surprisingly, retirees relied on this promise, by taking employment with the City, maintaining employment with the City, choosing when to retire, and rejecting opportunities for coverage under a spouse's health plan. The City provided nothing to retirees in exchange for eliminating the Retiree Health Benefit.

44. As a result of the City's actions, Class Plaintiffs have been and will continue to be injured every month. For some, the injury will be manageable; but for others the City's action will have dire consequences.

45. Class Plaintiffs had a contractual right to the Retiree Health Benefit. By unilaterally reducing the benefits provided under the Program, the City breached its contractual obligations to, unlawfully impaired its contractual relations with, and denied due process to, Class Plaintiffs.

CLASS ALLEGATIONS

46. Representative Plaintiffs bring this class action on behalf of themselves and all other persons similarly situated. The Class is defined as all retired employees of the City of Stockton who retired on or before June 30, 2012 and are currently participating in any City-sponsored health plan, or were participating in any such plan on June 30, 2012.

47. This action may properly be brought as a class action because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable.

48. The potential members of the Class as defined are so numerous (approximately 1,100) that joinder of all Class Plaintiffs is impracticable. Class Plaintiffs may be unable to seek redress for this injury on an individual basis because the amount of damages each has suffered may render such individual claims impracticable. Class Plaintiffs and the City will benefit from class-wide resolution of this controversy.

49. Questions of law and fact common to the class clearly predominate over any issues that will need to be litigated individually as to each class member. All eligible City retirees were covered by either the Original Health Plan or Modified Health Plan, depending on the date of retirement, and were entitled to lifetime retiree health benefits under nearly identical terms in several MOUs. The City's unilateral reduction or termination of the Retiree Health Benefit for all Class Plaintiffs resulted from *one* City action, the adoption of the Pendency Plan, in June of 2012. Among the common issues of fact and law are: (1) whether the Retiree Health Benefit was a promised post-employment benefit and element of employee compensation; (2) whether the City breached its contractual obligations to its retired employees, and/or substantially impaired its contractual relations with those retirees, and/or unlawfully deprived retirees of due process, when it reduced or eliminated the Retiree Health Benefit; and (3) whether the City replaced the Retiree Health Benefit with a "comparable new benefit" for retirees.

50. Representative Plaintiffs' claims are typical of the claims of the Class. They worked for many years for the City, had a contractual expectation to receive the Retiree Health Benefit, and had a contractual right to receive the Retiree Health Benefit throughout their retirement. Each is over 40 years old. Each will suffer either the elimination or the substantial

reduction in the premium paid by the City for the Retiree Health Benefit and will continue to be harmed for the rest of their lives by the City's planned eventual complete termination of the Retiree Health Benefit. Each has been harmed as a result of the elimination of the Retiree Health Benefit, either by being forced to pay their own premiums, to accept less insurance coverage, or to drop health insurance completely.

51. Representative Plaintiffs are members of the Class, will prosecute the case vigorously on behalf of the Class and will fairly and adequately represent and protect the interests of Class Plaintiffs. Counsel for Representative Plaintiffs are competent and experienced in litigating class actions and are familiar with the facts and law relevant to this dispute.

52. ARECOS and Representative Plaintiffs seek the same relief, namely, an order directing the City to maintain the Retiree Health Benefit for the good of all eligible City retirees. No money damages are sought. ARECOS and Representative Plaintiffs contend that this action could be efficiently litigated by ARECOS on behalf of its members and all City retirees who were eligible for the Retiree Health Benefit as of June 30, 2012. However, if ARECOS is found not to have standing, litigating this as a class action is superior to all other available means for the fair and efficient resolution of this dispute. Individual joinder of Class Plaintiffs in not practicable, and questions of fact and law predominate. Each Class Plaintiff is and continues to be injured by the City's unlawful conduct as alleged herein.

JURISDICTION AND VENUE

53. This Court has the power to hear this action as an adversary proceeding pursuant to 28 U.S.C. § 1334 because it is a non-core proceeding otherwise related to a pending case filed under Title 11 of the United State Code, *In re City of Stockton*, Case No. 12-32118, filed pursuant to Chapter 9 in the United States Bankruptcy Court for the Eastern District of California. Plaintiffs do not consent to entry of final orders of judgment by the bankruptcy judge. In addition, this Court has subject matter jurisdiction over the federal constitutional claims, and over the pendent state law claims because they arise from the same operative facts and circumstances as the federal claims.

54. The Court has personal jurisdiction over the City because the City is located and conducts business in this judicial district and this action arises from the City's conduct occurring here.

55. In November 2011, Mr. Lewis Patrick Samsell filed a Claim for Money Damages with the City, on behalf of himself and others similarly situated, relating to the City's reduction of the Retiree Health Benefit, pursuant to the California Government Tort Claims Act. Approximately 30 other retirees filed similar claims with the City at that time. In July 2012, Mr. Samsell filed a Claim for Money Damages with the City, on behalf of himself and others similarly situated, relating to the City's elimination of the Retiree Health Benefit, pursuant to the California Government Tort Claims Act. On information and belief, the City has not yet responded to any of those claims.[1]

FIRST CAUSE OF ACTION
Impairment of Contract - U.S. Constitution

56. Plaintiffs incorporate paragraphs 1 - 55 above. In unilaterally changing the terms of the Retiree Health Benefit, the City impaired contractual obligations, in violation of Article 1 section 19 of the United States Constitution and 42 U.S.C. § 1983. The City did so pursuant to an official policy. ARECOS' members and Class Plaintiffs have been damaged by the City's conduct as a result of this policy and will suffer irreparable injury if the City is not ordered to maintain the Retiree Health Benefit.

SECOND CAUSE OF ACTION
Impairment of Contract – California Constitution

57. Plaintiffs incorporate paragraphs 1 - 56 above. In unilaterally changing the terms of the Retiree Health Benefit, the City impaired contractual obligations, in violation of Article 1 section 9 of the California Constitution. ARECOS' members and Class Plaintiffs have been damaged by the City's conduct and will suffer irreparable injury if the City is not ordered to maintain the Retiree Health Benefit.

[1] Representative Plaintiffs contend that neither they nor any Class Plaintiff was required by law to file Government Tort Claims Act claims as a prerequisite to filing this lawsuit.

THIRD CAUSE OF ACTION
Denial of Due Process – United States Constitution

58. Plaintiffs incorporate paragraphs 1 - 57 above. In unilaterally changing the terms of the Retiree Health Benefit, the City deprived ARECOS members and Class Plaintiffs of their vested property rights to those benefits without due process, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983. The City did so pursuant to an official policy. ARECOS' members and Class Plaintiffs have been damaged by the City's conduct as a result of this policy and will suffer irreparable injury if the City is not ordered to maintain the Retiree Health Benefit.

FOURTH CAUSE OF ACTION
Denial of Due Process – California Constitution

59. Plaintiffs incorporate paragraphs 1 - 58 above. In unilaterally changing the terms of the Retiree Health Benefit, the City deprived ARECOS members and Class Plaintiffs of their vested property rights to those benefits without due process, in violation of Article 1, sec. 7 of the California Constitution. ARECOS' members and Class Plaintiffs have been damaged by the City's conduct and will suffer irreparable injury if the City is not ordered to maintain the Retiree Health Benefit.

FIFTH CAUSE OF ACTION
Breach of Contract

60. Plaintiffs incorporate paragraphs 1 - 59 above. In unilaterally changing the terms of the Retiree Health Benefit, the City breached its contractual obligations to ARECOS members and Class Plaintiffs. Each of the ARECOS members and Class Plaintiffs have satisfied their obligations under their respective contracts with the City. The ARECOS' members and Class Plaintiffs have been damaged by the City's conduct and will suffer irreparable injury if the City is not ordered to maintain the Retiree Health Benefit.

SIXTH CAUSE OF ACTION
Promissory Estoppel

61. Plaintiffs incorporate paragraphs 1 – 60 above. As set forth above, the City represented to the ARECOS' members and Class Plaintiffs that they would receive the Retiree

Health Benefit as elements of their deferred compensation for providing their labor to the City. ARECOS members and Class Plaintiffs reasonably relied on those representations, to their detriment, by providing their labor to the City, foregoing wage increases and other employment opportunities. ARECOS members and Class Plaintiffs have been injured by the City's failure to provide the Retiree Health Benefit in accordance with its representations. ARECOS members and Class Plaintiffs have been damaged by the City's conduct and will suffer irreparable injury if the City is not ordered to maintain the Retiree Health Benefit.

SEVENTH CAUSE OF ACTION
Declaratory Relief - 28 U.S.C. § 2201

62. Plaintiffs incorporate paragraphs 1 - 61 above. As described above, an actual controversy exists regarding whether the City may lawfully terminate the Retiree Health Benefit to existing retirees, ARECOS' members and Class Plaintiffs.

PRAYER FOR RELIEF

Wherefore, Plaintiffs hereby request the following relief:

1. A temporary, preliminary and permanent injunction prohibiting the City from implementing the changes to the Retiree Health Benefit;

2. A declaration under 28 U.S.C. § 2201 (The Declaratory Relief Act) that the City Retirees have a vested property interest in the Retiree Health Benefit and that the City's proposed changes eliminating the Retiree Health Benefit are unlawful;

3. An order compelling the City to maintain the Retiree Health Benefit with respect to the ARECOS' members and Class Plaintiffs and all other City of Stockton retirees entitled to the Retiree Health Benefit as of July 1, 2012;

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4. For an award of reasonable attorney's fees and costs under California Civil Code §§ 1021.5 and 1033.5; California Government Code §§ 800 and 31536; 42 U.S.C. § 1988, and any other statute or rule of law authorizing such an award; and

5. Any further relief that the Court deems just and proper.

Dated: July 10, 2012

Respectfully Submitted,

MOSCONE EMBLIDGE & SATER LLP

By: /s/ G. Scott Emblidge
G. Scott Emblidge

Attorneys for Plaintiffs Association of Retired Employees of the City of Stockton, Shelley Green, Patricia Hernandez, Reed Hogan, Glenn E. Matthews, Patrick L. Samsell, Alfred J. Siebel, Brenda Jo Tubbs, and Teri Williams on Behalf of Themselves and Others Similarly Situated