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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,

Adv. No.

APPLICATION FOR TEMPORARY
 RESTRAINING ORDER AND
 PRELIMINARY INJUNCTION OR IN
 THE ALTERNATIVE RELIEF FROM
 STAY

Plaintiffs,
 vs.
 CITY OF STOCKTON, CALIFORNIA,
 Defendant.

Date:
 Time:
 Courtroom:
 Judge: Hon. Christopher Klein

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INTRODUCTION

1
2 Plaintiffs ask this Court to enjoin and prohibit the City of Stockton (“the City”) from
3 implementing the elements of its so-called “pendency plan” by which the City seeks to
4 unilaterally renege on its obligations to provide vested and constitutionally-protected health
5 benefits to retired City employees (“the Retiree Health Benefit”). Injunctive relief is needed
6 given that many of the retirees live on limited fixed incomes and suffer from significant and
7 sometimes life-threatening conditions. If the Court permits the City to impose these changes as
8 planned, it could literally lead to serious physical harm or even death for some retirees.

9 This action is brought on behalf of members of the Association of Retired Employees of
10 the City of Stockton (“ARECOS”), and Shelley Green, Patricia Hernandez, Reed Hogan, Lewis
11 Patrick Samsell, Alfred Seibel, Brenda Jo Tubbs, Teri Williams, and Glenn E. Matthews, Jr., and
12 hundreds of other retired City of Stockton employees who are similarly situated (collectively
13 “Retirees”).

14 Without providing any opportunity for hearings or negotiations in Bankruptcy Court, the
15 City is proposing to terminate premium payments under the Retiree Health Benefit as of July 1,
16 2012, for all retirees who had been employed with the City for less than ten years (the “Short
17 Term Retirees”) and provide only a limited stipend for health insurance premiums for those
18 retirees who served the City longer (the “Long Term Retirees”), with premium payments for all
19 health insurance benefits to be terminated completely as of July 1, 2013. The City’s unilateral
20 reduction and elimination of the Retiree Health Benefit violates Retirees’ vested and
21 constitutionally-protected rights. Critically, some Retirees face the immediate termination of
22 their health insurance because they simply lack the financial resources to bear the burden that the
23 City seeks to shift to them. Some will be unable to secure other health care due to their age and
24 preexisting health conditions. To make matters even worse, the City provided Retirees only a
25 few days’ notice of its intent to eliminate the Retirees’ vested rights to health care.

26 For some of these Retirees, the premiums the City seeks to impose would cost from *30 to*
27 *80 percent of the Retirees’ annual income*. Some Retirees suffer acute or chronic conditions that
28 require frequent medical attention, and their lives are threatened without regular medical

1 attention and insurance to fund it. Still others may be currently hospitalized or otherwise so ill
 2 that they are not even aware that their health benefits have ended, or are incapable of making
 3 alternate plans for themselves.

4 Additionally, Retirees who are under 65 years old have no protection against denial of
 5 insurance coverage or discrimination based on pre-existing conditions if they attempt to obtain
 6 other insurance.

7 Because the Retirees have no alternative relief immediately available, they ask this Court
 8 to issue a temporary restraining order (“TRO”) and preliminary injunction to prevent the City
 9 from implementing the pendency plan as it applies to the Retirees’ health insurance benefits, or
 10 in the alternative grant the Retirees relief from stay so that they can pursue these remedies in
 11 District Court.

12 The Retirees do not anticipate presenting oral testimony at the hearing for a preliminary
 13 injunction, but reserve the right to do so. Retirees estimate that the hearing will require two
 14 hours.

15 **FACTUAL BACKGROUND**

16 **I. CITY’S OBLIGATIONS TO PAY RETIREE HEALTH**

17 **A. The City Has Provided Lifetime Health Benefits to Retirees Through MOUs** 18 **for More than Two Decades**

19 For decades, the City promised most of its employees that their compensation package
 20 included payment by the City of health insurance premiums during retirement. Gradually, the
 21 City extended this benefit to cover retirees beyond age 65 as a supplement to Medicare.

22 In 1980, the City began providing medical benefits to members of the Stockton Police
 23 Officers Association who retired from City service. The benefit included payment of the entire
 24 premium for a retired employee and his or her dependent until the retiree reached age 62, but not
 25 to exceed seven years. Declaration of Dwane Neil Milnes (“Milnes Dec.”), ¶ 14. The City
 26 extended a retiree health benefit to various unions throughout the 1980s and increased the
 27 maximum age through which retiree health benefits would be available to age 65. *Id.* By 1991,
 28 the City had extended the Retiree Health Benefit to all City employees through numerous

1 MOUs, which the City Council approved, and had added a Medicare supplement benefit for
2 many unions. *Id.*

3 The City’s promise to pay lifetime retiree healthcare premiums was explicit and formally
4 approved by the City Council. The promise is memorialized in numerous Memoranda of
5 Understanding (“MOUs”) and Comprehensive Annual Financial Reports approved or accepted
6 by the City Council, as well as in letters routinely provided by the City to its employees upon
7 retirement. *See* Milnes Dec., ¶ 15, Exs. A – D. Relying on the City’s promises, City employees
8 made wage and salary concessions, gave up other employment opportunities and dedicated their
9 working years to the City of Stockton to earn fully-funded, lifetime retiree health benefits. *Id.*, ¶
10 13; Declaration of Mary Morley (“Morley Dec.”), ¶ 4; Milnes Dec. ¶¶ 23, 25-31.

11 The MOUs typically described the City as agreeing to pay “a premium” or “all
12 premiums” for health insurance benefits for retirees. Milnes Dec., ¶ 15, Exs. A – D. These
13 terms have always been understood by the City to require the City to pay the entire premium for
14 health insurance for all qualifying retirees and their spouses or one dependent. *Id.*, ¶ 15.

15 For some of the retirees who had not qualified for Medicare upon retirement, the City
16 began paying the Part A Medicare premium (or in the alternative at the City’s choice, continuing
17 City medical benefits as primary coverage). The Retiree Medical Benefit was extended as a
18 supplement to Medicare after age 65.¹ This benefit was extended to Police and Fire union
19 members. *Id.*, ¶ 17.

20 In January 1993, the City changed its medical benefits in order to align them more
21 closely with industry standards and to reduce costs. Declaration of George Bist (“Bist Dec.”),
22 ¶ 2; Declaration of Kelley Garrett (“Garrett Dec.”), ¶ 2. Any employee who had retired prior to
23 that date was continued on what was called the “Original Plan,” while all current employees and
24 those who retired from that date forward received the benefits in the “Modified Plan.” Milnes

25 _____
26 ¹ This benefit was extended over the years, being added for Management & Confidential, Mid-
27 Management and Supervisory, and Law Department in 1985; Police Management in 1990; Fire
28 in 1996; SCEA, Trades and Maintenance, and Fire Management (based on MOU between City
and Fire Management) in 1997; and Police in 1998. Milnes Dec., ¶ 16 (City’s adopted GASB
45 Report dated June 30, 2011).

1 Dec., ¶ 18. The City’s unions agreed to give up 20% of their annual Cost of Living Increases in
2 exchange for securing the “Modified Plan” for City employees and future retirees, with the 20%
3 helping to fund the Modified Plan’s annual cost increases. *See* Morley Dec., ¶ 4; *see generally*
4 Milnes Dec., ¶ 13.

5 For example, in December 1996, the San Joaquin Public Employees Association
6 (“SJPEA”), and in March 2000, the Stockton City Employees Association (“SCEA”), the
7 successor to the SJPEA, agreed to terms of compensation to be included in the MOUs for the
8 period 1997 through 2008. These terms included a lower wage than the unions would have
9 otherwise accepted, in exchange for the City continuing to pay all of the premium for medical
10 benefits for employees and their dependents, and continuing unchanged the benefits included in
11 the Modified Medical Plan incorporated as a part of the MOU. Milnes Dec., ¶ 23; *see* Morley
12 Dec., ¶ 4; Bist Dec., ¶¶ 4-6; Garrett Dec., ¶¶ 3-5. The lower wages were also intended to provide
13 savings for the City that would assist in offsetting the cost of providing lifetime medical benefits
14 to retirees. Morley Dec., ¶ 4; Milnes Dec., ¶¶ 23, 24-29.

15 These concessions reached further than an employee’s base wage. Overtime and other
16 benefits may be tied to an employee’s wage level, and would also decrease as a consequence of
17 lower wages negotiated in an effort to preserve employee and retiree benefits. Morley Dec., ¶ 4;
18 Milnes, ¶ 30.

19 Critically, when unions accepted lower wages in order to secure benefits, the result was
20 that many employees received a lower wage in their last year of employment. Milnes Dec.,
21 ¶¶ 13, 31. The last year of employment provides the basis for calculating a retired employee’s
22 annual pension payments. *Id.* Accordingly, not only did employees accept lower wages in
23 exchange for the Retiree Health Benefit and other benefits, but they also received a lower
24 pension for the rest of their life. *Id.* The City benefited handsomely from this concession: not
25 only did the City save money on the lower wages, but the City also paid less to the California
26 Public Employees’ Retirement System (“CalPERS”) in annual pension payments because the
27 City’s pension payments to CalPERS are based on the wages being paid. *Id.*

1 A few changes were made in the Modified Plan in the following years that improved
 2 benefits. But the City did not reduce benefits in the Modified Plan because City officials
 3 understood that the lifetime benefits received by retirees at the time of their retirement were
 4 vested and so could not be changed unilaterally by the City. Milnes Dec., ¶¶ 6, 19; *see* Bist
 5 Dec., ¶¶ 5-6; *see generally* Garrett Dec., ¶¶ 4-5; Ramirez Dec., ¶¶ 3-5. This understanding – that
 6 retiree benefits vest upon retirement and cannot be changed thereafter – was also the reason the
 7 City allowed existing retirees to continue on the Original Plan, while adopting the Modified Plan
 8 for current employees and future retirees. Milnes Dec., ¶¶ 7, 8, 10, 18-19.

9 **B. The City Confirmed Its Obligation to Provide the Lifetime Retiree Medical**
 10 **Benefit**

11 The City repeatedly told its employees that the Retiree Medical Benefit was a benefit that
 12 qualifying employees would enjoy for the rest of their lives. For example, the City consistently
 13 provided retirees with a letter upon retirement that summarized their retiree benefits. The letter
 14 described the Retiree Medical Benefit and said “[t]his is a lifetime benefit for both you and your
 15 spouse,” or “[t]his lifetime benefit is provided to both you are your spouse.” Milnes Dec., ¶ 21,
 16 Ex. E.

17 The Stockton City Council also approved and/or accepted numerous Comprehensive
 18 Annual Financial Reports (“CAFR”) that described the Retiree Medical Benefit as a lifetime
 19 benefit. Every CAFR for the City of Stockton from at least June 30, 2001, through June 30,
 20 2006 describes Post Retirement or Post Employment Health Care Benefits as “a lifetime benefit
 21 provided to the retired employee and his or her eligible spouse.” *Id.*, ¶ 22. The June 30, 2007
 22 through June 30, 2010, CAFRs state: “This is a lifetime benefit provided to the retired employee
 23 and his or her eligible dependent.” *Id.* Similarly, the MOU with the Trades and Maintenance
 24 Unit for the period from 2006-2008 (Operation Engineers, Local 3, AFL-CIO) states: “This
 25 lifetime benefit is provided to the employee and the employee’s spouse.” *Id.*

26 Indeed, until 2011, the City consistently paid the entire premium for health insurance for
 27 each of its qualifying retirees and one dependent or spouse. Retiree health benefits were also
 28

1 continued by the City for the surviving spouse of a retiree. *Id.*; *see generally* Declaration of
 2 George Bist (“Bist Dec.”), ¶¶ 4-6; Ramirez Dec., ¶¶ 3-4.

3 **II. THE CITY UNILATERALLY IMPOSED A PLAN TO TERMINATE RETIREE**
 4 **MEDICAL BENEFITS**

5 On June 28, 2012, the City declared bankruptcy. The previous day, the City Council
 6 adopted what it terms its “pendency plan,” under which it decided to terminate premium
 7 payments under the Retiree Health Benefit as of July 1, 2012, for Short Term Retirees, and
 8 provide only a limited stipend for health insurance premiums for Long Term Retirees, with all
 9 premium payments for health insurance benefits to be terminated completely as of July 1, 2013.
 10 Milnes Dec. ¶ 36.

11 By letter of June 27, 2012, the City instructed retirees that they must pay their own
 12 premium by July 30, 2012 (with or without help by the City’s stipend), “or your medical
 13 coverage will be cancelled, retroactive to July 1, 2012.” Milnes Dec. ¶ 36, Ex. F. The City
 14 provided this notice only days before this change was to take effect. *Id.*, ¶ 36.

15 The one-year stipend provided to Long Term Retirees could be applied only “to coverage
 16 under a City sponsored plan, not any other individual or group plan.” *Id.*, ¶ 36, Ex. F. But the
 17 premium payments to stay on the City sponsored plan are extremely expensive: for retirees
 18 under 65, the premiums are \$875.92 per month for a retiree alone, \$1,576.66 for a retiree and
 19 spouse, and \$2,102.22 per month for a family. *Id.*, Ex. F at 2. For Long-Term Retirees, these
 20 high premiums are temporarily mitigated somewhat by the City’s one-year stipend, depending on
 21 the individual’s length of service. *Id.* However, the pendency plan provides very limited
 22 premium relief for those who have served less than 20 years for the City, and *no* premium relief
 23 for those who served less than 10 years, the Short Term Retirees.

24 Retirees were given until July 15, 2012, to make a change to or cancel their coverage.
 25 Any changes made are “irrevocable.” *Id.*, Ex. F. After one year, no Retirees would be allowed
 26 to enroll in the City’s medical plan at their own expense but without any subsidy or stipend or
 27 contribution from the City. *Id.*

1 The City estimates that the cost of the Retiree Health Benefit to the General Fund during
 2 the upcoming fiscal year (July 2012-June 2013) is \$9.2 million dollars. *Id.*, ¶ 37, Ex. G. By
 3 implementing its plan, the City would pay only \$2.1 for the Retiree Health Benefit, thus saving
 4 \$7.1 million dollars in the General Fund. *Id.* It is estimated that it would save a minimum of \$9
 5 million dollars in the following year, since it proposes to end all contributions to the Retiree
 6 Health Benefit effective July 1, 2013. *Id.*

7 8 **III. THE IMPACT OF THE RETIREE HEALTH BENEFIT TAKE-AWAY WILL BE DEVASTATING**

9 The Retiree class consists of former City employees; many are of limited financial
 10 means. Elimination of the Retiree Health Benefit would force many Retirees to pay premiums
 11 that represent 20% to over 50% – up to 80% in some cases – of their monthly income, thereby
 12 straining if not decimating already weak financial situations. *See* Declarations of Kent Autrand,
 13 Janet D. Bricker, Michael Burkhardt, Dulcenia Catlett, Debra Emery, Delia Fernandez, Elaine
 14 Freitas, Linda French, Kathy Glick, Patricia Hernandez, Reed Hogan, Vivian Look, Christine
 15 Lumpkin, Glenn Matthews, Rick Ragsdale, Stephen Rehberg, Kenneth Rogers, Lewis P.
 16 Samsell, Jeanette N. Schenck, Todd Schiess, Alfred Seibel, Cathy Sloan, Alice Sterming, Helen
 17 Tellyer, Kathy Tomura, Brenda Jo Tubbs, Douglas Carroll Watkins, Josephine Weber and Teri
 18 Williams.

19 However, the problem is not just a financial one. The City's cuts have serious
 20 implications for the quality of life of hundreds of Retirees, the majority of whom depend on the
 21 Retiree Health Benefit so that they can buy needed medications and receive necessary medical
 22 treatment and care. Some suffer serious health conditions such as diabetes, hypertension, cancer,
 23 Huntington's disease, and congestive heart failure. *See* Fernandez Dec. at ¶ 8; Glick Dec., ¶ 7;
 24 Ragsdale Dec., ¶ 7; Samsell Dec., ¶ 7; and Tomura Dec., ¶ 7. These Retirees would not be able
 25 to afford to pay the premiums and it is unlikely that they would be able to find coverage on the
 26 open market due to their pre-existing health conditions. *See, e.g.,* Fernandez Dec. at ¶ 8; Sloan
 27 Dec. at ¶ 10; Hogan Dec. at ¶ 7; Weber Dec., ¶ 7. Others will need to choose between buying
 28 medical coverage or food. *See* Weiss Dec. at ¶¶ 5, 6; Hernandez Dec. at ¶¶ 5, 6; and Seibel Dec.
 at ¶ 7. The City's plan to eliminate the Retiree Health Benefit would therefore have dire

1 consequences for Retirees. *See* Declarations of Kent Autrand, Delia Fernandez, Pat Hernandez,
2 Reed Hogan, Glenn Matthews, Alfred Seibel, Cathy Sloan, Helen Tellyer, and Brenda Jo Tubbs.

3 The potential devastating consequences of the City's planned cuts are illustrated by the
4 situation of Retiree Alfred J. Seibel and his wife. Mr. Seibel, who worked for the City for 31
5 years as a parks worker, states:

6 I take 9 prescriptions daily. I suffer from GERD, bleeding ulcers, irritable bowel
7 syndrome, high blood pressure, high cholesterol, high triglycerides, hypo-thyroid,
8 dislocated collar bone, osteoarthritis, enlarged lymph nodes from chemicals used
9 at work, a herniated disc in lower back after injury at work, enlarged prostate and
10 clinical depression. I have an unidentified mass on the right bronchial tube that
11 must be X-rayed annually. My wife takes 5 prescriptions daily. She has
12 permanent locked jaw and is on a very restrictive diet. She needs to be on a
13 special diet we already can't afford. She has Tic-DA-La-Rue (a form of epilepsy),
14 colitis, and rheumatoid arthritis. She takes female hormones due to having a
15 hysterectomy at age 28. She has hypo-thyroid. She has to take pain meds and
16 muscle relaxers to keep her jaw from getting worse. At this time her doctors have
17 talked to her about a feeding tube.

18 Seibel Dec. at ¶ 6.

19 Mr. Seibel's net household annual income is \$26,337. With the City's Retiree Health
20 Benefit cuts, Mr. Seibel would have to pay \$1,126.66 per month, or \$13,519.92 per year, which
21 represents 51% of the Seibels' net income. The Seibels also have a mortgage payment of
22 \$536.11 per month. *Id.* at ¶ 5. This would only leave the Seibels with \$532.02 to live on per
23 month. As Mr. Seibel states:

24 Needless to say we cannot afford to lose our medical coverage. Paying \$1,126.66
25 a month is obviously not an option. I am already taking generic meds for
26 cholesterol and triglycerides against my doctor's advice. I can't afford the \$70 co-
27 pay. My wife cries all the time. She don't [sic] understand how when you retire
28 and they promise you all this stuff, then they just take it away.

Id. at ¶ 7.

29 For many Retirees, losing the Retiree Health Benefit means paying premiums that
30 represent as much as 80% of their net annual incomes. *See* Hernandez Dec. at ¶¶ 5, 6 (the
31 \$15,319.92 per year in premiums for the City Health Plan would amount to 80% of her annual
32 income); Burkhardt Dec. ¶ 6 (34% of income); Emery Dec. ¶ 6 (36% of income); Look Dec.
33 (40% of income); Matthews Dec. ¶ 6 (38% of income); Rehberg Dec. ¶ 6 (34% of income);
34 Schenck Dec. ¶ 6 (31% of income); Sterming Dec. ¶ 6 (31% of income); and Williams Dec. ¶ 6

1 (32% of income); . Elimination of the Retiree Health Benefit would thus surely place many
 2 Retirees at the brink of financial ruin, or worse, even death, should they be unable to treat life
 3 threatening illnesses.

4 Many Retirees suffer a myriad of health problems, for which treatment of such diseases
 5 through the Retiree Health Benefit is vital. For example, 61-year-old Delia Fernandez, a former
 6 library aide who served the City for over 39 years, describes her conditions as follows:

7 Since my retirement I have been hospitalized twice for life-threatening situations.
 8 In 2010 I suffered a blood infection with side effects including renal failure and
 9 an equilibrium balance problem. I was in a convalescent hospital and had in-
 10 home health care for two months. In 2011 I again had renal failure. I have had
 11 major and chronic illnesses including heart attack, congestive heart failure,
 12 pulmonary embolism, diabetes, neuropathy, sleep apnea, and asthma. I take 13
 14 medications and use the following medical equipment: walker, wheelchair,
 15 hospital bed, sleep apnea machine, oxygen machine, and bath chair for the tub.
 16 Since I am not eligible for Medicare, if I lose my City Health Plan I will no longer
 17 have any medical insurance since with my many pre-existing conditions and
 18 medical history, no insurance company would accept me. This would be
 19 catastrophic for me.

20 Fernandez Dec. at ¶ 8. Ms. Fernandez’s net annual income is \$24,780.00. The City’s cuts would
 21 mean that Ms. Fernandez would have to pay \$5,111.04 annually (21% of her income) to continue
 22 her health insurance. *Id.* at ¶ 6.

23 Indeed, many Retirees suffer a wide range of illnesses and conditions, with many dealing
 24 with several chronic diseases requiring regular treatment. *See* Declaration of Helen Tellyer
 25 (“Tellyer Dec.”) at ¶ 7: “I have osteoarthritis for which I take pain medication twice daily. I
 26 also take medication for cholesterol and high blood pressure, neither of which are yet in generic
 27 form, making them more expensive”; Declaration of Brenda Jo Tubbs (“Tubbs Dec.”) at ¶ 7: “I
 28 currently suffer from chronic medical conditions which make me unable to work. I take 14
 29 prescriptions for various illnesses. In April I had a total hip replacement for which I am still
 30 going to physical therapy 3 times a week and will see the surgeon in early July again. I also see
 31 a liver doctor, lung doctor and heart doctor regularly and they order lots of lab work, MRIs, cat
 32 scans, etc. I have a very old, very severely torn rotator cuff injury that cannot be repaired due to
 33 how long it’s been an issue, making me unable to work. Cortisone shots are all they can do for
 34 me on that one.”

35 Of course, the burden is compounded for Retirees who rely on the Retiree Health Benefit
 36 for treatment of their own chronic conditions as well as the chronic conditions of a spouse or

1 dependent. Retiree Cathy Sloan served the City for 23 years and retired as an administrative
2 aide. She describes her and her husband's health problems:

3 I was diagnosed with breast cancer in 2008 and went through surgery, chemo and
4 radiation. I visit 2 doctors at Stanford every 6 months for follow-up and
5 occasionally need additional testing. I have also been diagnosed with
6 osteoporosis which requires follow-up and medications. With my medical
7 history and pre-existing conditions it will be difficult, if not impossible, for me to
8 find medical insurance on the open market. Losing our health insurance will take
9 a financial and emotional toll on us that will be impossible to overcome.

10 Sloan Dec. at ¶ 10.

11 Reed Hogan, a former civil engineer, states:

12 I have a thyroid condition and very high cholesterol which requires regular
13 monitoring. My wife has a thyroid condition which requires regular monitoring
14 by a medical specialist. Both of these medical conditions require expensive
15 medications on a regular basis. Attempting to obtain other insurance for these
16 pre-existing conditions will be very expensive if we could even get such
17 coverage.

18 Hogan Dec. at ¶ 7.

19 The situations of Ms. Sloan and Mr. Hogan are typical of many Retirees. *See* Autrand
20 Dec. at ¶ 7: "I am currently taking medications for high blood pressure, high cholesterol, and a
21 thyroid condition. My wife is taking medications and treatments for fibromyalgia, interstitial
22 cystitis, and migraines"; Hernandez Dec. at ¶ 8: "My husband is disabled. He is an amputee,
23 and is on dialysis. He is also diabetic and has heart issues. I am a breast cancer survivor (6
24 years) and am afraid to go to the doctor these days because I have not reached my deductible and
25 am concerned about medication co-pays."; Weber Dec. at ¶ 7: "My husband is under frequent
26 care for cancer. It is chronic Lymphoma and requires chemotherapy."; Matthews Dec., ¶ 7: "My
27 wife has Multiple Sclerosis and takes 14 medicines daily, including a daily injections. . . . She is
28 going to have to stop taking three of her medications because we cannot afford it."

The City's elimination of the Retiree Health Benefit would have catastrophic
consequences for the most vulnerable Retirees.

ARGUMENT

I. THE RETIREES ARE ENTITLED TO A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTIVE RELIEF

The Supreme Court has held that a party seeking a preliminary injunction “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). The moving party must “demonstrate that irreparable injury is *likely* in the absence of an injunction.” *Id.* at 22 (emphasis in original). The Ninth Circuit has also explained that the matter must “involve serious questions going to the merits” and the balance of hardships must “tilt sharply” toward the plaintiff. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (2011).

The Retirees meet all these elements. First, the Retirees are likely to prevail on the merits. Not only do they have vested contractual rights that are protected under the U.S. and California Constitutions, but they also have vested property rights to the Retiree Health Benefit that are protected by the Due Process clauses of the U.S. and California Constitutions. Second, the Retirees are not just likely, but are certain, to suffer irreparable harm if the requested relief is not granted. As set forth in the declarations of Retirees submitted in support of this Application, many live on limited fixed incomes, depend on the Retiree Health Benefit, and suffer from serious life-threatening medical conditions that require regular medical attention. Worse still, these pre-existing medical conditions could prevent the Retirees from obtaining reasonably priced insurance to replace the City’s costly plan.

Third, the balance of equities weighs heavily in favor of the Retirees. While the City’s fiscal situation is serious, the impact of permanently taking away the Retiree Health Benefit and violating the federal and state Constitutions cannot be overstated. Depriving the Retirees of their health benefits could be a matter of life and death. Fourth, issuance of the injunction would serve the public interest. It is contrary to the public interest to deprive elderly members of society, who have served the public, of access to essential medical care, or to force them to choose between buying food or paying insurance premiums.

1 The Retirees ask this Court to enjoin the City from unilaterally implementing the
 2 elements of the “pendency plan” (see Section II.C below) that would remove and/or diminish the
 3 Retiree Health Benefit.

4 **II. RETIREES ARE LIKELY TO SUCCEED ON THE MERITS**

5 **A. The City’s Action Violates its Contractual Obligations to Provide Retiree** 6 **Health Benefits Under Article I, §10 of the U.S. Constitution and Article I, §9** 7 **of the California Constitution**

8 The California Supreme Court has long held that public sector collective bargaining
 9 agreements – so-called MOUs – are binding, bilateral contracts. *Glendale City Employees*
 10 *Assoc., Inc. v. City of Glendale*, 15 Cal.3d 328, 334-39 (1975); *see also Sonoma County*
 11 *Organization of Employees v. County of Sonoma*, 23 Cal.3d 296, 304 (1979). The MOUs are to
 12 be construed, like other contracts, according to the rules of interpretation set forth in the
 13 California Civil Code as well as common law doctrines. *City of Glendale*, 15 Cal.3d at 334-39;
 14 *see also City of El Cajon v. El Cajon Police Officers’ Assn.*, 49 Cal.App. 4th 64, 71 (1996) (in
 15 construing terms of an MOU, “[w]e are guided by the well settled rules of interpretation of a
 16 contract, endeavoring to effectuate the mutual intent of the parties . . .”). A court’s task is to
 17 discern and enforce the intent of the parties, whether that intent is set forth in express written
 18 words or implied from the parties’ course of dealing. *Youngman v. Nevada Irrigation District*,
 19 70 Cal.2d 240, 246-47 (1970).

20 California courts have also recognized that vested rights may attach to certain longevity
 21 benefits awarded after a certain number of years of service, where benefits were important to the
 22 employees, had been an inducement to remain employed, and were a form of compensation
 23 already, at least partially, earned. *See, e.g., California League of City Employee Ass’ns v. Palos*
 24 *Verdes Library Dist.*, 87 Cal.App.3d 135, 140 (1978). Based on this reasoning, the Court of
 25 Appeal in *Thorning v. Hollister School Dist.*, 11 Cal.App.4th 1598, 1606-07 (1992), held that
 26 retired elected school board members had a vested right to their post-retirement health benefits
 27 because the benefits were important to the employees, had been an inducement to remain
 28 employed with the district, and were a form of compensation which had been earned by

1 remaining in employment. It concluded that retirement health benefits are obligations protected
2 by the contract clauses of the federal and state Constitutions. *Id.* at 1610.

3 Further, even where a city made no explicit promise of a lifetime benefit, such an
4 agreement may be implied. The Ninth Circuit recently asked the California Supreme Court to
5 opine on whether, under California law, a county and its employees could “form an implied
6 contract that confers vested rights to health benefits on retired county employees.” *Retired*
7 *Employees Assn. of Orange County, Inc. v. County of Orange*, 52 Cal.4th 1171, 1176 (2011)
8 (hereinafter “*REAOC*”). The California Supreme Court confirmed that “all modern California
9 decisions treat labor-management agreements whether in public employment or private as
10 enforceable contracts (*see* Lab. Code, § 1126) which should be interpreted to execute the mutual
11 intent and purpose of the parties.” *Id.* at 1183, citing *City of Glendale*, 15 Cal.3d at 339.

12 This principle has special force in the public employment context, inasmuch as “the
13 bargaining power of public employees has been severely limited by statute. . . .” *REAOC*, 52
14 Cal.4th at 1183, citing *Chula Vista Police Officers' Assn. v. Cole*, 107 Cal.App.3d 242, 248
15 (1980). The California Supreme Court goes on to state, “where the relationship *is* governed by
16 contract, a county may be bound by an implied contract (or by implied terms of a written
17 contract), as long as there is no statutory prohibition against such an agreement. *REAOC*, 52
18 Cal.4th at 1183, citing *Youngman*, 70 Cal.2d at 246 (emphasis in original). Thus, the California
19 Supreme Court concluded that under California law, a vested right to health benefits for retired
20 county employees can be implied under certain circumstances from a county ordinance or
21 resolution.

22 Here, the City entered into a series of MOUs with various bargaining units in which the
23 City agreed to provide the Retiree Health Benefit as an integral part of the total compensation
24 received by the Retirees. As discussed above in Section I, the MOUs typically described the
25 City as agreeing to pay “a premium” or “all premiums” for health insurance benefits for retirees.
26 At various times, bargaining units gave up salary and other benefits in exchange for the Retiree
27 Health Benefit when negotiating the MOUs. Until 2011, the City always paid the entire
28

1 premium for health insurance for all qualifying retirees and one dependent or spouse, or
 2 surviving spouses.

3 The City Council formally approved the MOUs and they represent binding contracts.²
 4 The City and bargaining units uniformly understood the MOUs ratified by the City Council to
 5 provide lifetime health benefits, and the City repeatedly described the Retiree Health Benefit as a
 6 lifetime benefit. *See Milnes Dec.*, ¶¶ 4, 5, 15, 21. As such, the City’s unilateral decision to
 7 renege on its contractual obligations constitutes violations of Article I, section 10, of the U.S.
 8 Constitution and Article I, section 9 of the California Constitution.

9
 10 **B. The Retirees Have A Vested Property Right to the Retiree Health Benefit**
Protected by the Fourteenth Amendment to the U.S. Constitution and
 11 **Article 1, §7 of the California Constitution**

12 The City’s threatened removal of the Retiree Health Benefit would also violate the
 13 Retirees’ vested property rights to their employment benefits, which are protected under the Due
 14 Process clause of the Fourteenth Amendment to the U.S. Constitution and Article 1, section 7 of
 15 the California Constitution.

16 The U.S. Supreme Court has ruled that “property interests do not arise from the
 17 Constitution but ‘are created and their dimensions are defined by existing rules or understandings
 18 that stem from an independent source such as state law – rules or understandings that secure
 19 certain benefits and that support claims of entitlement to those benefits.’” *Thomas v. City of Los*
 20 *Angeles*, 676 F.Supp. 976, 980 (C.D. Cal. 1987), citing *Board of Regents of State Colleges v.*
 21 *Roth*, 408 U.S. 564, 577 (1972); *see generally Perry v. Sindermann*, 408 U.S. 593, 601 (1972)
 22 (“A person’s interest in a benefit is a ‘property’ interest for due process purposes if there are
 23 such rules or mutually explicit understandings that support his claim of entitlement to the benefit
 24 and that he may invoke a hearing”). In addition, “A property interest in employment can, of
 25 course, be created by ordinance, or by an implied contract. In either case, however, the

26 ² On June 28, 2012, the Retirees submitted a Public Records Act request seeking, among other
 27 things, the City resolutions approving the MOUs at issue, and the following day requested an
 28 expedited response. Declaration of Kathryn Zoglin (“Zoglin Dec.”) at ¶¶ 5, Ex. C, D. On July 9,
 2012, the City advised Ms. Zoglin that it would request 14 additional days to process the request.
Id. at ¶ 6, Ex. E.

1 sufficiency of the claim of entitlement must be decided by reference to state law.” *Bishop v.*
 2 *Wood*, 426 U.S. 341, 344 (1976). The California Supreme Court has noted that “[a] benefit is
 3 deemed ‘vested’ when the employee acquires an irrevocable interest in the benefit.” *REAOC*, 52
 4 Cal.4th at 1189, n. 3.

5 In *Thorning v. Hollister School Dist.*, 11 CalApp.4th 1598, 1610 (1992), a retired school
 6 board member sought a writ of mandate when a new school board reversed the vote by the prior
 7 school board less than one month earlier that continued to provide health care benefits for retired
 8 board members. The Court concluded that the new school board violated the due process rights
 9 of the retired school board members when it refused to pay post-retirement health benefits
 10 because retirees had vested rights to post-retirement health benefits. *Id.* at 1610, citing *Stuart v.*
 11 *Flynn*, 380 F.Supp. 424, 426 (W. D. Pa. 1984) (“[A]cts of the individual members of the
 12 Retirement Board, in preventing payment to be made to the plaintiff of pension benefits which he
 13 accrued over his many years of service in county government constitute a deprivation of his Civil
 14 Rights since as an accrued and vested pension, it would be a property right, the taking of which
 15 would be a denial of Due Process”).

16 Stockton’s City Charter provides that “The City Council shall provide for a retirement
 17 and death benefit plan for officers and employees of the City.” Request for Judicial Notice, Ex.
 18 A [Charter], § 2600.³ Pursuant to that authority, the City Council repeatedly entered into MOUs
 19 and approved the Retiree Health Benefit. These MOUs were the result of negotiations, in which
 20 the City gained concessions in exchange for its promise to provide the lifetime Retiree Health
 21 Benefit; these MOUs are binding contracts under California law. Furthermore, the City
 22 repeatedly sent out letters to the Retirees upon their retirement confirming this obligation, stating
 23 that the Retiree Health Benefit “is a lifetime benefit for both you and your spouse.” The City’s
 24 Charter and City action approving MOUs with healthcare benefits thus created property interests
 25 protected by the Due Process clause of the Fourteenth Amendment to the U.S. Constitution and
 26 Article I, section 7 of the California Constitution.

27 _____
 28 ³ Article XI, section 5, of the California Constitution authorizes charter cities to set the
 compensation of their employees.

1 **C. The City Exceeded its Legal Authority When it Unilaterally Imposed the**
2 **Pendency Plan Rejecting Its Obligations to the Retirees**

3 **1. The City Exceeded Its Authority by Imposing its Pre-Confirmation**
4 **Pendency Plan That Abolishes Constitutionally-Protected Retiree**
5 **Health Benefits**

6 The City grossly exceeded its authority when it unilaterally implemented its pendency
7 plan before the Bankruptcy Court has had the opportunity to evaluate or confirm it as a plan of
8 adjustment pursuant to Bankruptcy Code Section 943. This Court should enjoin the City from
9 implementing this plan, at least as it relates to the Retirees, as a *sub rosa* attempt to circumvent
10 the requirement that a debtor obtain Court confirmation of a plan of reorganization or
11 adjustment.

12 In *In re Braniff Airways, Inc.*, 700 F. 2d 935 (5th Cir. 1983), the Fifth Circuit reversed a
13 sale of assets by Braniff to PSA because the proposed transaction exceeded the “use, sale or
14 lease” of Braniff’s property that was authorized by Bankruptcy Code section 363(b). It
15 identified several aspects of the transaction that were outside of the scope of Bankruptcy Code
16 section 363 and explained “The debtor and the Bankruptcy Court should not be able to short
17 circuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing
18 the terms of the plan *sub rosa* in connection with the sale of assets.” *Id.* at 940. The Fifth Circuit
19 held that the District Court was not authorized to approve the PSA transaction under Bankruptcy
20 Code section 363(b) and “[i]n any future attempts to specify the terms whereby a reorganization
21 plan is to be adopted, the parties and the district court must scale the hurdles erected in Chapter
22 11. *See, e.g.* 11 U.S.C. §1125 (disclosure requirements); §1126 (voting); §1129(a)(7) (best
23 interests of creditors test); §1129(b)(2)(B) (absolute priority rule).” *Braniff*, 700 F.2d at 940.
24 The Fifth Circuit noted that the PSA transaction left little to be reorganized and was “in fact a
25 reorganization.” *Id.*

26 The City’s elimination of Retiree Health Benefits is exactly that: an attempt to
27 circumvent the requirements of Chapter 9 for court approval of a plan of adjustment. The City’s
28 “plan” eliminates the constitutionally-protected contractual rights of the Retirees so as to avoid
compliance with the requirements set forth in Chapter 9 for the approval of a plan of adjustment

1 under section 943 and section 901, incorporating, *inter alia*, § 1125 (disclosure requirements);
2 § 1126(a)-(c); (e)-(g) (voting); and § 1129(b)(2)(B) (absolute priority rule).

3
4 **2. 11 USC § 365 Does Not Apply Because the MOUs at Issue are Not Executory Contracts**

5 The City may argue that its so-called pendency plan is appropriate given that, in a
6 Chapter 9 bankruptcy, 11 U.S.C. section 365 grants “the trustee, subject to court approval” the
7 authority to assume or to reject executory contracts. However, this argument fails for two
8 reasons. First, the MOUs at issue are not executory contracts. Second, it is the City – not the
9 trustee or the Court—that is exercising the authority granted in this section.

10 A contract is executory, and therefore assumable under section 365, only if one party's
11 failure to perform its obligation would excuse the other party's performance. *In re International*
12 *Fibercom, Inc.*, 503 F.3d 933, 941 (9th Cir. 2007) citing *Commercial Union Ins. Co. v. Texscan*
13 *Corp. (In re Texscan Corp.)*, 976 F.2d 1269, 1272 (9th Cir. 1992); *Pac. Express, Inc. v.*
14 *Teknekron Infoswitch Corp. (In re Pac. Express, Inc.)*, 780 F.2d 1482, 1487 (9th Cir. 1986)
15 (quoting V. Countryman, “Executory Contracts in Bankruptcy: Part I,” 57 *Minn. L. Rev.* 439,
16 460 (1973); see *Sharon Steel Corp. v. National Fuel Gas Distribt. Corp.*, 872 F.2d 36, 39 (3rd Cir.
17 1989) (executory contracts are “contract[s] under which the obligation of both the bankrupt and
18 the other party to the contract are so far unperformed that the failure of either to complete
19 performance would constitute a material breach excusing performance of the other”). See *In re*
20 *City of Vallejo*, 403 BR 72, 77 (E.D. Cal. 2009) (“Unexpired collective bargaining agreements
21 are executory contracts subject to rejection under section 365”).

22 When evaluating whether a contract is executory, “We must first evaluate the obligations
23 of both parties and determine whether they are material obligations.” *In re Texscan Corporation*,
24 976 F.2d 1269, 1272 (9th Cir. 1991); *In re Wegner*, 839 F.2d 533, 536 (9th Cir. 1988). The court
25 then looks to the date the bankruptcy petition was filed and determines if “either party's failure to
26 perform its remaining obligations would give rise to a material breach and excuse performance.”
27 *In re Wegner*, 839 F.2d at 536. A contract is not executory if one of the parties has “substantially
28

1 performed” its side of the bargain. The court may look to state law to see if the outstanding
2 obligation constitutes a material breach.

3 Here, the Retirees have completely performed their obligations under the bargain: they
4 have provided the City their labor and have retired from employment. While they were actively
5 employed, they gave up pay raises and other benefits in exchange for the Retiree Health Benefit,
6 because the latter was significant to them. It is only the City that has not substantially performed
7 its material obligations. The City has yet to provide the Retirees the full benefit of the bargains
8 to which the parties agreed in MOUs in effect at the time of retirement. As a result, 11 U.S.C.
9 section 365 provides no basis for the City to shirk its legal responsibilities or to obtain relief in
10 Bankruptcy Court.

11
12 **3. The City Has Not Complied with the Standards Set Forth in *Sonoma*
*County and Bildisco***

13 Even if the Court were to find that section 365 applies and the MOUs are executory
14 contracts, the City’s unilateral rejection of the MOUs is not justified and fails to comply with its
15 legal obligations under the Bankruptcy Code because the City did not first consider alternatives.

16 *In re County of Orange*, 179 B.R. 177 (C.D. Cal. 1995) is instructive. The County of
17 Orange (the “County”) filed for Chapter 9 bankruptcy and, about two weeks later, adopted a
18 series of cost reduction resolutions to address a severe shortfall in its general fund. *In re County*
19 *of Orange*, 179 B.R. at 179. Through these resolutions, the County unilaterally suspended
20 certain provisions of its employee agreements, which effectively eliminated employee security
21 and grievance rights. *Id.* at 179-80. The Bankruptcy Court granted a temporary restraining order
22 filed by a coalition of ten County employee organizations (“Coalition”) and enjoined the County
23 from treating any of the employees as permanently laid off. *Id.* at 185.

24 The Coalition argued that the County was required to satisfy a four-part test set forth by
25 the California Supreme Court in *Sonoma County Organization of Public Employees v. County of*
26 *Sonoma*, 23 Cal.3d 296 (1979) (“*Sonoma I*”) for determining whether emergency legislation
27 impairing contracts is constitutionally permissible: (1) a declared emergency must be based on
28 an adequate factual foundation; (2) the agency’s action must be designed to protect a basic social

1 interest and not benefit a particular individual; (3) the law must be appropriate for the emergency
2 and obligation; and (4) the agency decision must be temporary, limited to the immediate
3 exigency that caused the action. *In re County of Orange*, 179 B.R. 177,184, citing *Sonoma I*,26
4 Cal.3d at 305-06.

5 The Bankruptcy Court concluded that “any unilateral action by a municipality to impair a
6 contract with its employees must satisfy these factors if not as a legal matter, certainly from an
7 equitable standpoint.” *In re County of Orange*, 179 B.R. at 184. It found that “the emergency
8 did not necessitate the complete abrogation of seniority and grievance procedures without first
9 attempting to negotiate acceptable changes.” *Id.* The Court concluded that Orange County had
10 not established that it could not achieve its fiscal and reorganizational goals absent unilateral
11 action.

12 The Court in *In re County of Orange* recognized that the Supreme Court case of *N.L.R.B.*
13 *v. Bildisco and Bildisco*, 465 U.S. 513 (1984), which involved a Chapter 11 bankruptcy, applies
14 to Chapter 9 bankruptcies as well, but concluded that *Bildisco* did not grant a municipality in
15 bankruptcy the unilateral and limitless authority to breach collective bargaining agreements with
16 its unions. *See In re County of Orange*, 179 B.R. at 182-83.

17 In *Bildisco*, the Court explained that collective bargaining agreements should be rejected
18 in bankruptcy cases under section 365(a) of the Bankruptcy Code only where “the debtor can
19 show that the collective-bargaining agreement burdens the estate, and that after careful scrutiny,
20 the equities balance in favor of rejecting the labor contract.” *Bildisco*, 465 U.S. at 526.
21 Furthermore, the Bankruptcy Court should ensure that reasonable efforts have been made by the
22 debtor to negotiate voluntary modifications and that such efforts are not likely to produce
23 satisfactory results. *Id.* It should weigh both the degree and quality of hardships faced by the
24 parties in coming to its decision. *Id.* at 527. The Court affirmed the obligation of a debtor-in-
25 possession to bargain in good faith over the terms and conditions of a new contract. *Id.* at 534.

26 The same principles apply here, where Retirees are entitled to due process protections
27 concerning their vested health benefits, and where the City is attempting to permanently
28 eliminate those benefits. Even if the Court were to find that section 365 applies and the MOUs

1 are executory contracts, the City has not and cannot meet the *Sonoma I* four-prong test. Nor can
 2 it show that the equities balance in its favor, or that further negotiations may not yield improved
 3 results under *Bildisco*. In sum, the City has prematurely imposed this measure of last resort.

4 **III. RETIREES WILL SUFFER IRREPARABLE HARM IF PRELIMINARY RELIEF**
 5 **IS NOT GRANTED**

6 The Retirees will suffer irreparable harm in the absence of preliminary relief. Courts
 7 have confirmed that a deprivation of public medical benefits constitutes irreparable harm. In
 8 *V.L. v. Wagner*, 669 F.Supp.2d 1106, 1121 (N.D. Cal. 2009), the Court granted a request for a
 9 preliminary injunction where the State of California sought to implement a change in the law that
 10 would allow it to reduce or terminate In-Home Supportive Services (IHSS) to low-income
 11 elderly and disabled persons. The *Wagner* Court explained that “Numerous federal courts have
 12 recognized that the reduction or elimination of public medical benefits irreparably harms the
 13 participants in the programs being cut.” *Id.* at 1121; accord *Beltran v. Myers*, 677 F.2d 1317,
 14 1322 (9th Cir. 1982) (irreparable injury shown where enforcement of “California rule” which
 15 could make the petitioners ineligible for MediCal benefits and thus “may deny them [petitioners]
 16 needed medical care”).

17 The petitioners in *Wagner* submitted evidence that they would suffer immediate and
 18 irreparable harm without injunctive relief, since without the services, some “may neglect to take
 19 vital medications or take them improperly,” others would be “unable to leave their house to
 20 obtain food, medication and other necessities,” some would not be able to go to doctor’s
 21 appointments and thus “go without essential care, and some might “suffer injury to the mental
 22 and physical health, including a shortened life, and even death . . .” *Wagner*, 669 F.Supp.2d at
 23 1122; see also *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 651-52, 657 (6th Cir. 1996) (court
 24 granted preliminary injunction against former employer from modifying their retiree health plan
 25 to impose a monthly premium contribution, increased co-payments and deductibles, and a
 26 lifetime benefit cap, and cited affidavits from the retirees which set forth the financial hardship
 27 they would suffer even with “relatively small increases in their expenses without extreme
 28 hardship”).

1 As detailed in the declarations, if the City’s plan is allowed to proceed, many of the
 2 Retirees who have limited incomes would literally have to choose between buying food or
 3 paying medical insurance premiums. *See* Hernandez Dec. at ¶ 5, 6; and Seibel Dec. at ¶ 7.
 4 These Retirees would not be able to afford to pay the premiums and it is unlikely that they would
 5 be able to find coverage on the open market due to their pre-existing health conditions. *See*
 6 Fernandez Dec. at ¶ 8; Sloan Dec. at ¶ 10; and Hogan Dec. at ¶ 7. A number further suffer from
 7 life threatening conditions that require consistent monitoring and expensive medications. *See*
 8 Autrand Dec., Fernandez Dec., Hernandez Dec., Hogan Dec., Seibel Dec., C. Sloan Dec., Tellyer
 9 Dec., and Tubbs Dec.; *see* discussion in Section III.

10 If the plan is not enjoined, the threat of injury to many Retirees is “certain and great.”
 11 Moreover, an ultimate award of monetary damages would not cure the injury caused by even a
 12 temporary loss of health care, and there is no guarantee that Retirees could obtain alternative
 13 health insurance, either now or permanently.

14 **IV. THE BALANCE OF EQUITIES TIP IN FAVOR OF RETIREES**

15 The balance of equities tips sharply in favor of the Retirees in terms of the impact on the
 16 Retirees and the City, and thus dictates in favor of granting a temporary restraining order and
 17 preliminary injunction. In *Independent Living Center v. Maxwell-Jolly*, 572 F.3d 644 (9th Cir.
 18 2009), plaintiffs (a group of pharmacies, health care providers, senior citizens’ groups, and
 19 beneficiaries of Medi-Cal) sought a preliminary injunction to prevent California from
 20 implementing state legislation that would reduce payments to some medical services providers
 21 under Medi-Cal by ten percent. In weighing the relative equities and the public interest, the
 22 Ninth Circuit acknowledged “the severity of the fiscal challenges facing the State of California.”
 23 *Id.* at 659. However, it concluded that “A budget crisis does not excuse ongoing violations of
 24 federal law, particularly when there are no adequate remedies available other than an injunction.”
 25 *Id.* (citations omitted). It noted: “there is a robust public interest in safeguarding access to
 26 health care for those eligible for Medicaid. . . .” *Id.*

27 In *Wagner* (discussed above), the Court granted a preliminary injunction to prevent the
 28 denial of state medical benefits, explaining that the “State Defendants’ sole injury will be the

1 financial costs associated with continuing to provide services under the status quo.” *V.L. v.*
 2 *Wagner*, 669 F.Supp.2d at 1122.

3 The City undoubtedly is facing a budget crisis. However, that situation does not justify
 4 violating the constitutional rights of Retirees, who are entitled to and need vital medical
 5 insurance and care. Without medical insurance, they would likely need other government
 6 services, such as emergency room treatment in public hospitals. The equities tilt strongly in
 7 favor of the Retirees.

8 **V. ISSUANCE OF INJUNCTION IS IN PUBLIC INTEREST**

9 The public interest also weighs in favor of the Retirees. While the plaintiffs acknowledge
 10 that it is in the public interest for municipalities to be solvent and address their financial woes,
 11 the facts weigh heavily in favor of issuing the preliminary injunction where: “It would be tragic,
 12 not only from the standpoint of the individuals involved but also from the standpoint of society,
 13 were poor, elderly, disabled people to be wrongfully deprived of essential benefits for any period
 14 of time.” *V.L. v. Wagner*, 669 F.Supp.2d 1106, 1122, quoting *Lopez v. Heckler*, 713 F.2d 1432,
 15 1437 (9th Cir. 1983); *see generally Independent Living Center v. Maxwell-Jolly*, 572 F.3d 644
 16 at 659 (“there is a robust public interest in safeguarding access to health care for those eligible
 17 for Medicaid . . .”); Cal. Welf. & Inst’n Code § 15600 (Legislature’s recognition that California
 18 has a “responsibility to protect” the elderly and dependent adults, and that “economic instability
 19 of the family” constitutes one of the factors that contributes to abuse, neglect, or abandonment of
 20 elders and dependent adults”). The public interest is not served if elderly members of society
 21 who have served the public are denied access to essential medical care, or to require those of
 22 limited means to choose between buying food or paying insurance premiums.

23 **VI. THE COURT SHOULD NOT REQUIRE THE RETIREES TO POST A BOND**

24 When a court has issued a temporary restraining order, it has the discretion to determine
 25 the amount of security required, *if any*. F. R. Civ. Proc. 65(c); *Barahona-Gomez v. Reno*, 167
 26 F.3d 1228, 1237 (9th Cir. 1999); *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). A
 27 court may dispense with the filing of a bond when it concludes there is no realistic likelihood of
 28 harm to the defendant from enjoining his or her conduct. *Id.* Here, Retirees should not be

1 required to post a bond because, as discussed above, the City has a contractual obligation to
 2 provide medical benefits to Retirees and there is no legal basis for its action. Moreover,
 3 Retirees' right to receive retiree medical benefits constitutes a constitutionally-protected vested
 4 property right.

5 The harm to the City would be that it would be required to continue to pay the healthcare
 6 costs for the Retirees, which is something it is contractually obliged to do. As discussed above
 7 in Section II.C, it is premature and not legally authorized for the City to implement its "pendency
 8 plan" before this Court has had the opportunity to review it, much less approve it.

9 The Retirees request that this Court exercise its discretion and decline to require them to
 10 post a bond given their financial status, as set forth above and in the Declarations submitted in
 11 support of this Application. *See People of State of Cal. Ex rel. Van De Kamp v. Tahoe Regional*
 12 *Planning Agency*, 766 F.2d 1319, 1325, ("The court has discretion to dispense with the security
 13 requirement, or to request mere nominal security, where requiring security would effectively
 14 deny access to judicial review"); *Save Strawberry Canyon v. Department of Energy*, 613
 15 F.Supp.2d 1177, 1191 (N.D. Cal. 2009) (citizens' group challenging a large development project
 16 was not required to provide security as a condition for a preliminary injunction because to do so
 17 "would effectively deny access to judicial review" given that plaintiff "is a small non-profit
 18 organization and has indicated that it would have difficulty posting the bond").

19 If the Court determines that Retirees should post a bond, it should be a nominal bond,
 20 given that the Retirees are of "unremarkable financial means." *See Barahona-Gomez v. Reno*,
 21 *supra*, 167 F.3d at 1237 (district court did not abuse discretion in requiring only nominal bond
 22 amount for preliminary injunction which stayed deportations of illegal aliens, where it was noted
 23 that the vast majority of aliens were very poor). As set forth in the declarations filed in support
 24 of this Application, many of the Retirees are of advanced age, on limited incomes, and suffer
 25 from various health problems. If the Court finds that a bond is required, the Retirees request that
 the Court order a nominal bond of no more than \$1,000. *See id.*

26 **VII. IN THE ALTERNATIVE, THE COURT SHOULD GRANT THE RETIREES
 RELIEF FROM STAY**

27 The Court has the authority to enjoin the City's unilateral actions. *See In re County of*
 28 *Orange*, 179 B.R. at 184-85 (Court enjoined county that had declared Chapter 9 bankruptcy from

1 imposing unilateral changes to collective bargaining agreements because the situation did not
 2 justify such extreme measures). However, in the event that the Court finds that it cannot
 3 consider Retirees' motion or grant the requested relief, Retirees request relief from stay so that
 4 they can pursue a TRO in District Court. Good cause exists to grant Retirees' relief from the
 5 automatic stay to enforce their contractual and constitutional rights to vested lifetime health
 6 benefits. *See* 11 U.S.C. § 362(d)(1); *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169-70 (9th Cir.
 7 1990) (Bankruptcy court abused its discretion by not entirely lifting stay. Factors supporting
 8 abstention include, *inter alia*, the beneficial impact that resolution of the class claims in state
 9 court will have on efficient administration of the estate, the extent to which state law issues
 10 predominate over bankruptcy issues, the likelihood that the instigation of the proceeding in
 11 bankruptcy court is forum shopping to avoid imminent defeat in state court, the right to a jury
 12 trial, and the non-debtor status of the homeowner plaintiffs.)

13 Bankruptcy Code section 362(d) provides the Court with the discretion to grant Retirees
 14 relief from the automatic stay "for cause." *Id.* The City bears the burden of proving lack of
 15 cause. *In re Gauvin*, 24 B.R. 578, 580 (9th Cir. BAP 1982). No bright-line rule exists for the
 16 Court to apply in determining whether cause exists under Section 362(d). Rather, courts make
 17 this determination on a case-by-case basis. The Court must balance the needs and interests of
 18 creditors restrained by the automatic stay against the interests of the debtor in continuing the stay
 19 in effect. *See generally In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990). Section
 20 362(d)(1) is largely dependent on the context of each case. Courts often consider factors such as
 21 whether granting relief will interfere with the bankruptcy case; the complexity of the issues;
 22 judicial economy and efficiency; and prejudice to the parties. *See generally Mac Donald v.*
 23 *MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985); *Universal Life Church, Inc. v. United States (In*
 24 *re Universal Life Church, Inc.)*, 127 B.R. 453, 455 (E.D. Cal. 1991); *GSB I, LLC v. A Partners,*
 25 *LLC (In re A Partners, LLC)*, 344 B.R. 114, 127 (Bankr. E.D. Cal. 2006).

26 Here, a stay would not interrupt bankruptcy proceedings. The litigation involves both
 27 state and federal law. The Retirees' rights are fully vested and matured and cannot be altered
 28 except through a confirmed plan of adjustment, if even then. Further, allowing the City to
 unilaterally implement the pendency plan before confirmation improperly gives the City the

1 benefits of its plan without meeting the confirmation requirements and will cause irreparable
2 harm.

3 **CONCLUSION**

4 For the reasons set forth above, this Court issue a temporary restraining order and
5 preliminary injunction preventing the City from implementing the parts of its “pendency plan”
6 that relate to the Retiree Health Benefit. More specifically, the Retirees ask this Court: (1) to
7 order the City of Stockton to refrain from implementing any aspects of its “pendency plan” that
8 relate to the health care benefits of retirees of the City of Stockton; (2) to order the City of
9 Stockton to continue paying and providing health care benefits for the retirees of the City of
10 Stockton; (3) to waive any bond requirements; and (4) in the alternative, to grant relief from stay.

11
12 Dated: July 10, 2012

Respectfully Submitted,

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14
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26
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28