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 12 Themselves and Others Similarly Situated

13 **UNITED STATES BANKRUPTCY COURT**  
 14 **EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION**

15 In re:  
 16 CITY OF STOCKTON, CALIFORNIA,  
 Debtor.

Case No. 12-32118  
 Chapter 9

17 ASSOCIATION OF RETIRED EMPLOYEES  
 18 OF THE CITY OF STOCKTON, a nonprofit  
 19 California corporation, SHELLEY GREEN,  
 20 PATRICIA HERNANDEZ, REED HOGAN,  
 21 GLENN E. MATTHEWS, PATRICK L.  
 22 SAMSELL, ALFRED J. SIEBEL, BRENDA  
 23 JO TUBBS, TERI WILLIAMS, on Behalf of  
 24 Themselves and Others Similarly Situated,

Adv. No. 12-02302  
 SUPPLEMENTAL BRIEF IN SUPPORT  
 OF APPLICATION FOR TEMPORARY  
 RESTRAINING ORDER AND  
 PRELIMINARY INJUNCTION OR IN  
 THE ALTERNATIVE RELIEF FROM  
 STAY

25 Plaintiffs,  
 26 vs.  
 27 CITY OF STOCKTON, CALIFORNIA,  
 28 Defendant.

Date: July 23, 2012  
 Time: 1:30 p.m.  
 Courtroom: 35  
 Judge: Hon. Christopher Klein

**INTRODUCTION**

1  
2 Plaintiff Retirees ask this Court to maintain the status quo and to enjoin the City, through  
3 its “pendency plan,” from renegeing on its obligation to provide vested and constitutionally-  
4 protected health benefits. The City unilaterally seeks to impose this plan – with essentially no  
5 notice, without due process, and without Bankruptcy Court approval – an action that has a dire  
6 impact on the Retirees.<sup>1</sup> The Retirees do not ask the Court to invade the City’s governmental  
7 powers (e.g., its powers to regulate and its police powers). Nor do the Retirees ask the Court to  
8 commit the City, as an employer, to allocate its resources in a particular manner. The City long  
9 ago made this commitment, promising its employees that in return for their labor they would be  
10 entitled to certain post-employment benefits.

11 Rather, the Complaint and the Application for Temporary Restraining Order and  
12 Preliminary Injunction seek to protect the Retirees’ existing rights to their benefits and due  
13 process, as well as the Court’s authority with regard to plan confirmation, given that the City’s  
14 action exceeds its legal authority. The relief Retirees seek therefore does not constitute an  
15 “interference” with the City’s government powers and is not prohibited by Section 904.

16 However, if the Court determines that it does not have jurisdiction under Section 904, the  
17 proper outcome of this application is not dismissal, it is granting the Retirees alternative request  
18 for relief from stay. This will permit the Retirees to seek relief from an appropriate court. To  
19 rule otherwise would be to deprive the Retirees of any remedy for the destruction of their vested  
20 rights, which undeniably leaves many retirees in life-threatening circumstances.

21 As set forth in the Retirees’ opening papers, time is of the essence. The Retirees are  
22 entitled to access to some forum in which they can seek immediate relief.

23  
24  
25  
26  
27 <sup>1</sup> The Retirees do not concede that the City or the Court could impose the changes to their  
benefits in the “pendency plan” through a plan of adjustment.

**ARGUMENT**

**I. THE PLAIN LANGUAGE OF SECTION 904 PERMITS THE BANKRUPTCY COURT TO GRANT THE RELIEF REQUESTED IN THE COMPLAINT**

As one Bankruptcy Court explains, “The purpose of reorganization under Chapter 9 is to allow municipalities created by state law to adjust their debts through a plan voted on by creditors and approved by the Bankruptcy Court.” *In re Mount Carbon Metro. Dist.*, 242 B.R. 18, 32 (Bankr. D. Colo. 1999). “[C]hapter 9 was created to give courts only enough jurisdiction to provide meaningful assistance to municipalities that require it, not to address the policy matters that such municipalities control.” *In re Addison Comm. Hosp. Auth.*, 175 B.R. 646, 649 (Bankr. E.D. Mich. 1994). In light of these considerations, Section 904 provides:

Notwithstanding any power of the court, unless the debtor consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with –

- (1) any of the political or governmental powers of the debtor;
- (2) any of the property or revenues of the debtor; or
- (3) the debtor’s use or enjoyment of any income-producing property.

11 U.S.C. § 904. Section 904 does not grant unlimited protections or prerogatives to the City. Had Congress intended to protect municipalities from any and all court orders regarding how to allocate its resources, it could have done so. Instead, Congress drafted Section 904 to reach court orders only when they both pertain to certain specified government powers and “interfere” with those powers.

Plaintiffs’ request for injunctive relief does not involve or interfere with the government powers specified in Section 904. The Retirees do not ask the Court to order the City to engage in particular governmental activities, to elevate one City function over another, or to enact any particular legislation. Instead, the Retirees seek a temporary restraining order and preliminary injunction, or in the alternative the granting of relief from stay, to prevent the City – as an employer, not as a governmental regulator – from implementing the pendency plan as it applies to the Retirees’ Health Benefit. The relief requested by the Retirees would not affect the City’s

1 “use or enjoyment of income-producing property” or “any of the political or governmental  
2 powers of the debtor.”

3 The only part of Section 904 that could potentially apply to the relief requested is  
4 Subsection (2), which concerns “the property or revenues of the debtor.” The City will likely  
5 assert that this Court does not have jurisdiction under Section 904 to rewrite the City’s budget as  
6 set forth in the pendency plan. But the relief requested by the Retirees does not directly affect  
7 the property or revenues of the City. The amount and sources of revenues remain the same. Nor  
8 does the Retirees’ request have an indirect impact on City revenues that would invoke Section  
9 904. As detailed in their Application, the City agreed long ago to provide the Retiree Health  
10 Benefit and consistently recognized the status of the Benefit. The City, after having already  
11 exercised its political discretion to provide the Benefit and accepted the full performance by the  
12 Retirees of their services to the City to earn the Benefit, now seeks to abrogate the Benefit  
13 unilaterally, without due process, and without complying with Bankruptcy Code procedures.  
14 The Retirees simply seek an order to preserve the status quo by prohibiting the City from  
15 unilaterally modifying Plaintiffs’ vested and constitutionally-protected rights to their earned  
16 benefits. The City should not be able to violate these rights, either in or out of bankruptcy.

17 Indeed, the Bankruptcy Court granted injunctive relief under similar circumstances in *In*  
18 *re County of Orange*, 179 B.R. 177, 184 (C.D. Cal. 1995), where the court enjoined a Chapter 9  
19 debtor from treating employees as permanently laid off where the debtor suspended certain  
20 provisions of its employee agreements without first satisfying state law requirements for  
21 modifying its obligations in a fiscal emergency. The Court stated: “In my view, any unilateral  
22 action by a municipality to impair a contract with its employees must satisfy these factors [set  
23 forth in *Sonoma County Organization of Employees v. County of Sonoma*, 23 Cal.3d 296 (1979)],  
24 if not as a legal matter, certainly from an equitable standpoint.” *Id.* Although the employees  
25 were treated as “temporarily laid off,” the Court entered its order prohibiting the debtor from  
26 permanently laying off the employees to require compliance with state law notwithstanding the  
27 indirect economic effects of that decision. Moreover, if Section 904 were interpreted to include

1 any indirect impact on a Chapter 9 debtor's funds regardless of whether the debtor had already  
 2 exercised its governmental discretion in creating its obligations, then Section 904 would  
 3 effectively apply to virtually everything a Chapter 9 debtor has or will do. That result would  
 4 render the rest of Section 904, and the rest of Chapter 9, superfluous.

5 In sum, the relief sought by the Plaintiffs is not prohibited by Section 904. The  
 6 Complaint and the relief requested do not on their face involve government powers and do not  
 7 "interfere" with the City's discretion with regard to the government powers. Further, since  
 8 implementation of the plan as it relates to the Retirees itself violates the U.S. and California  
 9 Constitutions (and the Bankruptcy Code), it cannot be seen as an exercise of legitimate  
 10 government powers. This Court has the authority to grant injunctive relief now.

11 **II. SECTION 904 DOES NOT PERMIT THE CITY TO IMPOSE A PLAN OF**  
 12 **ADJUSTMENT WITHOUT MEETING THE FUNDAMENTAL**  
 13 **REQUIREMENTS OF DUE PROCESS AND SECTION 943**

14 While Section 904 is a shield to protect the constitutionality of a Chapter 9 bankruptcy  
 15 proceeding, it is not a sword to impose a plan of adjustment on creditors without the due process  
 16 accorded under Section 943. As one Bankruptcy Court recently explained, Section 904 does not  
 17 entitle "a municipal debtor to bankruptcy relief on standards less than or different from those the  
 18 Bankruptcy Code establishes." *In re City of Cent. Falls*, 2011 Bankr. LEXIS 5432, \*15 (Bankr.  
 19 D.R.I. Nov. 2, 2011) (holding that the standard of review for the rejection of an executory  
 20 contract in a chapter 9 bankruptcy case is the same as in other chapters notwithstanding sections  
 21 903 and 904). Further, the Court unquestionably has the power to administer and to oversee the  
 22 City's plan confirmation process. *See Mount Carbon*, 242 B.R. at 33 (discussing the role of the  
 23 Bankruptcy Court supervising the reorganization process and deciding whether to approve or  
 24 disapprove a municipality's proposed plan in Chapter 9).

25 Here, the Court has not yet entered an order for relief. Yet, the City's pendency plan,  
 26 which it announced even before it filed for Chapter 9 bankruptcy, is effectively a plan of  
 27 adjustment that unilaterally and irrevocably alters pre-petition, constitutionally-vested rights,  
 28 namely the Retiree Health Benefit. The City has done so without showing that it has met the

1 confirmation standards of Section 943 or allowing the Retirees the opportunity to present their  
2 objections as to why the City and the Court cannot alter their vested rights to the Retiree Health  
3 Benefit under a Chapter 9 plan. Indeed, the Retirees do not concede that their rights to the  
4 Retirement Health Benefit can be altered through a plan of adjustment. However, the City's  
5 "pendency plan," which is not really a bankruptcy plan and has not been voted upon or  
6 confirmed by the Court, reaches that result without due process to the Retirees.

7       According to the pendency plan, the City terminates Retiree Health Benefit premium  
8 payments as of July 1, 2012, for all retirees employed with the City for fewer than ten years and  
9 provides only a limited stipend for health insurance premiums for all other retirees, with all  
10 premium payments for health insurance benefits to be terminated completely as of July 1, 2013.  
11 In a letter dated June 27, 2012, Retirees were given until July 15, 2012 -- less than 20 days notice  
12 --to make an irrevocable decision whether to rely upon the unsubsidized or minimally subsidized  
13 City health plan, remove dependents from the plan, or cancel the plan. If a retiree does not pay  
14 the balance of the premium that will no longer be paid by the City, that retiree's medical  
15 coverage will be cancelled retroactive to July 1, 2012.

16       Thus, unless the Court exercises jurisdiction and issues an injunction retroactive to July  
17 1, 2012, the pendency plan may irrevocably alter the pre-petition rights of the Retirees to the  
18 Retiree Health Benefit, which the Plaintiffs contend cannot be done even with a confirmed plan  
19 of adjustment. The vested and constitutionally-protected rights of the Plaintiffs to their benefits,  
20 the fundamental requirements of due process, and the Court's authority to supervise the plan  
21 confirmation process are all improperly abrogated by the City's actions.

22       By filing for relief under Chapter 9, the City assumed the obligation to adjust its pre-  
23 petition debts only through a confirmed plan of adjustment voted on by creditors and approved  
24 by the Bankruptcy Court pursuant to Section 943 and subject to the limitations on the relief that  
25 the City can obtain through a plan. *See Mount Carbon*, 242 B.R. at 32. The City's unilateral  
26 implementation of the pendency plan irrevocably adjusts the Retiree Health Benefit before an  
27 order for relief has even been entered and without the City making any showing equivalent to

1 that required under Section 943. Section 904 does not trump the protections provided by Section  
 2 943, the requirements for due process, or the fundamental protections for the Retiree Health  
 3 Benefit, which the Retirees contend cannot be altered by the City or the Court through a plan of  
 4 adjustment. This Court can and should grant the TRO and preliminary injunction.

5  
 6 **III. RETIREES REQUEST THAT THE COURT GRANT RELIEF FROM STAY IF  
 IT DOES NOT HAVE JURISDICTION UNDER SECTION 904**

7 If this Court determines that it does not have jurisdiction under Section 904, then the  
 8 Retirees request that this Court grant their request for relief from stay so that they may seek  
 9 immediate relief from the appropriate court.<sup>2</sup> See 11 U.S.C. § 362. Good cause for relief from  
 10 stay exists, so that the Retirees may seek to enforce their constitutionally-vested property and  
 11 due process rights to the Retiree Healthcare Benefit. As set forth in the Declarations submitted  
 12 in support of the Application, many Retirees live on limited fixed incomes and suffer from  
 13 significant medical conditions that require regular and immediate medical attention. Needless to  
 14 say, they depend on the Retiree Health Benefit. For some, their very lives depend on it.

15 The equities lie firmly on the side of the Retirees. As set forth in the original  
 16 Application, the Retirees meet all the requirements for the issuance of injunctive relief. They  
 17 will be severely prejudiced and suffer irreparable harm if relief from stay is not granted, so that  
 18 they can seek relief from some court.

19 **CONCLUSION**

20 For the reasons explained above, this Court can award the relief sought in the Complaint  
 21 without the consent of the City, notwithstanding Section 904. Accordingly, the Complaint  
 22 should not be dismissed and the Court should rule on the merits of the Plaintiffs' Application for  
 23 a Temporary Restraining Order and Preliminary Injunction. Alternatively, if this Court believes  
 24

25  
 26 <sup>2</sup> In an abundance of caution, Plaintiff Retirees are serving a notice of their request for  
 27 relief from stay in the main bankruptcy case (case number 12-32118).

1 its hands are tied by section 904, the Retirees ask that the Court lift the automatic stay to permit  
2 them to seek a temporary restraining order in District Court or an appropriate state court.

3  
4 Dated: July 18, 2012

Respectfully Submitted,

5 MOSCONE EMBLIDGE & SATER LLP

6  
7 By:  /s/ G. Scott Emblidge  
8 G. Scott Emblidge

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10 Retired Employees of the City of  
11 Stockton, Shelley Green, Patricia  
12 Hernandez, Reed Hogan, Glenn E.  
13 Matthews, Patrick L. Samsell, Alfred J.  
14 Siebel, Brenda Jo Tubbs, and Teri  
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