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 City of Stockton
 8

9 UNITED STATES BANKRUPTCY COURT
 10 EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION
 12

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

Case No. 2012-32118
 D.C. No. OHS-13
 Chapter 9

**MOTION FOR ORDER APPROVING
 STIPULATION FOR ORDER
 PURSUANT TO 11 U.S.C. § 365(d)(4)
 FURTHER EXTENDING TIME
 WITHIN WHICH TO ASSUME OR
 REJECT 2009 LEASE AGREEMENT**

Date: October 28, 2013
 Time: 10:00 a.m.
 Dept: Courtroom 35
 Judge: Hon. Christopher M. Klein

22 Pursuant to § 365(d)(4) of title 11 of the United States Code (the “Bankruptcy Code”)¹,
 23 the City of Stockton, California (the “City”), the debtor in the above-captioned case, moves (by
 24 this “Motion”) for entry of an order approving the stipulation attached hereto as Exhibit A
 25 (“Stipulation”), by and between the City, Franklin California High Yield Municipal Fund and
 26

27 ¹ All references to code sections are to the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, unless otherwise
 28 specified.

1 Franklin High Yield Tax-Free Income Fund (collectively “Franklin Advisers, Inc.” or “Franklin”)
2 and Wells Fargo Bank National Association (“Wells Fargo”) as Indenture Trustee (the City,
3 Franklin and Wells Fargo are herein collectively, the “Stipulating Parties”), the parties in interest
4 to a lease/leaseback transaction, extending by 120 days the time under § 365(d)(4)(B)(ii) within
5 which the City must assume or reject an unexpired lease agreement relating to nonresidential real
6 property .

7 **JURISDICTION AND VENUE**

8 The Court has jurisdiction over this motion and the relief requested pursuant to 28 U.S.C.
9 §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157. Venue for the
10 motion is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

11 **BACKGROUND**

12 The opinion regarding the City’s eligibility for chapter 9 relief demonstrates that the Court
13 is intimately familiar with the complex facts of the City’s bankruptcy case. *See In re City of*
14 *Stockton, Cal.*, 493 B.R. 772 (Bankr. E.D. Cal. 2013). Accordingly, the City has omitted the
15 customary background description of the events leading to and following the City’s petition for
16 relief and instead focuses this Motion on the background relevant to the City’s unexpired leases
17 of nonresidential real property.

18 Prior to filing its petition for relief on June 28, 2012, the City had entered into six
19 transactions involving leases/leaseback financings to fund various public capital improvements.
20 In each transaction, the City entered into a number of lease agreements relating to nonresidential
21 real property that requires the City to pay rent for the use and occupancy of the subject real
22 property.² One such agreement, which relates to Franklin, is described in the following chart,
23 although it should be noted that unlike all other such transactions involving the City, the Franklin
24 agreement is not covered by bond insurance; all such bonds are owned by Franklin.

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27 ² Although described as lease transactions in the relevant documents, it could be argued that certain of these
28 transactions should be classified as secured loan transactions. Such transactions are included in this motion only in
an abundance of caution in the event that such transactions are classified as true leases. As set forth herein, the
Stipulating Parties reserve all rights with respect to these issues.

Lease Agreement	Real Party or Parties in Interest	Indenture Trustee
Lease Agreement, dated as of September 1, 2009, by and between the Stockton Public Financing Authority (the "Authority"), as lessor, and the City, as lessee, relating to Stockton Public Financing Authority Lease Revenue Bonds, 2009 Series A (Capital Improvement Projects)("2009 Lease Agreement")	Franklin	Wells Fargo

While each of the City's various lease agreements³ differs from the others in some respects, the various financings and their leases share the same fundamental structure: To accomplish each transaction, the City leased nonresidential real property to either the Authority or to the Redevelopment Agency of the City of Stockton (the "Agency") (each a "PFA"), and the PFA subleased the property back to the City. The PFA then assigned its right to receive rental payments (along with certain other rights relevant to the enforcement of remedies) under the applicable lease agreement to a trustee. Finally, the PFA issued bonds, or the trustee issued certificates of participation ("COPs"), and transferred the proceeds to the City for expenditure on capital improvements.

Payment of the principal of and interest on the bonds and COPs is made through the applicable trustee, pursuant to, inter alia, the terms of the related indenture or trust agreement, from the proceeds of rental payments received from the City pursuant to the terms of the applicable lease agreement and related assignment.⁴

Pursuant to § 365(d)(4)(A), which is incorporated into chapter 9 cases by § 901(a), the City was initially required to decide whether to assume or reject its unexpired leases of nonresidential property within 120 days of the entry of the order for relief. The Court's entry of its order for relief on April 1, 2013 [Dkt. No. 843] triggered the 120-day period, giving the City until July 30, 2013, to assume or reject its unexpired leases of nonresidential real property.

³ Copies of the relevant documents were attached as exhibits to the Declaration Of Vanessa Burke In Support Of City Of Stockton's Motion For Order Pursuant To 11 U.S.C. § 365(d)(4) Extending Time Within Which The City Must Assume Or Reject Unexpired Leases Of Nonresidential Real Property [Dkt. Nos. 984-87].

⁴ The descriptions of the transaction structure are included in this Motion for summary purposes only. In the event of any inconsistency between such descriptions and the relevant underlying documents, the underlying documents shall control.

1 Section 365(d)(4)(B) allows bankruptcy courts to extend the initial 120-day period, in the first
2 instance upon a motion for cause brought by the debtor to extend the deadline by 90 days, and in
3 all subsequent instances upon the prior written consent of the respective lessors.

4 On July 5, 2013, the City moved, by its Revised And Amended Motion For Order
5 Pursuant To 11 U.S.C. § 365(d)(4) Extending Time Within Which The City Must Assume Or
6 Reject Unexpired Leases Of Nonresidential Real Property [Dkt. No. 993] (“For Cause Extension
7 Motion”) for a 90-day extension under § 365(d)(4)(B)(i). Neither Franklin nor any other party in
8 interest opposed such motion. On July 24, 2013, the Court granted the For Cause Extension
9 Motion, establishing a new deadline of October 28, 2013 for the City to assume or reject its leases
10 of nonresidential real property. *See* Order Pursuant To 11U.S.C. § 365(d)(4) Extending The Time
11 Within Which The City Must Assume Or Reject Unexpired Leases Of Nonresidential Real
12 Property [Dkt. No. 1033] (“For Cause Extension Order”). All subsequent extensions of this
13 deadline can therefore be made only upon the prior written consent of the individual lessors. *See*
14 § 365(d)(4)(B)(ii).

15 **RELIEF REQUESTED AND BASIS THEREFORE**

16 By this Motion, the City seeks an order pursuant to § 365(d)(4)(B)(ii) approving the
17 attached Stipulation to extend the time within which the City must assume or reject the 2009
18 Lease Agreement by 120 days, from October 28, 2013, through and including February 25, 2014.

19 On October 10, 2013, the City filed the Plan For The Adjustment Of Debts Of City Of
20 Stockton, California [Dkt. No. 1133] (the “Plan”). In the Plan, the City takes the position that the
21 2009 Lease Agreement is a “lease” within the meaning of § 365, and seeks to reject it. Plan at 77.
22 The Plan also contemplates that any claim for rejection of the 2009 Lease Agreement is subject to
23 the damage limitation provisions of § 502(b)(6). *Id.* at 22.

24 Franklin disputes such characterization and proposed treatment, maintaining that the 2009
25 Lease Agreement is, in economic substance, a financing instead of an unexpired lease of
26 nonresidential real property within the meaning of §§ 365 or 502(b)(6). Franklin has advised the
27 City that it and Wells Fargo will initiate shortly an adversary proceeding against the City seeking,
28

1 among other things, a declaration regarding the true nature of the 2009 Lease Agreement (the
2 “Adversary Proceeding”).

3 The Stipulating Parties agree that in light of the status of this case, including the filing of
4 the Plan by the City and the impending initiation of the Adversary Proceeding, a further extension
5 of the time for the City to assume or reject the 2009 Lease Agreement is both appropriate and in
6 the best interest of all interested parties.

7 **COMPLETE RESERVATION OF RIGHTS**

8 This Motion requests no relief other than the extension of time for the City to assume or
9 reject the 2009 Lease Agreement. Each of the Stipulating Parties reserves all rights, defenses and
10 arguments other than those solely with respect to the extension of the time within which the City
11 must assume or reject such agreement. The rights reserved by the Stipulating Parties include, but
12 are not limited to, any issues raised in the Adversary Proceeding (except any issues relating to the
13 extension described in the Stipulation), and all rights, defenses and arguments as to whether the
14 2009 Lease Agreement constitutes a “lease” within the contemplation of § 365. Moreover, none
15 of the Stipulating Parties in interest waives any rights, defenses and arguments by virtue of any
16 failure to seek payment under the 2009 Lease Agreement during the periods prior to the
17 assumption or rejection of the 2009 Lease Agreement, and there shall be no implication drawn
18 from or prejudice resulting from any party’s failure to seek such payment.

19 **CONCLUSION**

20 For the foregoing reasons, the City requests that the Court enter an order approving the
21 attached stipulation to extend the time within which the City must assume or reject the 2009
22 Lease Agreement by 120 days, through and including February 25, 2014, and granting such other
23 and further relief as the Court deems proper.

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Dated: October 14, 2013

MARC A. LEVINSON
NORMAN C. HILE
PATRICK B. BOCASH
Orrick, Herrington & Sutcliffe LLP

By: /s/ Marc A. Levinson
MARC A. LEVINSON
Attorneys for Debtor
City of Stockton

Exhibit A

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**STIPULATION FOR ORDER
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Date: October 28, 2013
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 23 The City of Stockton, California (the “City”), the debtor in the above-captioned chapter 9
 24 bankruptcy case, Franklin California High Yield Municipal Fund and Franklin High Yield Tax-
 25 Free Income Fund (collectively “Franklin”), and Wells Fargo Bank National Association (“Wells
 26 Fargo”) as Indenture Trustee with respect to the Stockton Public Financing Authority Lease
 27 Revenue Bonds, 2009 Series A (Capital Improvement Projects) (collectively, the “Stipulating
 28 Parties”), by and through their respective attorneys of record, seek an order approving the

1 following stipulation (this “Stipulation”) extending the time under Bankruptcy Code
 2 § 365(d)(4)(B)(ii) within which the City must assume or reject the 2009 Lease Agreement (as
 3 defined below).

4 **RECITALS**

5 **A. The City’s Lease/Leaseback Financings**

6 Prior to filing its petition for relief on June 28, 2012, the City had entered into six
 7 transactions involving leases/leaseback financings to fund various public capital improvements.
 8 In each transaction, the City entered into a number of agreements, entitled lease agreements,
 9 relating to nonresidential real property. The agreement that relates to Franklin is described in the
 10 following chart:

Agreement	Real Party or Parties in Interest	Indenture Trustee
Lease Agreement, dated as of September 1, 2009, by and between the Stockton Public Financing Authority, as lessor, and the City, as lessee, relating to Stockton Public Financing Authority Lease Revenue Bonds, 2009 Series A (Capital Improvement Projects) (the “2009 Lease Agreement”)	Franklin	Wells Fargo

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 18 **B. Prior Extension Of The Deadline To Assume Or Reject**

19 Pursuant to Bankruptcy Code § 365(d)(4)(A), which is incorporated into chapter 9 cases
 20 by Bankruptcy Code § 901(a), the City was initially required to decide whether to assume or
 21 reject its alleged unexpired leases of nonresidential property within 120 days of the entry of the
 22 order for relief. The Court’s entry of its order for relief on April 1, 2013 [Dkt. No. 843] triggered
 23 the 120-day period, giving the City until July 30, 2013, to assume or reject its alleged unexpired
 24 leases of nonresidential real property. Bankruptcy Code § 365(d)(4)(B) allows the Court to
 25 extend the period during which the City may assume or reject such agreements, in the first
 26 instance upon a motion for cause brought by the City to extend the deadline by 90 days, and in all
 27 subsequent instances upon the prior written consent of the respective lessors.

1 On July 5, 2013, the City moved, by its Revised And Amended Motion For Order
2 Pursuant To 11 U.S.C. § 365(d)(4) Extending Time Within Which The City Must Assume Or
3 Reject Unexpired Leases Of Nonresidential Real Property [Dkt. No. 993] (“For Cause Extension
4 Motion”) for a 90-day extension under § 365(d)(4)(B)(i). On July 24, 2013, the Court granted the
5 For Cause Extension Motion, establishing a new deadline of October 28, 2013 for the City to
6 assume or reject its leases of nonresidential real property. See Order Pursuant To 11 U.S.C.
7 § 365(d)(4) Extending The Time Within Which The City Must Assume Or Reject Unexpired
8 Leases Of Nonresidential Real Property [Dkt. No. 1033] (“For Cause Extension Order”). All
9 subsequent extensions of this deadline can therefore be made only upon the prior written consent
10 of the individual lessors. See § 365(d)(4)(B)(ii).

11
12 **C. The Current Dispute Regarding The Characterization Of The 2009 Agreement**

13 On October 10, 2013, the City filed the Plan For The Adjustment Of Debts Of City Of
14 Stockton, California [Dkt. No. 1133] (the “Plan”). In the Plan, the City takes the position that the
15 2009 Lease Agreement is a “lease” within the meaning of § 365, and seeks to reject it. Plan at 77.
16 The Plan also contemplates that any claim for rejection of the 2009 Lease Agreement is subject to
17 the damage limitation provisions of § 502(b)(6). *Id.* at 22.

18 Franklin disputes such characterization and proposed treatment, maintaining that the 2009
19 Lease Agreement is, in economic substance, a financing instead of an unexpired lease of
20 nonresidential real property within the meaning of §§ 365 or 502(b)(6). Franklin has advised the
21 City that it and Wells Fargo will initiate shortly an adversary proceeding against the City seeking,
22 among other things, a declaration regarding the true nature of the 2009 Lease Agreement (the
23 “Adversary Proceeding”).

24 The Stipulating Parties agree that in light of the status of this case, including the filing of
25 the Plan by the City and the impending initiation of the Adversary Proceeding, a further extension
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1 of the time for the City to assume or reject the 2009 Lease Agreement is appropriate and in the
2 best interest of all interested parties.

3 Accordingly, the Stipulating Parties hereby stipulate and agree as follows:

4 **STIPULATION**

5 A. The Stipulating Parties agree that the time within which the City must
6 assume or reject the 2009 Lease Agreement under Bankruptcy Code § 365(d)(4) should be
7 extended by 120 days, from October 28, 2013, through and including February 25, 2014.

8 B. The consent of Franklin and Wells Fargo satisfies Bankruptcy Code
9 § 365(d)(4)(B)(ii).

10 C. In entering into this Stipulation, each of the Stipulating Parties reserves all
11 rights, defenses and arguments other than those solely with respect to the extension of the time
12 within which the City must assume or reject the 2009 Lease Agreement. The rights reserved by
13 the Stipulating Parties include, but are not limited to, any issues raised in the Adversary
14 Proceeding (except any issues relating to the extension described in the Stipulation), and all
15 rights, defenses and arguments as to whether the 2009 Lease Agreement constitutes a “lease”
16 within the contemplation of § 365. Moreover, none of the Stipulating Parties waive any rights,
17 defenses and arguments by virtue of any failure to seek payment under the 2009 Lease Agreement
18 during the periods prior to the assumption or rejection of the 2009 Lease Agreement, and there
19 shall be no implication drawn from or prejudice resulting from any party’s failure to seek such
20 payment.

21 Dated: October 14, 2013

ORRICK, HERRINGTON & SUTCLIFFE LLP

24 */s/ Marc A. Levinson*

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Marc A. Levinson
Attorneys for the City of Stockton

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Dated: October 14, 2013

JONES DAY

/s/ James O. Johnston

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High Yield Tax-Free Income Fund

Dated: October 14, 2013

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