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

16 In re:  
 17 CITY OF STOCKTON,  
 CALIFORNIA,  
 18 Debtor.

Case No. 2012-32118  
 D.C. No. OHS-15  
 Chapter 9  
**CITY'S RESPONSE TO  
 OBJECTION OF MICHAEL C.  
 COBB TO FIRST AMENDED PLAN**

Date: May 12, 2014  
 Time: 9:30 a.m.  
 Dept: C, Ctrm. 35  
 Judge: Hon. Christopher M. Klein

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1 **I. INTRODUCTION**

2 In 1998, the City of Stockton (the “City”) condemned a permanent easement over  
3 a short strip of land across an approximately one-acre parcel owned by Andrew Cobb.  
4 The purpose of the condemnation was to build a roadway, increasing access to  
5 surrounding land—including the parcel itself—and encouraging development. No one  
6 has ever questioned that the City was permitted to effect the condemnation, build a road,  
7 and maintain it for public use. Nor has anyone ever questioned the City’s obligation to  
8 pay for it. Indeed, the City *has* paid \$90,200, the value of the strip when the City had it  
9 appraised 15 years ago at the time it condemned it. Michael Cobb, the son of Andrew  
10 Cobb and successor to any interest in the property, claims that the City owes him more.

11 While the City disputes that it owes any additional payment to Cobb, any claim  
12 that Cobb possesses is a general unsecured claim against the City. In an exercise of its  
13 constitutional bankruptcy power, Congress, through chapter 9, has provided an  
14 evenhanded framework for accommodating the competing claims of retirees,  
15 bondholders, insurers, equipment lessors, tort claimants, and other creditors, while  
16 preserving a municipality’s ability to provide essential services to its citizens. That  
17 framework is properly reflected in the City’s plan of adjustment (the “Plan”).

18 Cobb asks for special treatment. He argues that his unsecured claim for money is  
19 elevated above chapter 9 by the requirement in the Fifth Amendment’s Takings Clause  
20 that the government may not take his property without “just compensation.” He  
21 suggests, in effect, that the Takings Clause requires the Plan to subjugate the expectations  
22 of other creditors and to ignore the municipality’s obligation to the public. Because his  
23 interest in payment arose in exchange for an interest in property, Cobb argues, his claim  
24 cannot be treated under chapter 9’s rules of general applicability. And “just  
25 compensation,” as he conceives of it, means full compensation even in the context of  
26 competing unsecured claims.

27 The Takings Clause neither guarantees what Cobb requests nor immunizes his  
28 unsecured claim from satisfaction through bankruptcy. It is long settled that the

1 bankruptcy law may adjust unsecured interests in the payment of money. This is all  
2 Cobb claims in this case, and all he can claim under California law, because he has no  
3 remaining interest in the strip of land the City condemned over 15 years ago.

4 His objection also fails because the City has not denied him the compensation  
5 due. It is the federal government, through the generally applicable provisions of chapter  
6 9, that acts upon his claim. This premise is the foundation of municipal bankruptcy—  
7 without it, a municipality would be impairing its contractual obligations every time it  
8 filed for chapter 9 relief, in violation of the Constitution’s Contracts Clause. The City  
9 acknowledged that it owed Cobb compensation for the condemnation, and it provided  
10 that compensation through statutorily-prescribed deposit procedures. But even if Cobb  
11 does have a residual unsecured claim to more money at this juncture, that unsecured  
12 claim is properly resolved through chapter 9’s generally applicable framework.

13 Finally, the compensation the Plan proposes to pay Cobb is “just” under the  
14 circumstances. Cobb’s claim cannot be viewed in isolation. It is one of scores that the  
15 Plan seeks to accommodate, fairly balancing the rights and expectations of all competing  
16 unsecured creditors while preserving the public’s interest in functioning local  
17 government. Treating Cobb’s unsecured claim as no more or less entitled than others’ is  
18 the only just result.

## 19 **II. PROCEDURAL BACKGROUND**

20 The City filed the First Amendment Plan for the Adjustment of Debts of City of  
21 Stockton, California on November 15, 2013. Dkt. No. 1204. It filed its Memorandum of  
22 Law in Support of Confirmation of First Amended Plan on February 3, 2014. Dkt.  
23 No. 1243. Cobb filed his Objection February 11, 2014. Dkt. No. 1261. The deadline for  
24 this responsive filing was set as March 31, 2014, the same date set for the City’s filing of  
25 a supplemental memorandum in support of the Plan. Dkt. No. 1242 ¶ 7. Any party or  
26 third party that filed a timely objection to the confirmation of the Plan may file a  
27 supplemental objection to confirmation no later than April 21, 2014. *Id.* Supplemental  
28 responsive pleadings to any objection to confirmation of the Plan may be filed no later

1 than April 28, 2014. *Id.* The Confirmation Hearing and the trial in the Adversary  
2 Proceeding between the City and Franklin are scheduled to commence on May 12, 2014  
3 at 9:30 a.m. Dkt. No. 1242 ¶ 19.

### 4 **III. STATEMENT OF FACTS**

5 The material facts are not in dispute. Andrew C. Cobb, the father of objector  
6 Michael C. Cobb, was the owner of a parcel of land located at 4218 Pock Lane in  
7 Stockton. *Cobb v. City of Stockton*, 192 Cal. App. 4th 65, 67 (Ct. App. 2011).<sup>1</sup> In  
8 October 1998, the City initiated eminent domain proceedings to condemn a permanent  
9 easement over a strip of land across the parcel. *Id.* The strip was to serve as a short  
10 section of a roadway built for public use. *Id.* The public has been using this roadway  
11 since it was completed in 2000.

12 At the time it initiated the eminent domain proceedings, the City had the strip of  
13 land appraised in accordance with California state law. Stockton City Council  
14 Resolution No. 98-0353 (Aug. 18, 1998), Ex. A hereto, at 2; *see* Cal. Civ. Proc. Code  
15 § 1255.010; Cal. Gov't Code § 7267.2. The appraisal valued it at \$90,200. The City  
16 deposited that sum as probable compensation for the condemnation, as required by state  
17 eminent domain law, Cal. Civ. Proc. Code § 1255.010. *Cobb*, 192 Cal. App. 4th at 67.  
18 Just before the end of 1998, the court in the eminent domain proceeding granted the City  
19 prejudgment possession. *Id.* The City finished its construction of the road in 2000. *See*  
20 Stockton City Council Resolution No. 00-0505 (Oct. 17, 2000), Ex. B hereto, at 1. In  
21 November of that same year, Michael Cobb—the current owner by operation of state  
22 probate and trust succession following his father's death—withdrawed the City's \$90,200  
23 deposit. *Cobb*, 192 Cal. App. 4th at 67. The withdrawal, under the controlling state  
24 statute, has a significant impact. By “operation of law,” it is “a waiver ... of all claims  
25 and defenses [of the condemnee regarding the property]... except a claim for greater  
26 compensation.” Cal. Civ. Proc. Code § 1255.260. In other words, Cobb's withdrawal of  
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28 <sup>1</sup> The California Court of Appeal's decision in Cobb's inverse condemnation case is incorporated by  
reference as Exhibit A to his Objection.

1 the funds relinquished “by operation of law” the property interest the City had sought to  
2 condemn; he retained only a right to argue over the amount he would be paid.

3 Cobb at that juncture should have, if he wanted to argue for additional payment,  
4 asserted such a claim. He did not. The case lay dormant for seven years. Cobb enjoyed  
5 the use of his \$90,200, and members of the public used the road to reach their homes,  
6 jobs, and schools. Without an assertion of a claim to additional payment by Cobb, there  
7 was nothing left to litigate. So, on October 9, 2007, the trial court dismissed the eminent  
8 domain action because it had not been brought to trial within five years of its  
9 commencement. *Cobb*, 192 Cal. App. 4th at 67; *see* Cal. Civ. Proc. Code § 583.310.

10 On March 14, 2008, Cobb filed an inverse condemnation suit in California  
11 Superior Court. That action was stayed as a result of the filing of the City’s chapter 9  
12 petition on June 28, 2012. The City’s list of creditors included Cobb. Dkt. No. 2. On  
13 August 16, 2013, Cobb filed a proof of claim. Cobb Obj. Ex. B. The proof of claim  
14 asserts that the true value of the land condemned on the date the City filed its eminent  
15 domain action was not \$90,200—as the appraisal reported, and as Cobb did not challenge  
16 for nearly a decade—but instead \$1,540,000.00. *Id.* He asks for interest on that amount  
17 totaling \$2,282,997.26. *Id.* He also asks for attorney’s fees, litigation expenses and  
18 costs, real estate taxes, and property maintenance costs in the amount of \$375,000. *Id.*  
19 His total new claim is for \$4,200,997.26. *Id.*

20 The City filed its First Amended Plan on November 15, 2013. Dkt. No. 1204.  
21 On February 11, 2014, Cobb filed this objection to its confirmation. Dkt. No. 1261.

#### 22 **IV. ARGUMENT**

23 Although neither the City’s pending plan of adjustment nor its accompanying  
24 disclosure statement mentions Cobb’s claim specifically, the City submits that the claim  
25 falls within Class 12 as a general unsecured claim. Cobb does not dispute that this  
26 treatment is appropriate under the Bankruptcy Code. He objects instead on the ground  
27 that treating his unsecured claim as a member of Class 12 would violate the Fifth  
28 Amendment’s Takings Clause. He maintains that every dime of his unsecured claim for

1 \$4,200,997.25—including for his attorney’s fees and the costs of his suit in state court—  
2 is property immune from adjustment by operation of the bankruptcy law.<sup>2</sup>

3 Cobb’s constitutional theory rests on a series of basic misconceptions. First, he is  
4 wrong to contend that confirmation of the Plan would unconstitutionally deprive him of  
5 his interest in real property. Cobb relinquished the relevant interest in the strip of real  
6 property involved here nearly 15 years ago. The Plan proposes to adjust nothing more  
7 than a bare unsecured monetary claim arising from that interest—the sort of unsecured  
8 interest, like an unsecured contract or tort claim, that the bankruptcy laws have long  
9 adjusted without constitutional compunction, *see In re Webber*, 674 F.2d 796, 803 (9th  
10 Cir. 1982).

11 A second problem with his argument is that the bankruptcy court’s prioritizing  
12 and adjustment of debts does not suggest a taking of property *by the City*. The incidental  
13 effect of chapter 9—a generally applicable federal economic regulation—does not turn  
14 the City’s actions into an uncompensated taking.

15 Third, Cobb errs in insisting that he is entitled to full compensation for his  
16 unsecured claim. The Takings Clause guarantees only compensation that is “just.” *See*  
17 U.S. Const. amend. V. The payment Cobb will receive pursuant to the Plan is just under  
18 the circumstances.

19 Last, Cobb’s warning of creation of a dangerous precedent—presumably based  
20 upon the unstated concern that municipalities will abuse chapter 9 by taking swaths of  
21 property and then avoiding fair compensation by filing a bankruptcy petition—is  
22 unfounded. He ignores chapter 9’s good faith requirement. In the unlikely event that a  
23 municipality did abuse the privilege of chapter 9 relief, the bankruptcy court would be  
24 fully competent to dismiss the petition or deny confirmation of a plan of adjustment.

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27 <sup>2</sup> The value of Cobb’s claim is grossly overstated. The City continues to maintain that Cobb received all  
28 the compensation he is owed when, in November 2000, he withdrew the \$90,200 the City deposited upon  
the appraisal of the strip of land. The City reserves its right to dispute Cobb’s claim regardless of the class  
in which it is ultimately included.

1           **A.     An Unsecured Interest in Monetary Payment Is Not Subject to Fifth**  
2           **Amendment Takings Clause Protection in Bankruptcy Cases.**

3           Cobb begins his Fifth Amendment argument with *Louisville Joint Stock Land*  
4 *Bank v. Radford*, 295 U.S. 555 (1935). Cobb Obj. at 6. He relies on *Radford* for the  
5 proposition that “[t]he many allowances and privileges permissible under chapter 9 do  
6 not supersede or ‘trump’ the provisions of the Fifth and Fourteenth Amendments ...  
7 mandating the payment of just compensation.” *Id.* at 5-6.

8           The problem with reliance on *Radford* is that that case makes clear that the  
9 Takings Clause’s limit on the bankruptcy power applies only to interests secured by  
10 specific property. The various bankruptcy laws passed by Congress have never been  
11 read to grant the power to extinguish the secured property interests of creditors. As  
12 *Radford* states, if Congress had done so, it would raise issues of the bankruptcy court  
13 taking property under the Fifth Amendment. Such concerns do not apply, however, to a  
14 bankruptcy court writing down or extinguishing an unsecured debt, which is a  
15 fundamental aspect of the bankruptcy power. *See In re Webber*, 674 F.2d at 802.  
16 Indeed, if the bankruptcy power is to serve its constitutional purpose, it must at least  
17 “include[] the power to discharge the debtor from his contracts and legal liabilities.”  
18 *Hanover Nat’l Bank v. Moyses*, 186 U.S. 181, 188 (1902). Recognizing this, the Ninth  
19 Circuit has distilled the Takings Clause’s limitation on the bankruptcy power down to  
20 “the fundamental teaching of *Radford* that Congress may not under the bankruptcy power  
21 completely take for the benefit of a debtor *rights in specific property*.” *In re Webber*,  
22 674 F.2d at 803 (emphasis added) (citing *Rodrock v. Sec. Indus. Bank*, 642 F.2d 1193,  
23 1198 (10th Cir. 1981)).

24           The upshot of this is that the bankruptcy law may constitutionally operate to  
25 adjust bare interests in the payment of money—like compensation sounding in contract  
26 or tort—but may not impair interests that are secured by specific property. The  
27 authorities Cobb cites, to the extent they are relevant at all, prove this point. In *United*  
28 *States v. Security Industrial Bank*, 459 U.S. 70 (1982), Cobb Obj. at 6, the Supreme

1 Court confronted § 522’s power to avoid “a nonpossessory, nonpurchase-money security  
2 interest” in household items. The Court ultimately construed § 522 to apply only to liens  
3 that attached after the provision’s enactment, side-stepping any constitutional concerns.  
4 *Id.* at 82. And in the course of doing so, the Court explicitly invoked the distinction  
5 between “traditional property interests” and mere “contractual obligations,” confirming  
6 the bankruptcy power’s ability to adjust the latter. *Id.* at 74 (citing *Hanover Nat’l Bank*,  
7 186 U.S. at 188).

8 Another case Cobb cites, *In re Lahman Mfg. Co.*, 33 B.R. 681 (Bankr. D.S.D.  
9 1983), Cobb Obj. at 6, applies this understanding too. Creditors in that case raised a  
10 Takings Clause objection to a preliminary injunction that would prevent them from  
11 proceeding on certain non-debtor guarantees connected to real property. *Id.* at 685. The  
12 bankruptcy court found that although the creditors’ interest in payment arose from a  
13 transaction in real property, it was nevertheless unsecured, and thus not a property  
14 interest. *Id.* at 686-87. The court acknowledged the general rule—that “*Radford* and its  
15 progeny speak to vested rights in specific property”—and found that because “[t]he bank  
16 has no lien or mortgage on any of the personal holdings of [the debtors],” its interests did  
17 not “rise above the level of a bare contractual right.” *Id.* Where operation of the  
18 bankruptcy law impairs no vested right in specific property, there is no Takings Clause  
19 problem in bankruptcy court.

20 Perhaps recognizing this, Cobb argues that his claim is not one for money, but a  
21 challenge to the City’s “physical taking of the real property ... and its continued  
22 retention.” Cobb. Obj. at 6. Cobb’s claim, however, is not based on a vested interest in  
23 specific property.

24 For purposes of Takings Clause analysis, relevant legal interests “are created and  
25 their dimensions are defined by existing rules or understandings that stem from  
26 independent sources such as state law.” *Ruckelshaus v. Monsanto*, 467 U.S. 986, 1001  
27 (1984). California eminent domain law defines Cobb’s interest here. Section 1263.10(a)  
28 of the California Civil Procedure Code provides that “[t]he owner of property acquired

1 by eminent domain is entitled to *compensation*.” Cal. Civ. Proc. Code § 1263.10(a)  
2 (emphasis added). It makes no mention of a right to anything other than compensation,  
3 or to a right to compensation somehow secured by the subject property or other property  
4 of the debtor. To the contrary, the right to compensation is “not enforceable ... by  
5 execution or other remedies provided a judgment creditor ....” Cal. Civ. Proc. Code  
6 § 1268.20 cmts.

7 Thus, at most, Cobb possesses an unsecured claim to payment. As such, it is not  
8 the sort of claim the Takings Clause protects from being written down through the orders  
9 of the bankruptcy court exercising its core bankruptcy power.

10 Moreover, the circumstances underlying Cobb’s claim make it even more clear  
11 that Cobb’s interest is an unsecured one in payment, the sort the bankruptcy law may  
12 permissibly adjust without offending the Fifth Amendment. Cobb conceded the relevant  
13 interest in the property itself in November 2000, when he withdrew the \$90,200  
14 deposited by the City as probable compensation consistent with the property’s appraisal  
15 value. As noted above, “if any portion of the money deposited [as probable  
16 compensation] is withdrawn, the receipt of any such money shall constitute a waiver by  
17 operation of law of all claims and defenses ... except a claim for greater compensation.”  
18 Cal. Civ. Proc. Code § 1255.260.

19 Thus, despite Cobb’s assertions to the contrary, there is not a question at this  
20 juncture of who owns the real property or whether the City had a legal right to condemn  
21 the land. Claims related to vested property interests all were waived by operation of law  
22 in 2000 when the funds were withdrawn. All that Cobb could possibly assert after  
23 withdrawing the \$90,200 is a belated unsecured claim to more money.

24 Furthermore, “where a property owner permits the completion by a public agency  
25 of the work which results in the taking of private property for a public use .... [h]is only  
26 remedy under such circumstances is proceeding in inverse condemnation to recover  
27 damages.” *Frustuck v. City of Fairfax*, 212 Cal. App. 2d. 345, 371 (Ct. App. 1963); *see*  
28 *also Kachadoorian v. Calwa Cnty. Water Dist.*, 96 Cal. App. 3d 741, 747 (Ct. App.

1 1979) (explaining rule that when property is subject to “public use ... the landowner is  
 2 not entitled to quiet title or to injunctive relief”). That is exactly the situation here. After  
 3 Cobb took the deposited funds and waived his rights to the property, the City proceeded  
 4 to build a road over the condemned strip of land, and put it into public use. Cobb  
 5 admitted this in his own complaints in the state court action. Second Am. Compl., *Cobb*  
 6 *v. City of Stockton*, CV 035015 (Cal. Super. Ct. Sept. 8, 2008), Cobb Obj. Ex. B, at ¶¶ 18,  
 7 19, 26-28; Third Am. Compl., *Cobb v. City of Stockton*, CV 035015 (Cal. Super. Ct. Dec.  
 8 28, 2008), Ex. C hereto, at ¶ 10. This is why the trial court sustained the City’s demurrer  
 9 with respect to his quiet title and ejectment claims there, Order Sustaining City of  
 10 Stockton’s Demurrer to Third Am. Compl., *Cobb v. City of Stockton*, CV 035015 (Cal.  
 11 Super. Ct. Apr. 3, 2009), Ex. D hereto, at 2, conclusions that Cobb did not challenge on  
 12 appeal. *Cobb*, 96 Cal. App. 4th at 67. Put simply, Cobb relinquished the *property right*  
 13 at issue.

14 Despite Cobb’s suggestion that he retains title to the property, Cobb Obj. at 5, in  
 15 actuality even this interest has effectively been extinguished “by operation of law” under  
 16 § 1255.260. The transfer of title is a mere formality in these circumstances because “in  
 17 addition to a mere taking of possession by the condemner there is also such a substantial  
 18 change in the status of the land taken and the condemnee’s relation to it as to constitute,  
 19 in effect, a divestiture for all practical purposes of all of the former owners’ interest.”  
 20 *People v. Peninsula Title Guar. Co.*, 47 Cal. 2d 29, 32 (1956). Cobb no longer has any  
 21 interest in the strip of land over which the roadway runs. All he has left is an unsecured  
 22 claim to money.<sup>3</sup>

23 Under these undisputed facts, Cobb’s unsecured claim is indistinguishable from  
 24 the claims held by any of the City’s other unsecured creditors.

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 28 <sup>3</sup> It bears note that some of the components of Cobb’s claim would not even have constitutional dimension  
*outside* of the bankruptcy context. “Attorney’s fees and expenses are not embraced within just  
 compensation for land taken by eminent domain.” *Dohany v. Rogers*, 281 U.S. 362, 368 (1930).

1           **B.     A Municipality Does Not Deny Just Compensation by Filing for**  
2           **Bankruptcy under Chapter 9.**

3           Cobb’s argument that the City is acting to unconstitutionally impair his  
4 compensation also rests on a misunderstanding of the “delicate state-federal relationship  
5 of mutual sovereigns [that] provides the framework for municipal bankruptcy.” *In re*  
6 *City of Stockton, Cal.*, 478 B.R. 8, 16 (Bankr. E.D. Ca. 2012). This Court had occasion  
7 to examine this relationship earlier in this case in an adversary proceeding filed by the  
8 Association of Retired Employees of the City of Stockton. *Id.* Before addressing the  
9 retirees’ specific argument, the Court evaluated the “basic points of constitutional law  
10 and history” underlying it. *Id.* at 15. Front and center was a discussion of the Contracts  
11 Clause of the United States Constitution, which bars states from “impairing the  
12 Obligation of Contracts.” U.S. Const. art. I, § 10, cl. 1.

13           This Clause, it was once thought, raised questions as to the constitutionality of  
14 municipal bankruptcy. Indeed, in *Ashton v. Cameron Cnty. Water Improvement Dist.*,  
15 298 U.S. 513, 530-32 (1936), the Court invalidated the municipal bankruptcy provisions  
16 based on such concerns, as well broader federalism arguments. Justice Cardozo  
17 dissented. He explained that resort to federal bankruptcy law does not constitute  
18 impairment of contracts by the state (from which municipalities derive all right and  
19 authority). *Id.* at 541-42 (Cardozo, J., dissenting). “Any interference by the states is  
20 remote and indirect. ... Impairment is not forbidden unless effected by the states  
21 themselves. No change in obligation results from the filing of a petition by one seeking a  
22 discharge, whether a public or a private corporation invokes the jurisdiction. The court,  
23 *not the petitioner*, is the efficient cause of the release.” *Id.* (emphasis added).

24           Justice Cardozo’s view won over two years later when the Court—with Justice  
25 Cardozo recused—approved municipal bankruptcy as federal and state “co-operation to  
26 provide a remedy for a serious condition in which the States alone were unable to afford  
27 relief.” *United States v. Bekins*, 304 U.S. 27, 53 (1938). The Court in *Bekins* recognized  
28 that treating resort to federal bankruptcy law as state impairment of contracts would

1 extend the Contracts Clause far beyond the abuses it was meant to address.

2 Thus, municipal bankruptcy is constitutional because when federal bankruptcy  
3 courts acting under federal bankruptcy law alter contract rights, it is not properly deemed  
4 the act of municipality or state. *See In re City of Stockton, Cal.*, 478 B.R. at 15-16; *In re*  
5 *City of Detroit, Mich.*, 504 B.R. 191, 231-32 (Bankr. E.D. Mich. 2013). So too when it  
6 comes to the Takings Clause. Chapter 9 discharges and claim reductions occur through  
7 the incidental operation of federal law through the federal bankruptcy court, and are not  
8 properly deemed a taking of property without just compensation by the City under the  
9 Fifth Amendment.

10 **C. Payment on Claims Adjusted Pursuant to Generally Applicable**  
11 **Bankruptcy Law Constitutes Just Compensation Under the Takings**  
12 **Clause.**

13 Cobb's Takings Clause arguments fail for another reason as well: The Plan, if  
14 confirmed, proposes to pay him all the compensation to which he is entitled under the  
15 Fifth Amendment. While Cobb contends that "[t]he Plan, by reason of its attempt to treat  
16 [his] claim as merely a 'tort' or 'general unsecured' claim, and to be paid some impaired  
17 pro rata portion of its allowed claim, thus impermissibly would permit the debtor to keep  
18 and retain the property taken from [him] *without payment of its approved claim (but*  
19 *rather some pro rata percentage) ...,"* Cobb Obj. at 7 (emphasis added), the Takings  
20 Clause does not require *full* compensation. It requires only compensation that is *just*.  
21 And it is difficult to imagine a more just result under the circumstances of a municipal  
22 bankruptcy than treating all unsecured creditors even-handedly pursuant to generally  
23 applicable bankruptcy law.

24 Had the Takings Clause's framers thought it desirable, they could have drafted a  
25 more rigid rule. "The earliest compensation clauses in this country ... provided for  
26 payment of 'an equivalent in money,' and 'full compensation,'" and some still do.  
27 Christopher Serkin, *The Meaning of Value: Assessing Just Compensation for Regulatory*  
28 *Takings*, 99 Nw. U. L. Rev. 677, 712 (2005). But the framers instead opted for a clause  
requiring "just compensation." The notion of "just compensation" is flexible. The

1 Supreme Court has “never attempted to prescribe a rigid rule for determining what is  
2 ‘just compensation’ under all circumstances and in all cases.” *United States v.*  
3 *Commodities Trading Corp.*, 339 U.S. 121, 123 (1950). And although often the  
4 appropriate measure of compensation will be market value on the date of a taking, the  
5 Court has cautioned against elevating this standard to a “fetish.” *United States v. Cors*,  
6 337 U.S. 325, 332 (1949). “[W]hen its application would result in manifest injustice to  
7 owner or public, courts have fashioned and applied other standards.” *Commodities*  
8 *Trading Corp.*, 339 U.S. at 123.

9 This principle enjoys its fullest expression in cases like this one. Consider the  
10 *New Haven Inclusion Cases*, 399 U.S. 392 (1970). There, the Supreme Court confronted  
11 the bankruptcy of the New York, New Haven & Hartford Railroad. By 1961, the New  
12 Haven was in dire financial straits and operating at a severe loss. *Id.* at 401-04. But  
13 unlike a struggling company, the New Haven could not simply close up shop and  
14 liquidate its assets to pay off its creditors—doing so would leave tens of thousands of  
15 commuters without passenger service and shut down vital freight lines. *Id.* at 401-02.  
16 The only option was inclusion of the New Haven in the then-merging Pennsylvania and  
17 New York Central Railroads. *Id.* at 408-09. The Penn Central would have to purchase  
18 the New Haven, decided the U.S. Interstate Commerce Commission—the agency with  
19 authority to enforce the Interstate Commerce Act—and it would have to purchase it in its  
20 entirety. *Id.* at 408. Anything short of this “would not be consistent with the public  
21 interest.” *Id.* (internal quotation marks omitted).

22 But as the merger and bankruptcy litigations dragged on throughout the 1960s,  
23 the New Haven continued to bleed money, and the bankruptcy litigation itself had racked  
24 up substantial administrative costs. *Id.* at 490. So in 1968, when Penn Central’s  
25 purchase price was calculated, the New Haven’s secured bondholders brought a Fifth  
26 Amendment challenge, maintaining that due to the erosion of the value of the New  
27 Haven’s estate, they would not receive just compensation for their interests. *Id.* The  
28 Court disagreed. It “d[id] not doubt that time consumed in the course of the proceedings

1 in the reorganization court ha[d] imposed a substantial loss upon the bondholders.” *Id.* at  
2 491. But “in the circumstances presented,” the Court concluded, there was “no  
3 constitutional bar to that result.” *Id.* It noted the New Haven’s status as a “public utility  
4 that does owe an obligation to the public.” *Id.* at 491-92 (citing *Reconstruction Fin.*  
5 *Corp. v. Denver & R.G.W.R. Co.*, 32 U.S. 495, 535-36 (1946)). It also invoked the  
6 “public interest” in the preservation of “rail operations vital to the Nation.” *Id.* at 492  
7 (citing *Penn-Central Merger and N&W Inclusion Cases*, 389 U.S. 486, 510 (1968)). In  
8 evaluating the reduced compensation the bondholders received, the Court considered the  
9 fairness of the purchase price to the bondholders, the Penn Central, and to the public in  
10 concluding that the compensation was just. *Id.* at 489-95.

11 The circumstances presented in municipal bankruptcy are similar. Municipalities  
12 owe an obligation to the public. They provide the police officers, firefighters, and other  
13 public servants that keep citizens safe and allow them to prosper. So when an economic  
14 downturn renders a municipality insolvent, the municipality must be able to reorder its  
15 affairs by adjusting its debts through bankruptcy. Inevitably, some creditors may be  
16 disappointed by the disposition of their claims through chapter 9. But application of  
17 chapter 9 in an evenhanded manner is the only just way to accommodate the interests of  
18 the creditors as a class, and to balance them with the public’s interest in functioning local  
19 government.

20 “The constitutional requirement of just compensation derives as much content  
21 from the basic equitable principles of fairness as it does from technical concepts of  
22 property law.” *United States v. Fuller*, 409 U.S. 488, 490 (1973) (citation omitted).  
23 Cobb is one of many unsecured creditors with claims against the City. In the interest of  
24 reordering its affairs so that it may serve its citizens, the City proposes to treat Cobb’s  
25 claim just as it proposes to treat those of others who fall within Class 12. Indeed, this is  
26 the only fair and just approach. By paying Cobb all the compensation that is appropriate  
27 under generally applicable bankruptcy law, the City provides “just compensation” under  
28 the circumstances.

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**D. Chapter 9’s Good Faith Requirement Is Adequate to Prevent Abuse in Future Cases.**

Cobb’s final argument is the warning that “the precedent cannot be set that a municipal corporation can take a private landowner’s property and then adjust the resulting constitutional liability down to ‘cents on the dollar’ liability utilizing the chapter 9 procedures.” Cobb Obj. at 7. Although he does not elaborate, presumably his concern is that if a municipality can treat a condemnee’s unsecured claim as such, municipalities have an incentive to engage in Takings sprees just before filing chapter 9 petitions. This is an empty worry.

To be clear, there is no suggestion at all that the City has engaged in bad faith here. It condemned the strip of Cobb’s land nearly 15 years before filing its bankruptcy petition, and this Court has already concluded that the City filed its petition in good faith. *In re City of Stockton, Cal.*, 493 B.R. 772, 795-98 (Bankr. E.D. Cal. 2013).

More to the point, in the unlikely event that a municipality did engage in this sort of abuse, a bankruptcy court could simply dismiss the petition. Section 921(c) provides the court with power to do just that “if the debtor did not file the petition in good faith.” 11 U.S.C. § 921(c). Ready resort to that power eliminates any genuine risk of abuse.

**V. CONCLUSION**

For the reasons stated, the Court should deny Cobb’s objection and confirm the Plan.

Dated: March 28, 2014

Orrick, Herrington & Sutcliffe LLP

By:                   /s/ Marc A. Levinson                    
                  Marc A. Levinson  
                  Robert M. Loeb  
                  Attorneys for City of Stockton, Debtor

# EXHIBIT A

**S** CITY OF STOCKTON  
STOCKTON CITY COUNCIL  
CITY HALL, STOCKTON, CALIFORNIA 95202  
TELEPHONE (209) 937-8459

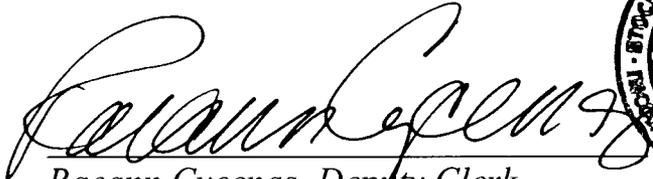


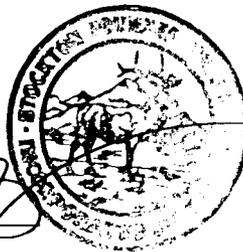
**I, KATHERINE GONG MEISSNER, do hereby certify as follows:**

*I am the duly appointed, qualified City Clerk of the City of Stockton, a California municipal corporation; as such City Clerk, I am the custodian of the official records of the City Council of said City. The attached Resolution is a full, true, and correct copy of Resolution No. 98-0353 of said City Council, which was adopted by the City Council on August 18, 1998 on file in the City Clerk's office.*

**IN WITNESS WHEREOF, I have hereto affixed my hand and the seal of the City of Stockton on January 12, 2009.**

**KATHERINE GONG MEISSNER, CITY CLERK  
CITY OF STOCKTON**

By   
Raeann Cychenas, Deputy Clerk



**98-0353**

Resolution No. \_\_\_\_\_

# STOCKTON CITY COUNCIL

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RESOLUTION OF THE CITY OF STOCKTON FINDING AND DETERMINING THE PUBLIC NECESSITY REQUIRES THE ACQUISITION OF CERTAIN REAL PROPERTY INTERESTS FOR A PUBLIC PROJECT AND DIRECTING THE ACQUISITION OF SAID REAL PROPERTY INTERESTS BY EMINENT DOMAIN PROCEEDINGS.

WHEREAS, the City of Stockton ("City") is a chartered municipal corporation and one of the public entities authorized to exercise the power of eminent domain; and

WHEREAS, Section 37350.5 of the Government Code authorizes the City to acquire by eminent domain any property necessary to carry out its powers and functions; and

WHEREAS, one of the powers and functions of the City of Stockton is to provide streets and highways and bridges to the community; and

WHEREAS, Government Code sections 40403 and 40404 authorize the City of Stockton to acquire property to provide bridges, streets, sidewalks, and public highways; and

WHEREAS, Government Code section 66462.5 provides that the City shall acquire, by negotiation or exercise of its eminent domain powers, any property interest which will permit offsite public improvements to be made on land not owned or successfully acquired by a subdivider when required by a condition of a tentative subdivision map; and

WHEREAS, the interests in certain real property located in Stockton, California (the "Property"), as described in Exhibit "A" attached and incorporated by reference, are necessary for the construction of a portion of a public street, the improvement and extension of Industrial Drive between the West State Route 99

CITY ATTY REVIEW BOA  
DATE AUG 10 1998

**98-0353**

Frontage Road and Pock Lane, and a crossing of North Little John Creek (the "Project"); and

WHEREAS, written notice of the intent of the City of Stockton to adopt this Resolution of Necessity was sent to the owners of the properties whose names and addresses appear on the last equalized county assessment roll; and

WHEREAS, a written request to appear was received on July 31, 1998, from James R. Baskette, on behalf of Andrew C. Cobb, Trustee; and

WHEREAS, a hearing was conducted and all interested persons were given an opportunity to be heard;

NOW, THEREFORE, based on the evidence presented,

BE IT FOUND, DETERMINED AND RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. That the Property to be acquired is described in Exhibit "A," attached and incorporated by this reference.
2. That the Property is to be acquired for a public use and a public project, the construction and installation of a public street and bridge crossing pursuant to the authority granted by Sections 37350.5, 40403, 40404, and 66462.5 of the Government Code and Section 1230.010, et seq. of the Code of Civil Procedure.
3. That the public interest and necessity require the acquisition, construction and installation of the Proposed Project.
4. That the Proposed Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury.
5. That the Property, as described in Exhibit "A," is necessary for the Proposed Project.
6. That the amount of compensation believed to be just has been determined and an offer in such amount and the basis therefor has been made to the owners of record as required by Government Code section 7267.2.
7. That the City Attorney is hereby authorized and empowered:

(a) To acquire in the City's name, by condemnation, the Property in accordance with the provisions of the Eminent Domain Law of the Code of Civil Procedure and the Constitution of California;

(b) To prepare and prosecute in the City's name such proceedings in the proper court as are necessary for such acquisition;

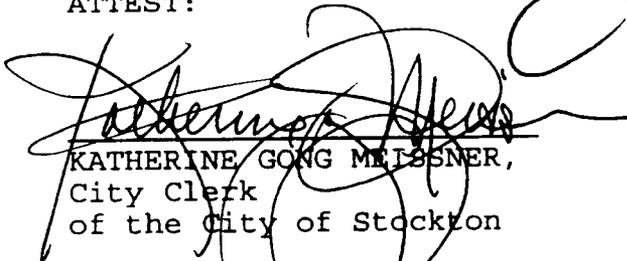
(c) To deposit the amount of probable compensation in compliance with Section 1255.010, et seq. of the Code of Civil Procedure; and

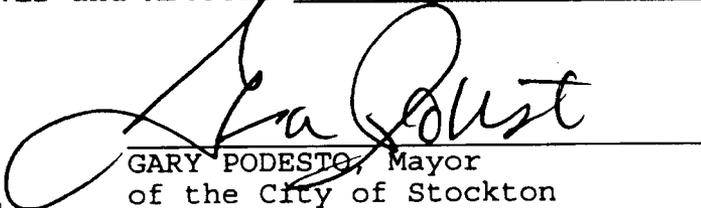
(d) To take all actions as necessary to secure immediate prejudgment possession and use of the property to be condemned; and

(e) To utilize the services of private counsel as co-counsel to prosecute said proceedings, as deemed necessary by the City Attorney.

PASSED, APPROVED and ADOPTED AUG 18 1998.

ATTEST:

  
KATHERINE GONG MEISSNER,  
City Clerk  
of the City of Stockton

  
GARY PODESTO, Mayor  
of the City of Stockton

CITY COUNCIL VOTED AS FOLLOWS:

AYES: 6

NOES: 0

ABSTAIN: 0

ABSENT: 1

## EXHIBIT A

### LEGAL DESCRIPTION

INDUSTRIAL DRIVE  
A.P.N. 179-180-07

All that certain real property, situate, lying and being in the City of Stockton, County of San Joaquin, State of California, described as follows:

#### PARCEL ONE:

Being a portion of that certain real property described as Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official Records, Book 4249, Page 556, San Joaquin County Records, also being a portion of the south 1/2 of Lot 9 of Ross-Gilmour Gardens, filed for record in Book of MAPS AND PLATS, Volume 7, Page 1, San Joaquin County Records, lying in Section 48 of the C.M. Weber Grant and being more particularly described as follows:

Commencing at City of Stockton survey control monument 5S-16, having the coordinates of N= 2,159,968.647 and E= 6,350,752.325, as shown on Book 33 of Surveys, at Page 20, San Joaquin County Records; thence South 17° 14' 51" East 4347.89 feet to City of Stockton survey control monument 3S-9, having the coordinates of N= 2,155,816.544 and E= 6,352,041.390, as shown on said Record of Survey; thence North 86° 15' 01" West 3470.85 feet to a 3/4" Iron Pin set at the northwesterly corner of Parcel "I," as shown on Book 28 of Surveys, at Page 87, San Joaquin County Records, said point being at the intersection of the northerly line of the southerly 1/2 of said Lot 9 of said Ross-Gilmour Gardens, with the centerline of Pock Lane (50.00 feet wide); thence North 72° 39' 12" East, along the northerly line of the southerly 1/2 of said Lot 9, also being the northerly line of said Parcel "I" and the northerly line of Lot 9 and Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records, a distance of 512.47 feet to an angle point in the northerly line of said Lot 1; thence continue North 72° 39' 12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 191.27 feet to the TRUE POINT OF BEGINNING of this description; thence continue North 72° 39' 12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 299.08 feet to an angle point in the boundary of Little John Creek, Unit 3, as shown on the plat filed April 26, 1994, in Book 31 of Maps and Plats, at Page 112, San

98-0353

Joaquin County Records, said point being on a non-tangent curve to the left, from which the radius point of said curve bears North 00° 51' 20" West, said curve having a radius of 958.00 feet; thence easterly, on the arc of said curve, through a central angle of 14° 53' 31", and a chord bearing and distance of North 81° 41' 54" East 248.30 feet, an arc distance of 249.00 feet to a point of reverse curvature, from which the radius point bears South 15° 44' 52" East; thence easterly, along the arc of a curve to the right, having a radius of 1042.00 feet, a central angle of 21° 55' 46", and a chord bearing and distance of North 85° 13' 01" East 396.38 feet, an arc distance of 398.82 feet to a point of reverse curvature, from which the radius point bears North 06° 10' 54" East; thence easterly, along the arc of a curve to the left, having a radius of 958.00 feet, through a central angle of 03° 18' 46", and a chord bearing and distance of South 85° 28' 29" East 55.38 feet, an arc distance of 55.39 feet to a point on the easterly line of Lot 9 of said Ross-Gilmour Gardens, said point bearing South 17° 44' 50" East 145.90 feet from the northeasterly corner of the southerly 1/2 of said Lot 9, as said northeasterly corner is shown on that certain map filed in Book 32 of Surveys, at Page 118, San Joaquin County Records; thence South 17° 44' 50" East, on a non-tangent line, along the easterly line of said Lot 9, a distance of 68.08 feet to a point of intersection with a non-tangent curve to the right, from which the radius point of said curve bears North 01° 31' 30" East, said curve having a radius of 1022.00 feet; thence westerly, along the arc of said curve, through a central angle of 04° 39' 24", and a chord bearing and distance of North 86° 08' 48" West 83.04 feet, an arc distance of 83.06 feet to a point of reverse curvature, from which the radius point bears South 06° 10' 54" West; thence westerly, along the arc of a curve to the left, having a radius of 978.00 feet, a central angle of 21° 55' 46", and a chord bearing and distance of South 85° 13' 01" West 372.04 feet, an arc distance of 374.32 feet to a point of reverse curvature, from which the radius point bears North 15° 44' 52" West; thence westerly, along the arc of a curve to the right, having a radius of 1022.00 feet, a central angle of 14° 53' 31", and a chord bearing and distance of South 81° 41' 54" West 264.88 feet, an arc distance of 265.63 feet to a point of reverse curvature, from which the radius point of said curve bears South 00° 51' 20" East; thence westerly, along the arc of a curve to the left, having a radius of 1978.00 feet, through a central angle of 08° 20' 11", with a chord bearing and distance of South 84° 58' 34" West 287.54 feet, an arc distance of 287.80 feet to the point of beginning.

Containing 1.235 Acres more or less.

PARCEL TWO:

Being a portion of that certain real property described as Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official

98-0353

Records, Book 4249, Page 556, San Joaquin County Records, also being a portion of the south 1/2 of Lot 9 of Ross-Gilmour Gardens, filed for record in Book of MAPS AND PLATS, Volume 7, Page 1, San Joaquin County Records, lying in Section 48 of the C.M. Weber Grant and being more particularly described as follows:

Commencing at City of Stockton survey control monument 5S-16, having the coordinates N= 2,159,968.647 and E= 6,350,752.325, as shown on Book 33 of Surveys, at Page 20, San Joaquin County Records; thence South 17° 14' 51" East 4347.89 feet to City of Stockton survey control monument 3S-9, having the coordinates of N= 2,155,816.544 and E= 6,352,041.390, as shown on said Record of Survey; thence North 86° 15' 01" West 3470.85 feet to a 3/4" Iron Pin set at the northwesterly corner of Parcel "I," as shown on Book 28 of Surveys, at Page 87, San Joaquin County Records, said point being at the intersection of the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, with the centerline of Pock Lane (50.00 feet wide); thence North 72° 39' 12" East, along the northerly line of the southerly 1/2 of said Lot 9, also being the northerly line of said Parcel "I" and the northerly line of Lot 9 and Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records, a distance of 512.47 feet to an angle point in the northerly line of said Lot 1 and the TRUE POINT OF BEGINNING of this description; thence continue North 72° 39' 12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 121.64 feet; thence South 11° 11' 53" East 16.33 feet to the beginning of a non-tangent curve to the left, having a radius of 1953.00 feet and a chord bearing and distance of South 77° 19' 12" West 101.01 feet, and from which the radius of said curve bears South 11° 11' 53" East; thence westerly, along the arc of said curve, through a central angle of 02° 57' 50", an arc distance of 101.03 feet to the centerline of North Little John Creek, also being the southerly line of aforesaid Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official Records, Book 4249, page 556, San Joaquin County Records, and also being the northerly line of Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records; thence along the southerly line of said Cobb Parcel, and the northerly line of said Lot 1, North 84° 41' 32" West 20.81 feet to the point of beginning.

Containing 1268 Square Feet of Land, more or less

Bearings and coordinates used in the above descriptions are based on the California Coordinate System-83, Zone III. All distances are ground level distances and must be multiplied by 0.99993339 to obtain grid distances.

98-0353

# EXHIBIT B

**S** CITY OF STOCKTON  
STOCKTON CITY COUNCIL  
CITY HALL, STOCKTON, CALIFORNIA 95202  
TELEPHONE (209) 937-8459



**I, KATHERINE GONG MEISSNER, do hereby certify as follows:**

*I am the duly appointed, qualified City Clerk of the City of Stockton, a California municipal corporation; as such City Clerk, I am the custodian of the official records of the City Council of said City. The attached Resolution is a full, true, and correct copy of Resolution No. 00-0505 of said City Council, which was adopted by the City Council on October 17, 2000 on file in the City Clerk's office.*

**IN WITNESS WHEREOF, I have hereto affixed my hand and the seal of the City of Stockton on January 12, 2009.**

**KATHERINE GONG MEISSNER, CITY CLERK  
CITY OF STOCKTON**

By   
Raeann Cycenas, Deputy Clerk



**00-0505**

Resolution No. \_\_\_\_\_

**STOCKTON CITY COUNCIL**

WHEREAS, the Public Works Department has determined that improvements in INDUSTRIAL DRIVE FROM MINDEN LANE TO POCK LANE – SOUTH OF LITTLE JOHN CREEK SUBDIVISION have been completed in accordance with the approved plans and specifications; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. THAT the improvements in INDUSTRIAL DRIVE FROM MINDEN LANE TO POCK LANE – SOUTH OF LITTLE JOHN CREEK SUBDIVISION in the City of Stockton, are hereby accepted.

2. THAT the City Clerk shall file a Notice of Completion with the County Recorder pursuant to Stockton Municipal Code Section 16-007.11.2.

PASSED, APPROVED and ADOPTED OCT 17 2000

  
GARY A. PODESTO, Mayor  
of The City of Stockton

ATTEST:

  
KATHERINE GONG MEISSNER, City Clerk  
of the City of Stockton

CITY ATTY  
REVIEW   
DATE OCT 11 2000

**00-0505**

# EXHIBIT C

RICHARDS, WATSON & GERSHON  
A Professional Corporation  
REGINA N. DANNER (137210)  
KIRSTEN R. BOWMAN (181627)  
355 South Grand Avenue, 40th Floor  
Los Angeles, CA 90071-3101  
Telephone: (213) 626-8484  
Facsimile: (213) 626-0078

Attorneys for Plaintiff,  
Michael A. Cobb, Trustee of the  
Andrew C. Cobb 1992 Revocable Trust  
dated July 16, 1992

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN JOAQUIN**

MICHAEL A. COBB, Trustee of the  
Andrew C. Cobb 1992 Revocable Trust  
dated July 16, 1992,

Plaintiff,

vs.

CITY OF STOCKTON, a municipal  
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. CV 035015

**THIRD AMENDED COMPLAINT  
FOR:**

1. **QUIET TITLE**
2. **EJECTMENT**
3. **TRESPASS**
4. **DECLARATORY RELIEF**

**Case Management Conference:**  
**Date: January 15, 2009**  
**Time: 8:45 a.m.**  
**Dept.: 41**

Plaintiff, Michael A. Cobb, Trustee of the Andrew C. Cobb 1992 Revocable Trust  
dated July 16, 1992 (“Plaintiff”), alleges as follows:

**I.**

**INTRODUCTION**

1. The Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992 (“Cobb  
Trust”) is the sole owner in fee of the real property located at 4218 Pock Lane, Stockton,  
California 95206 identified as San Joaquin Assessor’s Parcel Number 179-180-07 (“Cobb

IRW RICHARDS | WATSON | GERSHON  
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1 Property”). A true and correct copy of the Grant Deed recorded on July 31, 1992 is  
2 attached as Exhibit “1”.

3 2. Plaintiff, Michael A. Cobb, is the trustee of the Cobb Trust and has the  
4 power to prosecute this action for the protection of the Cobb Property. A true and correct  
5 copy of the affidavit of Acceptance of Trusteeship is attached as Exhibit “2”.

6 3. Defendant City of Stockton (“Defendant” or “City”) is a municipal  
7 corporation organized and existing under the laws of the State of California.

8 4. Plaintiff is ignorant of the true names and capacities of Defendants sued  
9 herein as DOES 1-50, Inclusive, and therefore sues these Defendants by such fictitious  
10 names. Plaintiff will amend this complaint to allege their true names and capacities when  
11 ascertained.

12 5. Plaintiff is informed and believes and based thereon alleges, that each  
13 fictitiously named Defendants claim some right, title, estate, lien or interest in the Cobb  
14 Property adverse to Plaintiff’s title, and their claims, and each of them constitute a cloud  
15 on plaintiff’s title to the Cobb Property.

16 6. Plaintiff is informed and believes and based thereon alleges, that each of the  
17 fictitiously named Defendants is responsible in some manner for the occurrences herein  
18 alleged, and that Plaintiff’s injuries as herein alleged were proximately caused by these  
19 Defendants.

20 7. On October 23, 1998, Defendant filed an eminent domain action seeking to  
21 condemn a permanent easement across the Cobb Property for the construction of a public  
22 roadway. The eminent domain action was filed in the Superior Court of the State of  
23 California, County of San Joaquin, and was further identified as Case No. CV006247  
24 (“1998 Action”). Specifically, Defendant sought to acquire an “easement” through the  
25 Cobb Property. The property that Defendant sought to acquire is legally described in  
26 Exhibit “A” to the Complaint in Eminent Domain that was filed in the 1998 Action. A  
27 true and correct copy of the Complaint in Eminent Domain filed in 1998 is attached as

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1 Exhibit “3” to this complaint. The property that was the subject of the 1998 Action will  
2 be hereby referred to as the “Property Interest”.

3 8. On October 23, 1998, Defendants recorded a Notice of Pendency of Action-  
4 Eminent Domain with the San Joaquin County Recorders (“Lis Pendens”) indicating an  
5 intent to condemn and acquire for a public use an easement interest in the above described  
6 Property Interest. A true and correct copy of the Notice of Pendency of Action-Action in  
7 Eminent Domain is attached as Exhibit “4” to this complaint.

8 9. On or about December 31, 1998, Defendant took legal pre-judgment  
9 possession of the Property Interest that was the subject of the 1998 Action pursuant to an  
10 Order for Prejudgment Possession. A true and correct copy of the Order for Prejudgment  
11 Possession is attached as Exhibit “5”.

12 10. Defendant constructed a public roadway on the Property Interest. The  
13 public roadway is described as Industrial Drive from Minden Lane to Pock Lane-South of  
14 Little John Creek Subdivision.

15 11. Defendant never obtained a Final Judgment of Condemnation and a Final  
16 Order of Condemnation of the Property Interest.

17 12. On October 9, 2007, the Court dismissed the 1998 Action for Defendant’s  
18 lack of prosecution; therefore, Defendants were and are no longer in legal possession of  
19 the Property Interest. A true and correct copy of the Case Report/Case Summary Sheet is  
20 attached as Exhibit “6”.

21 13. Although the 1998 Action was dismissed, Defendants failed and continue to  
22 fail to release the Lis Pendens recorded against the Cobb Property.

23 14. Because the Cobb Property is currently encumbered by the Lis Pendens,  
24 Plaintiff’s title to the Cobb Property is clouded, and Plaintiff is unable to use, develop or  
25 sell the Cobb Property.

26 15. On November 10, 2008, Plaintiff, through his attorneys, demanded that  
27 Defendants remove those portions of Industrial Drive from Minden Lane to Pock Lane-  
28 South of Little John Creek Subdivision constructed on San Joaquin County Assessor’s

1 Parcel Number: 179-180-07, commonly known as 4218 Pock Lane in the City of  
2 Stockton, California (“Ejectment letter”). A true and correct copy of the November 10,  
3 2008 Ejectment letter is attached as Exhibit “7”.

4 16. On November 11, 2008, Plaintiff, through his attorneys, submitted a  
5 Government Tort Claim under Government Code Section 910 et seq. for property  
6 damages, temporary restraining order, and preliminary and permanent injunction  
7 (“Claim”). A true and correct copy of the November 11, 2008 Claim is attached as  
8 Exhibit “8”.

9 17. Defendants failed to respond within forty-five days of submission of the  
10 Claim, as such, under Government Code Section 911.4, the Claim is deemed to have been  
11 denied.

12 18. On November 24, 2008, the Court in this matter ordered that Defendant’s  
13 demurrer to the Inverse Condemnation cause of action was sustained without leave to  
14 amend, as such Plaintiff has no legal remedy for Inverse Condemnation damages against  
15 Defendants. A true and correct copy of the Notice of Ruling and Order are attached as  
16 Exhibit “9”.

17 **II.**

18 **FIRST CAUSE OF ACTION FOR QUIET TITLE**

19 19. Plaintiff hereby realleges and incorporates by reference paragraphs 1  
20 through 18 above.

21 20. Plaintiff was seized of the Property Interests within five years of the  
22 commencement of this action.

23 21. Plaintiff is informed and believes, and on such information and belief  
24 alleges that Defendant, City of Stockton, claims an interest adverse to Plaintiff’s in the  
25 Cobb Property by way of recordation of a Lis Pendens, indicating that Defendants and  
26 each of them are entitled to an easement for a public highway on the Cobb Property, and  
27 the previously described Property Interest. The Lis Pendens was recorded on October 23,  
28 1998, in the Official Records the San Joaquin County Assessor’s Office, Some of the

1 unknown Defendants, specifically those additionally designated as DOES 1 to 25, claim  
2 interests in the Cobb Property adverse to Plaintiff's as assignees and successors of  
3 Defendant, City of Stockton.

4 22. Plaintiff is seeking to quiet title against the claims of Defendants by having  
5 Defendants release the Lis Pendens from the Cobb Property, and the Property Interest.

6 **III.**

7 **SECOND CAUSE OF ACTION FOR EJECTMENT**

8 23. Plaintiff hereby realleges and incorporates by reference paragraphs 1  
9 through 22 above.

10 24. Defendants are now in possession of the Property Interest and have been in  
11 unlawful possession of the Property Interest since October 9, 2007, when they ousted  
12 Plaintiff from peaceful possession of the Property Interest.

13 25. On November 10, 2008, Plaintiff demanded of Defendants, and each of  
14 them, that they remove that portion of Industrial Drive, which is constructed upon the  
15 Cobb Property specifically on the Property Interest, but Defendants, and each of them,  
16 have ignored this demand, have refused Plaintiff exclusive use of the Property Interest,  
17 and still unlawfully withhold possession of the premises.

18 26. The reasonable value of the rents and profits of the premises is, and was, an  
19 amount that is not known by Plaintiff at this time; however, Plaintiff will seek leave to  
20 amend the complaint to so state such sum before judgment. Plaintiff has been damaged in  
21 this sum since October 9, 2007, and will continue to be damaged as long as Defendants  
22 withhold possession of the Property Interest from Plaintiff. Plaintiff will seek leave to  
23 amend the complaint to so state the damages before judgment.

24 ///

25 ///

26 ///

27 ///

28 ///

IV.

**THIRD CAUSE OF ACTION FOR DAMAGES FOR TRESPASS AND FOR  
TEMPORARY RESTRAINING ORDER, AND PRELIMINARY AND  
PERMANENT INJUNCTION**

27. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 26 above.

28. On October 9, 2007, and continuing to the present time, Defendants, and each of them, without Plaintiff's consent, unlawfully possessed and continue to possess the Property Interest of which Plaintiff is the owner and possessor, by having constricted and continued daily use of Industrial Drive by the public. Defendants have no legal right to construct such road on Plaintiff's property, nor do Defendants have the right to allow the public to use such road on Plaintiff's property.

29. As a proximate result of Defendants' unlawful and continued possession of the Property Interest of which Plaintiff is the owner and possessor, by having constructed a road and by allowing the public to use such road on a daily basis, Plaintiff's property was damaged to such an extent that repairs will be necessary to restore the property to its prior condition all to Plaintiff's damage a sum according to proof. Plaintiff will seek leave to amend the Complaint to so state the damages before judgment.

30. As a further proximate result of Defendants' unlawful and continued possession of the Property Interest of which Plaintiff is the owner and possessor, by having constructed a road and by allowing the public to use such road on a daily basis, Plaintiff has suffered discomfort and annoyance and experienced mental suffering. Plaintiff has also sustained injuries to his nervous system, all of which injuries have caused and continue to cause plaintiff great mental, physical, and nervous pain and suffering. As a result of this mental distress, Plaintiff has suffered general damages.

31. As a further proximate result of Defendants' unlawful and continued possession of the Property Interest of which Plaintiff is the owner and possessor, by having constructed a road and by allowing the public to use such road on a daily basis,

1 Plaintiff has incurred, and will continue to incur, medical and related expenses.

2 32. Defendants' wrongful conduct, by having constructed a road on the  
3 Property Interest, and by allowing the public to use such road on a daily basis, unless  
4 enjoined and restrained by order of this court, will cause great and irreparable injury  
5 through the ongoing injury to the property, and will deprive Plaintiff of the ability to use,  
6 develop or sell the Cobb Property in its entirety.

7 33. Plaintiff has no adequate remedy at law for the injuries currently being  
8 suffered, and Defendants will continue to maintain and allow the public to use the road  
9 on Plaintiff's property unless restrained, and Plaintiff would be required to maintain a  
10 multiplicity of judicial proceedings to protect his interests.

11 V.

12 **FOURTH CAUSE OF ACTION AS AGAINST ALL DEFENDANTS**  
13 **UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1060**  
14 **(DECLARATORY RELIEF)**

15 34. Plaintiff repeats and realleges each and every allegation set forth in  
16 paragraphs 1 through 33, inclusive of this Third Amended Complaint and incorporates the  
17 same by this reference as though fully set forth herein.

18 35. An actual controversy has arisen and now exists between Plaintiff and  
19 Defendants concerning their respective rights and duties regarding Defendants' unlawful  
20 occupation, both by Lis Pendens and physically, of Plaintiff's property.

21 36. A judicial declaration is necessary and appropriate at this time, and under  
22 the circumstances, in order to determine the rights and duties of the parties concerning  
23 Defendant's unlawful occupation of Plaintiff's property.

24  
25 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as  
26 follows:

27 **FIRST CAUSE OF ACTION-QUIET TITLE**

28 1. For a judgment that Plaintiff is the fee owner of the Property Interest and

1 that Defendants have no interest in the property adverse to Plaintiffs;

2 2. For costs of suit herein incurred; and

3 3. For such other and further relief as the court may deem proper.

4 SECOND CAUSE OF ACTION-EJECTMENT

5 1. For restitution of the premises;

6 2. For damages for their unlawful possession after October 9, 2007, until  
7 delivery of possession thereof;

8 3. For costs of suit herein incurred; and

9 4. For such other and further relief as the Court may deem proper.

10 THIRD CAUSE OF ACTION-TRESPASS

11 1. For general damages for property damage in an amount to be ascertained;

12 2. For general damages for personal injury and mental distress according to  
13 proof;

14 3. For special damages for medical and related expenses according to proof;

15 4. For an order requiring Defendant to show cause, if it has any interest in the  
16 property, and why it should not be enjoined as hereinafter set forth, during the pendency  
17 of this action;

18 5. For a temporary restraining order, preliminary injunction, and a permanent  
19 injunction, all requiring Defendant and its agents, servants and employees, and all person  
20 acting under, in concert with, or for it:

21 a. To refrain from continuing to trespass on Plaintiff's land and from  
22 maintaining a public road on Plaintiff's property;

23 b. To remove Industrial Drive on the Cobb Property, as described in  
24 Exhibits A to the 1998 Action, and return the Cobb Property to its original condition.

25 6. For costs of suit herein incurred;

26 7. For reasonable attorney's fees according to proof;

27 8. For such other and further relief as the court may deem proper.

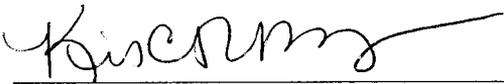
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1 FOURTH CAUSE OF ACTION-DECLARATORY RELIEF

2 1. For a judicial declaration that Plaintiff owns the Cobb Property in fee, to the  
3 exclusion of any claim by Defendant, to the portion of Plaintiff's Property that is  
4 encroached upon by the roadway.

5  
6 DATED: December 23, 2008

RICHARDS, WATSON & GERSHON  
A Professional Corporation  
REGINA N. DANNER  
KIRSTEN R. BOWMAN  
MARICELA E. MARROQUIN

9  
10  
11 By:   
12 Kirsten R. Bowman  
13 Attorneys for Defendant  
14 MICHAEL A. COBB, Trustee of the Andrew C.  
15 Cobb 1992 Revocable Trust dated July 16, 1992

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RWA RICHARDS | WATSON | GERSHON  
ATLANTA  
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

# EXHIBIT D

1 MAXWELL M. FREEMAN, #31278  
THOMAS H. KEELING, #114979  
2 COREN D. WONG, #185047  
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7 CITY OF STOCKTON  
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9 Stockton, California 95202  
Telephone: (209) 937-8333

10 Attorneys for defendant City of Stockton

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF SAN JOAQUIN

14 MICHAEL A. COBB, Trustee of the Andrew )  
C. Cobb 1992 Revocable Trust dated July 16, )  
15 1992, )  
16 Plaintiff, )  
17 vs. )  
18 CITY OF STOCKTON, a municipal )  
corporation; and DOES 1-50, inclusive, )  
19 Defendant. )  
20

CASE NO. CV035015  
~~PROPOSED~~ ORDER SUSTAINING  
DEFENDANT CITY OF STOCKTON'S  
DEMURRER TO THIRD AMENDED  
COMPLAINT OF MICHAEL A. COBB,  
TRUSTEE OF THE ANDREW C. COBB  
1992 REVOCABLE TRUST DATED JULY  
16, 1992 WITHOUT LEAVE TO AMEND

Date: March 12, 2009  
Time: 9:00 a.m.  
Dept: 41  
Judge: Hon. Elizabeth Humphreys  
Reservation No: 1167009

Complaint Filed: March 17, 2008  
First Amended Complaint Filed:  
July 11, 2008  
Second Amended Complaint Filed:  
September 8, 2008  
Third Amended Complaint Filed:  
December 24, 2008

21  
22  
23  
24  
25  
26 The above-entitled matter was calendared for hearing before the Honorable Elizabeth  
27 Humphreys in Department 41 of the above-entitled court at 9:00 a.m. on March 12, 2009. Pursuant  
28 to Local Rule of Court, rule 3-113(D), the Court issued its tentative ruling sustaining the demurrer

~~PROPOSED~~ ORDER SUSTAINING DEFENDANT CITY OF STOCKTON'S DEMURRER TO THIRD AMENDED  
COMPLAINT WITHOUT LEAVE TO AMEND

EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103

Filed APR 03 2009  
ROSA JUNQUEIRO, CLERK

By ~~SONYA FARNWORTH~~  
DEPUTY

1 without leave to amend. Plaintiff requested oral argument and on March 12, 2009, Kirsten R.  
2 Bowman of Richards, Watson & Gershon appeared on behalf of plaintiff Michael A. Cobb, Trustee of  
3 the Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992, and Thomas H. Keeling and Coren  
4 D. Wong of Freeman, D'Aiuto, Pierce, Gurev, Keeling & Wolf appeared on behalf of defendant City  
5 of Stockton. Having considered all of the pleadings filed by the parties, as well as oral argument by  
6 counsel for both parties, the Court now rules as follows:

7 1. Defendant City of Stockton's Demurrer to the Third Amended Complaint of Michael  
8 A. Cobb, Trustee of the Andrew C. Cobb 1992 Revocable Trust Dated July 16, 1992, is sustained  
9 without leave to amend on the following grounds:

10 a. As to the First Cause of Action for Quiet Title, the recordation of a lis pendens  
11 is a privileged act that cannot be the basis for any cause of action. (See, Civ. Code, § 47; see, e.g.,  
12 *Palmer v. Zaklama* (2003) 109 Cal.App.4th 1367, 1378; see also, TAC, ¶¶ 1, 8, 9, 12, 15, 21, 24;  
13 City's RFJN, Ex. D, ¶¶ 12-19.)

14 Plaintiff has conceded the fact of the intervening public use by affirmatively alleging a public  
15 use in his previous complaint. (See, City's RFJN, Exs. A, B, and H, ¶¶ 18, 19, and 26-28; see also,  
16 Code Civ. Proc., §§ 1240.030 and 1245.250.) The Third Amended Complaint does not contain any  
17 allegations of gross abuse of discretion. (See, *County of San Mateo v. Bartole* (1960) 184 Cal.App.2d  
18 422, 433; see also, *Sheffet v. County of Los Angeles* (1970) 3 Cal.App.3d 720, 736.)

19 b. As to the Second Cause of Action for Ejectment, the doctrine of intervening  
20 public use precludes Plaintiff from recovering restitution of the Property Interest as a matter of law.  
21 (See, e.g., *Reed v. Oakdale Irrigation District* (1920) 46 Cal.App. 139, 142; *Sheffet v. County of Los*  
22 *Angeles*, supra, 3 Cal.App.3d 720, 736; see also, City's RFJN, Exs. A; B; H 3:22-24, ¶¶ 18, 19, and  
23 26-28; TAC, ¶ 10.)

24 Plaintiff failed to timely file a claim for damages under Government Code sections 911.2 and  
25 945.6. The date a cause of action accrues for purposes of claims presentation is the same date on  
26 which the cause of action accrues for purposes of the statute of limitations. (See, *Shirk v. Vista*  
27 *Unified School District* (2007) 42 Cal.4th 201, 209.) The 1998 Action was dismissed on October 9,  
28 2007, and any cause of action for ejectment accrued, at the latest, on the date. (TAC, ¶ 12.) Plaintiff

1 did not submit a claim until November 12, 2008, a date beyond the one year statutory period  
2 permitted by the Government Code. (TAC, Ex. 8.)

3 Whether Plaintiff's injuries are continuing is not relevant to the determination of whether he  
4 filed a timely government claim. (See, Field-Escandon v. DeMann (1988) 204 Cal.App.3d 228, 234;  
5 Phillips v. City of Pasadena (1945) 27 Cal.2d 104, 107-108.)

6 The City did not waive the defense that Plaintiff's Government Code claim was untimely.  
7 (See, Gov. Code, §§ 911.2 and 911.3; Smith v. County of Los Angeles (1989) 214 Cal.App.3d 266,  
8 281 fn. 5; see also, TAC, ¶¶ 8, 16, and 30; City's RFJN, Ex. A.)

9 c. As to the Third Cause of Action for Trespass, see discussion regarding the  
10 Second Cause of Action for Ejectment above.

11 Plaintiff does not cite any statute imposing liability for trespass on a public entity. (Gov. Code,  
12 § 815)

13 d. As to the Fourth Cause of Action for Declaratory Relief, the Third Amended  
14 Complaint does not allege an "actual controversy" separate and apart from the one previously alleged  
15 in the Second Amended Complaint. (See, City of Cotati v. Cashmen (2002) 29 Cal.4th 69, 80; see  
16 also, TAC, ¶ 35; SAC, ¶ 40.)

17 2. Plaintiff's Request for Judicial Notice is granted.

18 3. Defendant's Request for Judicial Notice is granted.

19 Good cause appearing therefor, IT IS SO ORDERED.

20 Dated: March 17, 2009

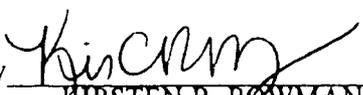
ELIZABETH HUMPHREYS

21 APR 03 2009

HON. ELIZABETH HUMPHREYS, JUDGE

22 Approved as to Form:

23 RICHARD, WATSON & GERSHON

24  
25 By   
KIRSTEN R. BOWMAN

26 Attorneys for plaintiff Michael A. Cobb,  
27 Trustee of the Andrew C. Cobb 1992  
Revocable Trust dated July 16, 1992

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