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*Attorneys for Appellants Franklin High Yield
Tax-Free Income Fund and Franklin
California High Yield Municipal Fund*

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re:
CITY OF STOCKTON, CALIFORNIA,

Debtor.

BAP No. EC-14-1550
Bankr. No. 12-32118
Chapter 9

FRANKLIN HIGH YIELD TAX-FREE
INCOME FUND AND FRANKLIN
CALIFORNIA HIGH YIELD
MUNICIPAL FUND,

Appellants,

v.

CITY OF STOCKTON, CALIFORNIA,
et al.,

Appellees.

**APPELLANTS' MOTION FOR
LEAVE TO EXCEED WORD
LIMIT REQUIREMENTS;
DECLARATION OF JOSHUA D.
MORSE IN SUPPORT THEREOF**

INTRODUCTION

Appellants Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal Fund (collectively, “Franklin”) hereby move for authorization to file principal briefs (appellant and appellee) of no more than 21,000 words each and a reply brief of no more than 10,500 words, in each case enlarging the word limitation set forth in Rule 8015(a)(7)(B) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) by fifty percent. This is Franklin’s first request for such relief.

BACKGROUND

This appeal arises from the contested confirmation of a plan of adjustment in one of the largest, highest-profile, and hardest-fought municipal bankruptcy cases ever conducted under chapter 9 of the Bankruptcy Code.

Franklin is the sole beneficial owner of the \$35,080,000 Stockton Public Financing Authority Lease Revenue Bonds, 2009 Series A (Capital Improvement Projects) for which appellee City of Stockton (the “City”), as chapter 9 debtor, is liable. Pursuant to the *First Amended Plan For The Adjustment Of Debts Of City Of Stockton, California, As Modified (August 8, 2014)*¹ (the “Plan”), Franklin has

¹ [Bankr. Docket No. 1645].

an allowed secured claim of \$4,052,000 and an allowed unsecured claim of \$32,551,625.93 in respect of those bonds.

The Plan provides for Franklin to be paid the full amount of its secured claim but less than 1% of its unsecured claim. The Plan does not provide for any other payments, compensation, or distributions to Franklin, now or in the future. As a result of that treatment, Franklin voted to reject the Plan and objected to its confirmation on several grounds. Following a one-week contested confirmation trial and substantial post-confirmation briefing and oral argument, on October 30, 2014, the Bankruptcy Court overruled Franklin's objections and confirmed the Plan pursuant to oral findings of fact and conclusions of law. A minute order reflecting the Bankruptcy Court's ruling was entered that same day² but, to date, no confirmation order has been entered.

Franklin filed a notice of appeal of confirmation of the Plan on November 12, 2014. Franklin and the City have filed a joint motion requesting that the Court establish an agreed-upon briefing schedule pursuant to which, among other things, Franklin's principal brief would be due on March 2, 2015. Franklin files this motion to request enlargement of the applicable word limitation on principal and reply briefs so that the parties are able to provide the Court with the factual background and legal analysis necessary for a full and fair adjudication

² [Bankr. Docket No. 1747].

of this appeal. The City has informed Franklin that it opposes the requested enlargement.

ARGUMENT

Under Bankruptcy Rule 8015(a)(7), a principal brief may not exceed 14,000 words and a reply brief may not exceed 7,000 words.³ Pursuant to Ninth Circuit BAP Rule 8015(a)-2, Franklin requests that the Court enlarge the word limit for principal briefs (appellant and appellee) to 21,000 words each and for Franklin's reply brief to 10,500 words, a fifty percent enlargement in each case.

An enlargement is appropriate under the circumstances for several reasons. *First*, the record in this appeal is voluminous. The City's chapter 9 case has lasted more than two-and-a-half years. The hearing on confirmation consumed five full trial days – plus an additional full day of post-trial argument – and included the live testimony of thirteen fact and expert witnesses. Testimony from an additional seven fact witnesses was submitted via written declaration. The trial transcript runs more than 1,340 pages, and approximately 1,534 trial exhibits were admitted into evidence.

³ Although the Ninth Circuit BAP Rules currently do not contain word limits akin to those in the newly-amended Bankruptcy Rules, Bankruptcy Rule 8015(f) requires the Court to “accept documents that comply with the applicable [word count] requirements of” the Bankruptcy Rules. Fed. R. Bankr. P. 8015(f).

Second, the issues presented on appeal are complex, important, and not subject to controlling precedent. Franklin filed over 215 pages of objections to confirmation, and additional briefing respecting the Plan totaled over 783 pages (in pleadings filed by eleven other interested parties), for a total of nearly 1,000 pages of confirmation-related briefing. Among other things, Franklin's objections raise a number of important issues as to which there is no binding authority, including (a) whether a chapter 9 plan of adjustment that provides a recovery of less than one cent on the dollar is in "the best interests of creditors" as required by section 943(b)(7) of the Bankruptcy Code; (b) whether the City improperly classified, disparately treated, and unfairly discriminated against Franklin's unsecured claim by providing similarly-situated unsecured creditors and claims with recoveries ranging from more than fifty cents on the dollar to payment in full; (c) whether the City was required to disclose and seek approval of more than \$13 million in fees that it paid to professionals during the bankruptcy case without court approval; (d) whether claims for retiree health benefits not payable for up to eighty years in the future must be discounted to present value for purposes of allowance in a chapter 9 case; and (e) whether the City acted in good faith in light of the Plan's punitive treatment of Franklin.

As evidenced by the massive scope of briefing before the Bankruptcy Court, Franklin cannot provide the Court with the factual background and legal analysis

necessary for the full and fair adjudication of those issues if it remains subject to the word limitations imposed by Bankruptcy Rule 8015(a)(7)(B).

Third, there is likely to be more than one appellee in this appeal. In addition to the City, a number of the City's other creditors participated in the confirmation proceedings and four or more creditors or creditor groups may seek to file briefs supporting the Plan on appeal. As they did before the Bankruptcy Court, those creditors and creditor groups are likely to raise issues and make arguments that are different from those made by the City. Franklin will need to address the arguments raised by all of those parties in both its principal and reply briefs, further necessitating the need for an enlargement of the word limit.⁴

CONCLUSION

For the foregoing reasons, Franklin respectfully requests that the Court enlarge the word limit for principal and reply briefs by fifty percent, to 21,000 words and 10,500 words respectively (subject to Franklin's right to seek a further enlarge of the word limit for its reply brief should the number and volume of appellee briefs so warrant), in each case excluding the corporate disclosure statement, table of contents, table of citations, statement with respect to oral

⁴ To the extent that multiple parties file appellee briefs, Franklin may require an additional enlargement of the word limit for its reply brief. Franklin reserves the right to seek such additional relief after the various appellee briefs have been filed and the necessary scope of its reply brief is known.

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**DECLARATION OF JOSHUA D.
MORSE IN SUPPORT OF
APPELLANTS' MOTION FOR
LEAVE TO EXCEED WORD
LIMIT REQUIREMENTS**

DECLARATION OF JOSHUA D. MORSE

I, Joshua D. Morse, hereby declare:

1. I am an attorney licensed to practice law in California and admitted to practice before, among other courts, the United States Court of Appeals for the Ninth Circuit. I am an attorney with the firm of Jones Day, counsel of record for Appellants Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal Fund (collectively, "Franklin"). I make this declaration pursuant to Bankruptcy Rule 8013(a)(2)(C) in support of *Appellants' Motion For Leave To Exceed Word Limit Requirements* (the "Motion").¹

2. I have personal knowledge of the facts set forth herein and if called as a witness I could testify competently to such facts.

3. Pursuant to the Motion, Franklin seeks authorization to file principal briefs (appellant and appellee) of no more than 21,000 words each and a reply brief of no more than 10,500 words, in each case enlarging the word limitation set forth in Bankruptcy Rule 8015(a)(7)(B) by fifty percent. The Motion is Franklin's first request for such relief.

4. This appeal arises from the contested confirmation of a plan of adjustment in one of the largest, highest-profile, and hardest-fought municipal bankruptcy cases ever conducted under chapter 9 of the Bankruptcy Code.

¹ Initially capitalized terms not defined herein shall have the meaning set forth in the Motion.

5. Franklin is the sole beneficial owner of the \$35,080,000 Stockton Public Financing Authority Lease Revenue Bonds, 2009 Series A (Capital Improvement Projects) for which the City, as chapter 9 debtor, is liable. Pursuant to the Plan, Franklin has an allowed secured claim of \$4,052,000 and an allowed unsecured claim of \$32,551,625.93 in respect of those bonds.

6. The Plan provides for Franklin to be paid the full amount of its secured claim but less than 1% of its unsecured claim. The Plan does not provide for any other payments, compensation, or distributions to Franklin, now or in the future. As a result of that treatment, Franklin voted to reject the Plan and objected to its confirmation on several grounds. Following a one-week contested confirmation trial and substantial post-confirmation briefing and oral argument, on October 30, 2014, the Bankruptcy Court overruled Franklin's objections and confirmed the Plan pursuant to oral findings of fact and conclusions of law. A minute order reflecting the Bankruptcy Court's ruling was entered that same day² but, to date, no confirmation order has been entered.

7. Franklin filed a notice of appeal of confirmation of the Plan on November 12, 2014. Franklin and the City have filed a joint motion requesting that the Court establish an agreed-upon briefing schedule pursuant to which, among other things, Franklin's principal brief would be due on March 2, 2015.

² [Bankr. Docket No. 1747].

Franklin files the Motion to request enlargement of the applicable word limitation on principal and reply briefs so that the parties are able to provide the Court with the factual background and legal analysis necessary for a full and fair adjudication of this appeal. The City has informed Franklin that it opposes the requested enlargement.

8. The record in this appeal is voluminous. The City's chapter 9 case has lasted more than two-and-a-half years. The hearing on confirmation consumed five full trial days – plus an additional full day of post-trial argument – and included the live testimony of thirteen fact and expert witnesses. Testimony from an additional seven fact witnesses was submitted via written declaration. The trial transcript runs more than 1,340 pages, and approximately 1,534 trial exhibits were admitted into evidence.

9. Franklin filed over 215 pages of objections to confirmation, and additional briefing respecting the Plan totaled over 783 pages (in pleadings filed by 11 other interested parties), for a total of nearly 1,000 pages of confirmation-related briefing. Among other things, Franklin's objections raise a number of important issues as to which there is no binding authority, including (a) whether a chapter 9 plan of adjustment that provides a recovery of less than one cent on the dollar is in "the best interests of creditors" as required by section 943(b)(7) of the Bankruptcy Code; (b) whether the City improperly classified, disparately treated, and unfairly discriminated against Franklin's unsecured claim by providing

similarly-situated unsecured creditors and claims with recoveries ranging from more than fifty cents on the dollar to payment in full; (c) whether the City was required to disclose and seek approval of more than \$13 million in fees that it paid to professionals during the bankruptcy case without court approval; (d) whether claims for retiree health benefits not payable for up to eighty years in the future must be discounted to present value for purposes of allowance in a chapter 9 case; and (e) whether the City acted in good faith in light of the Plan's punitive treatment of Franklin.

10. In addition to the City, a number of the City's other creditors participated in the confirmation proceedings and I believe that four or more creditors or creditor groups may seek to file briefs supporting the Plan on appeal.

I hereby declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. This Declaration was signed on December 17, 2014, at San Francisco, California.

By: /s/ Joshua D. Morse
Joshua D. Morse

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Bankruptcy Appellate Panel for the Ninth Circuit by using the appellate CM/ECF system on December 17, 2014.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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Signature: /s/ Kevin Floyd