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Save Our Sonoma Roads

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8 **UNITED STATES BANKRUPTCY COURT**

9 **EASTERN DISTRICT OF CALIFORNIA**

10 **SACRAMENTO DIVISION**

11 In re:

12 CITY OF STOCKTON, CALIFORNIA;

13 Debtor.

) Case No.: 12-32118 (CMK)

) DC No. CSH-2

) **Chapter 9**

) **OPPOSITION OF SAVE OUR
SONOMA ROADS TO CITY OF
STOCKTON'S MOTION TO
STRIKE AMICUS CURIAE BRIEF OF
SAVE OUR SONOMA ROADS**

) Date: May 1, 2014

) Time: 1:30 p.m.

) Judge: Hon. Christopher M. Klein

) C. Courtroom 35

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1 Save Our Sonoma Roads (“SOSroads”) opposes the City of Stockton’s (“Stockton”)
2 motion to strike the brief of SOSroads as Amicus Curiae in Support of Franklin High Yield
3 Tax Free Income Fund and Franklin California High Yield Municipal Fund’s (hereinafter
4 “Franklin Funds”) Objection Regarding the Confirmation of the First Amended Plan for the
5 Adjustment of Debts of City of Stockton, California (November 15, 2013) (ECF No.1352).
6 Stockton contends that the amicus brief was filed late¹ or improperly² and mostly avoids
7 addressing its substance.

8 While Stockton seems to urge that this case be decided in a vacuum, it is related to
9 similar insolvency problems throughout California and this nation. The municipal
10 bankruptcies in San Bernardino, Detroit and Vallejo are subjects of intense national press
11 scrutiny and commentary because they raise the most fundamental issues of local governance
12 in our time. As noted in the amicus brief, Warren Buffet, the wisest investor of our time,
13 warns that many public entities have promised pensions that they cannot afford. Just this
14 month a commission found that “the biggest threat to the long-term fiscal stability of [Los
15 Angeles is] the crushing cost of pensions and worker benefits.”³ While Stockton essentially
16 decries the amicus brief as a waste of judicial resources, the best means of conserving
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19 ¹ There are no amicus brief deadlines in either the federal or local bankruptcy rules or the Order
20 Governing the Disclosure and Use of Discovery Information and Scheduling Dates Related to the
21 Trial in the Adversary Proceeding and Any Evidentiary Hearing Regarding Confirmation of Proposed
22 Plan of Adjustment (ECF No. 1224). SOSroads filed its brief March 31, 2014 (ECF No. 1302) which
23 supports Franklin Funds’ objections which were filed on February 26, 2014 (ECF No. 1273) and
24 March 26, 2014 (ECF Nos. 1292-1297). The amicus brief could not reasonably have been filed
25 before March 26, 2014. Trial commences six weeks after March 31, 2014 and Stockton can file a
26 brief on April 28, 2014. Stockton cannot credibly argue that it has been prejudiced by the timing of
27 the amicus brief.

28 ² SOSroads concedes that amicus briefs are rarely filed in this court. It filed its amicus brief without a
motion, which is procedurally identical to the amicus brief filed in this court by the National
Federation of Municipal Analysts in *In re City of Vallejo, California*, Case No. 08-26813 on
September 8, 2010 (ECF No. 787).

³ Adam Nagourney, *Report Finds Los Angeles at Risk of Decline* NEW YORK TIMES (Apr. 9, 2014),
available at http://www.nytimes.com/2014/04/10/us/report-finds-a-los-angeles-in-decline.html?_r=0

1 judicial resources would be to avoid the avalanche of additional municipal bankruptcies that
2 will have to be adjudicated if this court fails to squarely address the public pension issue. If
3 pensions cannot be impaired in a bankruptcy proceeding the ability of many local
4 governments to function will be called into question. This court may soon have a second
5 opportunity to resolve the pension issue that it avoided in *City of Vallejo*.⁴

6 Any court has broad discretion to entertain the perspective of an amicus brief. The
7 Ninth Circuit allows an amicus to participate in an appeal where a “unique perspective” is
8 offered. *In re Heath*, 331 B.R. 424, 430 (B.A.P. 9th Cir. 2005). In the Seventh Circuit “[a]n
9 amicus brief should normally be allowed . . . when the amicus has unique information or
10 perspective that can help the court beyond the help that the lawyers for the parties are unable
11 to provide.” *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir.
12 1997). Then-Judge Alito, acting as a single judge on a motion to file an amicus brief, ruled
13 that an amicus need only show “(a) an adequate interest, (b) desirability, and (c) relevance.”
14 *Neonatology Assocs., P.A. v. Comm’r of Internal Revenue*, 293 F.3d 128, 131 (3d Cir. 2002).
15 He emphasized that

16 an amicus may provide important assistance to the court. Some
17 amicus briefs collect background or factual references that merit
18 judicial notice. Some friends of the court are entities with particular
19 expertise not possessed by any party to the case. Others argue points
20 deemed too far-reaching for emphasis by a party intent on winning a
particular case. Still others explain the impact a potential holding
might have on an industry or other group.

21 *Id.* at 132 (internal quotation marks omitted).⁵ This court has ample discretion to entertain
22 the perspective of SOSroads.

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24 ⁴ Moody’s Investors Service, Bankrupt California cities face steep climb to solvency without pension
25 relief (Feb. 20, 2014), available at https://www.moodys.com/research/Moodys-Bankrupt-California-cities-face-steep-climb-to-solvency-without-PR_293349#

26 ⁵ See also *Toussaint v. McCarthy*, 801 F.2d 1080, 1106 n.27 (9th Cir. 1986), *rev’d on other grounds*,
27 *Sandin v. Conner*, 515 U.S. 472 (1995) (ruling that “[j]ustice would not be served by ignoring the
28 amicus’ arguments.”).

1 SOSroads respectfully submits that it brings to the court a unique perspective and
2 information that can be of assistance. The implications of the impairment issue are
3 enormous. They are exemplified by the situation in Sonoma County where as much as 84
4 percent of the county road system is in such disrepair that much of it may deteriorate to
5 gravel or dirt. SOSroads brings to the attention of this court the real world effects on a
6 county that is failing to maintain the vast majority of its infrastructure because of out-of-
7 control pension liabilities. Sonoma County is a poster child for service delivery insolvency.

8 SOSroads is sympathetic to public employees who wish to be treated with dignity and
9 respect and want their employers to honor the promises made to them. SOSroads believes
10 that the 99 percent of residents in a jurisdiction who are not local government employees
11 deserve similar consideration. Sonoma County is breaking its promises to all residents by
12 failing to maintain its road system, and the amicus brief explains that the infrastructure began
13 declining at the time when the county began to make unsustainable pension promises. Those
14 obligations have grown from \$24 million in 2001 to \$122 million in 2012 and are projected
15 to be \$209 million in 2020.⁶

16 These problems are not just a litany of numbers. One member of SOSroads suffered
17 excruciating pain when she had broken her leg and an ambulance had to navigate a 200 yard
18 section of dirt road en route to the hospital.⁷ An ambulance bearing another member took
19 twice as long to get to the hospital when an ambulance avoided a section of dirt road. These
20 difficulties are destined to get worse. As the roads continue to deteriorate the response time
21 will increase for medical assistance, fire crews and sheriffs because emergency vehicles can
22 travel much more slowly on dirt and gravel than paved roads. The longer response times can
23 contribute to the death of a heart attack victim who might have lived, the unnecessary
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25 ⁶ New Sonoma's Financial Analysis of the County's Pension Crisis at 7 (Feb. 2014) (chart titled
26 Growth of County and Employee Contributions), available at <http://newsonoma.org>

27 ⁷ Letter from Ken and Karen Adelson to Sonoma County Board of Supervisors (Oct. 29, 2011)
(excerpt), available at <http://sosroads.org/index.php/sos-roads-announcements/letters>

1 complete loss of a home from a fire, or a homeowner's mortal injury by an intruder.
2 Members frequently report having to replace rims of wheels (not tires) on their vehicles. One
3 member hit a pothole so huge that the passenger airbag deployed and caused thousands of
4 dollars of damage to her vehicle.⁸

5 The economist Herb Stein famously stated that anything that could not go on forever
6 would eventually stop, and his wisdom applies to unsustainable pension obligations.
7 Delaying the resolution of this issue will only make the inevitable solutions more painful in
8 localities throughout California. In many cases impairment need not affect all employees or
9 retirees. They might be restricted to claw backs of retroactive pension increases, spiking
10 (boosting retirement pay by adding unused sick leave, vacation time, compensatory time, etc.
11 to the pension formula) and "air time." Adjustments could be made to the benefits for
12 politicians who approved irresponsible and self-dealing pension decisions. Resolving this
13 issue would remove the handcuffs from public officials when they negotiate with employees
14 who all too often believe that the fiscal condition of their local entity will never impact their
15 pensions no matter how onerous the effects may be on the delivery of fundamental
16 government services.

17 Ultimately it is not important whether the court grants Stockton's motion to strike.
18 What is of great consequence is whether the court decides to squarely address and resolve the
19 pension impairment issue.

20 DATED: April 24, 2014

HUNTON & WILLIAMS LLP

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23 /s/ Craig S. Harrison

By Craig S. Harrison

24
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Save Our Sonoma Roads

26 ⁸ Jonathan Weber & Tim Reid, *In California wine country, bumpy roads tell tale of fiscal woe*,
27 REUTERS (May 29, 2013), available at <http://www.reuters.com/article/2013/05/29/us-usa-pensions-sonoma-idUSBRE94S0GP20130529>