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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

In re: CITY OF STOCKTON, CALIFORNIA, Debtor.	CASE NO.: 12-32118-C-9 DCN: JD-2 **OFFICIAL COMMITTEE OF RETIREE'S OPPOSITION TO FRANKLIN'S MOTION TO ALTER AND AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING ALLOWED AMOUNT OF RETIREE HEALTH BENEFIT CLAIMS** Date: December 10, 2014 Time: 11:00 a.m. Judge: Hon. Christopher M. Klein Courtroom: 35, Department C

The Official Committee of Retirees (the "Committee") opposes Franklin's Motion to Alter and Amend Findings of Fact and Conclusions of Law Regarding the Allowed Amount of Retiree Health Benefit Claims (the "Present Value Motion"). The Committee submits that the Court correctly determined that the City is not required to discount the Retiree Health Benefit Claims[1] to present value, and that the claims should be allowed in their full amounts scheduled by the City

[1] Capitalized terms not defined herein shall have the meaning as defined by the Plan.

as undisputed and totaling $545,940,194.74. See Amended List of Creditors and Claims filed October 16, 2013, Dkt. No. 1150.

As explained below, the Bankruptcy Code does not require discounting of unsecured claims to present value to determine the allowed amount of the claim and imposing such a discount on Retiree Health Benefit Claims would unfairly discriminate against the Retiree Health Benefit Claimants, since it has not been applied to other creditors. Indeed, Franklin's own claim was not discounted to present value.[2] The Committee further submits that any ruling on the present value issue should not change the relative amounts of the Retiree Health Benefit Claims or the relative distributions to Retiree Health Benefit Claimants.

I. Retiree Health Benefit Claims Were Not Inflated as Part of the Retirees Settlement.

Franklin begins its argument with the incorrect assertion that the City agreed to allow the Retiree Health Benefit Claims in an aggregate amount of $545 million pursuant to the Retirees Settlement. (Present Value Motion, p. 4:14-15). This simply is not accurate. The Retirees Settlement did not determine the amount of any individual claim or the aggregate amount of the Retiree Health Benefit Claims. This was made clear in the evidence cited by Franklin in its Motion. See e.g. Exhibit B to Franklin's Motion, 5/13/14 Tr. (Goodrich) at 144:18-145:12 (where Ms. Goodrich explains that the Retiree Health Benefit Claims were not negotiated, the number represents the amount of the claims as calculated by the City's actuaries as the actual amount of the claims); Deposition Testimony of Dwane Milnes at fn. 15 of the Motion (where Mr. Milnes explains that the Retirees Settlement was not tied to the amount of the Retiree Health Benefit Claims); and Trial Exhibit 2044, which sets forth the terms of the Retiree Settlement.

Thus, contrary to Franklin's assertion, the amounts of the Retiree Health Benefit Claims were independently calculated by the City's actuaries as the actual amount of the claims, and not improperly inflated as part of the Retirees Settlement.

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[2] The Committee acknowledges Franklin's assertion that it has excluded post-petition interest from its claim. But, as explained below, that interest is excluded from Franklin's claim by the Bankruptcy Code and does not constitute discounting of Franklin's claim for present value.

II. The Bankruptcy Code Does Not Require Discounting of the Retiree Health Benefit Claims to Present Value.

As explained by the Committee in its pretrial brief in support of confirmation[3], the Retiree Health Benefit Claims, scheduled as undisputed, should be allowed as scheduled without any discounting to present value. Bankruptcy Code Section 502(b) provides for allowance of objected claims after notice and hearing in "the amount of such claim in lawful currency of the United States as of the filing date of the petition", subject to certain exceptions set forth in Section 502(b)(1) through (9). As explained in *In re Oakwood Homes Corp*., 449 F.3d 588, 597 (3d Cir. 2006), "amount" means the accelerated amount of the claim as of the petition date without discounting to present value. In *In re Oakwood Homes*, the Court of Appeals upheld the objections of an indenture trustee for a group of bondholders to the discounting of the bondholders' claims to present value and held that the bondholders' claims should be allowed in the full accelerated amount of their claims.

Of course, as explained in *In re Oakwood*, the Bankruptcy Code does provide for discounting to present value in certain circumstances. For example, when determining the "value" of claims or payments on allowed claims, as opposed to the "allowance" of claims, the Bankruptcy Code calls for a present value determination. *Id*., *See e.g*. 11 U.S.C. §§ 1129(a)(7), (9), and (15); 1129(b)(2); 1173(a)(2); 1225(a)(4) and (5); 1325(a)(4) and (5); 1328(b)(2). The application of present value to determine "value" has long been established in the application of these sections. For example, when an undersecured creditor makes an 1111(b) election, the total *payments* required on account of the creditor's "allowed" claim must have a "value" of at least the present value of the creditor's interest in the collateral. *See In re Weinstein*, 227 B.R. 284, 294 (B.A.P. 9th Cir. 1998). Another instance where the Bankruptcy Code provides an exception to the general standard for acceleration of debt when allowing claims lies in the express exceptions set forth in 502(b)(1) through (9). For example, Section 502(b)(6) calculates a claim for damages resulting from termination of a real property lease "without acceleration", and

[3] See Official Committee of Retiree's Memorandum in Support of Confirmation of the City of Stockton's First Amended Plan of Adjustment filed March 3, 2014, Dkt. No. 1304.

502(b)(7) provides for calculation of certain claims arising from termination of an employment contract "without acceleration." Thus, the Bankruptcy Code expressly provides for present valuation where that discount is required (i.e. in the Sections providing for determination of "value") and for exceptions to the general rule of acceleration of the debt (i.e. in the exceptions within Section 502(b)) but no such provision is made requiring discounting to present value for determining the allowed amount of claims generally, including the Retiree Health Benefit Claims.

The Court should also consider that Franklin's own general unsecured claim for $32,551,625.93 has not been discounted to present value. Franklin incorrectly attempts to assert that its claim was discounted to present value by noting that the claim does not include post-petition interest. (Present Value Motion at p. 11:6-10). However, that assertion is misleading since it incorrectly equates the Bankruptcy Code's exclusion of unmatured interest from the amount of a claim with the discounting a claim to present value. As the Court well knows, Bankruptcy Code Section 502(b)(2) expressly excludes unmatured interest from the allowed amount of Franklin's claim, so it should not be included in the amount of the claim before discounting to present value. And, in any event, the exclusion of contractually agreed interest is not the same as discounting to present value. Thus, Franklin is asserting that its unsecured claimshould be allowed at $32,551,625.93 without discounting to present value but Franklin wants the discounts applied to the Retiree Health Benefit Claims.. Thus, Franklin is asking the Court to apply a double standard that would allow Franklin to have the full amount of its claim (subject to the express limitations on unmatured interest in the Bankruptcy Code) without any discounting to present value but that the Retiree Health Benefit Claims should be reduced by present value. Franklin's attempt to stretch the Bankruptcy Code's disallowance of unmatured interest into a discriminatory present valuation requirement for only Retiree Health Benefit Claims should be denied.

Indeed, if Retiree Health Benefit Claims must be discounted to present value, then all claims must be discounted to present value, which would render meaningless the Bankruptcy Code's express provisions regarding the value of a claim and the exceptions included within Section 502(b). It would also result in a double discounting of claims, since claims would be

1 discounted to present value for allowance and then discounted to present value again when the
2 code sections requiring valuation of payments (as discussed above) on account of the allowed
3 claim are applied. Accordingly, Franklin Fund's suggestion that Retiree Health Benefit Claims
4 must be discounted to present value improperly expands the exceptions of Section 502(b), ignores
5 the Code's distinction between allowance and valuation and improperly deflates the value of
6 Retiree Health Benefit Claims.

7 The Committee acknowledges, as it did in its earlier briefing that *In re Oakwood*, involved
8 an interest-bearing claim, which Franklin attempts to distinguish from the Retiree Health Benefit
9 Claims. But as explained above, there is no reason to treat the Retiree Health Benefit Claims
10 differently. As recently explained by the Bankruptcy Court in *In re Gretag Imaging,* 485 B.R. 39,
11 46 (Bankr. D. Mass. 2013), allowance of non-interest bearing claims should not be determined by
12 a different set of rules than interest bearing claims and the reasons for allowing interest-bearing
13 claims as provided in *In re Oakwood* applies equally to interest-bearing and non-interest-bearing
14 claims. Moreover, to categorize the Retiree Health Benefit Claims as non-interest bearing claims
15 would be a mistake since retirees would be entitled to interest on a judgment for damages for the
16 loss of retiree health benefits outside of bankruptcy. Thus, allowing Retiree Health Benefit
17 Claims differently depending upon whether a prepetition judgment was obtained would be
18 improper and superimpose different standards for allowing claims depending on the status of
19 enforcement that is not provided in the Bankruptcy Code.

20 Finally, the Committee urges the Court not to follow the cases cited by Franklin Fund. In
21 *In re CF&I Fabricators of Utah, Inc.*, 150 F.3d. 1293, 1300 (10th Cir. 1998) and *In re CSC*
22 *Indus.*, 232 F.3d 505 (6th Cir 2000), the claimants did not challenge the discounting of their claim
23 to present value and the issue before the courts was what method of discounting to be applied. In
24 the cases cited above by the Committee, where the discounting to present value was challenged,
25 the courts correctly held that no discounting was required in the first instance. In addition, the
26 cases cited by Franklin wrongly misapply Bankruptcy Code sections governing classification of
27 claims or treatment of claims in the claims allowance analysis (e.g. *In re Thomson McKinnon*
28 *Secs.,* 149 B.R. 61, 75 (Bankr. S.D.N.Y. 1992) misapplying section 1123(a)(4)) or that

1 improperly expand the exceptions of Section 502(b) to swallow the rule (e.g. *Pereira v. Nelson*
2 *(In re Trace Int'l Holdings, Inc.),* 284 B.R. 32 (Bankr. S.D.N.Y. 2002) which involved rejected
3 employment contracts), or are inconsistent with the requirements of the Bankruptcy Code as
4 explained above.

5 Accordingly, the Committee submits that the amounts of the Retiree Health Benefit
6 Claims as set forth in the City's Amended List of Creditors and Claims should not be discounted
7 to present value.

8 **III. If The Court Determines to Apply a Present Valuation, it Should not Be**
9 **Applied to the Retiree Health Benefit Claims**.

10 If the Court were to adopt Franklin's contentions on whether present value should be
11 applied, which it should not do for the reasons stated above, the Court should not adopt Franklin's
12 proposed finding on the allowed amount of the Retiree Health Benefit Claims at $261.9 million.
13 The City's Amended List of Creditors and Claims Pursuant to 11 U.S.C. §§ 924 and 925 (Retiree
14 Health Benefit Claims) (Dkt. 1150) scheduled the Retiree Health Benefit Claims as undisputed.
15 Pursuant to Bankruptcy Code Sections 501, 502(a), 924 and 925, these Retiree Health Benefit
16 Claims are deemed allowed in the scheduled undisputed amount unless objections to the claims
17 are filed. No objections to those claims have been filed.

18 The Committee, the City, and Franklin Fund did stipulate to allow Franklin Fund to argue
19 at the confirmation hearing that the Retiree Health Benefit Claims should be discounted to present
20 value without filing objections to the approximately 1,100 Retiree Health Benefit Claims. See
21 Dkt. No. 1356. However, that stipulation expressly provided that any ruling would not alter the
22 amount of the Retiree Health Benefit Claims and any objection to the allowance of the Retiree
23 Health Benefit Claims, or any modification of the Amended List of Creditors, shall be made on
24 notice to the holders of such claims in accordance with the applicable Federal Rules of
25 Bankruptcy Procedure. *Id.*

26 The Retiree Health Benefit Claimants voted to accept the Plan with notice of their
27 undisputed claims in the amounts set forth in the City's Amended List of Creditors and the City's
28 promise to pay $5.1 million on account of allowed Retiree Health Benefit Claims. The $5.1

million payment is a fixed amount that would not be changed by the present value ruling. Therefore, the Committee submits that any ruling on present value should be made in a manner that would not change the respective distributions to Retiree Health Benefit Claimants as they have already voted overwhelmingly to approve the Plan with the current distribution schedule.

IV. Conclusion

The Court should deny Franklin's request to amend its findings of fact and conclusions of law. Reducing the Retiree Health Benefit Claims to present value is not required by the Bankruptcy Code and would unfairly discriminate against the retirees since Franklin's own claim has not been discounted. Finally, if the Court were to amend its findings to apply discounting to present value, it should do so in a way that does not affect the allowed amount or distributions to the Retiree Health Benefit Claims.

Dated: November 26, 2014

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