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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*.	**APPELLEE CITY OF STOCKTON, CALIFORNIA'S OPPOSITION TO APPELLANT'S MOTION FOR LEAVE TO EXCEED WORD LIMIT REQUIREMENTS**

INTRODUCTION

Appellants Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal Fund ("Franklin") have moved to file oversized opening and reply briefs—together an extra 10,500 words, or approximately 50 extra pages—with hints of a motion for even more words to come.[1] The motion should be denied. Yes, this bankruptcy case is complex—many bankruptcy cases are. But this appeal is no different from the many others that come before this Court, with lengthy records and important issues, in which the parties manage to cull their arguments and brief them within the word limit. Franklin and the appellees can do the same.

ARGUMENT

Until recently, this Court's rules provided that "appellee's initial briefs shall not exceed (30) pages, and reply briefs shall not exceed twenty (20) pages." Ninth Circuit BAP Rule 8015(a)-2. The explanatory note to that rule expressly noted that "[m]otions for leave to exceed page limitations are rarely granted." Federal Rule of Bankruptcy Procedure 8015(a)(7)(B)(i)-(ii), which went into effect on December 1, 2014, modified the rule to expand the permissible size of briefs. It provides that "[a] principal brief is acceptable if … it contains no more than 14,000 words" and "[a] reply brief is acceptable if it contains no more than half of the type

[1] *See* Appellant's Motion for Leave to Exceed Word Limit Requirements, Dkt. No. 10 at 1, 6 n.4.

volume specified [for principal briefs]," i.e., 7,000 words. Fed. R. Bankr. P. 8015(a)(7)(B)(i); *see* Fed. R. Bankr. P. 8015(f) ("A district court or BAP must accept documents that comply with the applicable requirements of this rule."). This expansion, which roughly doubles the permissible page count, brings the rules for bankruptcy appeals into line with the rules for appeals to the Circuit. Fed. R. App. P. 32(a)(7)(B)(i). The Ninth Circuit also "looks with disfavor on motions to exceed the applicable … limitations." 9th Cir. R. 32-2.

Between its opening brief and its reply, Franklin seeks leave to file 31,500 words of briefing, the equivalent of approximately 150 pages. This is three times the length of the 50-page limit for principal and reply briefs that long sufficed for "full and fair adjudication," Franklin Mot. at 3, in this Court. It has not come close to justifying its request.

1. Franklin identifies five issues that it plans to raise on appeal. Five issues is hardly extraordinary in appellate cases. Franklin will run up against the Court's established word limitations only if it insists upon attempting to fully relitigate each of these issues as if the confirmation hearing never occurred. The BAP, however, is a court of review. Franklin should be required like any other appellant to focus on the truly important issues, in light of standards of review that are deferential to the bankruptcy court in its exercise of discretion and judgment. A kitchen sink approach is simply not appropriate on appeal. Rather, the rules

require an appellant to separate the wheat from the chaff. Certainly, an appellant seeking three months to prepare its opening appeal brief—in a motion joined by the City—should spend at least some of that time attempting to focus, hone, and edit its arguments to fit within the generous existing 14,000 word limit rather than immediately seeking a massive enlargement of its brief.

2. The issues Franklin says it will raise are not nearly as vexing as it suggests. Classification, for example, is routinely at issue in appeals before this Court. To show how apparently complex this case is, Franklin notes that it filed "over 215 pages" of briefing before the bankruptcy court, and that, all told, interested parties filed nearly 1,000 pages. Franklin Mot. at 5. That the entirety of plan confirmation required substantial briefing does not support Franklin's argument at all. That is the stage of litigation where all parties litigated the full merits of all of their arguments. The briefing to which Franklin refers presumably spans from the City's Memorandum in Support of Confirmation, through all interested parties' briefs supporting or objecting to confirmation, the City's response, interested parties' replies, the City's surreply, and a full round of post-trial briefing. Much of this briefing addressed the same issues and authorities, just at different stages of the case. Again, the purpose of the word limitation for appellate briefs is to narrow the issues on appeal and avoid the relitigation of every claim.

3. Franklin also points to the five-day confirmation hearing. Franklin Mot. at 4. A five-day trial is far from unusual. Indeed, the 2013 Judicial Business Report shows that, in the period surveyed, nearly half (205 of 434) of all civil trials in Ninth Circuit trial courts that resulted in judgment were four days or longer.[2] Franklin, whose burden it is to establish its entitlement to relief, has not demonstrated that the ordinary rules are too miserly to explain the salient points of a five-day trial.

4. Finally, Franklin says its request is justified because "there is likely to be more than one appellee in this appeal." Franklin Mot. at 6. This has nothing to do with Franklin's opening brief, the purpose of which is to identify *its own* specific grievances with the bankruptcy court's decision. To the extent Franklin is faced in its reply brief with far-flung arguments in several, non-overlapping answering briefs, it can move for leave to file an oversized reply brief at that time.

In the interest of judicial economy, motions like Franklin's are by rule "rarely granted," and Franklin has identified nothing that should make it the exception to the rule.

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[2] *See* Administrative Office of the U.S. Courts, *Judicial Business of the United States Courts – 2013* at T-2, http://www.uscourts.gov/Statistics/JudicialBusiness/2013/statistical-tables-us-district-courts-trials.aspx.

CONCLUSION

For the foregoing reasons, the Court should deny Franklin's motion to file an oversized brief.

Dated: December 19, 2014

Respectfully submitted,

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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 19, 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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