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Attorney for Creditor
MICHAEL A. COBB

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

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In re:	)	**Case No. 32-32118**
	)	
CITY OF STOCKTON, CALIFORNIA,	)	**Chapter 9**
	)	
Debtor.	)	**Date: May 1, 2014**
	)	**Time: 1:30 p.m.**
	)	**Judge: Hon. Christopher M. Klein**

SUPPLEMENTAL OBJECTION TO PLAN OF CREDITOR MICHAEL A. COBB AND REPLY TO CITY'S RESPONSE

At turns branding MICHAEL A. COBB already compensated, greedy, and seeking "special treatment," the City of Stockton asserts that Cobb is merely an unsecured creditor whose rights may be freely affected by the Chapter 9 laws. (City's Response, filed March 28, 2014 (document no. 1298.) As can be seen, the City is unable to cite to any authority that squarely addresses whether in a Chapter 9 municipal reorganization a city may defeat the usual requirement in all governmental

takings that "just compensation," defined nearly uniformly as fair market value at some applicable date of valuation, be paid. As alluded to in Cobb's Objection filed February 11, 2014 (document no. 1261) to the first amended plan, this does appear to be a matter of first impression. As a general re-statement of Cobb's position, it being the constitutional mandate that a governmental body cannot take private property without payment of fair market value for it, the City cannot keep Cobb's property without payment of that fair market value, regardless of what events led the City into bankruptcy and regardless of whatever rights the City enjoys to eliminate or reduce contractual, statutory, and tort claims that other creditors have against it.

ADDITIONAL FACTUAL BACKGROUND

The City's recitation of facts is nearly correct, but not in all respects. The City attached as "Exhibit C" the "THIRD AMENDED COMPLAINT FOR 1. QUIET TITLE, 2. EJECTMENT, 3. TRESPASS, 4. DECLARATORY RELIEF" to its response to Cobb's objection purportedly as the operative pleading in the state court inverse condemnation action. As a reading of the opinion of the Third District Court of Appeal reveals (attached to Cobb's objection as Exhibit A), it is the *second* amended complaint, which included a cause of action for inverse condemnation, that is the state court claim that Cobb has against the City. (Cobb Objection filed Feb. 11, 2014 (document no. 1261, Ex. A, p. 2; *Cobb* v. *City of Stockton*, 192 Cal.App.4th 65, 66 (2011) ["In this instance, plaintiff's only challenge is to dismissal of the inverse condemnation claim contained in his second amended complaint.].) This complaint is attached hereto as Exhibit A.

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SUPPLEMENTAL OBJECTIONS AND REPLY TO CITY RESPONSE

I. THE PLAN CANNOT BE CONFIRMED WHERE IT PROPOSES TO PAY COBB ANY AMOUNT OTHER THAN CONSTITUTIONALLY-REQUIRED FULL FAIR MARKET VALUE, AND THE CITY MISUNDERSTANDS THE EFFECT OF THE DISMISSED STATE COURT EMINENT DOMAIN ACTION.

The City argues mistakenly that when it initiated an eminent domain action and made deposit of what it viewed as "probable compensation," which Cobb withdrew, that this results in Cobb having merely an "unsecured claim for payment." (City Response, p. 8, line 7.) It compounds its error with reliance on the effect of Code of Civil Procedure section 1255.260, which gives effect in an eminent domain action to the withdrawal by deeming it a waiver of claims and defenses except for additional compensation.

Cobb has previously cited, and continues to rely, on the principle that the obligation of a governmental entity taking a private landowner's property, whether a bankrupt or not, is a *condition* imposed on the exercise of the power. (*Long Island Water Supply Co.* v. *Brooklyn*, 166 U.S. 685, 689, 17 S.Ct. 718, 720 (1897).) The *actual* payment of compensation is required where there is a taking. (*United States* v. *412.715 Acres of Land*, 60 F.Supp. 576, 577 (1945).) No title passes without the payment. (*Kennedy* v. *Indianapolis*, 103 U.S. 599, 605-606 (1880); *People* v. *Peninsula Title Guaranty Co.*, 47 Cal.2d 29, 33 (1956).) As a result, while the City correctly notes that it has used part of the "strip of land" that was the subject of the eminent domain action, this use alone does not act to vest title to the City. Under eminent domain laws of California, only after the valuation is determined *and paid* may the governmental entity obtain a final order of condemnation, which may be recorded in the local land records. (Code Civ. Proc., § 1268.030) "Title to the

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property vests in the plaintiff upon the date of recordation." (Code Civ. Proc., § 1268.030, subd. (c).) The City has no order or judgment of condemnation; it has no title. Having no title itself, title remains with Cobb.

The City also seeks to rely on the effect of withdrawal of probable compensation *in an action that was dismissed*. As the Court of Appeal decision recites, the eminent domain case of the City was dismissed for lack of prosecution, which the City concedes as well. (City's Response, p. 4, lines 7-9.) The effect of this dismissal was one not on the merits and consequently not res judicata on any issue in that case. (*Mattern* v. *Carberry*, 186 Cal.App.2d 570, 572 (1960); *Stephan* v. *American Home Builders*, 21 Cal.App.3d 402, 406 (1971); *Gonsalves* v. *Bank of America*, 16 Cal.2d 169, 172 (1940).) The City's repeated recitation of how Cobb's withdrawal of a probable compensation deposit results in a mere unsecured claim for more has no res judicata effect.

The City seeks to distinguish *Radford* and *Lahman* and *Security Industrial Bank* on the basis that there the creditors were voluntary secured creditors, holding specific collateral to act as security for the debt. The City concedes that "[t]he various bankruptcy laws passed by Congress have never been read to grant the power to extinguish the secured property interests of creditors." (City's Response, p. 6, lines 10-11.) According to the City, such creditors should be elevated to a status *above* that of a landowner, who enters into no voluntary transactions with a later debtor, yet finds himself with his property taken with what he claims is inadequate constitutional compensation. There is no logic to protect a secured creditor, who has a claim for money albeit secured under contractual arrangements with the debtor, yet deny even greater protection to a landowner who involuntarily loses his real property to the government. Presumably, under the City's logic, had Cobb sold the property to the City on an installment basis, retaining a purchase money deed of trust,

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then the City could *not* affect Cobb's rights except perhaps to substitute some other, yet adequate, collateral. Yet, when the City opts instead to condemn his property, he is just an unsecured creditor at that point, whose claim is "indistinguishable from the claims held by any of the City's other unsecured creditors." (City's Response, p. 9, lines 23-24.) To the contrary, the claims are completely distinguishable: Cobb owned the property made subject to the City's condemnation; title has not vested in the City (we would ask the City then who it believes *does* own it?); there are no res judicata effects from the dismissed condemnation action; and Cobb continues to hold rights to that specific property until just compensation has been paid.

II. "JUST COMPENSATION" HAS LONG BEEN EQUATED TO REQUIRE RECOVERY OF FAIR MARKET VALUE, NOT SOME FLUCTUATING CONCEPT THAT DEPENDS "ON THE CIRCUMSTANCES" AS THE CITY WOULD HAVE IT.

The City makes repeated arguments that treating Cobb's inverse condemnation claim as a general unsecured claim subject to adjustment under general bankruptcy laws (i.e., "cents on the dollar") provides him "just" compensation "under the circumstances." (City's Response, p. 2, lines 13-14; p. 5, lines 17-18; p. 13, lines 25-28.) In making this argument, the City changes the entire meaning of "just compensation" as derived from decades of condemnation and inverse condemnation cases, and seeks to substitute the concept of what is "just" to require application to the circumstances of the bankrupt City, faced with so many claims that it is "fair" to allow the City to treat creditors "even-handedly" by lumping a landowner whose real property is physically deprived from him with creditors who have claims arising from events *other* than a physical deprivation. (City's Response, p. 11, lines 20-22; p. 13, lines 20-28.)

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If only this is what is meant by "just compensation." As with "straight" eminent domain actions, fair market value is the general measure of damages in inverse condemnation actions. (*Housley* v. *Poway*, 20 Cal.App.4th 801, 807 (1993).) An award includes interest from the date of damage (*Holtz* v. *San Francisco Bay Area Rapid Transit Dist.*, 17 Cal.3d 648,657 (1976); *Heimann* v. *Los Angeles*, 30 Cal.2d 746, 758 (1947).) If the property owner recovers in inverse condemnation, the owner is also entitled to reimbursement for "reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees . . . ." (Code Civ. Proc., § 1036; *Heimann*, *supra*.) The market value approach, rather than the "particular" value to the landowner, is deemed constitutionally necessary to be awarded as part of the "fair measure of the public obligation to compensate the loss." (*Kimball Laundry Co.* v. *United States*, 338 U.S. 1, 69 S.Ct. 1434, 1437 (1949); see also *United States* v. *564.54 Acres of Land*, 441 U.S. 506, 99 S.Ct. 1854, 1857-1859 (1979).) While the City is correct that "just compensation" is not always equivalent to fair market value, the standard requires the government to pay the deprived landowner an amount that fully compensates for the loss (e.g., *United States* v. *Cors*, 337 U.S. 325, 332 (1949), not one of general pro rata adjustment under insolvency laws.

Here, the City makes no pretense that recovery under Class 12 will in any way provide Cobb with fair market value, but rather just pleads that it is municipality that has to accommodate the competing interests of its creditors and balance those interests with the need to remain a functioning government, and by extension, inverse condemnation claimants must "take the hit" for the good of the public. The law is not ambiguous: "nor shall private property be taken for public use, without just compensation" (U.S. Const., Fifth Amend; Cal. Const., Art. I, Sec. 19).

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The term "just" has no meaning anywhere near that suggested by the City, and this novel argument must be rejected.

III. COBB'S CLAIM HAS NOTHING TO DO WITH THE CONTRACTS CLAUSE.

The City also keeps repeating the rule that bankruptcy laws may impair the obligations of contract, something that might otherwise violate the Contracts Clause. Cobb is not really sure who this argument is addressed to; Cobb admits that the Contract Clause, by its terms applicable only the states, does not invalidate federal bankruptcy law, otherwise valid, that affects state contractual relations between persons. Cobb sought to note its agreement with this principle and distinguish his own claim from a "mere contractual claim" by citing to *In re Lahman Manufacturing Company, Inc.*, 33 B.R. 681, 686 (Bankr. D.S.D 1983), and its holding that a physical taking of property is not an impairment of a "mere contractual right" that may be adjusted under the bankruptcy laws. In any event, there was no "contract" between the City and Cobb nor any contractual relations between them. The Contracts Clause is a limitation on the authority of the states; the Fifth and Fourteenth Amendments are limitations on the federal (and state) governments, including the authority of Congress to pass any laws, including those on the subject of bankruptcy. This is a physical taking claim, not one relying on an impairment of any of his contractual rights.

IV. THE AMOUNT OF COBB'S CLAIM IS IRRELEVANT TO THE PLAN OBECTION.

On the City's "greed" tack, it contends that the condemnation action deposit "provided [just] compensation through statutorily-prescribed deposit procedures" (City's Response, p. 2, lines 8-10) and that Cobb's claim is "grossly overstated" (City's Response, p. 5 & fn. 2). This is neither the

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time nor the place to determine the amount of Cobb's claim. Cobb filed his claim by the bar date and the City may have rights to object to the amount of the claim, on the basis (perhaps among others) that the extent of Cobb's position as to what is just compensation is not enforceable under state law, pursuant to 11 U.S.C. § 502. The objection is to the first amended plan's lack of any differing treatment to be afforded to an inverse condemnation creditor claiming a physical taking of his property by the debtor City. The City's dispute of the *amount* of the claim, as opposed to the *nature* of the claim, appears entirely irrelevant other than to try and "dirty up" Cobb.

V. THERE IS NO ESCAPING THAT THE PLAN SEEKS TO PAY COBB FOR HIS REAL PROPERTY SOMETHING OTHER THAN FAIR MARKET VALUE AS DETERMINED AT A TRIAL, AND ACCORDINGLY, IT CANNOT BE CONFIRMED.

While the City believes Cobb's claim should be lower in amount, what makes the plan objectionable is the lack of distinct treatment to be given to an inverse condemnation claimant such as Cobb. The City, after reciting to the constitutionally valid ability of the federal Chapter 9 laws to alter contract rights, then makes the statement, out of whole cloth, that the Fifth Amendment rights may be altered as well: "So too when it comes to the Takings Clause." (City's Response, p. 11, lines 5-6.) This is an untenable position by the City.

It is a long-standing principle that the bankruptcy laws do not overwrite other constitutional protections. See *Louisville Joint Stock Land Bank* v. Radford, 295 U.S. 555, 55 S.Ct., 854, 863 (1935) ["The bankruptcy power, like the other great substantive powers of Congress, is subject to the Fifth Amendment."]:

> "[T]he Fifth Amendment commands that, however great the nation's need, private property shall not be thus taken even for a wholly public use without just

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> compensation. If the public interest requires, and permits, the taking of property of individual mortgagees in order to relieve the necessities of individual mortgagors, resort must be had to proceedings by eminent domain; so that, through taxation, the burden of the relief afforded in the public interest may be borne by the public." (*Id.* at p. 602.)

Congress may prescribe any regulations concerning discharge in bankruptcy, but only to the extent that such laws are not so grossly unreasonable as to be "incompatible with fundamental law." (*Hanover National Bank* v. *Moyses* 186 U.S. 181, 192 (1902). The Due Process Clause is another limitation of the bankruptcy power. (*Kuehner* v. *Irving Trust Co.*, 299 U.S. 445, 57 S.Ct. 298, 301 (1937); see also *Armstrong* v. *United States*, 364 U.S. 40, 46-49, 80 S.Ct. 1563, 1567-1569 (1961) ["The total destruction by the Government of all value of these liens, which constitute compensable property, has every possible element of a Fifth Amendment 'taking,' and is not a mere 'consequential incidence' of a valid regulatory measure"].)

In its prior bankruptcy jurisprudence, the Supreme Court went to significant lengths to avoid a Takings Clause invalidation of federal reorganization law attendant to permitting the transfer of the Penn Central railroad properties to a new state-sponsored corporation, by finding that affected creditors could obtain just compensation under a separate federal law in the Court of Claims for any loss. (*Regional Rail Reorganization Act Cases*, 419 U.S. 102, 125-136, 148 (1974).) There was no support for the notion, advanced here by the City, that the bankruptcy laws permit something other than just compensation (as defined by law and precedent, see § II, *ante,* not by "fairness" concepts posited by the City) to be paid to affected property owners.

In *United States* v. *Security Industrial Bank*, 459 U.S. 70, 73-75, 103 S.Ct. 407 (1982), the Supreme Court majority rejected the contention that retroactive legislation does not implicate

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constitutional safeguards so long as the legislative act is within the rational exercise of Congress' bankruptcy power. After affirming the ability of bankruptcy laws to retroactively impair contractual rights, the Court states that when a bankruptcy power impairs "traditional property interests," the question of "whether the enactment takes property within the prohibition of the Fifth Amendment" is separate and distinct from the question of whether the enactment is a rational exercise of the bankruptcy authority. (*Id.,* 103 S.Ct. at p. 410.) The taking of Cobb's property was not of *some* of the bundle of sticks that constitute a "property right," but rather took *all* of the sticks. (See *id.*, 103 S.Ct. at pp. 411-412 ["complete destruction of the property right of the secured party"].) Nor was this a regulatory action or partial taking, but rather the core protection of the Takings Clause to require just compensation when there was an actual appropriation or physical invasion of real property. (E.g., Mugler v. Kansas, 123 U.S. 623, 668-669 (1887).)

The Plan's content to have Cobb be paid some impaired pro rata portion of its allowed claim would permit the debtor to keep and retain the property taken from Cobb without payment of his approved claim (but rather some pro rata percentage), in violation of 11 U.S.C. § 943(b)(4). As such, the Plan as constituted cannot be confirmed.

VI. THE GOOD FAITH STANDARD FOR FILING A MUNICIPAL BANKRUPTY IS NOT A REMEDY FOR A PLAN THAT PROPOSES TO EFFECT A TAKING WITHOUT PAYMENT OF JUST COMPENSATION.

The City's proposed "good faith" analysis in determining whether payment of just compensation may be avoided in a municipal bankruptcy is an attempt to compare apples to oranges. True, a municipal bankruptcy petition for relief under Chapter 9 may be denied where not

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filed in "good faith." (11 U.S.C. § 921(c).) However, this is a standard imposed on the municipality to utilize the bankruptcy laws for their benefit in the first place. It is not a law that involves the terms of a readjustment plan and how that plan proposes to deal with the differing classes of creditor's claims. There is no argument from Cobb that the City is a legitimate bankrupt that would benefit from this Chapter 9 proceeding. The fact that a City proposes the petition for relief in "good faith" does not mean that anything contained in its plan is therefore compliant with the Constitution, or which the general bankruptcy laws for that matter. The bankrupty power has limitations imposed elsewhere by the Constitution (particularly in later-enacted constitutional amendments), none of which depend on whether a municipality seeks bankruptcy protection in "good faith" or in "bad faith." It is the nature of the claim itself that is vital to its required treatment. Moreover, basing the allowance of a municipality whittling down a taking, on the one hand, or requiring payment of full just compensation, on an *ad hoc* determination of whether the petition was made in good faith leaves no definable rule as to why the same claim may be treated dissimilarly depending on the internal bona fides of the municipality. If the Takings Clause requires just compensation despite the existence of the Chapter 9 laws, it does so even if a municipality in good faith needs protection under Chapter 9.

VII. THE EFFECT OF PROPOSING A PLAN THAT MAY NOT BE CONFIRMED IS DISMISSAL OF THE CASE.

Where a Chapter 9 Plan may not be confirmed, the remedy appears to be to dismiss the bankruptcy case. (*In re Richmond Sch. Dist.,* 133 B.R. 221, 225 (Bankr. N.D.Cal.1991).)

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WHEREFORE, creditor MICHAEL A. COBB respectfully requests that the Court deny confirmation of the Plan and grant him such other and further relief as is just and proper, including dismissal of the case.

Dated: April 21, 2014

ATHERTON & DOZIER

/s/ Bradford J. Dozier

Bradford J. Dozier
Attorney for MICHAEL A. COBB

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Exhibit A

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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

SECOND AMENDED COMPLAINT FOR:

1. **INVERSE CONDEMNATION**
2. **QUIET TITLE**
3. **DECLARATORY RELIEF**
4. **EJECTMENT**

BY FAX

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") owns the real property located at 4218 Pock Lane, Stockton, California 95206 identified as San Joaquin Assessor's Parcel Number 179-180-07 ("Cobb Property") in fee. Plaintiff, Michael A. Cobb, is the trustee of the Cobb Trust and has the power to prosecute

this action for the protection of the Cobb Property. An affidavit of Acceptance of Trusteeship is attached as Exhibit "1".

2. Defendant City of Stockton ("Defendant" or "City") is a municipal corporation organized and existing under the laws of the State of California.

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

4. Plaintiff is informed and believes and based thereon alleges, that each fictitiously named Defendants is in some manner responsible for the injury and damage to Plaintiff as alleged herein.

5. On October 23, 1998, Defendant filed an eminent domain action seeking to condemn a permanent easement across one parcel of land owned by the Cobb Trust for the construction of a public roadway. The eminent domain action was filed in the Superior Court of the State of California, County of San Joaquin, and was further identified as Case No. CV006247 ("1998 Action"). Specifically, Defendant sought to acquire an "easement" through the Cobb Property, thereby, bisecting the property into two separate parcels of land. The property that Defendant sought to acquire is legally described in Exhibit "A" to the Complaint in Eminent Domain that was filed in the 1998 Action. The Complaint in Eminent Domain is attached as Exhibit "2" to this complaint. The property that was the subject of the 1998 Action will be hereby referred to as the "Property Interest".

6. When Defendant filed the 1998 Action, the Cobb Property was owned by the Cobb Trust. Andrew C. Cobb, was the trustee of the Cobb Trust. On or about November 30, 1998, Andrew C. Cobb filed an Answer to the Complaint in Eminent Domain. The Answer to the Complaint in Eminent Domain is attached as Exhibit 3.

7. By filing an Answer to the Complaint, Andrew C. Cobb, preserved his constitutional rights to contest Defendant's right to take the Property Interest, and to

receive just compensation as determined by a jury. In addition, by filing an Answer, Cobb affirmed that his property rights were adverse to those claimed by Defendant. It was not necessary for Plaintiff to file a cross-complaint for inverse condemnation because he preserved his constitutional rights in his Answer to the Complaint in Eminent Domain. Moreover, Andrew C. Cobb reasonably believed that his constitutional rights were protected by having filed an Answer to the Complaint in Eminent Domain.

8. On or about December 31, 1998, Defendant took legal pre-judgment possession of the Property Interest that was the subject of the 1998 Action pursuant to an Order for Prejudgment Possession. A true and correct copy of the Order for Prejudgment Possession is attached as Exhibit "4".

9. Andrew C. Cobb was originally represented by the law firm of Atherton and Dozier, who withdrew on October 15, 1999. Andrew C. Cobb continued to represent the Cobb Trust in pro per, and attempted to negotiate with the City of Stockton regarding the Property Interest until he was killed in early 2000. The City of Stockton refused to negotiate personally with Andrew C. Cobb because they felt Mr. Cobb was a threat to the City and therefore, directed all settlement negotiations through their attorneys, Freeman, D'Aiuto, Pierce, Gurev, Keeling and Wolf. A true and correct copy of an Informational Bulletin advising City staff to contact the Vice Unit if Andrew C. Cobb attempted to contact them is attached as Exhibit "5". After Andrew C. Cobb's death, there was a dispute among his heirs regarding the ownership interests of his property. In late 2000, Michael A. Cobb, his son, appeared in the 1998 Action as Executor of the Estate of Andrew C. Cobb and as Successor Trustee of the Trust. In late 2000, Michael A. Cobb withdrew the funds on deposit, thereby waiving any claims regarding the City's right to take, but not his right to a determination of just compensation by a jury. Michael A. Cobb, was also represented by Atherton and Dozier, who assisted in the negotiations with Defendant in 2000 but were never formally designated as the attorneys for the Cobb Trust in the 1998 Action. Michael A. Cobb was not represented by an attorney from 2000 to 2007.

10. Defendant eventually constructed a public roadway on the Property Interest that runs through the Cobb Property.

11. On July 9, 2007, the Court commenced a motion to dismiss the 1998 Action pursuant to Code of Civil Procedure Section 585.360. It came on for hearing before the Honorable Carter P. Holly, Judge Presiding. The matter was argued before the Court and submitted.

12. Plaintiff supported the dismissal of the 1998 Action because Defendant threatened to file a second eminent domain action, and Plaintiff did not want his right to just compensation and the property issues to languish in the court system for another nine (9) years.

13. On October 9, 2007, the Court dismissed the 1998 Action for Defendant's lack of prosecution. The Court ruled that Code of Civil Procedure Section 585.310 required that an action be brought to trial within five years after the action is commenced.

14. Defendant failed to prosecute the case for almost nine years, hence, the 1998 Action was dismissed, and Defendant's lawful possession of the Property Interests were terminated on October 7, 2007.

15. Defendant never obtained a Final Judgment of Condemnation and a Final Order of Condemnation of the Property Interest. The Cobb Trust is still the fee owner of the Property Interest.

16. Plaintiff and Defendant's attorneys continued to negotiate through the years, both verbally and in writing. Plaintiff represented the Andrew C. Cobb Trust in Pro per after 2000. Plaintiff spoke directly to the attorneys, Freeman, D'Aiuto, Pierce, Gurev, Keeling and Wolf, who represented Defendant in the 1998 Action. The attorneys for Defendant never told Plaintiff that they were unable to negotiate with him, and they promised Plaintiff that they would get back to him regarding the settlement offers that Plaintiff made to Defendant. An example of such a promise is reflected in the attached 2000 billing statement from Plaintiff's attorney to Defendant's attorney memorializing a promise by Defendant's attorneys to obtain a written response to Plaintiff's settlement

demand. A true and correct copy of the billing statement dated November 20, 2000 is attached as Exhibit "6". The 1998 Action never settled, and finally, in frustration, Plaintiff advised the attorneys for Defendant that he would just let a jury decide his right to compensation in the 1998 Action. No one from the Defendant's attorney's office advised him that it was necessary for him to prosecute the 1998 Action or that he should file a cross-complaint if he wished to preserve his rights in the 1998 Action. The attorneys for Defendant acknowledged, in other pleadings, that they believed that they were not able to negotiate with Plaintiff because he was not represented by an attorney; yet, they continued to lead Plaintiff into believing that they could negotiate a settlement, and thereby induced him into not filing a cross-complaint to protect his rights for greater compensation. Plaintiff detrimentally relied upon Defendant and its attorneys to continue to engage in good faith negotiations, and to prosecute the 1998 Action. Since Andrew C. Cobb filed an Answer to the Complaint in Eminent Domain, Plaintiff believed that his father had preserved the Trust's right to have just compensation determined by a jury. Once Plaintiff indicated that he wanted a jury to decide his right to just compensation in the 1998 Action, the attorneys for Defendant should have advised Plaintiff that it was necessary to file a cross-complaint to preserve his rights or to continue to prosecute the 1998 Action, yet failed they to do so. Plaintiff had no idea that the Defendant intended to acquire the Property Interest by obtaining legal possession of the Property Interest in 1998, falsely negotiate with the Plaintiff, induce Plaintiff into failing to file a cross-complaint and not prosecute the action resulting in a dismissal of the 1998 Action.

17. Defendant's attorneys by their own admission, failed to prosecute the 1998 Action under the premise that it could not prosecute the 1998 Action against the Trust alleging Plaintiff, Michael A. Cobb never retained counsel. Hence, unbeknownst to Plaintiff, Defendant had no intention of settling the 1998 Action.

18. When the Court dismissed the 1998 Action, Plaintiff's right to receive probable just compensation as determined by a jury was terminated, and therefore, the taking by the City without the payment of just compensation occurred.

19. The Cobb Property has been damaged because a public roadway for the public benefit has been constructed on it. The public roadway bisects the Cobb Property rendering the remaining property useless and undevelopable. Plaintiff has not received just compensation as determined by a jury for this taking of private property by a public entity.

FIRST CAUSE OF ACTION

AS AGAINST ALL DEFENDANTS

(Inverse Condemnation - Article I Section 19 of the California Constitution)

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

21. The Cobb Trust is the fee owner of the Cobb Property. Michael C. Cobb, is the trustee of the Cobb Trust. When the 1998 Action was filed on October 23, 1998, Andrew C. Cobb, was the Trustee of the Cobb Trust, which owned the Cobb Property. At no time has Defendant taken title to the Property Interest or any portion of the Cobb Property. The Trust has continued to pay real estate taxes on the entire parcel, including the Property Interest, up to the present.

22. On December 31, 1998, Defendant obtained an Order for Prejudgment Possession of the Property Interest after it deposited money with the Court in the 1998 Action. See Exhibit "3." Defendant subsequently took lawful possession of the Property Interest and built a public roadway through the middle of the Cobb Property. Defendant was negligent in failing to prosecute the 1998 Action to determine the true fair market value of the Cobb Property as required by the Constitution.

23. Defendant through its attorneys knowingly led Plaintiff to believe that it intended to settle the issues and/or prosecute the 1998 Action when in fact it did not have such intentions. As such, Plaintiff detrimentally relied upon Defendant's attorneys to continue to engage in good faith negotiations, and to prosecute the 1998 Action. Since Andrew C. Cobb filed an Answer to the Complaint in Eminent Domain, Plaintiff believed that his father had preserved the Trust's right to have just compensation determined by a

jury. Plaintiff had no idea that Defendant intended to acquire the Property Interest by obtaining possession of the Property Interest in 1998, falsely negotiate with the Plaintiff, do nothing to move the case forward, and then allow the Court to dismiss the 1998 Action.

24. Plaintiff represented the Andrew C. Cobb Trust in Pro per after 2000. Plaintiff spoke directly to the attorneys, Freeman, D'Aiuto, Pierce, Gurev, Keeling and Wolf, who represented Defendant in the 1998 Action. The attorneys for Defendant never told Plaintiff that they were unable to negotiate with him, and they promised Plaintiff that they would get back to him regarding the settlement offers that Plaintiff made to Defendant. The matter was not settled, and finally, in frustration, Plaintiff advised the attorneys for the City of Stockton that he would just let the Court decide his right to compensation in the 1998 Action. No one from the attorney's office advised him that it was necessary for him to prosecute the 1998 Action or that he should file a cross-complaint if he wished to preserve his rights in the 1998 Action. Since Andrew C. Cobb filed an Answer to the Complaint in Eminent Domain, Plaintiff believed that his father had preserved the Trust's right to have just compensation determined by a jury. Once Plaintiff indicated that he wanted a jury to decide his right to just compensation in the 1998 Action, the attorneys should have advised Plaintiff that it was necessary to file a cross-complaint to preserve his rights or to continue to prosecute the 1998 Action, yet failed they to do so. Plaintiff had no idea that the Defendant intended to acquire the Property Interest by obtaining legal possession of the Property Interest in 1998, falsely negotiate with the Plaintiff, induce Plaintiff into failing to file a cross-complaint and not prosecute the action resulting in a dismissal of the 1998 Action.

25. When the Court dismissed the 1998 Action, Plaintiff's right to receive probable just compensation as determined by a jury was terminated, and therefore, the taking by Defendant without the payment of just compensation occurred.

26. Defendant's acts constitute a taking because Defendant has physically invaded and appropriated a valuable property right for a public use. Defendant's taking

has caused the Cobb Property to diminish in value. The Cobb Property cannot be developed with a road running through it.

27. Defendant took and damaged the Cobb Property for a public use because it used the Cobb Property to construct a public roadway. The general public has continually used the roadway since it was constructed without any benefit to the property owner and without payment of just compensation.

28. Defendant's actions caused injury to the Cobb Property because the construction of the public roadway through the Cobb Property precluded the development of the Cobb Property. The construction of the public roadway rendered the remaining land an uneconomic remnant and thus constitutes a taking of the Cobb Property in fee.

29. Defendant has not paid Plaintiff just compensation for the taking. On October 23, 1998, Defendant deposited the sum of Ninety Thousand Two Hundred Dollars ($90,200.00) with the Court in order to obtain prejudgment possession of the Property Interest. On November 6, 2000, pursuant to a stipulation between Michael A. Cobb, as Executor of the Cobb Trust and Defendant, Michael A. Cobb withdrew the funds on deposit with the Court. The issue of just compensation in the 1998 Action was never tried before a judge or jury and remained unresolved upon the dismissal of the 1998 Action.

30. Defendant has the power of eminent domain and, thus, may be sued for inverse condemnation. Although Defendant took possession of the Property Interest in 1998, Plaintiff's cause of action accrued when Plaintiff was denied the right to a determination of just compensation by a jury when the 1998 Action was dismissed for failure to prosecute. Prior to the action being dismissed, it was not necessary to file this action because the eminent domain action was still pending, and Plaintiff had preserved his rights to just compensation by having Answered the Complaint in Eminent Domain.

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SECOND CAUSE OF ACTION

AS AGAINST ALL DEFENDANTS (Quiet Title-Adverse Possession)

31. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 30, inclusive of this Second Amended Complaint and incorporates the same by this reference as though fully set forth herein.

32. The Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992 ("Cobb Trust") is the fee owner of the real property located at 4218 Pock Lane, Stockton, California 95206 identified as San Joaquin Assessor's Parcel Number 179-180-07 ("Cobb Property") in fee. Plaintiff, Michael A. Cobb, is the trustee of the Cobb Trust and has the power to prosecute this action for the protection of the Cobb Property.

33. Plaintiff's title is based upon a Deed of Trust recorded in Official Records, Book 4249, Page 556, San Joaquin County Records, and is based upon his actual, open, notorious, exclusive, hostile, and adverse possession of the Cobb Property for at least five years preceding the commencement of this action, together with Plaintiff's payment of all taxes assessed against the Cobb Property for the same five year period, which taxes include assessments for the road constructed on the Cobb Property.

34. Defendant claims an interest adverse to Plaintiff in the above described parcel, in that Defendant alleges that it had legal possession, as a highway, easement of portions of the Cobb Property, which commenced in 1998, and was terminated on October 9, 2007.

35. Defendant never obtained a Final Order of Condemnation and Judgment in Condemnation; hence, Defendant's possession is no longer lawful.

36. Plaintiff is seeking to quiet title against all adverse claims of Defendant.

37. The adverse claims of Defendant are without any right whatsoever. Defendant has no right, title, estate, lien, or interest whatsoever in the Cobb Property, and which are adverse to Plaintiff's title.

38. Plaintiff seeks to quiet title as of November 30, 1998, which is the date that Plaintiff Answered the 1998 Action, or in the alternative as of December 31, 1998, when

Defendant obtained possession of the Property Interests, or finally, in the alternative, Plaintiff seeks to quiet title as of December 2003, which is the date five years after the Defendant obtained possession of the Property.

THIRD CAUSE OF ACTION

AS AGAINST ALL DEFENDANTS (Declaratory Relief)

39. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 38, inclusive of this Second Amended Complaint and incorporates the same by this reference as though fully set forth herein.

40. An actual controversy has arisen and now exists between Plaintiff and Defendant concerning their respective rights and duties under Defendant's taking or appropriation of Plaintiff's property for a public purpose without the payment of just compensation to be a determined by a jury under Article I Section 19 of the California Constitution. An actual controversy has also arisen and now exists between the parties regarding Defendant's wrongful occupation of Plaintiff's property, and therefore, Plaintiff contends that Defendant must remove the roadway, which is claimed to occupy those portions of the Cobb Property, identified as the Property Interests.

41. A judicial declaration is necessary and appropriate at this time, and under the circumstances, in order to determine the rights and duties of the parties under Defendant's taking or appropriation of Plaintiff's property, and determine the compensation and title hereunder.

FOURTH CAUSE OF ACTION

AS AGAINST ALL DEFENDANTS (EJECTMENT)

42. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 41, inclusive of this Second Amended Complaint and incorporates the same by this reference as though fully set forth herein.

43. A roadway is located on the Cobb Property, specifically over the Property Interests, and Defendant, thus, is possessing and withholding the use and enjoyment of that property to the exclusion of Plaintiff.

44. So long as Defendant wrongfully continues to possess and withhold the use and enjoyment of the Property Interests, Plaintiff is wrongfully being denied the full use and enjoyment of the Cobb Property.

PRAYER FOR RELIEF

Plaintiff hereby prays as follows:

ON THE FIRST CAUSE OF ACTION

1. That the amount of just compensation for the Property Interest be ascertained and determined;

2. For damages in an amount yet to be ascertained with interest thereon at the legal rate from the date of those damages;

3. Attorney's fees and litigation expenses;

4. Costs of suit;

5. Real estate taxes, maintenance costs, insurance costs; and

6. For such other relief as the Court deems just and proper

ON THE SECOND CAUSE OF ACTION

1. For a Judgment that Plaintiff is the owner in fee simple of the portion of the roadway, which encroaches on the Cobb Property, and that Defendant has no interest in the Cobb Property; and

2. For an order that Defendants be enjoined from making any further claim adverse to Plaintiff, by legal action or otherwise, relating to the portion of the Cobb Property onto which the roadway encroaches.

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ON THE THIRD CAUSE OF ACTION

1. For a judicial declaration that Defendant's taking or appropriation of Plaintiff's property was without the payment of just compensation under Article I, Section 19 of the California Constitution. .

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

ON THE FOURTH CAUSE OF ACTION

1. For restitution of the premises to Plaintiff.

DATED: September 8, 2008

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

By: _____
Kirsten R. Bowman
Attorneys for Defendant
MICHAEL A. COBB, Trustee of the Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992

EXHIBIT 1

Recording Requested By:
Christopher Engh, Esq.

When Recorded Mail To:
Christopher Engh, Esq.
KROLOFF, BELCHER, SMART, PERRY
& CHRISTOPHERSON
P. O. Box 692050
Stockton, CA 95269-2050

AFFIDAVIT OF ACCEPTANCE OF TRUSTEESHIP

Andrew C. Cobb having died on February 4, 2000, as evidenced by the attached certified copy of death certificate, I, Michael Cobb, hereby give notice that I have accepted the office of Trustee of the Andrew C. Cobb 1992 Revocable Trust.

I declare under penalty of perjury that the foregoing is true and correct and that this affidavit was executed on February 11, 2000, at Stockton, California.

Michael A Cobb
MICHAEL COBB

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN JOAQUIN)

On February 11, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared MICHAEL COBB, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Colleen R. Clay
Notary Public

MEP-1 COLLEEN R. CLAY COMM. # 1167318 NOTARY PUBLIC-CALIFORNIA SAN JOAQUIN COUNTY My Commission Expires JAN. 2, 2002 MEP-1

J:\DATA\WPDATA\CHE\Cobb.cat\AffidavitSuccessor.wpd(1mm)

PROOF OF SERVICE BY FIRST-CLASS MAIL

1. I am over eighteen years of age and not a party to this action. I am a resident of or employed in the county where the mailing took place.

2 My residence or business address is 305 N. El Dorado St., Suite 301, Stockton, CA 95202.

3. On April 21, 2014, I mailed from Stockton, San Joaquin County, California, the attached "Supplemental Objection to Plan of Creditor Michael A. Cobb and Reply to City's Response."

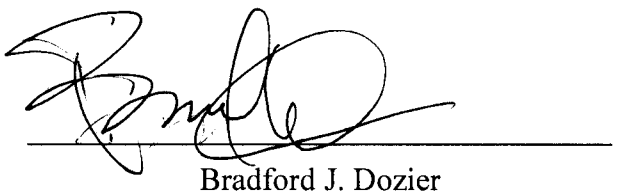
4. I served the document by enclosing it in an envelope and depositing the sealed envelope with the United States Postal Service with the postage fully prepaid, first-class.

5. The envelope(s) was/were addressed and mailed as follows, with the following name(s) and address(es) of the person(s) served:

John M. Luebberke City Attorney's Office 425 N. El Dorado St., 2nd Floor Stockton, CA 95202	Marc A. Levinson Orrick, Herrington & Sutcliffe LLP 400 Capitol Mall, Suite 3000 Sacramento, CA 95814-4497
Steven H. Felderstein Felderstein, Fitzgerald, Willoughby & Pascuzzi LLP 400 Capitol Mall, Suite 1750 Sacramento, CA 95814	Debra A. Dandeneau Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153
Jeffrey E. Bjork Sidley Austin LLP 555 West 5th Street Los Angeles, CA 90013	David Dubrow Arent Fox LLP 1675 Broadway New York, NY 10019-5820
James O. Johnston Jones Day 555 South Flower Street, Fiftieth Floor Los Angeles, CA 90071	William W. Kannel Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C. One Financial Center Boston, MA 02111
Michael J Gearin K&L Gates LLP 925 Fourth Avenue, Suite 2900 Seattle, WA 98104	

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Date: April 21, 2014



Bradford J. Dozier

Atherton & Dozier
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