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11  
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **IN AND FOR THE COUNTY OF SANTA CLARA**  
14 **AT SAN JOSÉ**

15 **SAN JOSE POLICE OFFICERS'**  
16 **ASSOCIATION,**

17 Plaintiff,

18 v.

19 **CITY OF SAN JOSÉ, BOARD OF**  
20 **ADMINISTRATION FOR POLICE AND FIRE**  
21 **DEPARTMENT RETIREMENT PLAN OF**  
22 **CITY OF SAN JOSE, and DOES 1-10,**  
23 inclusive,

24 Defendants.

25 **AND RELATED CROSS-COMPLAINT AND**  
26 **CONSOLIDATED ACTIONS**

Consolidated Case No. 1-12-CV-225926

[Consolidated with Case Nos. 1-12-CV-225928,  
1-12-CV-226570, 1-12-CV-226574,  
1-12-CV-227864, and 1-12-CV-233660]

Assigned For All Purposes To:  
Judge Patricia Lucas  
Department 2

**SUPPLEMENTAL DECLARATION OF**  
**TEAGUE P. PATERSON IN SUPPORT OF**  
**AFSCME LOCAL 101'S SUPPLEMENTAL**  
**MOTION FOR ATTORNEYS' FEES AND**  
**REPLY**

Hearing Date: November 13, 2014  
Hearing Time: 9:00 a.m.  
Courtroom: 2  
Judge: Honorable Patricia Lucas  
Action Filed: June 6, 2012  
Trial Date: July 22, 2013

27 I, TEAGUE P. PATERSON, declare under penalty of perjury:

28 1. I submit this declaration in support of Plaintiff AFSCME Local 101's Motion for Attorneys' Fees ("Motion") and its Reply in support of the Motion. This declaration supplements the previous declaration I submitted in support of the Motion. I have personal knowledge of the facts set forth herein and if called as a witness, I could and would competently testify as to them.

1           2.       Again, I am an attorney duly licensed by the States of California and New York and  
2 am a shareholder of the firm of Beeson, Tayer & Bodine, APC, counsel of record for Plaintiff  
3 AFSCME Local 101 in the above-captioned case.

4           3.       My firm also serves as counsel to the Peace Officers Research Association of  
5 California ("PORAC"). I recently submitted an *amicus brief* on behalf of PORAC in the City of  
6 Stockton municipal bankruptcy case as it related to pensions, to the United States Bankruptcy Court  
7 for the Eastern District of California, Sacramento Division (Case No: 2012-32118). In that case,  
8 Chief Judge Klein approved Stockton's reorganization plan which kept employee pensions intact.  
9 PORAC supported this plan.

10          4.       I am also a frequent speaker and presenter on matters related to public pensions at  
11 national CLE-accredited conferences. Most recently I moderated a panel regarding public pension  
12 law for the American Bar Association's Labor and Employment Law section's annual conference, in  
13 Los Angeles. I have also presented on this topic for the American Bar Association's Joint Committee  
14 of Employee benefits, in 2013, and before other CLE-accredited conferences.

15          5.       I have been quoted in several news articles reporting on the aforementioned case.  
16 Attached as **Exhibit A** to this declaration are true and correct copies of some of those articles. These  
17 articles are available to the public online and can be found by performing web searches. My  
18 involvement in the Stockton case and having been interviewed and quoted is further evidence of my  
19 expertise in the area of municipal pensions.

20          6.       Attached as **Exhibit B** to this declaration is a true and correct copy of the "*Laffey*"  
21 Matrix used by the United States Court of Appeals for the D.C. Circuit, for 2013-14. It is essentially  
22 an attorneys' fees market rate matrix setting the appropriate hourly rates based upon years of  
23 experience for fee petitions filed in its district court. It is annually updated. The fee schedule is  
24 available to the public online.

25          7.       I reviewed Exhibit B to Linda Ross' declaration ("Billing Analysis") in support of the  
26 City of San José's ("City") Opposition to this Motion ("Opposition"). That exhibit purports to be the  
27 City's compilation of select time entries AFSCME represented through the billing records it  
28 submitted as an attachment to my original declaration in support of this Motion. I found numerous

1 errors with the Billing Analysis and also discrepancies between the City's Fee Table and its  
2 characterization with the City's Opposition. For example, besides consistently misspelling my  
3 associate Vishtasp Soroushian's first name, the City made the following errors:

4 a. The City's Billing Analysis includes two entries under the topic of  
5 "Severability" that do not pertain to that subject. Rather, they pertain to the preparation of discovery  
6 requests. (City's Billing Analysis, p. 23.) This is a significant mistake, because the City requests that  
7 the Court subtract all time related to the topic of Severability. Not only does AFSCME disagree that  
8 this time should be cut, but it also points out that much of the discovery it propounded was related to  
9 parts of Measure B which the Court found unconstitutional. Therefore, it is inappropriate to exclude  
10 this time from AFSCME's fee recovery.

11 b. There are several discrepancies between the time the City asserts AFSCME  
12 spent working on various categorical issues presented in its Opposition and in its Billing Analysis.  
13 For example:

14 i. The Opposition says AFSCME spent 59.4 hours "drafting and arguing  
15 the Motions in Limine" (p. 23), while the Billing Analysis shows 59.70 hours of work (p. 16),

16 ii. The Opposition says AFSCME spent 131.5 hours "drafting the Post  
17 trial brief and proposed Statement of Decision" (p. 23), while the Billing Analysis shows 131.60  
18 hours of work (p. 17),

19 iii. The Opposition says AFSCME spent 91.2 hours "drafting the Pretrial  
20 brief" (p. 22), while the Billing Analysis shows 100.10 hours of work (p. 19),

21 iv. The Opposition says AFSCME spent 22 hours "drafting and reviewing  
22 the proposed judgment" (p. 23) while the Billing Analysis shows 23.00 hours of work (p. 21), and

23 v. The Opposition says AFSCME spent 11 hours on the severability cause  
24 of action (p. 25), while the Billing Analysis shows 11.4 hours of work (p. 23).

25 8. At page 23 of its Opposition, the City avers that "AFSCME spent a total of 59.4 hours  
26 drafting and arguing the Motions in Limine ... work that bordered on frivolous and should be  
27 subtracted." Through that statement, the City is averring that the work AFSCME performed with  
28 respect to the Motions in Limine was solely limited to bringing and arguing its own Motions in

1 Limine. However, the City includes in its time hours that AFSCME spent *opposing* the City's  
2 Motions in Limine; AFSCME was successful in many of these oppositions. (Ross Declaration,  
3 Exh. H, pp. 2-3 (Ross declaration exhibits hereinafter "Ross Exh. \_\_").) A cursory review of the  
4 City's Billing Analysis demonstrates that it accounts for time AFSCME spent opposing the City's  
5 motions. Over 8.4 of the hours included on the City's Billing analysis went towards opposing the  
6 City's Motions in Limine (pp. 15-16) and, in the least, that time should not be subtracted.

7 9. The City's Billing Analysis also labels as "Travel" time certain entries that includes  
8 time spent appearing at the hearing for which travel occurred. (*See, e.g.*, Ross Exh. B, pp. 4, 10, 12,  
9 14, 16.)

10 10. The Billing Analysis also includes certain incorrect dates. In particular, some entries  
11 indicate that certain work was performed in 2014 when it was actually performed in 2013. (*See, e.g.*,  
12 Ross Exh. B, p. 18, entries 1, 2, and 4.)

13 11. The City further includes certain billing entries in its constructed categories in an  
14 opportunistic yet inconsistent manner. It labels all of the following entries as "block billed," but  
15 includes them within categories for which it seeks a complete or drastic reduction in hours. Although  
16 AFSCME disagrees with all of the reductions the City seeks, I make the following point to  
17 demonstrate the self-serving nature of the City's Billing Analysis and discussion thereof within its  
18 Opposition. For example, although the City requests a 20% reduction for entries it categories as  
19 "block billed," a calculation it incorrectly computes in its favor, it includes certain of those entries  
20 under the following categories:

21 a. Motions in Limine, for which the City seeks a total reduction in hours:

22 i. July 8, 2013. (Ross Exh. B, p. 15.) The entry also includes time spent  
23 finalizing AFSCME's pre-trial brief, and the City is asking the Court to subtract close-to 50%  
24 reduction for time AFSCME spent on its pre-trial brief. Thus, for this work the City is actually  
25 asking the Court subtract the time twice.

26 ii. July 9, 2013. (*Ibid.*) The entry also includes time spent on other work,  
27 including depositions and stipulations. Again, the City seeks a 20% reduction for all block-billed  
28 entries, and so there is a double reduction again.

1                   iii.       July 12, 2013. (Ross Exh. B, p. 16.) The entry also includes time for  
2 other activities, including that spent appearing at the pretrial conference and meeting and conferring  
3 regarding exhibits.

4                   b.       Post-Trial Brief and Proposed Statement of Decisions, for which the City  
5 seeks an almost fifty percent reduction in time:

6                   i.       June 10, 13, 17, 18, 19, and 20, 2013. (Ross Exh. B, p. 18.) These  
7 entries also include time spent on, for example, preparing exhibits lists and witnesses for trial.

8                   ii.      July 3, 2013. (Ross Exh. B, p. 19.) This entry also includes time spent  
9 opposing the City's motions in limine.

10                  c.       Proposed Judgment, for which the City seeks a fifty percent reduction in time:

11                  i.       March 18, 2014. (Ross Exh. B, p. 20.) This entry also includes hours  
12 spent, for example, with respect to the attorneys' fees motion.

13                  12.      A former BTB associate, John Varga ("JEV"), and I drafted discovery requests that we  
14 served on the City. Many of the issues we explored through those discovery instruments related to  
15 the specific sections of Measure B the Court held to be unconstitutional. The first five entries  
16 (August 8 through August 17, 2012) on page 24 of the Ross Exhibit B related to this work.

17                  13.      Many of the entries the City refers to as "block-billing" with the Ross Exhibit B  
18 involved daily trial preparation or daily preparation of AFSCME's oppositions to the City's Motion  
19 for Summary Adjudication ("MSA"). The billing entries simply indicate the various related tasks  
20 necessary for trial preparation or for the preparation of MSA opposition papers. Those entries do not  
21 lump unrelated tasks together for a daily charge. The time spent on trial preparation and the MSA  
22 opposition, as indicated in the billing entries, is very reasonable and fully recoverable under this fees  
23 request.

24                  14.      The City also characterizes some of my time entries as "vague," such as one listed for  
25 January 14, 2013, on page 13 of the Ross Exhibit B. That entry is related to revisions I made to our  
26 opposition to the City's Motion for Judgment on the Pleadings.

27                  15.      On August 3, 2012, AFSCME filed its motion to dismiss the City's First Amended  
28 Complaint in the federal action. (See AFSCME's Supplemental Request for Judicial Notice ("Supp.

RJN”), Exh. A.) On August 20, 2012, the City filed an opposition to the various plaintiffs’ motions to dismiss, including the one filed by AFSCME. (Supp. RJN, Exh. B.) The Court adopted its tentative ruling and denied the City’s Motion to Stay this state court case in favor of the City’s federal action on August 23, 2012. (AFSCME’s Original RJN, Exh. B.) The Plaintiffs subsequently filed a consolidated reply in support of their motions to dismiss on September 13, 2012. (Supp. RJN, Exh. C.) These exhibits to the RJN, are also incorporated herein by reference, and they constitute true and correct copies of the documents filed with the federal court. They are included so that the Court can assess the reasonableness of the attorney time expended.

16. Almost a month and a half after it opposed the motions to dismiss in the federal case, the City voluntarily dismissed without prejudice its federal complaint on Oct. 1, 2012. (Ross Exh. K.)

17. If the Court were to apply the attorney fee rates applicable under the aforementioned *Laffey Matrix*, Messrs. Soroushian’s and my time would be billed at the hourly rates of \$255 and \$460, respectively; and clerk time would be billed at \$150 per hour. Using those rates, AFSCME’s fee award for work done on this state case would be as follows:

<b>Attorney Time and Fees Attributable to State Case (AFSCME Local 101 v. City of San Jose (Santa Clara Sup’r Court))</b>			
<b>ATTORNEY</b>	<b>TIME SPENT (HOURS)</b>	<b>REASONABLE HOURLY RATE</b>	<b>SUB-TOTAL</b>
Teague P. Paterson (Partner)	540.10	\$460.00	\$248,446.00
Associates	1,182.45	\$255.00	\$301,524.75
Law clerks	91.30	\$150.00	\$13,695.00
<b>TOTAL:</b>	1,813.85	N/A	\$563,665.75

18. Also using those rates, AFSCME’s fee award for work done on the federal case (*City of San José v. San José Police Officers’ Association, et. al.*, U.S. District Court for the Northern District of California, San José Division, Case No. 5:12-CV-02904-LHK) would be as follows:

<b>Attorney Time and Fees Attributable to Federal Case (City of San José v. SJPOA, et al. (U.S.D.C., N.D.Cal.))</b>			
<b>ATTORNEY</b>	<b>TIME SPENT (HOURS)</b>	<b>REASONABLE HOURLY RATE</b>	<b>SUB-TOTAL</b>
Teague P. Paterson	28.0	\$460.00	\$12,880.00

(Partner)			
Associates	71.2	\$255.00	\$18,156.00
<b>TOTAL:</b>	99.2	N/A	\$31,036.00

19. Even if AFSCME billed at the lower associate rate all twelve hours it anticipated working on this reply and appearing at hearing (for an award of \$3,060.00), it would be entitled to \$597,761.75 for its work on the federal and state cases and this reply pursuant to the *Laffey* Matrix rates. From what AFSCME originally requested in fees (\$513,411.25), this figure represents an increase of \$84,350.50, or over 16.4%.

20. Given the number of issues the City invoked through its opposition to this Motion, AFSCME's attorneys actually spent more than twelve hours just on researching and drafting this reply brief. However, in a further showing of good faith, AFSCME does not request compensation for additional time spent with respect to the motion, although it would be entitled to such monies.

21. AFSCME presented and developed various alternative legal theories in an attempt to defeat Measure B's pension provisions (sections which the Court ultimately held unconstitutional). These alternative theories included causes of actions alleging an unlawful Bill of Attainder & Ultra Vires Tax; violations of the state's Pension Protection Act ("PPA"), Takings Clause, & Due Process Clause; and the theories of estoppel. Both the City's demurrers and its motion for judgment on the pleading attacked several of these alternative theories recoverable, such as the PPA and Bill of Attainder causes of action. However, AFSCME was able to proceed to trial with these causes of action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on Dec. 4, 2014, at Onondaga County, New York.

  
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 TEAGUE P. PATERSON

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**PROOF OF SERVICE**

**SANTA CLARA SUPERIOR COURT**

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California, 94607-4051. On this day, I served the foregoing Document(s):

**SUPPLEMENTAL DECLARATION OF TEAGUE P. PATERSON  
IN SUPPORT OF AFSCME LOCAL 101'S SUPPLEMENTAL MOTION  
FOR ATTORNEYS' FEES AND REPLY**

**By Mail** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

**By Electronic Service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**SEE SERVICE LIST**

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, December 4, 2014.



Esther Aviva

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13 AND

14 *Plaintiffs/Petitioners, JOHN MUKHAR, DALE*  
15 *DAPP, JAMES ATKINS, WILLIAM*  
16 *BUFFINGTON AND KIRK PENNINGTON (Santa*  
17 *Clara Superior Court Case No. 112-CV-226574)*

18 AND

19 *Plaintiffs/Petitioners, TERESA HARRIS, JON*  
20 *REGER, MOSES SERRANO (Santa Clara*  
21 *Superior Court Case No. 112-CV-226570)*

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*PLAN OF CITY OF SAN JOSE (Santa Clara*  
*Superior Court Case No. 112CV225926)*

AND

*Necessary Party in Interest, THE BOARD OF*  
*ADMINISTRATION FOR THE 1961 SAN JOSE*  
*POLICE AND FIRE DEPARTMENT*  
*RETIREMENT PLAN (Santa Clara Superior*  
*Court Case No. 112CV225928)*

AND

*Necessary Party in Interest, THE BOARD OF*  
*ADMINISTRATION FOR THE 1975*  
*FEDERATED CITY EMPLOYEES'*  
*RETIREMENT PLAN (Santa Clara Superior*  
*Court Case Nos. 112CV226570 and*  
*112CV22574)*

AND

*Necessary Party in Interest, THE BOARD OF*  
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*112CV233660)*

EXHIBIT A

# THE WALL STREET JOURNAL

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<http://online.wsj.com/articles/stockton-faces-key-ruling-on-bankruptcy-1414679337>

U.S. NEWS

## Judge Approves California City's Bankruptcy-Exit Plan

Stockton to Slash Payments to Bondholders and Raise Taxes While Not Further Cutting City Pensions



A judge approved Stockton, Calif.'s plan to exit bankruptcy on Thursday. *GOSIA WOZNIACKA*

By **KATY STECH** and **DAN FITZPATRICK**

Updated Oct. 30, 2014 5:00 p.m. ET

The federal judge overseeing the two-year-long bankruptcy of Stockton, Calif., ruled Thursday that the distressed city can exit court protection without deeper cuts to its pension obligations.

U.S. Bankruptcy Judge Christopher Klein called the city's reorganization plan, which raises taxes and slashes payments to bondholders, "the best that can be done" during a hearing in Sacramento.

The decision is a victory for public-pension advocates who worried the judge would reject the plan because the city didn't cut obligations to California Public Employees' Retirement System, which controls city workers' retirement money. The same judge about a month ago said the city had the power to sever its ties with the retirement system, known as Calpers. The judge overseeing Detroit's bankruptcy case has also ruled that payments into pension funds can be reduced while a city is insolvent.

The resolution of the Stockton case is "unlikely" to lead other U.S. cities to view bankruptcy "as an attractive option for resolving serious financial challenges," said Standard & Poor's Ratings Services in a statement.

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#### PREVIOUSLY

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- Creditor Objects to Stockton Bankruptcy Plan (<http://online.wsj.com/news/articles/SB10001424052702303801304579411452722963032>) (2/28/14)
- Franklin, Calpers Clash on Stockton Pension Issue (<http://online.wsj.com/articles/franklin-calpers-clash-on-stockton-pension-issue-1404772370>) (7/7/14)
- Stockton Files for Bankruptcy Protection (<http://online.wsj.com/news/articles/SB10001424052702304058404577495412282335228>) (6/29/12)

Calpers, the largest public pension in the U.S., said in a statement, "The judge recognized that the city's employees and retirees have already made significant concessions" and "that further impairing pensions would harm them even more."

Judge Klein approved the city's reorganization plan over protests from two Franklin Templeton Investments-managed funds, which underwrote the bonds for Stockton's fire stations and parks. The funds argued that the city could afford to repay more than its \$4 million offer.

Critics of the exit plan have said the city will continue to struggle to afford the state-mandated payments to Calpers.

"We are disappointed," Franklin Templeton lawyer James Johnston said after the ruling.

Meanwhile, many pension fund lawyers applauded the judge's decision. Harvey Leiderman, a partner at Reed Smith LLP who represents public-employee pension funds, said the confirmation of Stockton's plan "threw cold water on anyone who thinks there is an easy exit off ramp for resolving your fiscal issues" through a municipal bankruptcy. Calpers is a client of Mr. Leiderman's, but he didn't represent the system in the Stockton case.

“The outcome in Stockton is more evidence that bankruptcy is not an appropriate tool to jettison pension debt,” said Teague Paterson, a lawyer at Beeson, Tayer & Bodine, who also represents pension funds and who filed a brief in the Stockton case.

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#### MORE IN CAPITAL JOURNAL

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- Democrats Lose Their Grip on Voters With Keys to the House (<http://online.wsj.com/articles/democrats-lose-their-grip-on-voters-with-keys-to-the-house-1414722604>)
- Nevada Race Could Set Stage for a Reid Challenge in 2016 (<http://online.wsj.com/articles/nevada-race-could-set-stage-for-a-challenge-of-senate-leader-harry-reid-in-2016-1414713943>)
- Latest 2014 midterm polls (<http://projects.wsj.com/elections2014/poll-tracker/#?tab=tSenate&raceIndex=0>)
- Senate map, reader contest (<http://graphics.wsj.com/balance-2014/>)
- Sign Up: Capital Journal newsletter ([http://online.wsj.com/public/page/email-setup.html?sub=capital\\_journal\\_daybreak](http://online.wsj.com/public/page/email-setup.html?sub=capital_journal_daybreak))

City leaders put Stockton, a city of 300,000 people located about 80 miles inland from San Francisco, into bankruptcy in June 2012, after it was hit hard by the housing crash. Judge Klein also blamed the city's financial woes on former leaders who offered overly generous pay to city workers and took on debt for new projects that the city couldn't afford.

It was the second-largest financial failure by a U.S. city and one of several California cities—San Bernardino, Vallejo and Mammoth Lakes—to seek bankruptcy protection in recent years. It needed a judge to approve its plan to repay creditors before it could exit from bankruptcy.

Instead of cutting payments to Calpers, the city chose to raise taxes. Last year, voters approved a 3/4-cent sales tax to pay for more police officers. More than 1,000 workers and retirees who had \$538 million in claims against the city also agreed to accept one-time payments worth \$5.1 million instead.

The judge on Thursday highlighted how much the city spent during its two years in bankruptcy, saying that legal fees amounted to \$13.8 million. “It's impossible” to go through a municipal bankruptcy, he said, “without spending an eight-digit number.”

Write to Katy Stech at [katherine.stech@wsj.com](mailto:katherine.stech@wsj.com) and Dan Fitzpatrick at [dan.fitzpatrick@wsj.com](mailto:dan.fitzpatrick@wsj.com)

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**Bloomberg Businessweek**

## News From Bloomberg

<http://www.businessweek.com/news/2014-10-31/stockton-s-costly-bankruptcy-may-not-tempt-other-cities>

# Stockton's Costly Bankruptcy May Not Tempt Other Cities

By Alison Vekshin and Michael Bathon October 31, 2014

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Stockton, California, is emerging from bankruptcy saddled with legal bills and a damaged reputation that will deter other U.S. cities from seeking a path through court to cut their debts.

"The leaders of distressed U.S. municipalities will continue to pursue other options before setting in motion the long and costly process that bankruptcy implies," Chris Morgan, director in the San Francisco office of Standard & Poor's, said yesterday in a statement after a judge approved the city's debt-adjustment plan. "We believe that the implications of Stockton's exit from bankruptcy will be modest."

Stockton, a city of 298,000 about 80 miles (130 kilometers) east of San Francisco, filed for bankruptcy in June 2012 after the housing market collapsed, retiree health-care costs mounted and tax revenue eroded. It was one of three California cities to file for bankruptcy that year.

U.S. Bankruptcy Judge Christopher Klein in Sacramento, California, yesterday approved Stockton's plan to exit court protection by paying bond investors pennies on the dollar while shielding public pensions. In doing so, he warned other cities about the costs of municipal bankruptcy and said it "shouldn't be entered into lightly."

As of May, the city had paid lawyers and other advisers almost \$14 million, according to court filings.

The bankruptcy filing was unavoidable, Connie Cochran, a Stockton spokeswoman, said in a phone interview.

## 'Insolvent' City

"We were insolvent both from a service perspective and fiscally," she said. "We recognize that we need to live within our means and follow the plan that we've developed."

Stockton will begin to exit bankruptcy once the judge sets a date, possibly by the end of the year, Cochran said.

The plan calls for a \$5.1 million contribution for canceling retiree health benefits. Also, Stockton voters last year approved a proposal to increase the city's sales tax to 9 percent to generate about \$28 million annually, which would go toward exiting bankruptcy, restoring city services and paying for law enforcement.

The police department is having trouble keeping employees, who are leaving because of low pay, said Kathryn Nance, president of the Stockton Police Officers' Association, which represents about 360 officers.

"It's still going to be a very long road just to get back to where we were before," Nance said in a phone interview. "We are the lowest-paid police force in the county and with the compensation packages and benefits, people are leaving to go to other agencies."

## 'Doesn't Change'

The bankruptcy exit "doesn't change the difficult economic environment" in the city, said S&P's Morgan. In assessing its creditworthiness, "the main thing we're going to be looking at is a willingness to meet their obligations and their overall financial health," he said in a phone interview.

The city passed on an option presented by Klein to end its contract with the California Public Employees' Retirement System, the biggest U.S. public pension fund. Doing so would have reduced pensions by 60 percent and caused many employees to leave, Marc Levinson, Stockton's lead bankruptcy attorney, had warned.

Still, Klein's ruling could set up future challenges from California cities burdened by retiree obligations.

"Local governments will now have more negotiating leverage with labor unions, who cannot count on pensions as ironclad obligations, even in bankruptcy," Gregory Lipitz, a vice president and senior credit officer at Moody's Investors Service, said in a research note yesterday.

## Detroit Plan

Stockton's bankruptcy was dwarfed by Detroit's. The city of about 700,000 filed a record \$18 billion municipal bankruptcy last year, saying decades of decline left it unable to provide basic services while still meeting financial obligations. Its plan to trim about \$7 billion in debt by reducing some bond recoveries and cutting retiree benefits goes up for court approval next week.

"Ultimately, the decision in Stockton highlights a unique and unfortunate situation brought on by the financial collapse of 2008, and thankfully not a situation that the overwhelming majority of municipalities have to face," Teague Paterson, a pension attorney at Beeson, Tayer & Bodine, said in a statement.

The case is *In re Stockton*, 12-bk-32118, U.S. Bankruptcy Court, Eastern District of California (Sacramento).

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## Judge approves Stockton's plan to repay creditors, leaving pensions intact

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A bankruptcy judge approved Stockton's financial reorganization plan, which continues city workers' full pensions with CalPERS. GOSIA  
WOZNIACKA / ASSOCIATED PRESS FILE

Government pensions in California remain untouchable, at least for now, after a bankruptcy judge approved Stockton's plan to repay its creditors Thursday without reducing the city's pension obligations.

In a major victory for CalPERS and public employees, U.S. Bankruptcy Judge Christopher Klein approved Stockton's reorganization plan over the objections of a disgruntled investment firm, Franklin Templeton, which wanted more money at the expense of the city's pension benefits. "This plan, I'm persuaded, is about the best that can be done," Klein told a packed courtroom in U.S. Bankruptcy Court in Sacramento.

Klein's ruling came one month after he decided that Stockton could reduce its payments to CalPERS if it wanted to. He said breaking contracts, including the relationship between Stockton and the big pension fund, is the essence of bankruptcy. But on Thursday he confirmed Stockton's blueprint for exiting bankruptcy even though it keeps pensions intact.

The Stockton case has loomed as a major test of the sanctity of public pensions at a time of rising costs to governments. Klein's Oct. 1 decision sent major reverberations through the financial world, government circles and public employee unions. Klein acknowledged Thursday that the earlier ruling "undermined" what had been an ironclad assumption: that government pensions are safe and sound, no matter what.

On Thursday, the judge took stock of the practicalities of Stockton potentially ripping up its contract with CalPERS. Even a partial reduction in payments to CalPERS would have triggered a complicated mechanism that would have slashed pension benefits to Stockton workers by 60 percent. Stockton officials said firefighters, police officers and other municipal employees, who have been quitting city government already, would rush to the exits in even greater numbers, leaving the crime-ridden city essentially ungovernable.

"It would be no simple task to go back and redo the pensions," the judge said.

Harvey Leiderman, a San Francisco lawyer and pension-law expert not involved in this case, put it this way: "Oct. 1 was an academic exercise. (Thursday) was a reality check."

CalPERS officials, who have steadfastly fought to preserve pensions, hailed the decision as fair treatment for Stockton's retirees and current employees, who have already taken cuts in salary and medical coverage. As for the legal status of pensions, they said Thursday's decision takes a lot of the sting out of the earlier ruling, which was seen as a blow to the nation's largest public pension fund.

"It makes the (Oct. 1) ruling less significant," said CalPERS General Counsel Matthew Jacobs, though he added: "It still exists." He said the California Public Employees' Retirement System is considering whether it can challenge the earlier ruling.

Organized labor applauded Thursday's ruling as well. The Oct. 1 decision now "has little meaning for the future of public pensions," said attorney Teague Paterson, an Oakland attorney who filed briefs in the case on behalf of the Peace Officers Association of California.

Advocates for pension reform, however, said Thursday's ruling approving the reorganization plan was a mistake because it allows Stockton to exit bankruptcy without dealing realistically with its obligations to CalPERS, which total around \$29 million a year.

"Only time will tell if the city of Stockton can continue to provide services without relief from their unsustainable pension obligations," said Dan Pellissier, a political consultant who has worked to reduce public pension costs. "They're betting on rosy (financial) assumptions."

Wall Street also took note of the ruling. Standard & Poor's Ratings Services said Klein's decision is a first step "to enable the city to recover its institutional health and standing in the credit markets."

Stockton officials were thrilled. After years of dealing with financial crisis, and more than two years of bankruptcy, "the city of Stockton can move forward," Mayor Anthony Silva said as he left the courtroom.

City Manager Kurt Wilson said police officers and other city employees have been leaving Stockton for the past few years because of uncertainty over their pensions and the city's financial troubles. The city employs 100 fewer police officers than it did before its financial woes began.

He said he believes the exodus will now stop.

"That's going to be a very big help for us," Wilson said.

Some employees and retirees, however, remain embittered by the cuts they've had to absorb. Retirees, notably, have lost all of their city-paid health care.

"Of course, there's consolation that the pensions stay intact," said retired police Sgt. Mark Anderson, 55, who was in the courtroom. Still, he said, "it's a sad day for Stockton."

The average Stockton retiree gets a \$24,000-a-year pension, although the amount can vary widely. Anderson's pension is \$60,000 a year.

Stockton got into financial trouble by borrowing heavily during the last housing boom, amassing more than \$200 million in bond debt to pay for parks, a marina and other amenities. It reached agreement with most of its bond creditors to pay 50 to 100 cents on the dollar.

But it couldn't make a deal with Franklin Templeton, which lent the city \$36 million to build a fire station and more. The city's plan ends up paying the firm around 12 cents on the dollar, or around \$4.3 million.

Franklin Templeton said it should get more money and it was being treated unfairly in light of the city's refusal to reduce pension contributions to CalPERS. Its lawyer James Johnston argued that CalPERS was seeking "exalted status."

But Klein, noting the sacrifices already made by workers and retirees, said the dispute boiled down to how they should be treated going forward. If the city were to reduce its pensions to free up cash for Franklin Templeton, workers and retirees would be "the real victims," the judge said. He added that city employees negotiated pay cuts with the understanding that their pensions would be left alone.

The legal status of public pensions has become a hot issue in two other municipal bankruptcies, San Bernardino's and Detroit's.

In Detroit, workers and retirees agreed to modest pension cuts after the judge there ruled pensions could be reduced. San Bernardino suspended its payments to CalPERS for several months after filing for bankruptcy in 2012, but has resumed payments and worked out a settlement with the pension fund earlier this summer. Details of that settlement haven't been disclosed.

Johnston, the lawyer for Franklin Templeton, said the firm is "disappointed" in Thursday's ruling. "We will evaluate our next steps," he said.

*Call The Bee's Dale Kasler, (916) 321-1066. Follow him on Twitter @dakasler (<https://twitter.com/dakasler>).*

## **Oakland Pension Expert Teague Paterson on Stockton Ruling**

In response to Judge Klein's opinion approving Stockton's bankruptcy plan today, leading pension attorney Teague Paterson of Beeson, Tayer & Bodine, who filed an amicus brief for Peace Officers Association of California in this case, has made the following statement:

"Judge Klein's decision to accept the Stockton Plan of Adjustment means that his October 1 opinion on pensions has little meaning for the future of public pensions. It has not established any legal or binding precedent. The City of Stockton is able to do what's right for the community – protect both pensions and public safety services.

"The outcome in Stockton is more evidence that bankruptcy is not an appropriate tool to jettison pension debt. Bankruptcy simply has too much baggage to even be considered as a viable option for cities interested in dismantling public employee retirement. Ultimately, the decision in Stockton highlights a unique and unfortunate situation brought on by the financial collapse of 2008, and thankfully not a situation that the overwhelming majority of municipalities have to face."

**EXHIBIT B**

## LAFFEY MATRIX – 2014-2015

Years (Rate for June 1 – May 31, based on prior year's CPI-U)

Experience	14-15
20+ years	520
11-19 years	460
8-10 years	370
4-7 years	300
1-3 years	255
Paralegals & Law Clerks	150

### Explanatory Notes:

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia. The matrix is intended to be used in cases in which a "fee-shifting" statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act). The matrix does **not** apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. This matrix is based on the hourly rates allowed in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). It is commonly referred to by attorneys and federal judges in the District of Columbia as the "Laffey Matrix" or the "United States Attorney's Office Matrix." The various "brackets" in the column headed "Experience" refer to the years following the attorney's graduation from law school, and are intended to correspond to "junior associates" (1-3 years after law school graduation), "senior associates" (4-7 years), "experienced federal court litigators" (8-10 and 11-19 years), and "very experienced federal court litigators" (20 years or more). Thus, the "1-3 years" bracket is generally applicable to attorneys in their first, second, and third years after graduation from law school, and the "4-7 years" bracket generally becomes applicable on the third anniversary of the attorney's graduation (*i.e.*, at the beginning of the fourth year following law school). *See Laffey*, 572 F. Supp. at 371; *but cf. EPIC v. Dep't of Homeland Sec.*, No. 11-2261, \_\_\_ F. Supp. 2d \_\_\_, 2013 WL 6047561, \*6 -\*7 (D.D.C. Nov. 15, 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate); *EPIC v. Dep't of Homeland Sec.*, 982 F. Supp.2d 56, 60-61 (D.D.C. 2013) (same).
3. The hourly rates approved in *Laffey* were for work done principally in 1981-82. The matrix begins with those rates. *See Laffey*, 572 F. Supp. at 371 (attorney rates) & 386 n.74 (paralegal and law clerk rate). The rates for subsequent yearly periods were determined by adding the change in the cost of living for the Washington, D.C. area to the applicable rate for the prior year, and then rounding to the nearest multiple of \$5 (up if within \$3 of the next multiple of \$5). The result is subject to adjustment if appropriate to ensure that the relationship between the highest rate and the lower rates remains reasonably constant. Changes in the cost of living are measured by the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.
4. Use of an updated Laffey Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the United States Attorney's Office as evidence of

prevailing market rates for litigation counsel in the Washington, D.C. area. See *Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n.14, 1109 (D.C. Cir. 1995), cert. denied, 516 U.S. 1115 (1996). Most lower federal courts in the District of Columbia have relied on the United States Attorney's Office Matrix, rather than the so-called "Updated Laffey Matrix," as the "benchmark for reasonable fees" in this jurisdiction. *Miller v. Holzmann*, 575 F. Supp. 2d 2, 18 n.29 (D.D.C. 2008) (quoting *Pleasants v. Ridge*, 424 F. Supp. 2d 67, 71 n.2 (D.D.C. 2006)); see, e.g., *Berke v. Bureau of Prisons*, 942 F. Supp. 2d 71, 77 (D.D.C. 2013); *Heller v. District of Columbia*, 832 F. Supp. 2d 32, 40-49 (D.D.C. 2011); *American Lands Alliance v. Norton*, 525 F. Supp. 2d 135, 150 (D.D.C. 2007). But see *Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 14-15 (D.D.C. 2000). The United States Attorney's Office does not use the "Updated Laffey Matrix" to determine whether fee awards under fee shifting statutes are reasonable.

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