

6

1 James O. Johnston (SBN 167330)
Charlotte S. Wasserstein (SBN 279442)
2 JONES DAY
555 South Flower Street, 50th Floor
3 Los Angeles, CA 90071
Telephone: (213) 489-3939
4 Facsimile: (213) 243-2539
Email: jjohnston@jonesday.com
5 cswasserstein@jonesday.com

Joshua D. Morse (SBN 211050)
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 626-3939
Facsimile: (415) 875-5700
Email: jmorse@jonesday.com

6 *Attorneys for Franklin High Yield Tax-Free*
7 *Income Fund and Franklin California High*
8 *Yield Municipal Fund*

9 **UNITED STATES BANKRUPTCY COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **SACRAMENTO DIVISION**

12 In re:
13 CITY OF STOCKTON, CALIFORNIA,
14 Debtor.

Case No. 12-32118 (CMK)
D.C. No. OHS-15
Chapter 9
Adv. Proceeding No. 13-02315-C

16 WELLS FARGO BANK, NATIONAL
ASSOCIATION, FRANKLIN HIGH
17 YIELD TAX-FREE INCOME FUND,
AND FRANKLIN CALIFORNIA HIGH
18 YIELD MUNICIPAL FUND,

19 Plaintiffs.

20 v.

21 CITY OF STOCKTON, CALIFORNIA,
22 Defendant.

FRANKLIN HIGH YIELD TAX-FREE INCOME FUND AND FRANKLIN CALIFORNIA HIGH YIELD MUNICIPAL FUND'S EVIDENTIARY OBJECTIONS TO DIRECT TESTIMONY DECLARATION OF KURT WILSON IN SUPPORT OF CONFIRMATION OF FIRST AMENDED PLAN FOR THE ADJUSTMENT OF DEBTS OF CITY OF STOCKTON CALIFORNIA (NOVEMBER 15, 2013)

Date: May 12, 2014
Time: 9:30 a.m.
Dept: C, Courtroom 35
Judge: Hon. Christopher M. Klein

1 Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal
 2 Fund (collectively, “Franklin”) respectfully submit the following evidentiary objections to the
 3 *Direct Testimony Declaration Of Kurt Wilson In Support Of Confirmation Of First Amended Plan*
 4 *For The Adjustment Of Debts Of City Of Stockton, California (November 15, 2013)* [Docket
 5 No. 1383 / Adv. Pro. Docket No. 76].

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
7 3. Franklin attacks the deals that the City, 8 through arduous mediation and after 9 thousands of hours of work by the City’s 10 management team and outside professionals, 11 has struck with Ambac, Assured, and NCFG. 12 <u>But Franklin ignores one of the critical elements of these deals. These agreements are vital to the City because they each ensure the City’s continued use of properties that are important, and often essential, to the City’s operations.</u>	Franklin objects to the statements in this paragraph because they misstate Franklin’s arguments.
13 7. The properties underlying the City’s 14 deals with Ambac, Assured, and NCFG are 15 important civic facilities, and the City, in the 16 exercise of its business judgment, has 17 determined that they cannot be sacrificed. 18 There is one deal with Assured, the Pension 19 Obligation Bond (POB) settlement, which 20 does not directly involve an underlying 21 property. However, the City entered into the 22 POBs settlement as part of a global settlement with Assured that ensured the City’s continued use of 400 E. Main under favorable lease terms. <u>The City believes that Assured would not have entered into the new 400 E. Main lease on the same terms had it not reached an acceptable settlement on the POB Claims.</u>	Franklin objects to the underlined statements in this paragraph because they contain opinion testimony that is not rationally based on Mr. Wilson’s perception and not helpful to clearly understand Mr. Wilson’s testimony or to determine a fact in issue. FED. R. EVID. 701.
23 10. <u>The City has made its best efforts to 24 raise taxes in light of its fiscal crisis and 25 bankruptcy case.</u> The City realized several 26 years ago that it needed to pursue additional 27 revenues. <u>At the time, however, the 28 justification for new taxes did not meet the expectations of the community.</u> As a result, on more than one occasion voters rejected calls for new taxes, even to support important public items. Subsequently, the City engaged FM3, a reputable national firm with more than 30 years of experience specializing in opinion research to support the passage of	Franklin objects to the statements in this paragraph because Mr. Wilson’s description of the FM3 report is not the best evidence of that document. FED. R. EVID. 1002.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>finance measures to fund local public services. The City enlisted FM3 to survey likely Stockton voters in September 2012 on the level of support for sales and/or utility user tax increases, structured either as special taxes (with earmarked proceeds) or general taxes (without earmarked proceeds). A true and correct copy of the results of FM3s research is attached as Exhibit B to the declaration of former City Manager Robert Deis in support of the City’s eligibility for bankruptcy relief (“Deis Decl.”, [Dkt. No. 708]). A summary of FM3’s key findings was also admitted into evidence as Exhibit 106 at the Eligibility Hearing. <u>Those results showed that the measure had a greater probability of passing if a portion of the receipts went to public safety purposes, including the hiring of additional police. It also showed substantially lower support for a tax measure whose receipts would be dedicated solely to paying the City’s creditors.</u></p>	
<p>12. I agree with the testimony of former City Manager Robert Deis when he stated that “for a tax increase measure to be successful it is essential that a city have a compelling argument or a specific ‘product’ that will be funded by the tax increase which resonates with the voters.” Deis Decl. at 9. It was critical to the passage of Measure A that the public see that the resulting revenues would go to hiring police officers and improving public safety. At the same time, however, the City was barely able to sell a tax increase that paid for the some of the City’s most vital “products”: law enforcement, crime prevention, and the restoration of City services. In my experience, it would be impossible to pass a tax measure devoted solely to paying creditors like Franklin, particularly considering the likelihood of a much stronger organized opposition than what we saw with Measure A. The City has acted in good faith by asking the voters to pass the highest tax increase that the City thought feasible and by presenting voters with a “product” they would support. Were the City’s bankruptcy case dismissed, it could not, as Franklin suggests it might, be able to raise yet more tax revenue at the drop of a hat.</p>	<p>Franklin objects to the statements in this paragraph because they misstate Franklin’s arguments.</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>13. Franklin's arguments that the City should raise its utility users' tax ("UUT") rate likewise miss the mark. In November 2008, the City placed Measure U on the ballot, which the voters passed. The purpose of Measure U was to modernize the current user utility tax ordinance to treat taxpayers equally regardless of the technology used for telecommunication and video services. Specifically, it was intended to protect the tax from litigation alleging that local phone taxes should have been repealed when the federal government ceased taxing long-distance calls in 2006. It was also intended to extend the tax to new technologies such as text messaging. In order to address public concern, Measure U reduced the overall UUT rate from 8% to 6%. This action likely relieved some political pressure, which allowed the City an opportunity to garner additional support for the later tax measure.</p>	<p>Franklin objects to the statements in this paragraph because they misstate Franklin's arguments.</p>
<p>14. Any UUT increase requires voter approval. The FM3 poll indicated lower support for a UUT than a sales tax. A sales tax measure initially polled at 71% support, but wound up with only 51.86% "yes" votes. <u>A 2% UUT increase initially polled at 58% support, so it seems likely such a proposal would not succeed after a hard fought ballot campaign. This may be in part due to the City's promise with Measure U that the UUT would remain at 6%. Putting a 2% UUT rate increase on the ballot would run counter to that promise.</u></p>	<p>Franklin objects to the statements in this paragraph because Mr. Wilson's description of the FM3 poll is not the best description of that document. FED. R. EVID. 1002.</p>
<p>15. <u>Franklin criticizes the City's decision not to impair CalPERS, which is the market standard for government employee pensions in California. The point Franklin misses or ignores is that there is not much in the way of a decision involved. A "decision" implies a choice between two or more options. But there is, in reality, no feasible alternative to CalPERS for Stockton, and Franklin fails to propose one. If the City wishes to retain its employees, and wishes to avoid the \$1.6 billion judgment that would immediately result from rejecting its CalPERS obligations, it must honor its debts to CalPERS as the trustee for the City's retirees. The City's ability to retain and attract a qualified workforce is dependent, among other things, on the competitiveness of its total</u></p>	<p>Franklin objects to the underlined statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Wilson's perception and not helpful to clearly understand Mr. Wilson's testimony or to determine a fact in issue. FED. R. EVID. 701. Franklin further objects to the underlined statements in this paragraph because they are speculative and lack foundation. FED. R. EVID. 602. Franklin further objects to the statements in this paragraph because they misstate Franklin's arguments.</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>1 <u>compensation package. We have witnessed</u> 2 <u>the negative impact on recruitment and</u> 3 <u>retention within the police department, for</u> 4 <u>example, that can be caused by even the hint</u> 5 <u>of losing the ability to provide a competitive</u> 6 <u>compensation package. Other departments are</u> 7 <u>experiencing similar challenges. As an</u> 8 <u>example, the City is currently unable to fully</u> 9 <u>operate its new Delta Water Supply Project</u> 10 <u>because of an inability to attract and retain</u> 11 <u>qualified employees. In the absence of</u> 12 <u>CalPERS or an equivalent plan, the City</u> 13 <u>would be unable to compete with other</u> 14 <u>employers. The search for a comparable plan</u> 15 <u>that also produces a cost savings for the City</u> 16 <u>has not identified any options. Even if such an</u> 17 <u>option did exist, however, the termination</u> 18 <u>liability that the City would owe to CalPERS</u> 19 <u>would more than offset any hypothetical</u> 20 <u>savings.</u></p> <p>fn2: Unfunded termination liability for the Safety Plan is \$1.042 billion and for the Miscellaneous Plan is \$576 million, for a total of \$1.618 billion, according to the 6/30/12 actuarial valuation by CalPERS (page 28 of each plan's report).</p>	
<p>16. However, while the City's Plan does not impair CalPERS, the City has reduced its CalPERS obligation through other means. The City's CalPERS obligation is based on a variety of factors, such as the number of employees enrolled in the system, the amount of pay received by those employees, the tier in which they are enrolled, who pays for the employee share of the obligation, the ability to spike pay, etc. <u>The City has taken actions to reduce costs in each of these areas, and these actions have resulted in a dramatic decrease in the City's long-term CalPERS obligation. Franklin's implication that the City has done nothing to address its pension costs is therefore incorrect.</u></p>	<p>Franklin objects to the statements in this paragraph because they misstate Franklin's arguments.</p>
<p>17. I have reviewed the Expert Report of Charles M. Moore ("Moore Report"). Moore opines that the City may not able to absorb what he describes as "very high, growing, and unpredictable" costs related to CalPERS. <u>At the same time, however, he contradictorily attacks the City's modest annual contingency and minimum fund balance as excessive.</u> The City has an obligation to propound a Plan that ensures its long-term fiscal stability. The</p>	<p>Franklin objects to the underlined statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Wilson's perception and not helpful to clearly understand Mr. Wilson's testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers, Inc. v. Bayer Corp.</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (E.D. Cal. June 17, 2009) (fact witness not permitted to offer opinions to rebut expert's methodology).</p>

