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9 UNITED STATES BANKRUPTCY COURT
 10 EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION
 12

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

Case No. 2012-32118
 D.C. No. OHS-1
 Chapter 9

**OBJECTIONS TO DECLARATION
 AND EXPERT REPORT OF DAVID
 NEUMARK PURSUANT TO FEDERAL
 RULE OF EVIDENCE 702 AND
 DAUBERT V. MERRELL DOW
 PHARMACEUTICALS, INC.¹**

Date: February 26, 2013
 Time: 1:30 p.m.
 Dept: C
 Judge: Christopher M. Klein

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27 _____
 28 ¹ The City is not asking the Court for a ruling on the City's objections to evidence at the February 26, 2013 Status Conference. Rather, the City will seek direction from the Court at such hearing as to how it would like to proceed as to the City's objections.

TABLE OF CONTENTS

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

Page

- I. INTRODUCTION 1
- II. OBJECTIONS 3
 - A. Legal Standard 3
 - B. Neumark’s Expert Testimony Is Not Helpful To The Court Because It Is Irrelevant To The Question Of The City’s Good Faith Or Satisfaction Of The Negotiation Requirement 4
 - C. The Neumark Declaration and Report Are Based On Insufficient Facts, Data, And Qualifications..... 7
 - D. The Neumark Declaration And Report Are Purely Speculative And Based On Faulty Principles And Methods, And Are Therefore Unreliable 9
- III. CONCLUSION 12

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

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

California ex rel. Brown v. Safeway, Inc.,
615 F.3d 1171 (9th Cir. 2010) *on reh'g en banc sub nom. California ex rel. Harris v. Safeway, Inc.*, 651 F.3d 1118 (9th Cir. 2011) 9

Daubert v. Merrell Dow Pharm, Inc.,
509 U.S. 579 (1993) 1, 3, 4, 9

Elsayed Mukhtar v. California State Univ., Hayward,
299 F.3d 1053 (9th Cir. 2002) *amended sub nom. Mukhtar v. California State Univ., Hayward*, 319 F.3d 1073 (9th Cir. 2003) 4

General Elec. Co. v. Joiner,
522 U.S. 136 (1997) 1, 4

Guidroz-Brault v. Missouri Pac. R. Co.,
254 F.3d 825 (9th Cir. 2001) 9

In re Air Disaster at Lockerbie Scotland on Dec. 21, 1988,
37 F.3d 804 (2d Cir. 1994) 9

In re Cloobek,
BAP NV-06-1165-BSN, 2007 WL 7535051 (B.A.P. 9th Cir. May 2, 2007) 4

In re Pierce Cnty. Hous. Auth.,
414 B.R. 702 (Bankr. W.D. Wash. 2009) 5

Kumho Tire Co., Ltd. v. Carmichael,
526 U.S. 137 (1999) 1, 4

Primiano v. Cook,
598 F.3d 558 (9th Cir. 2010) 8

Stilwell v. Smith & Nephew, Inc.,
482 F.3d 1187 (9th Cir. 2007) 4

United States v. Redlightning,
624 F.3d 1090 (9th Cir. 2010) 4, 7

White v. Ford Motor Co.,
312 F.3d 998 (9th Cir. 2002) *opinion amended on denial of reh'g*,
335 F.3d 833 (9th Cir. 2003) 4

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

TABLE OF AUTHORITIES
(cont'd)

Page(s)

FEDERAL STATUTES, RULES, REGULATIONS

11 U.S.C.

§ 109(c)(3).....	2
§ 109(c)(5)(B)	2, 4
§§ 109(c) and 921(c)	1
§ 921.....	6
§ 921(c)	2, 4, 5

Federal Rules of Evidence

702.....	1, 3, 4, 8
702(b).....	7
702(c), (d).....	9

Rule of Bankruptcy Procedure 9017	3
---	---

OTHER AUTHORITIES

COLLIER ON BANKRUPTCY ¶ 921.04[2]	5
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1 The City of Stockton (the “City”) hereby submits the following objections to the
2 Declaration Of David Neumark In Support Of National Public Finance Guarantee Corporation’s
3 And Assured Guaranty Corp. And Assured Guaranty Municipal Corp.’s Supplemental Objection
4 To The City Of Stockton’s Qualifications Under Section 109(c) and 921(c) (the “Neumark
5 Declaration” in support of the “NPFGE Obj.” to the City’s “Petition”) and the accompanying
6 Expert Report of David Neumark (the “Neumark Report”), pursuant to Federal Rule of Evidence
7 702 and *Daubert v. Merrell Dow Pharm, Inc.*, 509 U.S. 579 (1993). These objections are made in
8 addition to those objections raised in the City’s “Objections To Declaration Of David Neumark
9 In Support Of National Public Finance Guarantee Corporation’s And Assured Guaranty Corp.
10 And Assured Guaranty Municipal Corp.’s Supplemental Objection To The City Of Stockton’s
11 Qualifications Under Section 109(c) and 921(c)” and focus on the helpfulness, qualifications, and
12 reliability of the expert opinions rendered by David Neumark (“Neumark”) in the Neumark
13 Declaration and Neumark Report.

14 **I. INTRODUCTION**

15 In *Daubert*, the Supreme Court recognized and reaffirmed that the Federal Rules of
16 Evidence require courts to perform a “gatekeeping role” with regards to the admissibility of
17 expert opinion testimony. 509 U.S. at 597; *see also Kumho Tire Co., Ltd. v. Carmichael*, 526
18 U.S. 137, 149 (1999) (holding that the *Daubert* “gatekeeping” obligation applies to all expert
19 testimony, not just “scientific” testimony); *General Elec. Co. v. Joiner*, 522 U.S. 136, 142 (1997).
20 This gatekeeping obligation requires courts considering the admissibility of expert opinions based
21 on scientific, technical, or otherwise specialized knowledge to ensure that the expert is properly
22 qualified to render the proffered opinion, that the proffered opinion will be helpful to the trier of
23 fact, and that the proffered opinion is based upon sufficiently reliable information, principles, and
24 methodologies. *See* FRE 702. Put more simply, courts at the trial level “must ensure that any and
25 all [expert opinion] admitted is not only relevant, but reliable.” *Daubert*, 509 U.S. at 589. The
26 Neumark Declaration and Neumark Report fail these fundamental criteria.

27 As a preliminary matter, the entirety of both Neumark’s Declaration and Report is
28 inadmissible because neither offers any opinion testimony that would be relevant or helpful to the

1 Court in deciding the questions that are actually before it. The City has presented evidence
2 showing that it meets the requirements for chapter 9 eligibility, including (1) that the City is a
3 municipality; (2) that the City is authorized by California law to bring its Petition; (3) that the
4 City is insolvent as defined under 11 U.S.C. § 109(c)(3); (4) that the City desires to effect a plan
5 to adjust its debts; (5) that the City has met the negotiation requirement of § 109(c)(5)(B); and,
6 finally (6) that the City has filed its Petition in good faith pursuant to § 921(c). *See generally* City
7 Of Stockton’s Memorandum Of Facts And Law In Support Of Its Statement Of Qualifications
8 Under Section 109(c) Of The United States Bankruptcy Code (“Mem.”). The NPFGB Obj. and the
9 Supplemental Objection Of Assured Guaranty Corp. And Assured Guaranty Municipal Corp. to
10 Debtor’s Chapter 9 Petition And Statement Of Qualifications (“Assured Obj.”), meanwhile,
11 contend that the City is not in fact insolvent under section 109(c)(3), has not met the negotiation
12 requirement of section 109(c)(5)(B), and did not file its Petition in good faith as required by
13 section 921(c).² Both NPFGB and Assured offer Neumark’s Declaration and Report in support of
14 their contentions that the City has not satisfied its negotiation requirement because it did not seek
15 to reduce its CalPERS obligations, and that the City’s concerns that a reduction in pension
16 benefits might cause the loss or transfer of a substantial number of its police officers are merely
17 pretext. *See* Assured Obj., at 28-31.

18 Neumark’s expert testimony does not directly address the City’s good faith belief that it
19 could not seek pension benefit reductions without potentially adverse effects to public safety.
20 Instead, Neumark’s ultimate opinion is that the City has not proved that a reduction in pension
21 benefits will cause a substantial number of current officers to leave the City *to a scientific*
22 *certainty*. *See* Neumark Declaration, ¶ 6; Neumark Report, at 6. However, the City is not
23 required to meet this absurdly high evidentiary burden. Moreover, Neumark himself provides no
24 independent analysis or evidence showing that the City’s claims are incorrect, and instead states
25 only that the City’s evidence does not meet social science standards. This opinion is irrelevant to
26 the Court’s determination of the City’s satisfaction of the good faith and negotiation standards,
27

28 ² The NPFGB Obj. makes only the arguments related to the negotiation requirement and good faith, while the Assured
Obj. raises all three arguments.

1 because it speaks to a standard that has no basis in the law. As such, it fails the helpfulness
2 requirement of *Daubert* and FRE 702, and is inadmissible.

3 Moreover, Neumark is not sufficiently qualified to render the expert opinions in his
4 Declaration and Report. Neumark testifies that the City's concerns regarding the effect of a
5 pension benefit cut on lateral transfers do not meet a social science standard of certainty, but he
6 admits to having no expertise with law enforcement, CalPERS, or Stockton specifically.
7 Moreover, much of the Neumark Report, as described in detail below, is also inadmissible
8 because it is based on incomplete information, unwarranted assumptions and speculation, and
9 flawed methodologies. As such, these opinions fail the basic requirement of reliability laid out in
10 FRE 702 and *Daubert*, and are inadmissible on that ground as well.

11 **II. OBJECTIONS**

12 **A. Legal Standard**

13 Federal Rule of Evidence 702³ provides:

14 A witness who is qualified as an expert by knowledge, skill,
15 experience, training, or education may testify in the form of an
opinion or otherwise if:

16 (a) the expert's scientific, technical, or other specialized knowledge
17 will help the trier of fact to understand the evidence or to determine
a fact in issue;

18 (b) the testimony is based on sufficient facts or data;

19 (c) the testimony is the product of reliable principles and methods;
20 and

21 (d) the expert has reliably applied the principles and methods to the
facts of the case.

22 Fed. R. Evid. 702. Thus, in order for an expert's opinion to be admissible as evidence, the expert
23 must be qualified to render such an opinion, the opinion must be helpful to the trier of fact, and
24 the opinion must be reliable (based on sufficient facts, reliable principles, and reliable application
25 of those principles).

26 ///

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28 ³ The Federal Rules of Evidence are made applicable to cases under the Bankruptcy Code by Rule of Bankruptcy
Procedure 9017.

1 Trial courts have broad discretion in deciding whether to admit or exclude expert
 2 testimony under FRE 702. *General Elec. Co.*, 522 U.S. at 141-42; *see also In re Cloobek*, BAP
 3 NV-06-1165-BSN, 2007 WL 7535051 (B.A.P. 9th Cir. May 2, 2007). However, a trial court
 4 must exercise its gatekeeping function for expert opinion evidence, and any determination of
 5 reliability should be made on the record. *See White v. Ford Motor Co.*, 312 F.3d 998, 1007 (9th
 6 Cir. 2002) *opinion amended on denial of reh'g*, 335 F.3d 833 (9th Cir. 2003) (holding that
 7 *Daubert* and *Kumho Tire* “require that the judge apply his gatekeeping role under *Daubert* to all
 8 forms of expert testimony”); *Elsayed Mukhtar v. California State Univ., Hayward*, 299 F.3d
 9 1053, 1066 (9th Cir. 2002) *amended sub nom. Mukhtar v. California State Univ., Hayward*, 319
 10 F.3d 1073 (9th Cir. 2003) (“*Kumho* and *Daubert* make it clear that the court must, on the record,
 11 make some kind of reliability determination.”).

12 **B. Neumark’s Expert Testimony Is Not Helpful To The Court Because It Is**
 13 **Irrelevant To The Question Of The City’s Good Faith Or Satisfaction Of The**
 14 **Negotiation Requirement.**

15 In order to be admissible, expert testimony must be helpful to the trier of fact. *Daubert*,
 16 509 U.S. at 591; *Stilwell v. Smith & Nephew, Inc.*, 482 F.3d 1187, 1192 (9th Cir. 2007); *Kumho*
 17 *Tire*, 526 U.S. at 156. Specifically, expert evidence or testimony must “assist the trier of fact to
 18 understand the evidence or to determine a fact in issue.” *Daubert*, 509 U.S. at 591. Where expert
 19 testimony does not touch on the questions actually at issue in a case, such testimony is necessarily
 20 unhelpful to the Court. *Id.* (“Expert testimony which does not relate to any issue in the case is not
 21 relevant and, ergo, non-helpful.”) (quoting 3 Weinstein & Berger ¶ 702[02], pp. 702–18). Expert
 22 opinion testimony which fails this basic test of relevance is inadmissible. *Id.*; *Stilwell*, 482 F.3d
 23 at 1192; *United States v. Redlightning*, 624 F.3d 1090, 1123 (9th Cir. 2010).

24 The Neumark Declaration and Report are not helpful to the Court, because they are
 25 irrelevant to the question of the City’s good faith in filing its Petition under section 921(c), or the
 26 City’s satisfaction of its negotiation requirement under section 109(c)(5)(B). The Neumark
 27 Declaration and Report offer Neumark’s expert opinion that the City’s belief that a “modest”
 28 reduction in pension benefits could potentially lead to a “mass exodus” of senior police officers
 “is not based on any findings that stand up to social science standards of evidence.” Neumark

1 Report, at 6; *see also* Neumark Declaration, ¶ 6 (“the City’s claims are not based on any findings
2 that stand up to recognized social science standards of evidence”); Neumark Report, at 2
3 (stating the question Neumark considered as whether the City “provided reliable, scientific
4 evidence to establish that any pension cuts – even modest pension cuts – would lead to [a] “mass
5 exodus” [of police officers] or create recruitment problems.”). Similarly, Neumark states that
6 “one cannot conclude that past police force departures are *solely* due to compensation changes.”
7 Neumark Declaration, ¶ 7 (emphasis added); Neumark Report, at 7. NPFG and Assured rely on
8 these expert opinions as support for their contention that the City has not filed its Petition in good
9 faith or satisfied the negotiation requirement because it should have sought a reduction in its
10 pension obligations. However, the City is *not* required to show that it was acting on evidence that
11 met a social sciences standard of certainty. Rather, the City need only show that it had a good
12 faith belief that a pension reduction might cause experienced officers to seek to transfer out of the
13 City, to the detriment of public safety. *See In re Pierce Cnty. Hous. Auth.*, 414 B.R. 702, 711
14 (Bankr. W.D. Wash. 2009) (laying out the factors for determination of good faith under § 921(c))
15 (citing COLLIER ON BANKRUPTCY ¶ 921.04[2]). Neumark’s expert opinion testimony has no
16 bearing on the question of good faith, because it imposes an entirely separate, and unreachable,
17 standard for the City’s actions. As such, Neumark’s Declaration and Report are unhelpful to the
18 Court and should be excluded as inadmissible.

19 Neumark admits that his only task was to render his opinion on the strength of the City’s
20 evidence. Neumark Depo., at 63:13-21. Neumark does not provide any new evidence or
21 independent analysis regarding the possibility that pension cuts would cause experienced officers
22 to leave the City’s police department, but instead only opines that the City has not proven this
23 will be the case. Neumark Depo., at 151:18-19; 193:18-22 (“I wasn’t doing an affirmative report
24 to try to test these hypotheses . . . I was asked to look at the evidence and say whether anything
25 that had been presented that [sic] convinced me that was the case.”). Indeed, Neumark
26 acknowledges that he has no evidence of his own which “meets social science standards” that
27 conclusively demonstrates officers would *not* leave the City for other departments in response to
28 a modest reduction in pension benefits. Neumark Depo., 197:8-21; *see also* 184:11-19 (stating

1 that he did not engage in any new empirical analysis for his report). Thus, despite asserting that
2 the City's evidence does not meet a scientific standard for certainty regarding the possible
3 transfer of police officers in response to pension cuts, Neumark himself did not perform his own
4 affirmative study to determine whether City police officers would leave for other departments in
5 response to a modest reduction in pension benefits. Neumark Depo., at 90:21-24; 197:8-21. In
6 fact, Neumark stated during his deposition that a complete study to determine the likelihood of
7 officers leaving the department due to a cut in pension benefits would take him a minimum of six
8 months of full-time work (with a support staff) and would cost at least \$500,000. Neumark Depo.,
9 at 96:25-97:14. Moreover, Neumark himself is not even sure that the data required to undertake
10 such a study is even available. Neumark Depo., at 97:15-98:16. It would be absurd for a city in
11 economic crisis to have delayed for at least half a year, at a cost of at least half a million dollars,
12 just for the chance of attaining an unnecessary level of scientific "certainty" as to the possibility it
13 would lose police officers based on a reduction in pension benefits.⁴ Certainly, that is not what is
14 required of the City to satisfy the good faith requirement of section 921.

15 Ultimately, despite his claims of uncertainty, Neumark acknowledges that it was
16 reasonable for the City to be concerned about the possibility of losing experienced police officers
17 (and having difficulty recruiting new officers) if pension benefit cuts were imposed. Neumark
18 Depo., at 119:25-121:12. He also concedes that some of the City's evidence supports its
19 conclusion that past compensation cuts led to past transfers, just not to what an "economist would
20 say is the standard of convincing evidence." Neumark Depo., at 208:4-209:18; *see also* Neumark
21 Depo., at 222:10-22 (stating that he cannot definitively state that previous departures from the
22 City's police department were not due to benefit cuts). This is in stark contrast to the statement in
23 Neumark's Declaration that "[n]o convincing evidence" has been presented by the City to support
24 its concerns. Neumark Declaration, ¶ 6. Thus, having admitted that information available to the
25 City gave rise to a reasonable concern about the impact of pension cuts on the City's police
26 retention and public safety, Neumark's expert opinion that the City's evidence nevertheless does
27

28 ⁴ Furthermore, Neumark can offer no evidence of any municipality making decisions based on criteria meeting social science standards of evidence. Neumark Depo., at 198:13-199:2.

1 not “stand up to social science standards of evidence” is completely irrelevant to the questions
2 before the Court. As such, Neumark’s Declaration and Report should be excluded as unhelpful
3 and inadmissible.

4 **C. The Neumark Declaration and Report Are Based On Insufficient Facts, Data,
5 And Qualifications.**

6 The expert opinions offered in the Neumark Declaration and Report as to the likelihood a
7 pension cut will lead experienced officers to transfer from the City, and the potential effect on
8 crime and public safety such transfers might have, lack the necessary factual basis. *See* FRE
9 702(b) (expert opinion testimony must be based on “sufficient facts or data” to render the opinion
10 reliable); *United States v. Redlightning*, 624 F.3d 1090, 1111 (9th Cir. 2010). Despite opining
11 that the City has failed to show that a reduction in pension benefits will cause current officers to
12 transfer out of the city to a level of scientific certainty, Neumark’s Declaration and Report
13 undertake no independent analysis of this claim and fail to consider or include facts that would be
14 important to such an analysis. In fact, Neumark readily acknowledges that he lacked a great deal
15 of potentially helpful information.

16 For instance, Neumark’s conclusion that the City would not face a mass exodus of
17 experienced employees or recruitment issues is not based on any evidence of what other cities
18 have actually experienced. Neumark Depo., 221:7-14. Neumark admits to lacking information
19 regarding the availability of open positions and compensation in other jurisdictions, Neumark
20 Depo., at 83:2-15, and allows that he had no information regarding the level of transfers and
21 retirements in order to be able to judge whether current levels were “unusual relative to other
22 departments or other years.” Neumark Depo., at 86:9-87:14 (“I had no basis for knowing whether
23 I was looking at something highly unusual or not.”). Neumark also concedes that he did not
24 perform any specific research on the effects of public employee pensions on public employee
25 retention or on public employee migration. Neumark Depo., at 43:8-22. Nor did he determine
26 whether any other California police departments have experienced wage and benefit cuts
27 comparable to those in the City since 2008. Neumark Depo., at 183:22-184:7. Neumark also
28 acknowledges that he is not aware of any time when CalPERS benefits were reduced for existing

1 employees or retirees. Neumark Depo., at 56:10-14. Neumark also chose not to interview any
2 past or current officers to determine what factors might lead an officer to seek a transfer, and did
3 not perform any research or investigation into what employment concerns are the biggest factors
4 in influencing the City's police officers in their decision whether to migrate elsewhere. Neumark
5 Depo., at 238:20-24; 239:17-240:8. Neumark also provides no evidence or analysis of the
6 potential impact of several non-economic factors he claims may have played a significant role in
7 past officer transfers (see Section D, below), and concedes that he did not do an affirmative report
8 and does not have any evidence supporting his alternative theories. Neumark Depo., at 193:20-
9 22. Thus, while Neumark offers some minimal evidence, it is plainly insufficient where his
10 Report omits or ignores facts which would plainly be material to the opinion he is offering. This
11 fails the sufficiency requirement of FRE 702, and Neumark's opinions are therefore inadmissible
12 where based on insufficient facts and evidence.

13 Furthermore, Neumark himself lacks sufficient qualifications to render many of the
14 opinions contained in his Declaration and Report. *See* FRE 702 (an expert must be sufficiently
15 qualified to render the opinions contained in his testimony based on his knowledge, skill, training,
16 experience, or education in the field in question); *Primiano v. Cook*, 598 F.3d 558, 563 (9th Cir.
17 2010). Neumark has never worked in or consulted with a law enforcement agency, Neumark
18 Depo., at 39:13-19; Neumark has never been involved with local government as an official,
19 Neumark Depo., at 39:22-25; and Neumark has never worked with CalPERS, and has no
20 experience studying the effect of public employee pensions on public employee retention or on
21 the migration of employees between employers within the same pension system, Neumark
22 Depo., at 41:14-21 43:8-13, 44:8-15. Nor did he study public safety workers or review any
23 studies focusing on public safety workers. Neumark also has no experience specific to the City's
24 human resources issues or specific to the City's police department's retention and lateral transfer
25 issues. Neumark Depo., 46:10-12; 80:22-81:2. Thus, while Neumark may have some expertise,
26 it is clearly not applicable to the specific question of the City's ability to retain experienced
27 officers in the face of a modest pension benefit reduction (on top of the City's previous reductions

28 ///

1 in compensation and benefits). Neumark's Declaration and Report should therefore be excluded
2 based on Neumark's lack of qualifications.

3 **D. The Neumark Declaration And Report Are Purely Speculative And Based On**
4 **Faulty Principles And Methods, And Are Therefore Unreliable.**

5 In order to be deemed reliable, expert testimony must be the product of the reliable
6 application of reliable principles and methods. FRE 702(c), (d). Such testimony must be
7 "supported by appropriate validation – *i.e.*, good grounds." *Daubert*, 509 U.S. at 590. An expert
8 opinion must be more than a bald assertion without support, and expert opinions that lack a
9 factual basis and are based on speculation or conjecture are inadmissible. *Guidroz-Brault v.*
10 *Missouri Pac. R. Co.*, 254 F.3d 825, 829 (9th Cir. 2001) (expert testimony may not include
11 "unsupported speculation and subjective beliefs."); *California ex rel. Brown v. Safeway, Inc.*, 615
12 F.3d 1171, 1181 (9th Cir. 2010) *on reh'g en banc sub nom. California ex rel. Harris v. Safeway,*
13 *Inc.*, 651 F.3d 1118 (9th Cir. 2011) (expert testimony inadmissible where expert testified a result
14 was "plausible" and "likely" but "admitted that he had done no analysis").⁵

15 The Neumark Declaration and Report contain numerous instances of unreliable principles
16 and methods. For one, Neumark's opinions are based on vague and faulty assumptions. For
17 instance, Neumark assumed that a "modest" pension had "a rough definition of about ten percent,
18 and if you added 5 or 6 or 7 percent to that in either direction or a little more or a little less." *See*
19 *Neumark Depo.*, at 150:8-15; *see also* 31:23-32:12. Thus Neumark's starting point was a pension
20 reduction of anywhere from 3 to 17%, plus or minus "a little more or a little less." This is a large
21 margin for error, and is purely speculative to begin with. Even more important, Neumark
22 assumes that a "modest" reduction in pensions is one that would not be "viewed as a dramatic
23 change in a person's financial circumstances." *Neumark Depo.*, at 32:6-12 ("[G]oing back to the
24 qualitative question . . . one could imagine an elimination of pensions being viewed as a dramatic
25 change in a person's financial circumstances. And I think modest is kind of ruling out that
26

27 ⁵ Expert testimony which is the product of speculation or unsupported assumptions is also inadmissible as unhelpful
28 to the trier of fact. *See In re Air Disaster at Lockerbie Scotland on Dec. 21, 1988*, 37 F.3d 804 (2d Cir. 1994)
("Expert opinions are excluded as unhelpful if based on speculative assumptions or unsupported by the record.").

1 qualitatively . . .”). In making this assumption, Neumark *assumes his own conclusion*.

2 Naturally, if he assumes that a “modest” pension reduction would not create a dramatic change in
3 an officer’s personal finances, this leads almost directly to the conclusion that an individual
4 officer will not decide to leave because of such pension cuts. Thus, Neumark defined one of his
5 variables according to the result that NPPG and Assured wanted to see. This is a plain case of
6 biased speculation, and is necessarily unreliable.

7 Neumark’s assumed definition of “mass exodus” is similarly vague. Neumark varyingly
8 states that a mass exodus could be a “10 or 15 or 20 percent” in the City’s police force, Neumark
9 Depo., at 144:3-11, while noting that Chief Jones referred to “20 to 40 police officers,” Neumark
10 Depo., at 146:11-21. Ultimately, Neumark acknowledges that it is “fair to say I don’t know
11 exactly what [Jones and Deis] meant [by ‘mass exodus] because they weren’t exact and I wasn’t
12 asked as part of my work to -- to kind of figure out whether through parsing their words or some
13 other document, you know quantitatively exactly what that phrase means.” Neumark Depo., at
14 143:7-18. Thus, Neumark renders an expert opinion that a “modest” reduction in pension
15 benefits will not result in a “mass exodus” of experienced officers from the City’s police
16 department, despite not having a definitive understanding of what either of those terms means.
17 Instead, the Neumark Report simply assumes measures for these terms which lead to its desired
18 result. This is the very definition of a speculative expert opinion, and as such is completely
19 unreliable.

20 Neumark’s analysis of the causal link between benefit cuts and public employee retention
21 is also flawed. The Neumark Report attempts to undermine the City’s concern that compensation
22 and benefit cuts will lead officers to seek a lateral transfer out of the City’s police department by
23 raising a host of “non-economic” factors that might also affect an officer’s decision to transfer.
24 Neumark Report, at 7-9 (citing factors such as quality of life, unhappiness with the police chief or
25 departmental organization, and even, ironically, the City’s high violent crime rate). Essentially,
26 Neumark’s opinion is that the City cannot say with certainty that past reductions in benefits
27 caused officers to leave, or that future reductions would cause additional transfers, because there
28 are many other factors that might also play a role in that decision. Neumark Report, at 9

1 (“[M]any factors were at play that could have induced police officers to leave Stockton, aside
2 from compensation cuts.”). After attacking the City’s evidence as inconclusive, Neumark
3 ultimately comes to the ambivalent conclusion that “[w]hile the research on the economics of
4 migration generally does not specifically quantify the effects of economic vs. other factors, it
5 certainly demonstrates that non-economic factors play an important role.” Neumark Report,
6 at 11.

7 This vague opinion is notably unhelpful, and is certainly not an affirmative conclusion
8 that the City’s claims are wrong or that the City should not have a good faith concern about the
9 retention of police officers. Neumark offers no new evidence or analysis regarding the impact of
10 the “non-economic” factors he cites, and instead merely states that these factors *might* have been
11 significant. It is pure speculation to claim that other factors may have an impact on past or future
12 officer transfers without providing some analysis on that point. Moreover, the Neumark Report
13 completely fails to consider the possibility that Stockton’s poor performance on some of these
14 other factors might render compensation and benefits *more* important for Stockton than for other
15 cities. Neumark Depo., at 191:14-192:7 (noting that Stockton has “a number of unfavorable
16 features” relative to other locations). If in fact Stockton is a less desirable place to work
17 according to other criteria, then its ability to offer competitive compensation and benefits
18 becomes paramount. Yet the Neumark Report considers none of this, and instead merely
19 speculates that pension cuts might not be significant in the face of other factors.

20 Neumark’s opinion on the possibility that a pension reduction will not cause officers to
21 leave is also flawed in that it only considers the effect of a pension benefit cut in isolation.
22 Neumark Depo., 169:19-170:13; 172:22-173:9. This is unrealistic, given that the City has already
23 imposed numerous reductions in compensation and benefits. Neumark thus cannot reliably apply
24 an opinion based on a single, isolated benefit reduction when in fact any pension reduction will
25 necessarily take place in the context of other reductions that have already occurred. *See* Neumark
26 Depo., at 176:17-177:5 (noting that separate benefit reductions may have an additive effect
27 greater than the sum of their parts when combined).

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1 Nevertheless, Neumark concedes that economic factors do play a role, and sometimes a
2 “significant” role, in an officer’s decision to stay with a city or seek a transfer. Neumark Depo.,
3 at 73:15-21; 75:19-25; 76:18-77:4; *see also* Neumark Depo., at 188:12-17 (“pension cuts,
4 compensation cuts, health insurance reductions, those are all things that could an effect [sic] how
5 a worker values a job and therefore an effect what [sic] they do.”). Moreover, Neumark has said
6 that even where non-economic factors (such as lifestyle or family commitments) factor into an
7 employee’s decision to migrate, economic factors *still play a role*. Neumark Depo., at 225:13-24
8 (“[Economic factors] do play a role. I mean economic conditions in different places do matter. I
9 don’t think I ever made a statement they don’t matter.”). Thus, Neumark’s conclusion that the
10 City could not be sure that cuts to pension benefits would lead experienced officers to transfer out
11 of the City is entirely unreliable, and is therefore inadmissible.

12 **III. CONCLUSION**

13 Based on the foregoing, the City requests that the Court exclude the Neumark Declaration
14 and Report in their entirety as inadmissible because they are unhelpful and do not aid the Court’s
15 determination of the City’s eligibility for chapter 9. In the alternative, the City requests that the
16 Court exclude as unreliable those portions of the Neumark Declaration and Report which proffer
17 speculative opinion testimony, or opinion testimony based on improper principles and methods,
18 as to the City’s ability to show that it had a reasonable, good faith concern that a modest pension
19 reduction could lead to a substantial number of City police officers seeking a lateral transfer.
20 Finally, the City requests that the Court strike all portions of the NPFGB Obj. and Assured Obj.
21 that depend upon any portion of the Neumark Declaration or Neumark Report that are found to be
22 inadmissible.

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