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1 MARC A. LEVINSON (STATE BAR NO. 57613)
 malevinson@orrick.com
 2 NORMAN C. HILE (STATE BAR NO. 57299)
 nhile@orrick.com
 3 PATRICK B. BOCASH (STATE BAR NO. 262763)
 pbocash@orrick.com
 4 ORRICK, HERRINGTON & SUTCLIFFE LLP
 400 Capitol Mall, Suite 3000
 5 Sacramento, California 95814-4497
 Telephone: +1-916-447-9200
 6 Facsimile: +1-916-329-4900

7 Attorneys for Debtor
 City of Stockton
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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-18
 Chapter 9

**CITY OF STOCKTON'S MOTION
 FOR ORDER ADMITTING EVIDENCE
 OF THE AB 506 COUNTEROFFER OF
 THE FRANKLIN FUNDS**

Date: April 7, 2014
 Time: 1:30 p.m.
 Dept: 35
 Judge: Hon. Christopher M. Klein

22 Franklin's summary objection to the City's plan of adjustment¹ is chock full of references
 23 to the City's offer to Franklin during the AB 506 process (made as part of the City's "Ask").
 24 Franklin repeatedly cites to this offer in support of its contention that the plan was not proposed in
 25 good faith and to imply that the City failed to act in good faith during the prebankruptcy
 26 mediation – a point Franklin lost a year ago. Meanwhile, Franklin's summary objection
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28 ¹ Due to the multitude of pleadings already filed in this case, the City in this motion will not once again define terms with which the Court is very familiar. The summary objection is docket no. 1273.

1 references, but does not describe, Franklin's AB 506 counterproposal to the Ask, implicitly
 2 trumpeting its own putative good faith while complaining about the victimhood that the plan
 3 would impose upon it. This motion seeks an order authorizing the City to introduce Franklin's
 4 AB 506 counterproposal and related evidence to permit the City to tell the other side of the story.
 5 The City brings this motion because, as previewed by Franklin at the March 19 status conference
 6 hearing, Franklin would not agree to the admission of its conduct during the AB 506 process
 7 unless it was permitted to introduce evidence of the confidential mediation conducted by Judge
 8 Perris as well. The City declined such offer not only in order to preserve mediation
 9 confidentiality, but also to avoid requiring discovery that invariably would follow in order to fully
 10 flush out the Judge Perris mediation evidence.

11 **A. Procedural Background**

12 This motion is made necessary by prior rulings made during the eligibility phase of this
 13 case. Evidence relating to the AB 506 process was deemed privileged pursuant to the Court's
 14 Order On Motion For Leave To Introduce Evidence Relating To Neutral Evaluation Process
 15 Under California Government Code § 53760.3 (the "Protective Order"). However, the City's
 16 Ask, including the City's initial offers to its various creditors, was expressly exempted from the
 17 Protective Order. Franklin's counteroffer, meanwhile, continues to be privileged under the
 18 Protective Order.²

19 **B. The City Seeks To Present Evidence Of Franklin's AB 506 Counter-Offer To Dispel**
 20 **Franklin's One-Sided Assertions.**

21 The summary objection is replete with references to the Ask. *See* Summary Objection at
 22 1:15-18, 2:8-10, 3:12-15, 5:19-23, 7:2-9, 21:11-15, and 53:9-14, among others. Franklin
 23 repeatedly raises the Ask in support of its contention that the plan is not proposed in good faith.
 24 Meanwhile, Franklin would have the Court believe that its own AB 506 counteroffer was entirely
 25 reasonable, while the City's offer was not. In fact, Franklin goes so far as to insinuate that the
 26 City has not acted in good faith during the mediation process at-large. For instance, at page 5 of

27 ² Although the parties stipulated to the use of AB 506 evidence in connection with the evidentiary hearing on the
 28 City's eligibility for chapter 9, that stipulation does not extend to the evidentiary hearing on confirmation of the
 City's Plan. Order Granting Joint Motion To Modify Order On Motion For Leave To Introduce Evidence Relating
 To Neutral Evaluation Process Under California Government Code § 53760.3, ¶ 2.

1 the Summary Objection, Franklin pointedly states that it “would like to be a cooperative partner
2 in the City’s rehabilitation – as evidenced by [its] *own* good-faith settlement offers both *prior to*
3 and during the bankruptcy case.”³ Summary Objection, at 5:19-21 (emphasis added).

4 Franklin thus attempts to paint a one-sided picture of the AB 506 Process. Franklin
5 readily cites the City’s offer, while hiding the specifics of its own counteroffer behind the prior
6 orders. In response to this gamesmanship, the City seeks an order admitting into evidence the
7 Franklin counteroffer as well as related deposition testimony. Such a ruling would enable the
8 City to respond to Franklin’s allegations on equal footing. While the City would not normally
9 seek the admission of offers made during mediation, Franklin has put the parties’ AB 506 conduct
10 squarely at issue. So long as Franklin is able to conceal its counteroffer behind the mediation
11 screen, it is free to continue to intimate that the City’s has acted in bad faith, while the City will
12 be handcuffed in its response.

13 **C. The City Brings This Motion Now In Order To Include This Evidence In Its**
14 **Supplemental Response To Objections To Its Plan Of Confirmation.**

15 Franklin makes its bad faith allegations and implications in the summary objection. The
16 best time and place for the City to respond is in its own briefing filed prior to the May 12
17 confirmation hearing. At the March 19, 2014 status conference, the Court set two dates for
18 additional status conferences at which motions could be heard prior to the confirmation hearing:
19 April 7 and April 28. Only the first date allows for the Court to consider the City’s motion in
20 time for the City to include evidence of the Franklin counteroffer in its supplemental response,
21 which must be filed on April 28. Therefore, the City has brought the instant motion at this time in
22 order to allow for inclusion of this evidence in the City’s briefing should the City’s requested
23 relief be granted. Waiting for a determination on the first day of the confirmation hearing would
24 mean both parties would not know whether such key evidence is admissible, and would require
25 trial preparation that would not be necessary if the ruling were issued two weeks before.

26 _____
27 ³ On page 7 of the summary objection, Franklin states that “[d]uring the case, Franklin made several additional offers
28 . . . all of which were rejected by the City.” Here again, Franklin implies that the City acted unreasonably during
negotiations and shields its claims from scrutiny behind mediation confidentiality. While the City does not seek
leave to present evidence related to postpetition mediation offers, Franklin’s pattern is clear.

1 **D. The Court Need Not Lift Confidentiality On All Mediation Materials.**

2 In a preemptive strike on the City’s not-yet-filed motion, counsel for Franklin argued at
3 the March 19 status conference that allowing the admission of its AB 506 counteroffer would
4 necessitate a ruling that the mediation confidentiality be obliterated altogether, thus making
5 public all the discussions, offers, counteroffers, etc. from the post-petition mediation conducted
6 by Judge Perris. In the words of Franklin’s counsel, the City’s request is an attempt to open only
7 the first chapter of a book. To the contrary, it is Franklin that seeks to tell only half the story.
8 Franklin’s summary objection leans heavily on the City’s offer made in the Ask while
9 simultaneously hiding behind the orders that currently prevent the City from discussing
10 Franklin’s own counteroffer.

11 The City seeks only to respond to Franklin’s allegations regarding the Ask on equal
12 ground. Because Franklin has put the City’s offer in the Ask at issue, the City should be allowed
13 to discuss Franklin’s counteroffer. There is no need for the Court to go further and eliminate
14 postpetition mediation confidentiality. Allowing Franklin to lift the confidentiality veil as to the
15 Judge Perris mediation sessions would open a Pandora’s box, perhaps starting with requests for
16 further discovery as to the City’s offers to other creditors. Needless cost and delay would be
17 incurred, and the all-important cloak of mediation confidentiality would be rendered essentially
18 meaningless. By contrast, the relief the City seeks is limited to only that which is necessary to
19 allow the City to respond to Franklin’s assertions, and the City only seeks that relief based on
20 Franklin’s decision to raise the issue.

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E. Conclusion

Based on the foregoing, the City respectfully requests that the Court issue an order lifting the privilege and confidentiality relating to Franklin’s AB 506 counteroffer and permitting the City to introduce it into evidence along with deposition and other testimony relating to it – starting with inclusion of the evidence in the City’s briefing in support of confirmation.

Dated: March 24, 2013

MARC A. LEVINSON
NORMAN C. HILE
PATRICK B. BOCASH
Orrick, Herrington & Sutcliffe LLP

By: /s/ Marc A. Levinson
MARC A. LEVINSON
Attorneys for Debtor
City of Stockton