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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

In re: CITY OF STOCKTON, CALIFORNIA, Debtor.	Case No. 2012-32118 D.C. No. OHS-15 Chapter 9 **DIRECT TESTIMONY DECLARATION OF VANESSA BURKE IN SUPPORT OF CONFIRMATION OF FIRST AMENDED PLAN FOR THE ADJUSTMENT OF DEBTS OF CITY OF STOCKTON, CALIFORNIA (NOVEMBER 15, 2013)**[1]
WELLS FARGO BANK, NATIONAL ASSOCIATION, FRANKLIN HIGH YIELD TAX-FREE INCOME FUND, AND FRANKLIN CALIFORNIA HIGH YIELD MUNICIPAL FUND, Plaintiffs, v. CITY OF STOCKTON, CALIFORNIA, Defendant.	Adv. No. 2013-02315 Date: May 12, 2014 Time: 9:30 a.m. Dept: Courtroom 35 Judge: Hon. Christopher M. Klein

[1] While this declaration is made in support of confirmation of the Plan, out of an abundance of caution, and because the evidentiary hearing on Plan confirmation and the trial in the adversary proceeding share common issues, it is being filed in both the main case and the adversary proceeding.

I, Vanessa Burke, hereby declare:

1. I am the Chief Financial Officer, Treasurer, and Director of the Administrative Services Department (the "Department") for the City of Stockton, California ("the City" or "Stockton"). I make this declaration in support of confirmation of the City of Stockton, California's ("City") First Amended Plan For The Adjustment Of Debts Of City Of Stockton, California (November 15, 2013). In my role as Chief Financial Officer, Treasurer, and Director of the Department, my responsibilities include, among other things, management of the City's finance, budget, revenue, treasury, and information technology functions. I was previously the Assistant Director of Administrative Service, where my responsibilities included developing and administering the Department's budget, conducting financial analyses, preparing a variety of reports relating to department and City-wide financial activities, and attending City Council meetings and committee meetings to provide information regarding the Department's budget and other financial matters.

The City's Public Facility Fee Funds

2. In accordance with Generally Accepted Accounting Principles (GAAP), Governmental Accounting Standards Board Statements (GASBS) AB 1600, and additional guidance published by the League of California Cities applicable to municipalities, the City accounts for each public facility fee ("PFFs")[2] collected in dedicated restricted funds ("PFF Funds") by fee category. In the City's Chart of Accounts, separate PFF Funds for each category of PFF fee are established as follows: Traffic Signal Impact (Funds 900-904), Street Improvement Impact (Fund 910), Regional Transportation Impact-Traffic (Fund 917), Community Recreation Center Impact (Fund 920), City Office Space Impact (Fund 930), Fire Station Impact (Fund 940), Library Impact (Fund 950), Police Station Impact (Fund 960), Parkland Impact (Fund 970), Street Tree and Sign Impact (Funds 978 & 979), Street Light In Lieu (Funds 908-985), Air Quality Mitigation Impact (Fund 990), Administrative Fees (Fund 999), Water Connection (Fund 424), Wastewater Connection (Fund 434), Delta Water Surface Fee (Fund 425) , and Agricultural Land

[2] Capitalized terms used but not defined herein have the meaning ascribed to them in the First Amended Plan for the Adjustment of Debts of City of Stockton, California (November 15, 2013) [Dkt. No. 1204].

Mitigation Fee (Fund 687). These funds are considered by the City to be capital projects funds under GAAP; the Agricultural Land Mitigation Fee is being held by the City in a Trust Fund.

3. The City's PFF revenues have decreased precipitously in the past several years as a result of the impact from the Great Recession, decline in new housing starts, decline in overall development, and the overall national economic downturn. The diminished collection of PFF fees reflect this sad reality. Since fiscal year 2006-07, revenues from PFF fees (excluding utility connection fees, surface water fees and land mitigation fees) have declined as follows:

Fiscal Year	PFF Revenue (In Thousands)	% Increase/(Decrease)
2006-07	$24,687	
2007-08	$27,686	12.1%
2008-09	$8,087	(70.8%)
2009-10	$6,752	(16.5%)
2010-11	$4,960	(26.5%)
2011-12	$3,153	(36.4%)
2012-13	$2,313	(26.6%)
2013-14 est	$2,261	(2.2%)

As this chart shows, 2007-08 was the last good year for the City's PFF collections.

4. As of June 30, 2013, the PFFs contained an aggregate $34.4 million in cash. Most, if not all, of this money is committed to the development of future infrastructure projects. Available fund balances total approximately $4.9 million. However, given the relative trickle of PFF collections, the City has only a fraction of the funds it needs for required overall infrastructure improvements. According to an econometric study completed by Economic & Planning Systems, Inc. in 2013, based on the City's current general plan, entitlements, houses committed, and other factors, the City's infrastructure needs over the next 25 years amount to over $400 million. *See* Exhibit A to the Declaration of Stephen Chase In Support Of City's

Supplemental Memorandum Of Law In Support Of Confirmation Of First Amended Plan For The Adjustment Of Debts Of City Of Stockton, California (November 15, 2013), at p. 85. Without sufficient revenues being collected to fund the infrastructure, and given the City's inability to issue new debt without a special revenue pledge, the City is currently undertaking a comprehensive review of its general plan, general plan elements, development needs, developer agreements, and conducting rate studies to address the shortfall in its infrastructure needs.

The City Is Paying Its Current Debts As They Become Due

5. The City incurs operating debts every day. These debts include but are not limited to, payroll, payments to vendors that provide everything from supplies to electricity to garbage collection, construction commitments for large public works projects, payments for the City's own utility usage to keep the lights on, water purchases, and debt payments that are outside of the bankruptcy that are a specific pledge of revenues. These debts are the necessary costs of operating and running a city.

6. To the best of its knowledge, the City is paying all of its post-petition debts as they become due. If it did not, the City would no longer be able to operate. If the City did not meet its payroll obligations as they become due, for example, City employees would likely cease coming to work. If the City did not pay its vendors, they would no longer do business with the City. In sum, if the City were not to pay its current bills as they became due, it would be unable to provide basic services to the residents of Stockton. Franklin's allegation that the City's payment of such debts unfairly discriminates against Franklin reflects a fundamental misunderstanding of the City's function. Contrary to what Franklin may believe, the City is not run for Franklin's benefit. It is run for the benefit of its citizens.

7. To the extent that any administrative claims arise in the bankruptcy case, the City will pay them.

The City Will Continue To Collect Revenues After The Effective Date

8. The City will continue to collect sales tax revenues, real property tax revenues, user utility tax revenues, and other taxes, fees, and revenues following the Effective Date. These revenues will enable the City to maintain and fund adequate municipal services, including fire

and police protection, as well as to satisfy the City's obligations to its creditors as restructured pursuant to the Plan. As explained in the Direct Testimony Declaration of Robert Leland being submitted concurrently, the projections of these revenues in the City's detailed long-range financial are sufficient to meet these demands.

Nature Of General Liability Claims

9. Many of the proofs of claim filed against the City in the bankruptcy case are General Liability Claims. Each General Liability Claim potentially consists of two portions. The first is the self-insurance retention portion, or SIR Claim Portion. This portion, which represents the first $1 million of the Claim, is an obligation of the City that will be paid from the City's Risk Management Internal Service Fund. This portion of each General Liability Claim will receive the Unsecured Claim Payout Percentage under the Plan. The other potential portion of each General Liability Claim—the Insured Portion—is any amount that is reduced to judgment or later settled in an amount of above $1 million, which will be paid by one or more of the excess risk-sharing pools of which the City is a member. This portion of each General Liability Claim is not impaired under the Plan. Each General Liability Claim will thus potentially receive a blended recovery: approximately 1% for the first $1 million, and presumably 100% for all amounts over $1 million.

Franklin Misrepresents The City's Accounting Standards

10. Franklin argues in its Pretrial Reply Brief ("Franklin Reply") that because the City "has recorded its liability under the Agreements . . . as 'long term debt' in its audited financial statements," while it "has accounted for its liability in respect of actual leases as 'operating leases' in its audited financial statements and reports," the Agreements must be secured financing transactions, and not leases. Franklin Reply, at 8. These statements are misleading, at best, and completely ignore the complicated web of standards and regulations that dictate how the Agreements must be recorded. How a particular "lease" is accounted for in the City's financial statements depends upon a multi-pronged test that is derived from a number of sources, including GAAP, GASBS No. 13 (*Accounting for Operating Leases with Scheduled Rent Increases*), Financial Accounting Standards Board Statement (FASBS) No. 13 (*Accounting for Leases, as*

amended and interpreted), National Council on Government Accounting (NCGA) Statement 1, and others. Based on these accounting standards, a given lease may be required to be accounted for as an operating lease, a capital lease, or long-term debt (not to mention numerous sub-classifications, including sales type, direct financing type, leverage type, and others). Thus, contrary to Franklin's implication, the City does not just universally account "for its liability in respect of actual leases as 'operating leases.'" Nor does the fact that the 2009 Lease Revenue Bond is not accounted for as an operating lease imply that it is being characterized as a secured financing transaction. "General long-term debt is not limited to liabilities arising from debt issuances per se, but may also include non-current liabilities on lease-purchase agreements and other commitments that are not current liabilities." GASB 34, Par. 81. Similarly, pronouncements by the NCGA and GASB "also define the noncurrent portion of capital leases, operating leases with scheduled rent increases, compensated absences, claims and judgments, pensions, special termination benefits, and landfill closure and post-closure care liabilities as long-term liabilities." *Id.* What Franklin's argument fails to grasp is that both capital leases and long-term indebtedness are required to be classified and presented as "long-term debt". In fact, GASB 14 includes examples that show lease revenues bonds as properly designated as long-term debt. The City adhered to all applicable accounting standards when it properly accounted for the 2009 Lease Revenue Bonds as long-term debt, and that accounting designation does not change the nature of the Agreements as "leases."

Executed this 21st day of April 2014, at Stockton, California. I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Vanessa Burke