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 City of Stockton
 8

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. 2012-32118
 D.C. No. OHS-15
 Chapter 9

**DIRECT TESTIMONY
 DECLARATION OF PATRICK B.
 BOCASH IN SUPPORT OF
 CONFIRMATION OF FIRST
 AMENDED PLAN FOR THE
 ADJUSTMENT OF DEBTS OF CITY
 OF STOCKTON, CALIFORNIA
 (NOVEMBER 15, 2013)¹**

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 20 WELLS FARGO BANK, NATIONAL
 ASSOCIATION, FRANKLIN HIGH
 21 YIELD TAX-FREE INCOME FUND,
 AND FRANKLIN CALIFORNIA
 22 HIGH YIELD MUNICIPAL FUND,
 23 Plaintiffs,

Adv. No. 2013-02315

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

24 v.
 24 CITY OF STOCKTON, CALIFORNIA,
 25 Defendant.

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 28 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.

1 I, Patrick B. Bocash, hereby declare:

2 1. I am an attorney licensed to practice law in California and admitted to practice
3 before the United States District Court for the Eastern District of California. I am an attorney with
4 the firm of Orrick, Herrington & Sutcliffe LLP, counsel of record for the City of Stockton,
5 California (the "City"), in this chapter 9 case. I make this declaration in support of confirmation
6 of the City of Stockton, California's ("City") First Amended Plan For The Adjustment Of Debts
7 Of City Of Stockton, California (November 15, 2013). Except as to those matters set forth on
8 information and belief, I have personal knowledge of the facts set forth herein and if called as a
9 witness I could testify competently to such facts.

10 2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts of testimony
11 from the Deposition of Jennifer Johnston ("Johnston"), taken in this matter on March 6, 2014. It
12 has been redacted of information designated by counsel for Franklin² as Confidential under the
13 Order Governing The Disclosure And Use Of Discovery Information And Scheduling Dates, Etc.
14 [Dkt. Nos. 1224 (Case), 16 (Proceeding)], as amended by the Order Modifying Order Governing
15 The Disclosure And Use Of Discovery Information And Scheduling Dates, Etc. [Dkt. Nos. 1242
16 (Case), 18 (Proceeding)]. The City reserves its rights to challenge any or all of these
17 designations.

18 3. Attached hereto as **Exhibit B** is a true and correct copy of the Judgment Of
19 Possession After Unlawful Detainer, filed April 19, 2012 in *Wells Fargo Bank, National*
20 *Association v. City of Stockton*, Superior Court of the State of California, County of San Joaquin,
21 Case No. 39-2012-00277622-CU-UD-STK.

22 4. Attached hereto as **Exhibit C** is a true and correct copy of the Order Appointing
23 Receiver, filed April 19, 2012 in *Wells Fargo Bank, National Association v. City of Stockton*,
24 Superior Court of the State of California, County of San Joaquin, Case No. 39-2012-00277622-
25 CU-UD-STK.

26
27
28 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].

1 5. Attached hereto as **Exhibit D** is a true and correct copy of the Memorandum Of
2 Points And Authorities In Support Of Plaintiff's Application For Entry Of Default Judgment In
3 Validation Proceedings (C.C.P. § 860-870), filed December 22, 2006 in *City of Stockton v. All*
4 *Persons Interested, etc.*, Superior Court of the State of California, County of San Joaquin, Case
5 No. CV030753.

6 6. Attached hereto as **Exhibit E** is a true and correct copy of the Judgment, filed
7 January 3, 2007 in *City of Stockton v. All Persons Interested, etc.*, Superior Court of the State of
8 California, County of San Joaquin, Case No. CV030753.

9 7. Attached hereto as **Exhibit F** is a true and correct copy of excerpts from Debtor's
10 Memorandum in Support of Confirmation of the First Amended Plan for Adjustment of Debts, *In*
11 *re Connector 2000 Associates, Inc.*, U.S. Bankruptcy Court for the District of South Carolina,
12 Case No. 10-04467-dd [Dkt. No. 132].

13 8. Attached hereto as **Exhibit G** is a true and correct copy of a September 23, 2013
14 email from Lisa Gallegos to Johnston and Stacey Johnston Coleman with subject "RE: Stockton
15 heads up." This document was produced by Franklin.

16 9. Attached hereto as **Exhibit H** is a true and correct copy of a print-out retrieved
17 from the Franklin Templeton Investments website for the Franklin California High Yield
18 Municipal Fund, showing "Total Net Assets" of \$1,641,500,000 as of February 28, 2014 for all
19 share classes of the Franklin California High Yield Municipal Fund. This print-out was retrieved
20 from
21 https://www.franklintempleton.com/retail/app/product/views/fund_page.jsf?fundNumber=275 on
22 March 31, 2014.

23 10. Attached hereto as **Exhibit I** is a true and correct copy of a print-out retrieved
24 from the Franklin Templeton Investments website for the Franklin High Yield Tax-Free Income
25 Fund, showing "Total Net Assets" of \$7,778,100,000 as of February 28, 2014 for all share classes
26 of the Franklin High Yield Tax-Free Income Fund. This print-out was retrieved from
27
28

1 https://www.franklintempleton.com/retail/app/product/views/fund_page.jsf?fundNumber=230 on
2 March 31, 2014.

3 11. Attached hereto as **Exhibit J** is a true and correct copy of excerpts of testimony
4 from the Deposition of John Wiley, taken in this matter on March 6, 2014. It has been redacted
5 of information designated by counsel for Franklin as Confidential under the Order Governing The
6 Disclosure And Use Of Discovery Information And Scheduling Dates, Etc. [Dkt. Nos. 1224
7 (Case), 16 (Proceeding)], as amended by the Order Modifying Order Governing The Disclosure
8 And Use Of Discovery Information And Scheduling Dates, Etc. [Dkt. Nos. 1242 (Case), 18
9 (Proceeding)]. The City reserves its rights to challenge any or all of these designations.

10 12. Attached hereto as **Exhibit K** is a true and correct copy of excerpts of testimony
11 from the rough transcript³ of the Deposition of Charles Moore, taken in this matter on April 16,
12 2014.

13 13. Attached hereto as **Exhibit L** is a true and correct copy of excerpts of testimony
14 from the rough transcript⁴ of the Deposition of Frederick Chin, taken in this matter on April 18,
15 2014.

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

19
20 */s/ Patrick B. Bocash*
21 _____
Patrick B. Bocash

22
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25
26 ³ Given the amount of apparent typographical errors in the rough transcript, which at times render certain testimony
27 indecipherable, the City reserves its right to re-designate deposition testimony for Mr. Moore after it receives the
final draft of his deposition transcript.

28 ⁴ Given the amount of apparent typographical errors in the rough transcript, which at times render certain testimony
indecipherable, the City reserves its right to re-designate deposition testimony for Mr. Chin after it receives the final
draft of his deposition transcript.

Exhibit A

March 6, 2014

1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:

CITY OF STOCKTON, CALIFORNIA, Case No. 12-32118(CMK)

Chapter 9

Debtor.

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

Plaintiffs.

Vs.

CITY OF STOCKTON, CALIFORNIA,

Defendant.

DEPOSITION OF JENNIFER JOHNSTON

Thursday, March 6, 2014

11:19 a.m.

555 California Street, 26th Floor

San Francisco, California

REPORTED BY:

Kimberly A. Barrette

CSR No. 6671

March 6, 2014

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APPEARANCES:

For the FRANKLIN HIGH YIELD TAX-FREE INCOME
FUND and FRANKLIN CALIFORNIA HIGH YIELD
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JENNIFER JOHNSTON

March 6, 2014

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March 6, 2014

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JENNIFER JOHNSTON

In re: City of Stockton, California

Thursday, March 6, 2014

Kimberly A. Barrette CSR No. 6671

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Exhibit 3009	Document Bates FRK001009-13	22
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March 6, 2014

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SAN FRANCISCO, CALIFORNIA

Thursday, March 6, 2014

11:19 a.m.

JENNIFER JOHNSTON,

Having been first duly sworn, was examined and testified
as follows:

EXAMINATION

BY MR. HILE:

Q. Ms. Johnston, I'm Norman Hile, and I represent
the City of Stockton in the bankruptcy proceeding.

I'll be asking you questions in your capacity
as an individual witness and also as the person who's
been designated by Franklin to be the corporate person to
testify.

We'll get into that in a minute, but let me
ask some questions just to make sure we have the ground
rules.

Have you ever had your deposition taken
before?

A. No.

Q. I'm sure you've had a chance to meet with
counsel for Franklin, but let me just make sure that the
rules are clear between the two of us.

1 Do you understand that you're under oath?

2 A. Yes.

3 Q. And do you understand that the oath is the
4 same oath as if we were in a courtroom with a judge
5 present?

6 A. Yes.

7 Q. Do you understand that when the deposition is
8 completed, you will have the opportunity to make any
9 corrections that you feel are necessary?

10 A. Yes.

11 Q. If you do make corrections, however, I will
12 have the opportunity to comment upon them if the case
13 goes to trial.

14 Do you understand that?

15 A. Yes.

16 Q. The reason I want you to understand that is
17 because I need your best testimony here today.

18 Do you understand that?

19 A. Yes.

20 Q. Okay. Is there any reason why you can't give
21 your best testimony here today either because of
22 medications or other matters?

23 A. No.

24 Q. I'm going to be asking questions that focus on
25 the transaction in which Franklin Advisers purchased for

1 Franklin Funds \$35 million approximately worth of lease
2 revenue bonds for certain capital improvement projects.

3 Is that a transaction that you have in mind if
4 I talk about the bond transaction?

5 A. Yes.

6 Q. First of all, what is your current position?

7 A. I'm a vice president and research analyst at
8 Franklin Advisers.

9 Q. And what are your duties?

10 A. I'm responsible for surveilling as well as
11 looking at new deals for the government tax-back and
12 tobacco sectors.

13 Q. Do the bonds that we're here for today, would
14 that fit within the government section?

15 A. Yes.

16 Q. And to whom do you report?

17 A. My direct manager is Thomas Walsh. He's the
18 director of research.

19 Q. And we just deposed Mr. Wiley. How does your
20 position relate to what he does?

21 A. I'm the analyst that would present the
22 materials to him as the portfolio manager.

23 Q. Now, in doing the analysis that you do, what
24 types of things do you draw upon to do that analysis?

25 MR. JOHNSTON: Objection. Vague and ambiguous

March 6, 2014

8

1 to the form of the question. You can answer to the
2 extent you understand it.

3 THE WITNESS: Are you talking about new deal
4 or surveillance?

5 BY MR. HILE: Q. Let's start with new deals.

6 A. So for a new deal there would be an offering
7 statement, preliminary statement. We would also look at
8 either audited financials or CAFR, depending on what the
9 municipality provides. We would do research on
10 demographic information, tax pass information, property
11 values, debt and pension information.

12 Q. Once you have done your research, do you
13 present a written report to Mr. Wiley, for instance, if
14 it's an investment that would be placed in one of the
15 high yield funds?

16 A. Not immediately.

17 Q. What happens immediately?

18 A. Oh, immediately -- first before I do that, we
19 would have a conversation with the issuer, a phone call
20 usually, unless they choose to come visit us.

21 We would discuss any number of issues that are
22 pertinent to the deal. Also might have conversations
23 with a banker or financial advisor. Then we would have a
24 presentation, sit-down meeting between the analyst and
25 the portfolio manager.

1 A. I don't recall, but I would have talked to
2 somebody at RBC, and it's highly likely I spoke with a
3 financial advisor. I don't recall, but that would be
4 normal protocol.

5 Q. When you say a financial advisor, is that the
6 RBC financial advisor?

7 A. No. Del Rio, I believe, was the financial
8 advisor on the deal.

9 Q. Okay. Do you recall who it was at Del Rio?

10 A. It would have been Ken Dieker.

11 Q. Okay. In your job, do you analyze investments
12 that are not high yield investments?

13 A. Yes.

14 Q. What percentage are high yield?

15 A. I don't know. I'd have to guess.

16 Q. More than half?

17 A. At the time?

18 Q. Yes.

19 A. At the time I would say 25 percent.

20 Q. Twenty-five percent were high yield, okay.

21 And how do you define high yield?

22 A. I would define that as below investment grade,
23 well, Triple B plus or below in grading.

24 Q. What are the risks that are associated, in
25 your mind, with a high yield security?

1 A. A rating volatility due to credit change, also
2 pricing volatility as a result, market volatility.

3 Q. When high yield funds are marketed at
4 Franklin, are the people who are selling interest in
5 these funds advised not to try to sell these types of
6 investments in high yield securities to people on fixed
7 incomes?

8 A. I don't know.

9 Q. Who was the portfolio manager for the High
10 Yield Tax-Free Income Fund in 2009?

11 A. John Hopp.

12 Q. What would have been his job with respect to
13 this particular bond transaction?

14 A. The same as John Wiley.

15 Q. Okay. Is Mr. Hopp still with Franklin?

16 A. No.

17 Q. Do you know where he is?

18 A. He lives in Norway.

19 MR. JOHNSTON: It's beyond the subpoena power.
20 We could all go.

21 MR. RYAN: It'd be a nice trip.

22 BY MR. HILE: Q. Who was the portfolio
23 manager for the California High Yield Municipal Fund at
24 the time these bonds were purchased?

25 A. John Wiley.

1 Q. And is he still the portfolio manager for that
2 fund?

3 A. Yes.

4 Q. Since the bonds that are the subject of this
5 proceeding went into default, do you know whether any
6 other bonds that were held in the California High Yield
7 Fund have gone into default?

8 A. I don't know.

9 Q. How about for the Franklin High Yield Tax-Free
10 Income Fund?

11 A. I don't know.

12 Q. You're not aware of any, is that true?

13 A. That's correct.

14 Q. Now, when this transaction that turned out to
15 be the purchase of these bonds came back to your
16 attention, please describe for me what you did to do the
17 analysis of them.

18 A. I would have started with a preliminary
19 offering statement, POS. I would have reviewed that. I
20 would have collected previous CAFRs, Stockton's CAFR. I
21 would have used those CAFRs to create a spreadsheet that
22 summarizes the general fund.

23 I would have reviewed the information in the
24 documents. And to supplement that information, I may
25 have gone to the State's Bureau of Labor Statistics

1 looking for employment information.

2 I would have read news articles, had the
3 discussion with the City and possibly the banker
4 involved. I would have sat down and discussed the credit
5 with the portfolio manager and then, upon purchase,
6 written up a report.

7 Q. Okay. Do you know if that report was written?

8 A. Yes.

9 Q. Okay. And has been produced in this
10 litigation?

11 A. Yes, it has.

12 Q. Okay. And if I were to look for it, what
13 would I look for?

14 A. It would be a report that has -- the top of
15 the report would have the description of the bonds. It
16 would be dated in the fall of 2009.

17 Q. Okay. And when you wrote that, who would you
18 then send it to?

19 A. That is sent to our management, the management
20 of the department, as well as the portfolio managers in
21 any funds that would be interested in the bonds.

22 Q. Did that report reflect what you had been told
23 by Mr. Moses?

24 A. Yes.

25 Q. Did it reflect what you'd been told by Ms. Van

1 Auken?

2 A. Yes, not in entirety.

3 Q. Did it report what you'd been told by RBC?

4 A. Yes.

5 Q. And how about by Mr. Dieker?

6 A. Yes.

7 Q. Do you remember anything specific that Ms. Van
8 Auken told you about?

9 A. No.

10 Q. Now, when you put together this report, I
11 assume that there were other documents that you used to
12 put it together. Have those been produced in this
13 litigation?

14 A. Yes.

15 Q. Okay. Is there any information that you
16 learned from Mr. Moses during your analysis that has
17 turned out to be untrue?

18 A. I don't remember exactly what he has told me
19 as opposed to what might have been in an official
20 statement or elsewhere.

21 Q. So the answer is no?

22 A. I don't know.

23 Q. Don't know.

24 How about Ms. Van Auken, is there anything
25 that she told you that turned out not to be true?

1 Q. Okay. Is it your understanding that Franklin
2 has the ability to sell the properties?

3 A. No.

4 Q. Did Franklin -- did you or, to your knowledge,
5 anyone at Franklin do any independent appraisal of the
6 three properties that were being leased, the park and the
7 two golf courses?

8 MR. JOHNSTON: Objection, ambiguous as to
9 time.

10 BY MR. HILE: Q. I'll say at the time that
11 you were working on your report and leading up to the
12 time the bonds were purchased.

13 A. No.

[REDACTED]

1 Q. Other than Mr. Wiley, Mr. Walsh, perhaps you,
2 was there anyone else involved in the decision to acquire
3 these bonds for the funds?

4 A. Not that I recall.

5 Q. What were Franklin's motivations for entering
6 into the lease financing transaction?

7 A. Generally to purchase securities that provide
8 stable tax-free income and repayment of principal at
9 maturity.

10 Q. When you say "stable," what do you mean?

11 A. Generally interest is paid twice a year.

12 Q. Now, at the time that Franklin purchased these
13 bonds, there had been reports in the press that Stockton
14 was -- had been considering bankruptcy protection. And
15 what was the reason that you decided to purchase the
16 bonds regardless of those reports?

17 A. We didn't think they would file bankruptcy.

18 Q. Why not?

19 A. Because we felt that they would make the right
20 decisions to avoid it.

21 Q. And Franklin was willing to take that chance?

22 A. Correct.

23 Q. Okay. Now, what were the reasons that you
24 thought that Stockton would be able to avoid bankruptcy?

25 A. At the time we had bought the bonds,

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█
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█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]

█ [REDACTED]
█ [REDACTED]
█ [REDACTED]

9 Q. Now, you've answered in your personal capacity
10 with respect to what you did with respect to due
11 diligence related to this transaction.

12 As the corporate representative, is there
13 anything else that you know of that Franklin Advisers did
14 to perform due diligence for the purchase of these 2009
15 lease revenue bonds?

16 A. The portfolio manager, John Wiley would have
17 done research of what was going on in the market,
18 interest rates, supply, those types of considerations as
19 well.

20 Q. Have you seen any of that result of that
21 analysis?

22 A. No.

█ [REDACTED]
█ [REDACTED]
█ [REDACTED]

1 A. Yes.

2 Q. Okay. So I understand that you may not have
3 been privy personally to this, but as the corporate
4 representative, Mr. Wiley would have -- Mr. Wiley did
5 transmit the bid to whom at the City?

6 A. It wouldn't have been to the City. It would
7 have been to RBC.

8 Q. And who at RBC?

9 A. Our salesperson at the time was Karl Hummel.

10 Q. Was the interest rate that Franklin Advisers
11 asked for in the bid higher than what had been previously
12 offered?

13 MR. JOHNSTON: Objection to the form of the
14 question, ambiguous as to "previously offered."

15 THE WITNESS: I don't know what time frame
16 you're talking about.

17 BY MR. HILE: Q. At the time that the bid was
18 submitted, was it a different interest rate than what RBC
19 had proposed?

20 A. I don't know the answer to that.

21 MR. JOHNSTON: I do not believe that's fairly
22 within the scope of your designated topics.

23 BY MR. HILE: Q. Who on behalf of Franklin
24 reviewed the official statement and the other documents,
25 including the indenture and the leases, for this

1 transaction?

2 A. I did.

3 Q. Okay. Anyone else?

4 A. No. I assume you mean at Franklin.

5 Q. Yes.

6 A. No.

7 Q. When you reviewed them, was this the first
8 time that you had reviewed documents for a lease
9 financing?

10 MR. JOHNSTON: Objection to the form of the
11 question as to vague, as to what you mean by "lease
12 financing."

13 BY MR. HILE: Q. Do you know what an
14 Offner-Dean financing is?

15 A. Yes.

16 Q. Is this the first time that you had seen
17 documents for an Offner-Dean transaction or had you seen
18 them before?

19 A. In my career?

20 Q. Yes.

21 A. I have seen them before.

22 Q. Did you, as the person from Franklin who was
23 looking at the documents, review them to see whether or
24 not they were consistent with what you had seen before in
25 other Offner-Dean transactions?

1 A. Yes.

2 Q. Had you in the past recommended that Franklin
3 purchase lease transactions that were Offner-Dean type
4 lease transactions?

5 A. Yes.

6 Q. How many?

7 A. I don't know.

8 Q. More than five?

9 A. Yes.

10 Q. In an Offner-Dean transaction, what do you
11 understand is the security for the payment on the bonds?

12 MR. JOHNSTON: Objection, calls for a legal
13 conclusion.

14 BY MR. HILE: Q. Just asking for your
15 understanding.

16 A. So debt service payments are made -- generally
17 they are not always exactly the same, but they are
18 generally an appropriation from the general fund. There
19 could be other revenues also available to make those
20 payments.

21 Q. Anything else?

22 A. That's generally it.

23 Q. So the answer is there's nothing else that you
24 can add to that?

25 A. No.

March 6, 2014

42

1 Q. Now, the third category that I have here,
2 which relates similar to what we were talking about, is
3 the process by which Franklin evaluated and determined to
4 invest in the 2009 LRBs, and it has a list of things.

5 Let me start with the first one. Have you
6 told me every person employed or engaged by Franklin or
7 any of its affiliates that were involved in evaluating
8 and determining to invest in the 2009 lease revenue
9 bonds?

10 A. To the best of my memory.

11 Q. Okay. Looking at Category 3B, what criteria
12 was Franklin using to evaluate the 2009 lease revenue
13 bonds?

14 A. We don't really have criteria. We have the
15 requirements of our prospectus that tell us what we can't
16 buy or can buy.

17 Q. Okay. What are those?

18 A. So for the California High Yield Municipal
19 Bond Fund, they have to be a tax exempt bond issued
20 within the State of California or a United States
21 territory. They have to be tax exempt.

22 For the high yield funds, those can
23 technically be investments from any state in the union
24 and its territories, as well as having to, of course, be
25 tax free.

1 valuations of the properties as defined here to be the
2 golf courses and Oak Park that Franklin performed or
3 asked to be performed or which you are aware?

4 A. No.

5 Q. Was Franklin -- when we say of "which you are
6 aware," was Franklin shown any appraisals for those
7 specific properties during the period leading up to the
8 purchase of the bonds?

9 A. Just the information in the preliminary
10 official statement.

11 Q. Okay. And that is -- there is a page with a
12 chart on it, that's it?

13 A. Correct.

14 Q. None of the underlying information was shown
15 to you?

16 A. That's correct.

17 Q. Okay. Did you ask for it?

18 A. No.

19 Q. Category Number 5 again on page 6 talks about
20 the nature of the collateral that would support the
21 secured loan transaction referred to by Franklin in its
22 complaint in the adversary proceeding.

23 Now, have you read the complaint in the
24 adversary proceeding?

25 A. Yes.

1 Q. Are you familiar, then, with the statement in
2 the complaint that is referred to here with respect to
3 what Franklin claims as the secured loan transaction and
4 what the security would be?

5 MR. JOHNSTON: I'll object to the form of the
6 question as ambiguous and vague.

7 Do you have the complaint that she can look
8 at?

9 MR. HILE: I don't.

10 BY MR. HILE: Q. Well, let me ask it this
11 way.

12 Other than the lease payments, is there any
13 collateral that you are aware of that is provided for in
14 the bond documents?

15 A. Yes.

16 MR. JOHNSTON: I will object to the extent it
17 calls for a legal conclusion. You can now answer in your
18 capacity as a 30(b)(6) witness, a Franklin
19 representative.

20 BY MR. HILE: Q. What is that that you said
21 "yes" to?

22 A. In addition to the debt service payments that
23 would be made from the general fund appropriation or
24 other revenues in this case, PFFs, upon its default there
25 is a right to possess the property, the collateral.

1 Additionally, it could be do something to
2 maximize the value, we could re-let it, the properties.

3 Additionally, we would have the right to sue
4 the City every time a debt service payment was missed.

5 Q. Okay. Let's talk about the first one of those
6 for a second. A right to possess the property,
7 collateral. There is not a right, as you understand it,
8 is there, to sell the property?

9 A. Correct.

10 Q. There is no such right?

11 A. That's correct.

12 Q. So in possession of it, what would that
13 consist of?

14 MR. JOHNSTON: I'll object to the extent it
15 calls for a legal conclusion.

16 You can answer with that caveat.

17 THE WITNESS: Can you reask the question?

18 BY MR. HILE: Q. Sure. With respect to
19 possession of the properties, what would that consist of?

20 MR. HILE: Same objections.

21 MR. JOHNSTON: Yes, I will also object that
22 that's an ambiguous question.

23 But if you understand what he's asking for,
24 you may answer it.

25 THE WITNESS: I think I do. Which is that we

1 would have the right to exercise the remedies. We could
2 evict the City and do a variety of things with the
3 property.

4 BY MR. HILE: Q. That right being what?

5 MR. JOHNSTON: Same objection.

6 THE WITNESS: To my knowledge, we could hold
7 it, we could re-let it. That's my knowledge.

8 BY MR. HILE: Q. Anything else?

9 A. Not that I'm aware.

10 Q. Let's look at Category Number 6, Franklin's
11 plans or proposed use of the properties in the event that
12 Franklin takes possession of the properties including any
13 planned changes in the use and operation of the
14 properties.

15 Are there plans that Franklin has to take
16 possession of the properties and use them for another
17 use?

18 MR. JOHNSTON: Objection, ambiguous, "another
19 use."

20 THE WITNESS: We have not made any decisions.

21 BY MR. HILE: Q. So there are no plans to
22 take possession of the properties, correct?

23 MR. JOHNSTON: Objection, misstates the
24 testimony.

25 THE WITNESS: We have made no decisions.

1 (Exhibit 3011 was marked.)

2 BY MR. HILE: Q. Ms. Johnston, the reporter
3 has marked as Exhibit 3011 a multi, multi-page document.

4 The first page is entitled, "Due issue, Full
5 Book Entry," and the title is \$35,080,000 Stockton Public
6 Financing Authority Lease Revenue Bonds, 2009 Series A
7 (Capital Improvement Projects)," and it's dated August
8 20th, 2009. Do you recognize this document?

9 A. Yes.

10 Q. What is it?

11 A. It's the final official statement for the 2009
12 financing.

13 Q. Did you receive it?

14 A. Yes.

15 Q. Okay. And now we're talking about you
16 personally?

17 A. Okay.

18 Q. Do you know whether anyone else at Franklin
19 received it?

20 A. I don't know.

21 Q. How long before the actual purchase of the
22 bonds did you receive this?

23 A. This is generated after the transaction has
24 been completed.

25 Q. Okay. So this version 3011 was provided after

1 the purchase?

2 A. Correct.

3 Q. But you did see a preliminary offering
4 statement; is that correct?

5 A. That's correct.

6 Q. Was there any other versions of the offering
7 statement that you saw before the bonds were purchased?

8 A. I don't remember.

9 Q. When you get an offering statement or OS, like
10 this, after the purchase, do you review it to make sure
11 that it's similar to what you had seen in the preliminary
12 stages as a general rule?

13 A. Yes.

14 Q. Did you do that in this instance?

15 A. I believe so.

16 Q. Okay. When you did that, did you find
17 anything in it that was different or a surprise to you
18 from what you'd read before?

19 A. Different, yes.

20 Q. What was different?

21 A. There's final pricing information, that sort
22 of stuff, final debt service payment chart would be
23 included in this version.

24 Q. Okay. Can you show those to me, please?

25 A. So on page -- this is not numbered. It's the

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55

1 second physical piece of paper.

2 Q. Uh-huh.

3 A. It shows the final size of each term, the
4 coupon payment and the pricing yield. That would not be
5 in a preliminary version.

6 Q. Okay.

7 A. There's the potential -- I don't recall
8 specifically, but the information on page 5, it's
9 possible it will be changed between the two versions once
10 the final pricing is done. It's page 5 numbered.

11 Q. Yes, okay.

12 A. Page 7, this information would be updated in
13 the final version. Page 13, the debt service schedule.

14 Q. What would be different about that?

15 A. It's usually blank. I don't recall exactly
16 what was in the preliminary. It's usually blank in a
17 preliminary official statement, because we don't know
18 what the interest costs are, as no coupon has been
19 determined.

20 Q. Okay.

21 A. That's probably it. I don't know if you want
22 me to go through the whole thing. I'm not going to
23 remember other types of things, but it's generally
24 information like that that's not available at the time of
25 the preliminary version.

1 Q. Okay. I appreciate that.

2 When you got this, did you review it to
3 confirm that the information that had not been right
4 before or was different from before was satisfactory?

5 A. I guess I don't quite understand your
6 question. The information that I provided is purely just
7 -- I mean, I review it because I recalculate things based
8 on final interest costs --

9 Q. Right.

10 A. -- if that's what you mean.

11 Q. Yes.

12 A. Yes, I would go through that. That's the
13 information that would be utilized in the final version
14 of the report.

15 Q. Okay. And that information upon your review
16 was what you had expected it to be?

17 A. Yes.

18 Q. Any surprises?

19 A. Not that I recall.

20 Q. Now, before you saw this particular offering
21 statement for this transaction, how many lease revenue
22 bond transactions had you been involved in analyzing?

23 A. In my career?

24 Q. Yes.

25 A. Hundreds.

1 Q. Hundreds, okay.

2 A. I mean, I'm guessing -- but, you know, I've
3 been doing it for 20 years, so --

4 Q. Okay. And how many of those lease revenue
5 bond transactions, I understand there were many of them,
6 were for California cities or governmental entities?

7 A. I don't know. I would guess -- lease
8 financing is a tool most popular in California, so I
9 would say a majority.

10 Q. Okay. And were the documents that were
11 generated for this lease revenue bond transaction -- that
12 being the official statement, the indenture, the lease
13 agreements -- were they all similar to what you had seen
14 before?

15 A. Yes.

16 Q. So the transaction, as a structure, was
17 something that you were familiar with, is that correct?

18 A. Yes.

19 Q. At the time that you reviewed the official
20 statement for this transaction, had you ever had a lease
21 revenue bond go into default?

22 A. Me personally, I can't recall if it was a
23 lease revenue structure or a certificate of
24 participation, but there has been one other deal.

25 Q. Okay. Was that was before this?

1 A. Correct.

2 Q. Okay. Do you remember what city or
3 government?

4 A. It was not in California. Actually, I believe
5 it was a revenue bond, now that I'm thinking about it.

6 Revenue bond in a revenue structure, not a
7 lease revenue bond.

8 Q. Okay. So as far as --

9 A. But we're going way back.

10 Q. No, I understand. As far as lease revenue
11 bond transactions, this is the first one that you're
12 aware of that you've been involved with that went into
13 default?

14 A. That I've been involved in, yes.

15 Q. Okay. Are you aware of any others that
16 Franklin has purchased for placement into its High Yield
17 Tax-Free Fund or for its California High Yield Tax-Free
18 Fund that went into default?

19 A. Not for certain. I'd have to verify the
20 structure of the deal.

21 Q. Okay.

22 A. So I don't know. Can I clarify? You're
23 talking about at the time of the deal?

24 Q. Yes. Let me then ask the next question.

25 For you, personally, are there any other lease

1 revenue transactions that have gone into default since
2 the time of this deal, that being September of '09?

3 A. Lease revenue? Yes.

4 Q. Was that --

5 A. Actually, I'm sorry, that's incorrect. I'm
6 sorry. No.

7 Q. No, okay.

8 If you look at Page 11, please, I'm using the
9 pagination in the document itself. There is at the
10 bottom of the page some upper-case language that starts,
11 quote, "The 2009 bonds are limited obligations of the
12 authority."

13 Do you see that?

14 A. Yes.

15 Q. Is this language something which you had seen
16 before in other lease revenue bond transactions?

17 A. In general, yes. Obviously this is specific
18 to an entity in San Joaquin County.

19 Q. All right. So the first sentence there, which
20 is not limited to San Joaquin County, is language you had
21 seen.

22 Then the second sentence is, correct me if I'm
23 wrong, is language that you would see, just that it's
24 specific to San Joaquin County because that happens to be
25 the place where these bonds were issued?

1 a voluntary petition in bankruptcy, failure by the City
2 to properly lift any execution garnishment or attachment
3 or adjudication of the City as a bankruptcy or assignment
4 by the City for benefit of creditors," and it goes on.

5 Is that language about the filing of a
6 voluntary petition in bankruptcy something which was
7 standard language for a lease revenue bond at the time?

8 MR. JOHNSTON: Objection. Asked and answered.

9 THE WITNESS: Yes.

10 BY MR. HILE: Q. And under Limitations on
11 Remedies, the second paragraph talks about under Chapter
12 9 of the Bankruptcy Code there are no involuntary
13 petitions in bankruptcy.

14 Again, is that language you had seen before?

15 MR. JOHNSTON: Same objection.

16 THE WITNESS: Yes.

17 BY MR. HILE: Q. Now, on Page 27 of the
18 official statement there is a section called Discussions
19 Regarding Concerns of the City's General Fund Solvency,
20 and it begins with a discussion of the article in the
21 record, the Stockton Record.

22 This language is not language that you had
23 seen before in an offering statement, is it?

24 A. By another issuer?

25 Q. Yes.

1 A. Correct. It just pertains to something for
2 Stockton.

3 Q. Specifically. And so it's correct, is it not,
4 that you had never seen before in an official statement a
5 discussion of the concerns regarding a City's general
6 fund solvency or potential for going into bankruptcy, had
7 you?

8 A. I'm going to be guessing, but I have been
9 following the sector through the Orange County
10 bankruptcy.

11 I would imagine language following Orange
12 County deals since then has had similar language or
13 talked about these types of things.

14 Q. Well, let me make sure I understand. I
15 understand that after the Orange County bankruptcy there
16 may have been references to the potential for an issuer
17 to go into bankruptcy as one contingency.

18 But have you ever seen one where the specific
19 issuer discloses that it has itself been in a situation
20 where it has considered bankruptcy before issuing this
21 debt?

22 MR. JOHNSTON: Objection. That misstates the
23 document and the facts in evidence.

24 THE WITNESS: I mean, I would answer the same
25 way. I'm pretty sure every Orange County official

1 statement after the bankruptcy referenced the fact that
2 they had been in bankruptcy and that whole process,
3 unless I'm not understanding your question.

4 BY MR. HILE: Q. Have you ever seen the
5 possibility of bankruptcy discussed for a city that had
6 not yet been in bankruptcy?

7 A. Not that I can recall.

8 (Exhibit 3012 was marked.)

9 MR. HILE: For the record, Exhibit 3012 is a
10 document entitled Indenture of Trust by and between the
11 Stockton Public Financing Authority and Wells Fargo Bank
12 National Association as Trustee, and it shows it's
13 relating to a \$35,080,000 Stockton Public Financing
14 Authority Lease Revenue Bonds, 2009 Series A.

15 BY MR. HILE: Q. Have you seen the Indenture
16 of Trust before, Ms. Johnston?

17 A. No.

18 Q. Is this a document which was provided to
19 Franklin upon the completion of the purchase of these
20 bonds?

21 A. It's summarized in the official statement.

22 Q. Okay. But you didn't personally read it?

23 A. That's correct.

24 Q. Let me just ask, on the upper right-hand
25 corner it has a series of dates. Can you tell me what

1 that means?

2 A. I cannot.

3 Q. Had you seen earlier versions of the Indenture
4 of Trust before the September closing of this bond deal?

5 A. No.

6 Q. Have you ever read an Indenture of Trust in a
7 lease revenue bond transaction?

8 A. No, not in this format.

9 Q. Who at Franklin would have received the final
10 documents related to this issuance for its -- for
11 Franklin's records?

12 A. This is held at the trustee.

13 Q. Okay. So this would be -- Wells Fargo would
14 receive this particular document?

15 A. Correct.

16 Q. And you would not get a copy of it at
17 Franklin?

18 A. We could ask for it.

19 Q. But typically you don't?

20 A. We rely on the official statement.

21 Q. Okay. Is the same true with respect to the
22 lease agreement between the Public Financing Authority
23 and the City of Stockton?

24 A. Yes.

25 Q. So that would not be provided to you?

1 A. Not unless we asked for it.

2 Q. Would it go to the trustee?

3 A. The trustee would have it.

4 Q. Okay. And how about the site and facility
5 lease itself, is that something that would go to the
6 trustee?

7 A. Correct.

8 Q. During the course of your analysis of this
9 lease revenue bond deal, did you review drafts of the
10 indenture?

11 A. No.

12 Q. How about of the lease?

13 A. No.

14 Q. Who would be reviewing those on Franklin's
15 behalf?

16 A. We rely on the official statement.

17 Q. So for all of the lease revenue bond deals
18 that you have reviewed over the years, have you ever seen
19 the indenture itself?

20 A. I believe I have in a couple of New York
21 deals.

22 Q. Never seen one for a California deal?

23 A. Not that I recall.

24 Q. I'm going to apologize if I've asked you this
25 question before. It's been a long day. I asked a lot of

1 questions to Mr. Wiley.

2 At the time that Franklin purchased these
3 bonds in 2009 -- I'm asking this of you personally --
4 were you aware of the operating deficits for the golf
5 courses that were two of the properties that were subject
6 to the leases in this case?

7 A. Yes.

8 Q. Okay. Had you analyzed the profits and losses
9 for those golf courses over a period of time?

10 A. No.

11 Q. What did you look at?

12 A. I inquired about that in a phone conversation
13 with the City.

14 Q. Okay.

15 A. Our security under the lease is a general fund
16 obligation of the City, and the City intended to pay --
17 use PFFs, so not revenues of the golf course. So an
18 in-depth analysis was not necessary.

19 Q. Okay. But what was your analysis as to what
20 would happen if the bonds went into default and you were
21 trying to recover through your rights under these leases
22 to these properties, what was your analysis there?

23 MR. JOHNSTON: Objection to the extent it
24 calls for a legal conclusion.

25 THE WITNESS: I think at the time the bonds

1 were issued we felt the City was not going to default and
2 would not choose to.

3 BY MR. HILE: Q. So is it fair to say that
4 you were not relying in any way upon recovering on these
5 bonds in a case of a default from the golf course
6 properties' revenues?

7 MR. JOHNSTON: Objection. Misstates the
8 testimony.

9 THE WITNESS: Correct. The revenues of the
10 golf course are not pledged.

11 BY MR. HILE: Q. Okay. And from what you had
12 seen, they weren't going to be profits that were spun off
13 through operations of the golf courses, isn't that true?

14 A. Well, I wouldn't know if the City were going
15 to make decisions to change management or something like
16 that, so there's always the potential they could make
17 decisions to change that.

18 Q. Okay. And why would it be the City who would
19 make those changes?

20 A. Because they operate the golf course.

21 Q. Okay. Even if there's a default?

22 A. I hadn't thought about it in that context.

23 Q. Okay. So is it fair to say you were not
24 looking to any spin-off or revenue from the golf courses
25 to satisfy the interest payments on these bonds?

1 A. Correct.

2 Q. And you did understand that the golf courses
3 were operating at a deficit when Franklin purchased these
4 bonds, correct?

5 A. Yes.

6 Q. Has there been any attempt, since the bonds
7 went into default, to see how the golf courses are doing
8 financially?

9 MR. JOHNSTON: I'll caution the witness not to
10 disclose privileged information and analysis prepared in
11 anticipation for litigation.

12 THE WITNESS: I'm not going to answer.

13 BY MR. HILE: Q. Anything you could say would
14 be privileged?

15 A. Yes.

16 MR. JOHNSTON: That's fair to say.

█ [REDACTED]

25 Q. Okay. And what were you told?

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1 be an e-mail string that you were copied on, and the date
2 range is in December of 2013. Let me just ask, who is
3 Christopher Franta?

4 A. He is an employee. I'm not -- I don't know
5 who he works for, but he is under the umbrella of our
6 organization.

7 Q. Okay. Is he a press relations person?

8 A. No. He works on our sales side.

9 Q. Okay. Have you seen this document before?

10 A. Yes.

11 Q. Now, on the first page -- understanding that
12 this is an e-mail string, so you kind of have to read it
13 backwards --

14 A. Mm-hmm.

15 Q. -- but on the first page what I wanted to
16 focus on was the Stockton update e-mail and the language
17 that goes down there with a bunch of bullets.

18 Do you know who wrote this?

19 A. I'm not a hundred percent sure, no.

20 Q. After the subject line, Mr. Franta says, "See
21 below for the note after discussing with Jen."

22 Was this Stockton update e-mail that has the
23 bullets something that was discussed with you?

24 A. Probably. I don't recall the conversation,
25 but --

1 Q. Have you seen the Stockton update e-mail text
2 that goes below the Stockton update e-mail down to,
3 "Again we continue to work hard to try to maximize
4 shareholder value"?

5 A. I don't recall, but I assume I read the
6 e-mail.

7 Q. Okay. Is the e-mail accurate from your
8 perspective?

9 A. Accurate in terms of what?

10 Q. Of what the update says? I'm talking about
11 the points that are in the bullets.

12 A. Yes.

13 Q. Okay. The second bullet says, "Exposure in
14 the two funds (high yield tax-free and California high
15 yield municipal fund) is very low."

16 What does that mean?

17 A. Exposure looking at percentage of total net
18 assets is very low. It's not a primary holding in our
19 funds.

20 Q. As far as total net assets, that would be of
21 the entire funds, each fund?

22 A. Correct.

23 Q. And have you made a calculation to determine
24 what percentage of the total assets in each fund is
25 comprised of this 35 million 800- -- I'm sorry -- 80,000

1 financial situation of any of the funds' investors,
2 correct?

3 MR. JOHNSTON: Objection, asked and answered.

4 THE WITNESS: No.

5 MR. RYAN: I'm just trying to get a sense of
6 where the statement comes from and if you know anything
7 that could help me to see if this statement has any
8 support in actual factual data. That's all I'm trying to
9 get at.

10 MR. JOHNSTON: The witness has answered that.

11 THE WITNESS: I do not personally have that
12 information.

13 MR. RYAN: That's all the questions I have.
14 Thank you.

15 MR. HILE: Thank you, Ms. Johnston.
16 Okay. That's it.

17 THE REPORTER: Mr. Ryan, you're taking copies?

18 MR. RYAN: Yes, let's get a copy.

19 THE REPORTER: No rough?

20 MR. RYAN: No rough and no exhibits with the
21 E-tran.

22

23 (Deposition concluded at 3:10 p.m.)

24

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STATE OF CALIFORNIA)
)
COUNTY OF SACRAMENTO)

I, Kimberly A. Barrette, a Certified Shorthand Reporter, do hereby certify:

That prior to being examined, the witness in the foregoing proceedings was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said proceedings were taken before me at the time and place therein set forth and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

I further certify that I am neither counsel for, nor related to, any party to said proceedings, nor in any way interested in the outcome thereof.

In witness whereof, I have hereunto subscribed my name.

Dated: March 17, 2014

Kimberly A. Barrette

Kimberly A. Barrette
CSR No. 6671



Exhibit B

Filed 4/19/12
ROSA JUNQUEIRO, CLERK
By C Ledesma

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7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN JOAQUIN - UNLIMITED JURISDICTION

10 WELLS FARGO BANK, NATIONAL
ASSOCIATION, a National Banking
11 Association, as Indenture Trustee,
12 Plaintiff,

13 vs.

14 CITY OF STOCKTON, a California municipal
corporation and chartered city,
15 Defendant.

Case No.: 39-2012-00277622-CU-UD-STK

**JUDGMENT OF POSSESSION AFTER
UNLAWFUL DETAINER**

17 Plaintiff's Verified Complaint for Unlawful Detainer came on for trial on April 12, 2012.
18 Jeffrey A. Davis of Mintz Levin Cohn Ferris Glovsky and Popeo P.C. appeared on behalf of plaintiff,
19 Wells Fargo Bank, National Association, a National Banking Association, as Indenture Trustee
20 ("Wells Fargo"); Thomas H. Keeling of the Freeman Firm appeared on behalf of the City of
21 Stockton, a California municipal corporation and chartered city (the "City"). Other appearances are
22 as noted on the record.

23 After considering the briefs, pleadings and other papers on file or presented to the Court, the
24 Parties' stipulations as to facts and the admissibility of documents; the testimony presented and the
25 arguments of counsel; the Court's ruling having been made orally on the record in the presence of
26 the parties; and good cause appearing therefor,
27
28

1 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

2 1. The City's continuing possession and occupation of the Property (defined below)
3 constitutes an unlawful detainer within the meaning of California Code of Civil Procedure section
4 1161 under the Lease Agreement Dated as of June 1, 2004 by and between the Stockton Public
5 Financing Authority, as Lessor, and the City of Stockton, as Lessee, as amended on or about May
6 10, 2005 (the "Lease Agreement"), and Wells Fargo, as the duly appointed assignee of the Stockton
7 Public Financing Authority, is hereby awarded possession of that certain real property and
8 improvements thereon (collectively, the "Property") commonly known as:

- 9 a. the Edmund S. Coy Parking Garage located at 130 North Hunter Street, Stockton,
10 California, described more fully in Exhibit A attached hereto; and
11 b. the Market Street Garage located at 430 East Market Street, Stockton, California,
12 described more fully in Exhibit B attached hereto; and
13 c. the Arena Parking Garage located at 310 West Fremont Street, Stockton,
14 California, described more fully in Exhibit C attached hereto.

15 2. As set forth in the Lease Agreement, Wells Fargo is hereby and hereafter authorized
16 to enter and re-enter the Property and to operate or re-let the Property or any part thereof for the
17 account of the City, and the Lease Agreement shall not terminate during the term of the Lease
18 Agreement or be forfeited notwithstanding the entry of this Judgment or any enforcement thereof.

19 3. By stipulation between Wells Fargo and the City, which stipulation is hereby
20 approved, so long as (a) Wells Fargo remains in possession of the Property during the remaining
21 term of the Lease Agreement and (b) the City does not enact any law or measure that imposes a tax,
22 fee, levy or other charge that affects or relates to the Property, operations on the Property, or the use
23 of all or any part or parts of the Property by any persons, including parking customers and tenants,

- 24 a. Wells Fargo shall continue to operate the parking garages on the Property as
25 parking garages open to the public on days and at times generally consistent with
26 past operations.
27 b. Wells Fargo shall honor the City's obligations as set forth in Section 2 of that
28 certain Agreement for Purchase and Sale of Real Property dated August 17, 2004

1 between the City and the County of San Joaquin, a political subdivision of the
2 State of California (the "County") to provide the County the use of fifty-six (56)
3 covered parking spaces currently provided to the County in the Market Street
4 Garage located at 430 East Market Street, Stockton, California, provided that
5 Wells Fargo shall have no obligation to the County for any payment of the cash
6 equivalent value of parking stalls not used by the County;

7 c. Wells Fargo shall provide validated or free evening parking to patrons of the
8 City's Bob Hope Theater at the Edmund S. Coy Garage only as well as paid
9 parking at the Market Street Garage as needed pursuant to paragraph 3.a.

10 d. Wells Fargo shall honor the Stockton Asparagus Festival Agreement dated
11 August 5, 2008 to provide paid parking for patrons and visitors at all of the
12 garages, as well as honoring free three-day parking passes (not to exceed 70)
13 issued to Asparagus Festival sponsors at the Arena Parking Garage only.

14 e. Wells Fargo shall provide free parking at the Arena Parking Garage located at
15 310 West Fremont Street, Stockton, California, once per year for the Work Net
16 Job Fair so long as the City continues to exchange such parking privileges for the
17 City's use of the Work Net lot during the annual Asparagus Festival.

18 4. The City's separate defenses alleged in its Answer to the Verified Complaint and the
19 City's objection to the enforcement of the Lease Agreement by way of unlawful detainer as
20 violative of the California Constitution or any provision thereof are hereby denied with prejudice.

21 5. Consistent with provisions of Section 9.2 of the Lease Agreement, notwithstanding
22 anything in this Judgment of Possession, Wells Fargo shall have no right to cause the fee interest or the
23 leasehold interest of the City in the Property to be sold, assigned or otherwise alienated, subject always
24 to Wells Fargo's rights under paragraph 2 hereof and the Lease Agreement to enter, re-enter, operate
25 and re-let the Property.

26 6. All issues raised by the parties related to the transition of operations of the Property
27 following possession and entry by Wells Fargo under this Judgment will be addressed in connection
28 with Wells Fargo's post-judgment motion to appoint a receiver pursuant to California Code of Civil

1 Procedure section 712.060 to be heard in this Court on April 19, 2012 at 8:30 a.m., except that
2 commencing on the date that this Judgment becomes effective following the stay imposed by
3 paragraph 9 below until the date a receiver takes possession of the Property (the "Sequestration
4 Period"), the City shall collect and sequester for the benefit of Wells Fargo all monies received from
5 parking operations on the Property, including pro rata shares of any monthly parking fees advanced
6 to the City for parking during the Sequestration Period, and shall turn over such funds to Wells
7 Fargo or the receiver promptly upon request with a certification of compliance with this paragraph
8 less the City's reasonable direct costs of operating the Property during the Sequestration Period as
9 agreed by the parties or as determined by the Court, if the parties cannot agree on application of
10 expenses or any other issue.

11 7. Wells Fargo is entitled to reimbursement of its attorneys' fees and expenses pursuant
12 to Section 9.5 of the Lease Agreement in an amount to be determined by the Court upon application
13 therefor.

14 8. Wells Fargo is entitled to an award of its costs of suit herein.

15 9. Pursuant to California Code of Civil Procedure section 1174(c), this Judgment is
16 stayed for five calendar days from its entry, within which time any of the persons specified herein
17 may pay into Court, for Wells Fargo, \$779,934.71, as rent due, with interest thereon, and the costs
18 of the proceedings, and if such sums are so paid, this Judgment shall be satisfied and the City shall
19 be restored to possession of the Property; and if payment is not made as so provided within five
20 calendar days, the Judgment may be enforced as set forth above.

21 **IT IS SO ORDERED.**

22 Dated: 4/19/12

ROGER ROSS

24 _____
JUDGE OF THE SUPERIOR COURT

EXHIBIT A

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JUDGMENT OF POSSESSION

Edmund S. Coy Parking Structure Site

PARCEL 1:

THE WEST ONE-HALF OF THE NORTH 25 FEET OF LOT 3 AND THE NORTH 25 FEET OF LOT 1, IN BLOCK 64, EAST OF CENTER STREET, IN THE CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS.

PARCEL 2:

THE SOUTHERLY TEN (10) FEET OF SAID PORTION OF CHANNEL STREET ADJOINING THE NORTHERLY BOUNDARY OF SAID BLOCK 64, THE SOUTH LINE OF THE SOUTHERLY TEN (10) FEET OF SAID PORTION OF CHANNEL STREET BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID BLOCK 64; THENCE EASTERLY 303.00 FEET ALONG THE NORTHERLY BOUNDARY OF SAID BLOCK 64 TO THE NORTHEAST CORNER OF SAID BLOCK 64 AND THE POINT OF TERMINATION OF SAID SOUTH LINE.

PARCEL 3:

THE NORTH 75 FEET OF EACH OF LOTS 9 AND 11 IN BLOCK 64 EAST OF CENTER STREET, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS.

PARCEL 4:

THE EAST 40 FEET OF LOT 7; THE SOUTH 25 FEET OF EACH OF LOTS 9 AND 11, AND THE NORTH 25 FEET OF THE EAST 140 FEET OF LOT 14 IN BLOCK 64 EAST OF CENTER STREET ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS.

PARCEL 5:

ALL OF LOT 5 AND PORTION OF LOTS 1, 3, 7, 13 AND 14 IN BLOCK 64, EAST OF CENTER STREET, ACCORDING TO THE MAP AND SURVEY OF SAID CITY OF STOCKTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF CHANNEL STREET, SAID POINT BEING THE NORTHEAST CORNER OF THE WEST ONE-HALF OF SAID LOT 3; THENCE EASTERLY ALONG THE SOUTH LINE OF CHANNEL STREET, 85 FEET TO THE NORTHEAST CORNER OF THE WEST 10 FEET OF SAID LOT 7, BEING ALSO THE NORTHWEST CORNER OF THE EAST 40 FEET OF SAID LOT 7; THENCE SOUTHERLY ALONG PROPERTY LINE, A DISTANCE OF 150 FEET TO A POINT IN THE NORTH LINE OF LOT 8 IN SAID BLOCK 64, EAST OF CENTER STREET, SAID POINT BEING THE SOUTHEAST CORNER OF THE WEST 10 FEET OF SAID LOT 14 AND ALSO BEING THE SOUTHWEST CORNER OF THE EAST 140 FEET OF SAID LOT 14; THENCE WESTERLY ALONG THE NORTH LINE OF SAID LOT 8, 10 FEET TO THE NORTHEAST CORNER OF LOT 6 IN SAID BLOCK 64, EAST OF CENTER STREET; THENCE WESTERLY ALONG THE NORTH LINE OF SAID LOT 6, 25 FEET TO THE SOUTHEAST CORNER OF THE WEST 125 FEET OF SAID LOT 13; THENCE NORTH ALONG PROPERTY LINE, 25 FEET TO THE NORTHEAST CORNER OF THE SOUTH ONE-HALF OF THE WEST 125 FEET OF SAID LOT 13; THENCE WEST ALONG THE NORTH LINE OF THE SOUTH ONE-HALF OF SAID LOT 13, 125 FEET TO THE NORTHWEST CORNER OF THE SOUTH ONE-HALF OF SAID LOT 13, SAID POINT BEING IN THE EAST LINE OF HUNTER STREET; THENCE NORTH ALONG THE EAST LINE OF HUNTER STREET, 100 FEET TO THE NORTHWEST CORNER OF THE SOUTH ONE-HALF OF THE NORTH ONE-HALF OF SAID LOT 1; THENCE EAST ALONG PROPERTY LINE, 75 FEET TO THE SOUTHEAST CORNER OF THE NORTH ONE-HALF OF THE NORTH ONE-HALF OF THE WEST ONE-HALF OF SAID LOT 3; THENCE NORTH ALONG THE EAST LINE OF THE WEST ONE-HALF OF SAID LOT 3, 25 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

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JUDGMENT OF POSSESSION

Market Street Parking Garage

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF STOCKTON, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, SAID REAL PROPERTY BEING LOTS 1, 3, 5, 7, 9, 11, 13, 14, 15 AND 16 OF BLOCK 23, EAST OF CENTER STREET, OF THE OFFICIAL MAP OF THE CITY OF STOCKTON, APPROVED AND ADOPTED BY THE CITY COUNTY OF THE CITY OF STOCKTON IN JULY 23, 1893, THE NORTHERLY 1 FOOT OF LOTS 2 AND 4 OF SAID BLOCK 23, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID BLOCK 23, EAST OF CENTER STREET; THENCE EASTERLY 303.00 FEET ALONG THE NORTHERLY BOUNDARY OF SAID BLOCK 23 TO THE NORTHEAST CORNER OF SAID BLOCK 23; THENCE SOUTHERLY 202.00 FEET ALONG THE EASTERLY BOUNDARY OF SAID BLOCK 23 TO THE SOUTHEAST CORNER OF SAID LOT 16; THENCE WESTERLY 202.00 FEET ALONG THE SOUTHERLY BOUNDARIES OF LOTS 16 AND 14 TO THE NORTHEAST CORNER OF SAID LOT 4; THENCE SOUTHERLY ONE (1) FOOT ALONG THE EASTERLY BOUNDARY OF SAID LOT 4 TO A POINT; THENCE WESTERLY 101.00 FEET ALONG A LINE PARALLEL WITH AND 1.00 FOOT PERPENDICULAR TO THE SOUTHERLY LINE OF SAID LOT 14 TO THE WESTERLY BOUNDARY LINE OF SAID BLOCK 23; THENCE NORTHERLY 203.00 FEET ALONG THE WESTERLY BOUNDARY OF SAID BLOCK 23 TO THE POINT OF BEGINNING.

EXHIBIT C

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JUDGMENT OF POSSESSION

Stockton Events Center Parking Structure Site

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF STOCKTON, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, SAID REAL PROPERTY BEING PARCEL 2 OF PARCEL MAP, STOCKTON EVENTS CENTER, RECORDED IN BOOK 23, PAGE 15, SAN JOAQUIN COUNTY RECORDS, AND SAID PROPERTY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL 2, THENCE ALONG THE BOUNDARY OF SAID PARCEL 2 THE FOLLOWING EIGHT (8) COURSES:

- 1) SOUTH 11 DEGREES 34'46" EAST, 86.01 FEET;
 - 2) SOUTH 78 DEGREES 25'14" WEST, 32.84 FEET;
 - 3) SOUTH 11 DEGREES 34'46" EAST, 43.70 FEET;
 - 4) SOUTH 78 DEGREES 25'14" WEST, 298.76 FEET;
 - 5) ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 546.00 FEET, A CENTRAL ANGLE OF 12 DEGREES 30'48" AND AN ARC LENGTH OF 119.25 FEET;
 - 6) NORTH 78 DEGREES 25'14" EAST, 32.73 FEET;
 - 7) NORTH 33 DEGREES 24'58" EAST, 17.68 FEET; AND
 - 8) NORTH 78 DEGREES 25'14" EAST, 306.99 FEET TO THE POINT OF BEGINNING.
- BASIS OF BEARINGS IS THE SOUTHERLY LINE OF FREMONT STREET, BEARS NORTH 78 DEGREES 25'14" EAST, AS SHOWN ON SAID PARCEL MAP, STOCKTON EVENTS CENTER.

Exhibit C

Filed 4/19/12
ROSA JUNQUEIRO, CLERK
By C Ledesma
DEPUTY

1 Jeffrey A. Davis (SBN 103299)
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5 Facsimile: 858-314-1501

6 Attorneys for Plaintiff,
WELLS FARGO, NATIONAL ASSOCIATION

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN JOAQUIN - UNLIMITED JURISDICTION

10 WELLS FARGO, NATIONAL ASSOCIATION,
a National Banking Association, as Indenture
11 Trustee,
12 Plaintiff,
13 vs.
14 CITY OF STOCKTON, a California municipal
corporation and chartered city,
15 Defendant.
16

Case No.: 39-2012-00277622-CU-UD-STK
ORDER APPOINTING RECEIVER

17
18 The application of Wells Fargo Bank, National Association, as Indenture Trustee
19 ("Plaintiff" or "the Trustee") for the appointment of a post-judgment receiver in the above entitled
20 action, came on for hearing on April 19, 2012, at 8:30 a.m. in Department V-1 of the above-
21 entitled Court. Jeffrey A. Davis of Mintz Levin Cohn Ferris Glovsky and Popeo P.C. appeared on
22 behalf of the Trustee; Thomas H. Keeling of the Freeman Firm appeared on behalf of the City of
23 Stockton, a California municipal corporation and chartered city (the "City"). Other appearances
24 are as noted on the record.

25 Upon due consideration of the Trustee's application, the City's opposition, the
26 Judgment of Possession After Unlawful Detainer (the "Judgment") entered April 19, 2012, the
27 parties' stipulated facts and stipulation as to the admissibility of documents; and other pleadings
28 filed in this action, it appears to the Court that this is a proper case for the appointment of a

1 receiver. Accordingly, the Court finds that Plaintiff's showing is sufficient and considering the
2 interests of both the Plaintiff and the Defendant, the appointment of a receiver is a reasonable
3 method to obtain the fair and orderly satisfaction of the Judgment pursuant to California Code of
4 Civil Procedure § 708.620, THEREFORE,

5 **IT IS HEREBY ORDERED THAT:**

6 Plaintiff's application for appointment of a receiver is GRANTED. The Court
7 hereby appoints Kevin J. Whelan of The Beverly Group, Inc. (the "Receiver") as Receiver of the
8 "Receivership Estate" commonly known as the Edmund S. Coy Parking Garage, the Market Street
9 Parking Garage and the Arena Parking Garage in Stockton, California (as defined in further detail
10 in Exhibit 1 attached hereto and incorporated herein by this reference) for all purposes. This
11 appointment is made to assist the Court in connection with the implementation and enforcement of
12 the Judgment. As such, the Receiver shall perform the duties set forth herein and in doing so shall
13 care for, manage, preserve and protect the Receivership Estate as instructed by the Court and in
14 the manner the Receiver believes most beneficial to the Receivership Estate and the Trustee. The
15 Receiver must be sworn to perform the duties faithfully, pursuant to Code of Civil Procedure
16 § 567.

17 Any confirmation hearing that may be required by California Rule of Court 3.1176
18 is hereby waived.

19 1. For this order to become effective, the Receiver must file a \$10,000
20 Receiver's bond under Code of Civil Procedure § 567. Upon filing the bond and his oath,
21 Receiver shall be vested with all the powers and responsibilities of a Receiver as provided by law
22 to receivers and as specifically set forth herein below. The Receiver shall not be deemed to be in
23 possession of the Receivership Estate until he has delivered, by fax or email, a written notice
24 declaring the start date and time of his possession (the "Commencement Notice") to counsel for
25 the City and the Trustee so as to allow time for the Receiver to obtain appropriate insurance and
26 any information needed to operate the Real Property upon the commencement of the Receiver's
27 possession.

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1 2. Subject to the foregoing, immediately upon the filing of the Receiver's
2 undertaking and oath, the Receiver shall, without further order of this Court unless specified,
3 immediately have the following powers and legal responsibilities:

4 a. Upon the delivery of the Commencement Notice, the Receiver shall
5 take physical custody and possession of, and the City shall assist the Receiver in taking physical
6 custody and possession of all the real and personal property constituting the Receivership Estate,
7 and the Receiver is authorized to exclude the City and any agents, attorneys, employees or
8 representatives thereof, or anyone claiming under any of them, from the Receivership Estate
9 without the necessity of the Court issuing a writ of possession under the Judgment, although the
10 Receiver or the Trustee may elect to seek such issuance;

11 b. The Receiver shall acquire from the City and all of its agents or
12 employees in possession thereof, and the City shall cooperate with respect to producing, all keys,
13 lock combinations and other means to access locked areas relating to the Receivership Estate, and
14 may change any and all locks on the Receivership Estate;

15 c. From and after taking possession of the Receivership Estate, the
16 Receiver shall ensure that all of the Receivership Estate's revenues are properly received, collected
17 and recorded. All monies coming into the possession of the Receiver pursuant hereto and not
18 reserved or expended for any of the purposes herein authorized shall be distributed by the
19 Receiver to the Trustee for application pursuant to its Indenture of Trust without further order of
20 the Court;

21 d. No funds of the Receivership Estate may be expended without the
22 authorization of the Receiver and the Receiver may impose whatever safeguards he deems
23 necessary to ensure every expenditure is properly authorized;

24 e. Subject to the terms of this Order, and in consultation with the
25 Trustee where provided in this Order, the Receiver shall determine, in his discretion, how best to
26 use, operate, manage, control, rent and lease the Receivership Estate;

27 f. The Receiver shall continue to operate, care for, preserve and
28 maintain the Receivership Estate in a manner necessary to preserve its overall value and shall

1 incur the expenses necessary in such operation, care, preservation and maintenance, and may
2 purchase materials, supplies, and services and pay therefore at ordinary and usual rates and prices
3 out of funds that shall come into his possession as Receiver, and may compromise debts of the
4 Receivership Estate, and as Receiver may do all things and incur the risks and obligations
5 ordinarily incurred by owners, managers, and operators of similar properties, provided that no
6 such risk or obligation so incurred shall be the personal risk or obligation of the Receiver but shall
7 be a risk or obligation of the Receivership Estate;

8 g. The Receiver shall have the authority to write checks for the purpose
9 of making any payments or distributions required or permitted to be made hereunder, including,
10 without limitation, expenses on account of the operation, care for, preservation and maintenance of
11 the Receivership Estate, bank service charges, commissions, tenant improvement costs, dues and
12 publications, insurance, accounting and other professional services, postage costs and courier or
13 other delivery costs, interest, inventory, office expenses, rent, security deposits, or other payment
14 arising under a lease or rental agreement, repairs, supplies, taxes, utilities and telephone expenses,
15 wages and premiums and renewals of the receivership bond to the State of California;

16 h. The Receiver shall not expend funds generated by the Receivership
17 Estate, or any other funds in the possession of the Receiver for expenses or liabilities that arose or
18 were incurred prior to the Receiver's delivery of the Commencement Notice without approval of
19 the parties or this Court. Absent approval from the parties or the Court, all such expenses and
20 liabilities remain the responsibility of the Defendant;

21 i. The Receiver, after consultation with the Trustee, may employ
22 additional agents and employees, as necessary to preserve and protect the Receivership Estate and
23 to pay said agents, contractors and employees, at ordinary and usual rates and prices, pursuant to
24 appropriate contracts, or otherwise, out of funds that come into his possession as Receiver, and
25 shall, in consultation with the Trustee, consider and implement a process by which a permanent
26 parking lot operator may be engaged for the long term operation or re-letting of the parking
27 operations of the Real Property, but beyond the term of the Receivers' possession, if the Receiver
28 determines such engagement to be beneficial and cost effective;

1 j. The Receiver, after consultation with the Trustee, may set or modify
2 monthly, daily and event parking rates;

3 k. The Receiver shall have the authority, after consultation with the
4 Trustee, to enter, modify, renew, terminate or reject any leases, subleases, contracts or agreements
5 relating to the Receivership Estate, and to eject any tenants who have breached their leases or
6 subleases or remain in possession after the termination thereof. To the extent determined to be
7 necessary or useful, the Receiver may obtain, or request that the Trustee obtain, one or more writs
8 of possession pursuant to the Judgment, and may prosecute, or request that the Trustee prosecute,
9 any unlawful detainer or other action or proceeding;

10 l. The Receiver may bring and prosecute all proper actions for the
11 (i) collection of rents and profits derived from the Receivership Estate, (ii) removal from the
12 Receivership Estate of persons not entitled to entry thereon, (iii) protection of the Receivership
13 Estate, (iv) damage caused to the Receivership Estate, (v) recovery of possession of the
14 Receivership Estate;

15 m. The Receiver may, after consultation with the Trustee, and with
16 prior Court approval, hire, employ, retain, terminate, and otherwise obtain the advice and
17 assistance of attorneys and accounting and other professionals as may be reasonably necessary to
18 the proper discharge of the Receiver's duties (and to pay such professionals reasonable fees from
19 the rents, revenues, and proceeds of the Receivership Estate). Should the Receiver desire to
20 employ attorneys, the Receiver may apply to the Court pursuant to California Rule of Court
21 3.1180 for the Court's approval of the Receiver's proposed attorneys, with proposed fee schedule;

22 n. The Receiver may, after consultation with the Trustee, hire, employ,
23 retain, and terminate consultants, operating companies and/or other property management, brokers
24 and any other personnel or employees which the Receiver deems necessary to assist him in the
25 discharge of his duties, to whom the Receiver may delegate operational responsibilities for the
26 Receivership Estate as set forth in this order and, at the Receiver's election, pay any federal, state,
27 and local payroll taxes due in connection with employees of the Receiver and/or any property
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1 managers, provided, however, that no contract shall extend beyond the termination of the
2 receivership unless authorized by the Trustee and the City, or by the Court;

3 o. The Receiver may communicate, directly or indirectly, with any
4 person, firm or entity, including without limitation, any representative of the Trustee; and

5 p. The Receiver may receive and open mail directed to the City or its
6 agencies or districts addressed to or delivered to the Receivership Estate, plus all mail which
7 appears, or may appear to pertain to the Receivership Estate, including but not limited to mail
8 addressed to agents or employees at the Receivership Estate. The Receiver shall redirect mail
9 determined (whether before or after opening) to be of a personal nature, or not involving the
10 business activities of the City conducted at the Receivership Estate, to the person to whom the
11 mail was intended to be delivered (if the Receiver knows the forwarding address of said person) or
12 shall return such mail to the sender.

13 3. So long as (a) he remains in possession of the Receivership Estate, and (b)
14 the City does not enact any law or measure that imposes a tax, fee, levy or other charge that affects
15 or relates to the Property, operations on the Property, or the use of all or any part or parts of the
16 Property by any persons, including parking customers and tenants,

17 a. The Receiver shall continue to operate the Receivership Estate as
18 parking garages open to the public on days and at times generally consistent with past operations;

19 b. The Receiver shall honor the City's obligations as set forth in
20 Section 2 of that certain Agreement for Purchase and Sale of Real Property dated August 17, 2004
21 between the City and the County of San Joaquin, a political subdivision of the State of California
22 (the "County") to provide the County the use of fifty-six (56) covered parking spaces currently
23 provided to the County in the Market Street Garage located at 430 East Market Street, Stockton,
24 California, provided that the Trustee shall have no obligation to the County for any payment of the
25 cash equivalent value of parking stalls not used by the County;

26 c. The Receiver shall provide validated or free evening parking to
27 patrons of the City's Bob Hope Theater at the Edmund S. Coy Garage only as well as paid parking
28 at the Market Street Garage as needed pursuant to paragraph 3.a.

1 d. The Trustee shall honor the Stockton Asparagus Festival Agreement
2 dated August 5, 2008 to provide paid parking for patrons and visitors at all of the garages, as well
3 as honoring free three-day parking passes (not to exceed 70) issued to Asparagus Festival sponsors
4 at the Arena Parking Garage only.

5 e. The Receiver shall provide free parking at the Arena Parking Garage
6 located at 310 West Fremont Street, Stockton, California, once per year for the Work Net Job Fair
7 so long as the City continues to exchange such parking privileges for the City's use of the Work
8 Net lot during the annual Asparagus Festival.

9 4. In addition to all of the powers hereinabove set forth, the Receiver is hereby
10 vested with all of the powers of receivers authorized pursuant to California Code of Civil
11 Procedure § 568.

12 5. The City shall deliver to the Receiver: (i) all monies or other funds in its
13 possession that are sequestered pursuant to the Judgment to the Receiver promptly upon request
14 and as set forth in the Judgment; (ii) all records, statements, bills, invoices and other data
15 maintained by the City in connection with the property and all documents and records (including
16 records maintained in electronic form) pertaining to the operation, maintenance and proceeds of
17 the Receivership Estate (collectively, the "Books and Records"), whether in the possession and
18 control of the City or in the possession and control of agents, servants or employees of the City,
19 provided, however, that said Books and Records shall be made available for the use of the agents,
20 servants and employees of the City upon reasonable notice in the normal course of the
21 performance of their duties, as necessary.

22 6. The Receiver shall, within thirty (30) days of his qualification hereunder,
23 file in this action an inventory under California Rule of Court 3.1181 of all property of which he
24 shall have taken possession pursuant hereto, including, without limitation, the identity of all
25 written or non-written leases, subleases, rental contracts, options, contracts for sale, insurance
26 policies, fixtures or personal property, but excluding personal property of any tenants. The
27 Receiver may thereafter, to the extent necessary, conduct periodic inventories of all property of the
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1 Receivership Estate of which he shall have taken possession pursuant to this Order, and to provide
2 counsel for the Trustee with regular and material updates.

3 7. The Receiver shall prepare and deliver to the Trustee and the City monthly
4 operating reports which shall account for all of the Receivership Estate's revenues and expenses,
5 and shall include a statement reflecting the Receiver's fees and expenses incurred for said period
6 in the operation and administration of the Receivership Estate, as well as the fees and expenses of
7 any attorneys, accountants, consultants or operators employed by the Receiver. The Receiver, his
8 employees, or employees of The Beverly Group, Inc. shall be compensated at the rates set forth
9 below:

10 Kevin J. Whelan	\$300.00 per hour
11 Staff	\$200.00 per hour

12 In addition, the Receiver shall be reimbursed for all reasonable expenses incurred by the Receiver
13 on behalf of the Receivership Estate (including but not limited to expenses necessary for the
14 protection and preservation of the Receivership Estate such as fees for locksmiths, electrical or
15 other emergency items, IRS mileage rate, U.S. postage, Federal Express or other overnight mail,
16 photocopies at \$0.20 per page, court filing fees, and telephone and facsimile charges).

17 8. In anticipation that there is a possibility that the parking fees, rents, security
18 deposits, issues and profits collected by the Receiver may not be sufficient to pay the obligations
19 described above or the expenses incurred on account of the care, management, preservation,
20 protection and maintenance of the Receivership Estate, upon the written request of the Receiver,
21 the Trustee is hereby authorized, but in no way obligated, to lend, and the Receiver is hereby
22 authorized to borrow on behalf of and as an obligation of the Receivership Estate, for which the
23 Receiver shall have no personal liability, money from time to time to satisfy these obligations
24 and/or expenses or to satisfy the payment of any taxes upon the Receivership Estate. Such
25 advances shall be on such terms and conditions as the Receiver and the Trustee may reasonably
26 agree. Any advances of money for such purposes by the Trustee or any other lender shall be
27 added to the obligations of Defendant and shall remain subject to the provisions of the Trust
28 Indenture evidencing such obligations. Any advances of money for such purposes by the Trustee

1 or any other lender shall be made pursuant to a Receivership Certificate and shall be considered
2 advances made by the Trustee or any other lender pursuant to the Trust Indenture.

3 9. Upon completion and filing of all monthly reports and ten (10) days after
4 mailing said statement to the parties (or via e-mail, at the party's request), the Receiver shall be
5 paid from funds held by the Receivership Estate, if any, the amount of said statement. Despite the
6 periodic payment of Receiver's fees and administrative expenses, said fees and expenses shall be
7 submitted to the Court, for its final approval and confirmation, in the form of either a noticed
8 interim request for fees, stipulation among the parties, or Receiver's Final Account and Report.

9 10. The Receiver shall have the power to execute any and all documents (except
10 sale documents) without a specific court order, and shall maintain or establish accounts at such
11 bank (other than the Trustee Bank) as the Receiver may determine are necessary for the
12 Receivership Estate for the purpose of depositing some or all funds of the Receivership Estate
13 collected by the Receiver, and the Receiver shall have the authority to write checks on such
14 accounts for the purpose of making any payments required or permitted to be made hereunder by
15 the Receivership Estate, and the Receiver shall apply for a federal tax identification number to
16 provide to the bank so as to establish such an account. The Receiver may also employ said bank
17 or other financial institution, or any other bank of the Receiver's choice (other than the Trustee
18 Bank), to establish a payroll service.

19 11. The Receiver, upon or prior to his taking possession of the Receivership
20 Estate, shall determine whether the Receivership Estate is adequately insured and, if necessary,
21 disburse funds for the procurement or maintenance of fire, hazard, liability and other insurance for
22 the Receivership Estate in amounts the Receiver may deem fit or proper and cause all presently
23 existing policies, if feasible, to be amended, or cause all acquired policies to provide, that the
24 Receiver, The Beverly Group, Inc., the Receivership Estate, and the Trustee shall be named as
25 insureds or additional insureds. The Receiver may use insurance proceeds to repair the
26 Receivership Estate, as he deems appropriate.

27 12. The Receiver shall, as necessary and appropriate, notify all local, state and
28 federal governmental agencies, all vendors and suppliers, and any and all others who provide

1 goods or services to the Receivership Estate of his appointment as Receiver. No utility may
2 terminate service to the Receivership Estate as a result of non-payment of pre-receivership
3 obligations without prior order of this Court. No insurance company may cancel their existing
4 current-paid policy as a result of the appointment of the Receiver.

5 13. The Receiver will prepare and provide the applicable party and file with the
6 Internal Revenue Service a pass through return of the income and expenses of the Receivership
7 Estate after discharge from the case.

8 14. Kevin J. Whelan is acting solely in his capacity as Receiver and the debts of
9 the Receiver are solely the debts of the Receivership Estate. In no event shall Kevin J. Whelan
10 personally or The Beverly Group, Inc. or the Trustee have any liability or obligations for the
11 proper debts of the Receiver and/or the Receivership Estate; provided, however, that an action
12 may be brought against the Receiver for actions he takes in his official capacity to the full extent
13 authorized by California law.

14 15. The Receiver, the Trustee and the City may, from time to time and upon 72
15 hours' notice to each of the other parties (or, in the case of an extreme emergency, on 24 hours'
16 notice), petition this Court for instructions in pursuance of this Order and further orders which this
17 Court may make.

18 16. The Receiver shall continue in possession of the Receivership Estate
19 pending further order of the Court. The Receiver shall apply to the Court for a formal discharge

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1 and approval of his final accounting no later than one hundred twenty (120) days after he
2 relinquishes control of the Receivership Estate or otherwise ordered by the Court. Until such time
3 as the Receiver's final report and accounting has been approved by the Court, the Receiver shall
4 not turn over any receivership funds to any party or entity except as provided in this Order without
5 prior Court order.

6 **IT IS SO ORDERED.**

7 Dated:

4/19/12
4/12/12

ROGER ROSS

JUDGE OF THE SUPERIOR COURT

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ORDER APPOINTING RECEIVER

EXHIBIT 1

**PROPERTY INCLUDED IN THE
RECEIVERSHIP ESTATE**

All of the City's present and future right, title and interest in the following property (the "Receivership Estate"):

a) the Edmund S. Coy Parking Garage located at 130 North Hunter Street, Stockton, California, described more fully in Exhibit 1-A attached hereto ("Coy Garage"); and

b) the Market Street Garage located at 430 East Market Street, Stockton, California, described more fully in Exhibit 1-B attached hereto ("Market Street Garage"); and

c) the Arena Parking Garage located at 310 West Fremont Street, Stockton, California, described more fully in Exhibit 1-C attached hereto ("Arena Parking Garage" and together with the Coy Garage and the Market Street Garage, the "Land"),

d) all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "Improvements");

e) all tenements, hereditaments, appurtenances, privileges and other rights and interests now or in the future benefiting or otherwise relating to the Land or the Improvements, including easements, rights of way, development rights, mineral rights, water rights and water stock (the "Appurtenances," and together with the Land and the Improvements, the "Real Property");

f) all parking fees, rents, security deposits, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Real Property or the ownership, use, management, operation, leasing or occupancy of the Real Property, including those past due and unpaid (the "Rents");

g) all the right, title, interest, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which the City now has or may hereafter acquire in the Real Property, and any and all awards made for the taking by eminent

1 domain or by any proceeding or purchase in lieu thereof of the whole or any part of the Property,
2 including, without limitation, any awards resulting from a change of grade of streets and awards
3 for severance damages;

4 h) the City's right, title, and interest in any and all existing and future leases and
5 subleases (including subleases thereof), whether written or oral, recorded or unrecorded rental
6 agreements and all future agreements for use and occupancy, and any and all extensions, renewals
7 and replacements thereof, upon all or relating to any part of the Real Property, all licenses and
8 agreements relating to the management, leasing or operation of the Property or any portion
9 thereof, and all guarantees of and security for lessee's performance hereunder (hereinafter
10 collectively referred to as the "Leases");

11 i) the immediate and continuing right to collect and receive all of the rents, security
12 deposits, fees, charges, accounts, income, receipts, revenues, issues, profits and other income of
13 any nature now due or which may become due or to which the City may now or hereafter become
14 entitled to or may make demand or claim for, arising or issuing from or out of the Leases or from
15 or out of the Real Property or any part thereof, including but not limited to, minimum rents,
16 additional rents, percentage rents, security deposits, parking or common area maintenance
17 contributions, tax and insurance contributions, deficiency rents and liquidated damages following
18 default in any Lease, all accounts receivable, instruments, and general intangibles related to the
19 operation of the Real Property, and any business operated thereon by the City and all proceeds
20 thereof, and all proceeds payable under any policy of insurance covering loss of rents resulting
21 from untenability caused by destruction or damage to the Real Property;

22 j) any and all rights and claims of any kind which the City may have against any
23 tenant under the Leases or any subtenants or occupants of the Real Property (all such monies,
24 rights and claims described in this paragraph being hereinafter called "Cash Collateral"), excepting
25 therefrom any sums which by the express provisions of any of the Leases are payable directly to
26 any person or entity other than the landlord under the Leases;

27 k) all additions, accessions, replacements, substitutions, proceeds, and products of the
28 property described herein;

- 1 l) all books and records pertaining to any and all of the Real Property, including
- 2 records relating to monthly parkers and tenants or subtenants under any Leases;
- 3 m) all plans, specifications, scopes of work, contracts, agreements and purchase orders
- 4 pertaining or incidental to the design, renovation or improvement of the Real Property;
- 5 n) all of the City's rights under any payment, performance or other bond in connection
- 6 with construction or development of the Real Property, and all construction materials, supplies and
- 7 equipment delivered to the Real Property or intended to be used in connection with the
- 8 construction or development of the Real Property wherever actually located;
- 9 o) all architectural drawings, plans, specifications, soil tests, feasibility studies,
- 10 appraisals, engineering reports and similar materials relating to the Real Property;
- 11 p) all books, records, surveys, reports, and other documents related to the property
- 12 described herein or construction, renovation, or operation of the Real Property; and
- 13 q) all governmental permissions, environmental clearances, authority to subdivide the
- 14 Real Property, rights, licenses and permits as are necessary for the commencement, continuation,
- 15 completion, occupancy, use and disposition of all or any portion of the Real Property.

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ORDER APPOINTING RECEIVER

EXHIBIT 1-A

LEGAL DESCRIPTION OF LAND

Edmund S. Coy Parking Garage

Edmund S. Coy Parking Structure Site

PARCEL 1:

THE WEST ONE-HALF OF THE NORTH 25 FEET OF LOT 3 AND THE NORTH 25 FEET OF LOT 1, IN BLOCK 64, EAST OF CENTER STREET, IN THE CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS.

PARCEL 2:

THE SOUTHERLY TEN (10) FEET OF SAID PORTION OF CHANNEL STREET ADJOINING THE NORTHERLY BOUNDARY OF SAID BLOCK 64, THE SOUTH LINE OF THE SOUTHERLY TEN (10) FEET OF SAID PORTION OF CHANNEL STREET BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID BLOCK 64; THENCE EASTERLY 303.00 FEET ALONG THE NORTHERLY BOUNDARY OF SAID BLOCK 64 TO THE NORTHEAST CORNER OF SAID BLOCK 64 AND THE POINT OF TERMINATION OF SAID SOUTH LINE.

PARCEL 3:

THE NORTH 75 FEET OF EACH OF LOTS 9 AND 11 IN BLOCK 64 EAST OF CENTER STREET, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS.

PARCEL 4:

THE EAST 40 FEET OF LOT 7; THE SOUTH 25 FEET OF EACH OF LOTS 9 AND 11, AND THE NORTH 25 FEET OF THE EAST 140 FEET OF LOT 14 IN BLOCK 64 EAST OF CENTER STREET ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS.

PARCEL 5:

ALL OF LOT 5 AND PORTION OF LOTS 1, 3, 7, 13 AND 14 IN BLOCK 64, EAST OF CENTER STREET, ACCORDING TO THE MAP AND SURVEY OF SAID CITY OF STOCKTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF CHANNEL STREET, SAID POINT BEING THE NORTHEAST CORNER OF THE WEST ONE-HALF OF SAID LOT 3; THENCE EASTERLY ALONG THE SOUTH LINE OF CHANNEL STREET, 85 FEET TO THE NORTHEAST CORNER OF THE WEST 10 FEET OF SAID LOT 7, BEING ALSO THE NORTHWEST CORNER OF THE EAST 40 FEET OF SAID LOT 7; THENCE SOUTHERLY ALONG PROPERTY LINE, A DISTANCE OF 150 FEET TO A POINT IN THE NORTH LINE OF LOT 8 IN SAID BLOCK 64, EAST OF CENTER STREET, SAID POINT BEING THE SOUTHEAST CORNER OF THE WEST 10 FEET OF SAID LOT 14 AND ALSO BEING THE SOUTHWEST CORNER OF THE EAST 140 FEET OF SAID LOT 14; THENCE WESTERLY ALONG THE NORTH LINE OF SAID LOT 8, 10 FEET TO THE NORTHEAST CORNER OF LOT 6 IN SAID BLOCK 64, EAST OF CENTER STREET; THENCE WESTERLY ALONG THE NORTH LINE OF SAID LOT 6, 25 FEET TO THE SOUTHEAST CORNER OF THE WEST 125 FEET OF SAID LOT 13; THENCE NORTH ALONG PROPERTY LINE, 25 FEET TO THE NORTHEAST CORNER OF THE SOUTH ONE-HALF OF THE WEST 125 FEET OF SAID LOT 13; THENCE WEST ALONG THE NORTH LINE OF THE SOUTH ONE-HALF OF SAID LOT 13, 125 FEET TO THE NORTHWEST CORNER OF THE SOUTH ONE-HALF OF SAID LOT 13, SAID POINT BEING IN THE EAST LINE OF HUNTER STREET; THENCE NORTH ALONG THE EAST LINE OF HUNTER STREET, 100 FEET TO THE NORTHWEST CORNER OF THE SOUTH ONE-HALF OF THE NORTH ONE-HALF OF SAID LOT 1; THENCE EAST ALONG PROPERTY LINE, 75 FEET TO THE SOUTHEAST CORNER OF THE NORTH ONE-HALF OF THE NORTH ONE-HALF OF THE WEST ONE-HALF OF SAID LOT 3; THENCE NORTH ALONG THE EAST LINE OF THE WEST ONE-HALF OF SAID LOT 3, 25 FEET TO THE POINT OF BEGINNING.

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ORDER APPOINTING RECEIVER

EXHIBIT 1-B

LEGAL DESCRIPTION OF LAND

Market Street Garage

Market Street Parking Garage

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF STOCKTON, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, SAID REAL PROPERTY BEING LOTS 1, 3, 5, 7, 9, 11, 13, 14, 15 AND 16 OF BLOCK 23, EAST OF CENTER STREET, OF THE OFFICIAL MAP OF THE CITY OF STOCKTON, APPROVED AND ADOPTED BY THE CITY COUNTY OF THE CITY OF STOCKTON IN JULY 23, 1893, THE NORTHERLY 1 FOOT OF LOTS 2 AND 4 OF SAID BLOCK 23, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID BLOCK 23, EAST OF CENTER STREET; THENCE EASTERLY 303.00 FEET ALONG THE NORTHERLY BOUNDARY OF SAID BLOCK 23 TO THE NORTHEAST CORNER OF SAID BLOCK 23; THENCE SOUTHERLY 202.00 FEET ALONG THE EASTERLY BOUNDARY OF SAID BLOCK 23 TO THE SOUTHEAST CORNER OF SAID LOT 16; THENCE WESTERLY 202.00 FEET ALONG THE SOUTHERLY BOUNDARIES OF LOTS 16 AND 14 TO THE NORTHEAST CORNER OF SAID LOT 4; THENCE SOUTHERLY ONE (1) FOOT ALONG THE EASTERLY BOUNDARY OF SAID LOT 4 TO A POINT; THENCE WESTERLY 101.00 FEET ALONG A LINE PARALLEL WITH AND 1.00 FOOT PERPENDICULAR TO THE SOUTHERLY LINE OF SAID LOT 4 TO THE WESTERLY BOUNDARY LINE OF SAID BLOCK 23; THENCE NORTHERLY 203.00 FEET ALONG THE WESTERLY BOUNDARY OF SAID BLOCK 23 TO THE POINT OF BEGINNING.

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ORDER APPOINTING RECEIVER

EXHIBIT 1-C

LEGAL DESCRIPTION OF LAND

Arena Parking Garage

Stockton Events Center Parking Structure Site

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF STOCKTON, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, SAID REAL PROPERTY BEING PARCEL 2 OF PARCEL MAP, STOCKTON EVENTS CENTER, RECORDED IN BOOK 23, PAGE 15, SAN JOAQUIN COUNTY RECORDS, AND SAID PROPERTY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL 2, THENCE ALONG THE BOUNDARY OF SAID PARCEL 2 THE FOLLOWING EIGHT (8) COURSES:

- 1) SOUTH 11 DEGREES 34'46" EAST, 86.01 FEET;
 - 2) SOUTH 78 DEGREES 25'14" WEST, 32.84 FEET;
 - 3) SOUTH 11 DEGREES 34'46" EAST, 43.70 FEET;
 - 4) SOUTH 78 DEGREES 25'14" WEST, 298.76 FEET;
 - 5) ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 546.00 FEET, A CENTRAL ANGLE OF 12 DEGREES 30'48" AND AN ARC LENGTH OF 119.25 FEET;
 - 6) NORTH 78 DEGREES 25'14" EAST, 32.73 FEET;
 - 7) NORTH 33 DEGREES 24'58" EAST, 17.68 FEET; AND
 - 8) NORTH 78 DEGREES 25'14" EAST, 306.99 FEET TO THE POINT OF BEGINNING.
- BASIS OF BEARINGS IS THE SOUTHERLY LINE OF FREMONT STREET, BEARS NORTH 78 DEGREES 25'14" EAST, AS SHOWN ON SAID PARCEL MAP, STOCKTON EVENTS CENTER.