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

7 Attorneys for Debtor
 City of Stockton
 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 VAL
 TOPPENBERG IN SUPPORT OF
 CONFIRMATION OF FIRST
 AMENDED PLAN FOR THE
 ADJUSTMENT OF DEBTS OF CITY
 OF STOCKTON, CALIFORNIA
 (NOVEMBER 15, 2013)¹**

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

25 CITY OF STOCKTON, CALIFORNIA,
 26 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, Val Toppenberg, hereby declare:

2 1. I am the Economic Development Advisor for the City of Stockton (“the City” or
3 “Stockton”). I make this declaration in support of confirmation of the City of Stockton,
4 California’s (“City”) First Amended Plan For The Adjustment Of Debts Of City Of Stockton,
5 California (November 15, 2013). Since becoming the City’s Economic Development Advisor in
6 March 2013, I have participated in the preparation and review of technical and real estate-related
7 documents for the City. I have 36 years of public agency experience in planning, redevelopment,
8 and economic development, including 25 years as the Director of Redevelopment and Economic
9 Development for the cities of Merced, California, and West Sacramento, California. I also have
10 several years of experience advising clients on land use issues and development projects.

11 *Oak Park, Van Buskirk Golf Course, And Swenson Golf Course Operate At A Loss And A Lease*
12 *On These Properties Has Virtually No Value*

13 2. The three leased properties relating to the 2009 Golf Course/Park Bonds² are Oak
14 Park, Van Buskirk Golf Course, and Swenson Golf Course. Each of these properties, individually
15 and in the aggregate, have operated at a loss before debt service for the last five years, and for the
16 last eight years in the aggregate (Swenson showed some positive cash flow in the 2005/2006,
17 2006/2007 and 2007/2008 fiscal years, but not enough to even offset the operating losses at Van
18 Buskirk, not to mention the additional operating losses at Oak Park). A true and correct copy of
19 the Summary Income Statements for Swenson and Van Buskirk golf courses for the fiscal year
20 ending June 30, 2013 is attached as Exhibit A to the Direct Testimony Declaration of Susan Wren
21 In Support Of Confirmation Of First Amended Plan For The Adjustment Of Debts Of City Of
22 Stockton, California (November 15, 2013) (“Wren DTD”). A true and correct copy of a chart
23 showing the golf program revenues and expenditures for fiscal years 2008-09, 2009-10, and
24 2010-11 is attached as Exhibit B to the Wren DTD. A true and correct copy of the revenues and
25 expenditures for fiscal years 2005-06 through 2009-10 is attached as Exhibit C to the Wren DTD.

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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 3. Oak Park generates some revenue from the baseball fields, tennis courts and the
2 ice rink, but this revenue is far short of the expenditures for maintenance and operations. All
3 three properties have been able to cover their operational deficits only through the infusion of
4 subsidies from the City. The golf fund, comprised of costs and revenues related to the two golf
5 courses, lost \$335,341 in the fiscal year ending June 30, 2013, \$275,441 in FY 11-12, and
6 \$365,879 in FY 10-11. *See* Wren DTD, Exs. A, B. In fact, the golf courses have lost money
7 every fiscal year going back to 2005-06. Based on the City's projections, the financial
8 performance of the golf courses will not improve in the foreseeable future. This continued poor
9 performance is due to many factors, including the recent economic downturn, limited disposable
10 income available to residents in Stockton and San Joaquin County and recreational trends of
11 younger populations moving away from golfing.

12 4. The City has evaluated the leasehold value of the Golf Course/Park Properties in
13 order to consider its options with regard to these properties. The City initially retained two
14 appraisers, Kenneth Hopper of Real Property Analysts and Kevin Ziegenmeyer of Seevers Jordan
15 Ziegenmeyer, to appraise the leasehold interest of properties. While no appraisal was ever
16 completed, these appraisers, during their conversations with me and other representatives of the
17 City, informed the City that the golf course and park leases – subject as they are to both the terms
18 of the leases and to various use restrictions, and in light of the fact that the leases of the park and
19 golf courses have lost significant amounts of money solely on an operational basis (before debt
20 service) every year for many years (and are projected to continue to lose money) – would likely
21 result in a formal appraisal report showing that the leases have no value. As a result, the City and
22 these appraisers mutually agreed that there was no point to continuing with a full appraisal.

23 5. Based on my personal experience with the City, my review of the historical
24 operating information for the Golf Course/Park Properties, my review of documents discussing
25 the issue of attempting to operate the Swenson and Van Buskirk golf courses at a profit, including
26 the costs of deferred maintenance and capital improvements required, in view of the deferred
27 maintenance and capital improvements required at Oak Park, the yearly subsidies that must be
28 paid by the City to cover operational deficits run by the golf courses, my conversations with the

1 City's appraisers, and past, current, and projected economic conditions in the City, I believe that
2 the prospect of ever operating the three properties at a profit are extremely remote and as a result,
3 a lease of Oak Park, Swenson Golf Course and Van Buskirk Golf Course would have virtually no
4 value to a third party.

5 *The City's Settlements With Assured, Marina Towers, And DBW*

6 6. As the City's Economic Development Advisor, I was extensively involved in the
7 mediation sessions conducted by Judge Elizabeth Perris both with Assured Guaranty related to
8 the property at 400 E. Main Street and with Marina Towers LLC. I was also extensively involved
9 in the settlement discussions between the City and DBW. Each of these settlements benefits the
10 City, as explained below.

11 *Assured*

12 7. The City's settlement with Assured regarding the Office Building Claims is
13 premised on the City's lease of space in 400 E. Main. When the City purchased the building, it
14 intended for 400 E. Main to be the new City Hall, and invested several million dollars in upgrades
15 to make it home to the City's information technology division. The City used publicly available
16 information, including the lease for the sixth floor of 400 E. Main by San Joaquin County and
17 offers for space received from other property owners, in order to determine the current market
18 lease rate for space in 400 E. Main. Although I made inquiries of local brokers regarding lease
19 rates in Stockton, there are few buildings of similar quality and with space available. The City's
20 team considered several other buildings as we evaluated options for City Hall and the lease rates
21 for these buildings, including the Waterfront Towers building, the building at 500 E. Main Street
22 and the building at 343 E. Main Street. The City received proposals from owners for these and
23 other nearby buildings, but none of the buildings had the space or quality that was available in
24 400 E. Main. Along with overall quality and space requirements, two other issues important to
25 the City's new lease of 400 E. Main are the availability of parking and "exclusive" space terms.
26 As part of the lease, 130 parking spaces will be available to the City in the building's
27 underground parking lot. Parking was not available as part of the lease for either of the other two
28

1 closest buildings. Further, the 65,000 square feet includes only space that is to be used
2 exclusively by the City.

3 8. Based on the terms of the new lease and on the past, current and projected market
4 for leased properties in Stockton, and based on my professional experience in real estate matters,
5 the City's lease of 400 E. Main is a below-market lease that will result in substantial savings and
6 other benefits for the City. The difference between the City's rate and the market rate as
7 represented by the San Joaquin County lease of the sixth floor – which, like the City's lease, does
8 not include an allowance for building improvements (and none was done except for painting and
9 carpet repairs) – is \$0.57 per square foot. The City's rate for the 65,000 square feet results in a
10 savings of approximately \$445,000 per year or at least \$3.5 million over the first eight-year hard
11 term. In addition, space offered at the Waterfront Towers building – the only other building
12 comparable in quality, but which is out of the core of the business district – is \$0.82 more per
13 square foot than the City's rate at 400 E. Main. The Waterfront Towers rate includes utilities and
14 janitorial services, which are also included in the City's rate at 400 E. Main.

15 Marina Towers

16 9. Pursuant to the Marina Towers Settlement, the City transferred five surplus real
17 properties, valued collectively at \$973,500, to Marina Towers LLC, settling the eminent domain
18 case known as *City of Stockton v. Marina Towers LLC et al.*, San Joaquin Superior Court, case
19 no. CV022054, and related litigation. The case arose as the result of the City's taking of two
20 parcels of real property from Marina Towers LLC to develop the Stockton Event Center, a project
21 that now includes a public ballpark and arena and public parking. The east parcel owned by
22 Marina Towers LLC was unimproved, and the west parcel was improved with a five-story office
23 building that had been vacant since 1989. After extended litigation and a long procedural battle,
24 the parties resolved the litigation by agreeing to the entry of a Stipulated Judgment in
25 Condemnation, which the San Joaquin Superior Court entered on June 29, 2010. The City
26 subsequently filed its Chapter 9 Case. The parties then commenced the mediation refereed by
27 Judge Perris, which resulted in the settlement.

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1 10. In the City's chapter 9 case, Marina Towers LLC argued that it was entitled to
2 payment in full under the Takings Clause of the Fifth Amendment and threatened to file various
3 motions in this Court. The City disputed that contention, but in order to avoid the attorney fees
4 that such a fight would have generated, and in order to put the five surplus properties, which
5 provided the City with little or no upside, back on the tax rolls, the City reached an agreement
6 with Marina Towers LLC with the active involvement of Judge Perris. In return for the
7 properties, Marina Towers LLC agreed to withdraw its proof of claim for \$1,875,000. The City
8 viewed the settlement as a win-win because it avoided the cost and uncertainty of litigation over
9 an issue of first impression, while transferring five surplus and non-income-producing properties
10 back on the tax roll in the hands of a capable developer that hopefully will improve them,
11 providing additional tax revenue to the City.

12 DBW

13 11. As evidenced by that certain Stockton Waterfront Marina \$13,300,000 Loan
14 Contract dated as of June 21, 2004 (as amended, the "Marina Construction Loan Agreement"),
15 DBW loaned the City \$13,300,000 (the "Marina Construction Loan"), bearing interest at 4.5%
16 per year with interest and principal payments due annually on August 1 of each year for 30 years
17 commencing on the August 1 after the final disbursement of loan proceeds, secured by a
18 Collateral Assignment of Rents and Leases for the Project Area respectively. The loan was for
19 the construction of the Marina Project, which has generated no net operating revenues since its
20 official opening on October 30, 2009. The City General Fund subsidy for the Marina Project
21 totals \$1,905,299 from fiscal year 2010-11 through the adopted budget for fiscal year 2013-14.
22 The Marina Construction Loan Agreement provides that DBW, upon default, may take over the
23 operations of the Marina Project and charge the costs of operations to the City. DBW has
24 asserted a Claim under the Marina Construction Loan Agreement (the "DBW Construction Loan
25 Claim"), secured by a pledge of gross revenues under the terms of a Collateral Assignment of
26 Rents and Leases for the Project Area.

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1 12. Under the settlement with DBW, the General Fund will not be required to pay debt
2 service on the DBW Construction Loan Claim, or to reimburse operating expenses to DBW
3 should DBW take over operations of the Marina Project. DBW will retain its pledge of rents and
4 leases generated from the Marina Project. However, the pledge of gross revenues will be
5 converted to a pledge of revenues net of all reasonable and direct operating expense of the Marina
6 Project, calculated on a fiscal year basis ending June 30 of each year. Should DBW decide to
7 take over operations of the Marina Project, DBW will be responsible for payment of all operating
8 expenses of the Marina Project, and the City will have the right to ensure that the Marina Project
9 is operated in a responsible and safe manner, including providing adequate security, and the City
10 shall have the right to compel DBW to alter its manner of operations if such operations pose a
11 threat to the public welfare or if such operations abet a public nuisance. The General Fund shall
12 have no liability, directly or indirectly, for the Claims of DBW, and the City may decide at any
13 time to cease subsidizing the operating deficits of the operation of the Marina Project. DBW has
14 stated to the City an interest in exercising its remedy of taking possession of the Marina Project.
15 The real property that is the subject of the Marina Project shall be that real property described in
16 Exhibit A to the Plan, and should DBW exercise its remedy of taking possession of the Marina
17 Project, DBW shall succeed to possession and control only over the real property set forth in
18 Exhibit A to the Plan.

19 13. This settlement greatly decreases the City's exposure. In the original loan
20 document, DBW had the right to repayment from gross revenues and there was a possibility the
21 City might be required to supplement operation and maintenance costs from the City's general
22 fund in order to keep the Marina Project in operation. Under the City's settlement with DBW, the
23 loan payments will be made from revenues net of operation and maintenance costs. Moreover, in
24 the event that maintenance and operations costs do not allow a full loan payment, the City will
25 not be required to supplement operations with general fund subsidies.

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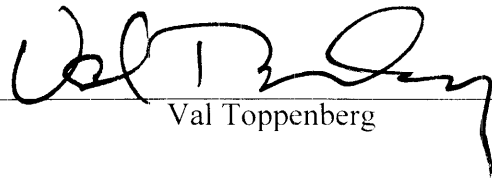
1 Franklin Mischaracterizes The Return On Certain Settlements

2 14. On pp. 46-47 of its brief, Franklin sets forth a chart purporting to characterize the
3 distribution to various creditors. Many of these characterizations are incorrect or misleading. I
4 can attest specifically that Franklin's characterizations of the settlements with Assured and NPF
5 are based on flawed assumptions regarding the value of the property underlying each settlement.
6 Franklin's chart assumes certain values for the leased properties underlying the Assured and
7 NPF settlements. The property related to the Assured settlement is 400 E. Main, discussed
8 above. The properties related to the NPF settlements include the Stewart/Eberhardt Building,
9 an essential services building (as defined by Cal. Health & Safety Code § 16007) that is home to
10 several essential City operations, and the Stockton Arena, home to the Stockton Thunder and a
11 variety of performing arts and other events. The City has not appraised any of these properties.
12 This is in part because secured deals, like those with Assured and NPF, don't require appraisals.
13 More importantly, it is because the City exercised its business judgment in determining that these
14 assets were essential or could not be replaced. Finally, many of the properties related to the
15 Assured and NPF settlements are buildings designed for a specific purpose for which accurate
16 typical market appraisals are impossible. How would one appraise the value to the City, for
17 example, of a police communication building and fire stations, or of the Arena? These buildings
18 are designed for specific purposes and would require extensive retrofitting to be used for any
19 other purpose.

20 15. The appraisal submitted by Franklin displays a clear lack of understanding of how
21 cities value their assets. Because there are no comparable sales and no income to assess, the
22 appraiser reverts to the cost approach. The value to the City is the inherent value of providing
23 services to its citizens, while the general market value is what an informed buyer would pay for
24 the property. Further, to assume a possessory value based on a lease is similar to a fee simple
25 ownership is an inherently flawed assumption. Although the appraiser goes on to describe the
26 challenges and associated risks, he continues to presume a perpetual possessory interest. The
27 lease allows possession by the creditor only until they are repaid, then the property must be
28 returned to the city in its current condition. Finally, the appraiser assumes that the city's interests

1 would solely be based in supporting value maximizing changes in use displays a lack of
2 appreciation for the political process of obtaining land use approvals.

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

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9 Val Toppenberg

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