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7 *Income Fund and Franklin California High*
8 *Yield Municipal Fund*

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. 12-32118 (CMK)
D.C. No. OHS-15
Chapter 9
Adv. Proceeding No. 13-02315-C

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

19 Plaintiffs.

20 v.

21 CITY OF STOCKTON, CALIFORNIA,
22 Defendant.

FRANKLIN HIGH YIELD TAX-FREE INCOME FUND AND FRANKLIN CALIFORNIA HIGH YIELD MUNICIPAL FUND'S EVIDENTIARY OBJECTIONS TO DIRECT TESTIMONY DECLARATION OF VANESSA BURKE IN SUPPORT OF CONFIRMATION OF FIRST AMENDED PLAN FOR THE ADJUSTMENT OF DEBTS OF CITY OF STOCKTON CALIFORNIA (NOVEMBER 15, 2013)

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

1 Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal
 2 Fund (collectively, “Franklin”) respectfully submit the following evidentiary objections to the
 3 *Direct Testimony Declaration of Vanessa Burke in Support of Confirmation of First Amended Plan*
 4 *for the Adjustment of Debts of City of Stockton, California (November 15, 2013)* [Docket No. 1366 /
 5 Adv. Pro. Docket No. 61].

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
8 4. As of June 30, 2013, the PFFs contained 9 an aggregate \$34.4 million in cash. <u>Most, if not</u> 10 <u>all, of this money is committed to the</u> 11 <u>development of future infrastructure projects.</u> 12 <u>Available fund balances total approximately</u> 13 <u>\$4.9 million. However, given the relative</u> 14 <u>trickle of PFF collections, the City has only a</u> 15 <u>fraction of the funds it needs for required</u> 16 <u>overall infrastructure improvements.</u> According 17 to an econometric study completed by 18 Economic & Planning Systems, Inc. in 2013, 19 based on the City’s current general plan, 20 entitlements, houses committed, and other 21 factors, the City’s infrastructure needs over the 22 next 25 years amount to over \$400 million. <i>See</i> 23 Exhibit A to the Declaration of Stephen Chase 24 In Support Of City’s Supplemental 25 Memorandum Of Law In Support Of 26 Confirmation Of First Amended Plan For The 27 Adjustment Of Debts Of City Of Stockton, 28 California (November 15, 2013), at p. 85. <u>Without sufficient revenues being collected to</u> <u>fund the infrastructure, and given the City’s</u> <u>inability to issue new debt without a special</u> <u>revenue pledge, the City is currently</u> undertaking a comprehensive review of its general plan, general plan elements, development needs, developer agreements, and conducting rate studies to address the shortfall in its infrastructure needs.	Franklin objects to the underlined statements in this paragraph because they are speculative and lack foundation. FED. R. EVID. 602. Franklin also objects to the statements in this paragraph because Ms. Burke’s description of the EPS report is not the best evidence of the contents of that document. FED. R. EVID. 1002.
24 6. To the best of its knowledge, the City is 25 paying all of its post-petition debts as they 26 become due. If it did not, the City would no 27 longer be able to operate. <u>If the City did not</u> 28 <u>meet its payroll obligations as they become</u> <u>due, for example, City employees would likely</u> <u>cease coming to work. If the City did not pay</u> <u>its vendors, they would no longer do business</u> <u>with the City. In sum, if the City were not to</u> <u>pay its current bills as they became due, it</u> would be unable to provide basic services to	Franklin objects to the underlined statements in this paragraph because they are speculative and lack foundation. FED. R. EVID. 602. Further, the italicized statements regarding Franklin’s alleged beliefs consist of inadmissible hearsay. FED. R. EVID. 801, 802. Franklin further objects to the italicized statements because they assume facts not in evidence and misstate Franklin’s arguments. FED. R. EVID. 602.

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>1 <u>the residents of Stockton. Franklin's allegation</u> 2 <u>that the City's payment of such debts unfairly</u> 3 <u>discriminates against Franklin reflects a</u> 4 <u>fundamental misunderstanding of the City's</u> 5 <u>function. Contrary to what Franklin may</u> 6 <u>believe, the City is not run for Franklin's</u> 7 <u>benefit. It is run for the benefit of its citizens.</u></p>	
<p>8 8. The City will continue to collect sales tax 9 revenues, real property tax revenues, user 10 utility tax revenues, and other taxes, fees, and 11 revenues following the Effective Date. These 12 revenues will enable the City to maintain and 13 fund adequate municipal services, including 14 fire and police protection, as well as to satisfy 15 the City's obligations to its creditors as 16 restructured pursuant to the Plan. As explained 17 in the Direct Testimony Declaration of Robert 18 Leland being submitted concurrently, the 19 projections of these revenues in the City's 20 detailed long-range financial are sufficient to 21 meet these demands.</p>	<p>Franklin incorporates herein its concurrently filed <i>Evidentiary Objections To The Direct Testimony Declaration Of Robert Leland in Support Of Confirmation Of First Amended Plan For The Adjustment Of Debts Of City Of Stockton, California (November 15, 2013)</i> with respect to paragraph 10. Franklin objects to the underlined statements in this paragraph because they contain improper opinion testimony that is not rationally based on Ms. Burke's perception and is not helpful to clearly understand her testimony or to determine a fact in issue. FED. R. EVID. 701.</p>
<p>13 10. Franklin argues in its Pretrial Reply Brief 14 ("Franklin Reply") that because the City "has 15 recorded its liability under the Agreements . . . 16 as 'long term debt' in its audited financial 17 statements," while it "has accounted for its 18 liability in respect of actual leases as 'operating 19 leases' in its audited financial statements and 20 reports," the Agreements must be secured 21 financing transactions, and not leases. Franklin 22 Reply, at 8. <u>These statements are misleading, at</u> 23 <u>best, and completely ignore the complicated</u> 24 <u>web of standards and regulations that dictate</u> 25 <u>how the Agreements must be recorded. How a</u> 26 <u>particular "lease" is accounted for in the City's</u> 27 <u>financial statements depends upon a multi-</u> 28 <u>pronged test that is derived from a number of</u> <u>sources, including GAAP, GASBS No. 13</u> <u>(Accounting for Operating Leases with</u> <u>Scheduled Rent Increases), Financial</u> <u>Accounting Standards Board Statement</u> <u>(FASBS) No. 13 (Accounting for Leases, as</u> <u>amended and interpreted), National Council on</u> <u>Government Accounting (NCGA) Statement 1,</u> <u>and others. Based on these accounting</u> <u>standards, a given lease may be required to be</u> <u>accounted for as an operating lease, a capital</u> <u>lease, or long-term debt (not to mention</u> <u>numerous sub- classifications, including sales</u> <u>type, direct financing type, leverage type, and</u> <u>others). Thus, contrary to Franklin's</u> <u>implication, the City does not just universally</u></p>	<p>Franklin objects to this paragraph in its entirety because it purports to address whether the Agreements should be characterized as leases for bankruptcy purposes, and testimony in that regard is no longer relevant. FED. R. EVID. 401, 402. Franklin objects to the underlined statements in this paragraph because they contain improper opinion testimony that is not rationally based on Ms. Burke's perception and is not helpful to clearly understand her testimony or to determine a fact in issue. FED. R. EVID. 701. Franklin further objects to the italicized statements because they assume facts not in evidence and misstate Franklin's arguments. FED. R. EVID. 602.</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16</p> <p>account “for its liability in respect of actual leases as ‘operating leases.’” Nor does the fact that the 2009 Lease Revenue Bond is not accounted for as an operating lease imply that it is being characterized as a secured financing transaction. “General long-term debt is not limited to liabilities arising from debt issuances per se, but may also include non-current liabilities on lease-purchase agreements and other commitments that are not current liabilities.” GASB 34, Par. 81. Similarly, pronouncements by the NCGA and GASB “also define the noncurrent portion of capital leases, operating leases with scheduled rent increases, compensated absences, claims and judgments, pensions, special termination benefits, and landfill closure and post-closure care liabilities as long-term liabilities.” <i>Id.</i> What Franklin’s argument fails to grasp is that both capital leases and long-term indebtedness are required to be classified and presented as “long-term debt”. In fact, GASB 14 includes examples that show lease revenues bonds as properly designated as long-term debt. The City adhered to all applicable accounting standards when it properly accounted for the 2009 Lease Revenue Bonds as long-term debt, and that accounting designation does not change the nature of the Agreements as “leases.”</p>	

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18 Dated: April 25, 2014

JONES DAY

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