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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 TOM NELSON REBUTTING EXPERT REPORT OF FREDERICK E. CHIN

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 Tom Nelson Rebutting Expert Report of Frederick E. Chin*,
 4 [Docket No. 1363 / Adv. Pro. Docket No. 58]. Franklin incorporates herein its concurrently filed
 5 *Motion To Exclude Testimony Of Tom Nelson*.

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
5. I have reviewed the Chin Report submitted by Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal Fund (together, " <u>Franklin</u> "). Mr. Chin did not contact me as part of the preparation of the Chin Report, nor to my knowledge did he contact anyone else at either of the Courses or at Kemper. <u>Mr. Chin's report is seriously flawed, and either omits or glosses over critical considerations relevant to the profitability and value of the Courses. Specifically, Mr. Chin's "valuation" ignores (1) the market conditions that place extreme price pressures on the Courses, (2) the continued projected shortfalls for the Courses, and (3) the millions of dollars in capital improvements and deferred maintenance that would have to be undertaken in order for the Courses to turn a profit.</u>	Franklin objects to the underlined portions of this paragraph because they consist of improper opinion testimony that is not rationally based on Mr. Nelson's perception and is not helpful to clearly understand Mr. Nelson's testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers, Inc. v. Bayer Corp.</i> , 2009 U.S. Dist. LEXIS 57947, at *8-9 (E.D. Cal. June 17, 2009) (fact witness not permitted to offer opinions to rebut expert's methodology). Furthermore, the underlined portions of this paragraph are inadmissible because they assume facts not in evidence and lack foundation. FED. R. EVID. 602. Franklin also objects to the statements in this paragraph because Mr. Nelson's description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002.
6. The Chin Report suggests that revenues at the Courses could be increased by simply increasing course fees. Chin Report, at 36-38. <u>However, this conclusion ignores the realities of the market in which the Courses compete.</u>	Franklin objects to the underlined portion of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Nelson's perception and is not helpful to clearly understand Mr. Nelson's testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i> , 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert's methodology). Franklin also objects to the statements in this paragraph because Mr. Nelson's description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002.
7. Shortly after Kemper took over management of the Courses, there were several important changes to the golf industry in the Stockton area. Elkhorn Golf Club in north Stockton, which had previously declared bankruptcy and ceased operations, was purchased by former members and Sierra Golf Management	Franklin objects to the italicized portions of this paragraph because they assume facts not in evidence and lack foundation. FED. R. EVID. 602. Franklin also objects to the italicized portion of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Nelson's

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<p>1 and re-opened as a public, heavily-discounted 2 facility. Similarly, Micke Grove Golf Links in 3 Lodi changed management to Fore Golf Partners, 4 a very aggressive discount firm. Lockeford 5 Springs Golf Course in Lodi also began heavily 6 discounting its fees due to local market pressure. 7 During this period, The Reserve at Spanos in 8 Stockton began discounting its fees for the first 9 time due to market changes. <i>Due to these 10 changes, the ability to charge full-price, or 11 "rack," rate has virtually been eliminated, 12 requiring constant discounts and deals in order 13 to attract play and reasonably compete with the 14 Stockton area golf market.</i></p>	<p>perception and is not helpful to clearly understand Mr. Nelson's testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9.</p>
<p>8. <i>As a result of this increased competitiveness, it would be difficult, if not impossible, for either of the Courses to increase revenues by merely raising their fees, because doing so would cause golfers to take their business elsewhere.</i> Even with Kemper's aggressive marketing, players search the local area for the best deal. By way of example, after I recently sent an e-mail blast to Kemper's mailing list offering a discounted rate, one of my local competitors send an e-mail blast just hours later, offering prices a dollar or two lower in order to combat my offer. It is not unusual for players to bring in offers from my competitors and state they will play at the Courses only if we match their offer.</p>	<p>Franklin objects to the italicized portions of this paragraph because they are speculative and lack foundation. FED. R. EVID. 602. Franklin also objects to the italicized portion of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Nelson's perception and is not helpful to clearly understand Mr. Nelson's testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9.</p>
<p>9. The Chin Report briefly acknowledges that the Courses have consistently lost money for nearly a decade, but appears to give this fact little to no weight in his valuation of the Courses. <u>This is a critical omission, as any legitimate valuation must consider the financial realities at the Courses.</u></p>	<p>Franklin objects to the statements in this paragraph because Mr. Nelson's description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002. Franklin also objects to the underlined portions of this paragraph because they consist of improper opinion testimony that is not rationally based on Mr. Nelson's perception and is not helpful to clearly understand Mr. Nelson's testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert's methodology).</p>
<p>10. Over the past five years, each of the Courses has operated at a loss and has required a subsidy from the City's General Fund. See Declaration of Val Toppenberg In Support Of City's Supplemental Memorandum Of Law In Support Of Confirmation Of First Amended Plan</p>	<p>Franklin incorporates herein its concurrently- filed <i>Evidentiary Objections To 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).</i></p>

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<p>1 For The Adjustment Of Debts Of City Of 2 Stockton, California (November 15, 2013) 3 (“Toppenberg Decl.”), ¶ 2, Exs. A, B, C. In 4 addition, while Swenson operated at a small 5 profit during fiscal years 2005-06, 2006-07, and 6 2007-08, these profits were insufficient to cover 7 losses at Van Buskirk. <i>Id.</i> As a result, the 8 Courses together have lost money every year for 9 the past eight years. <i>Id.</i></p>	
<p>12. Attached hereto as Exhibits C and D are 13 true and correct copies of pro forma summary 14 profit and loss projections prepared by Kemper 15 during FY 2011-2012 for Swenson and Van 16 Buskirk, respectively.² These two documents 17 contain projections of revenues and expenses for 18 FY 2012-2013, FY 2014-2015, and FY 2015-16. 19 The projections on page 35 of the Chin Report of 20 net income for FY 2014-2015 and FY 2015-16 21 rely upon the projections in Exhibits C and D for 22 those years. But a comparison of the projections 23 in Exhibits C and D for FY 2012- 2013 against 24 the actual FY 2012-2013 results reflected in 25 Exhibits A and B reveals that the forecasts in 26 Exhibits C and D are obsolete.</p> <ul style="list-style-type: none"> a. Actual total revenues for Swenson in FY 2012-2013 (\$1,170,185) were only 86% of Exhibit C’s projected total revenues for that year (\$1,354,343). b. There was an actual net loss for Swenson of \$169,679 in FY 2012-2013, in contrast to Exhibit C’s projected net income of \$17,275. c. Actual total revenues for Van Buskirk in FY 2012-2013 (\$538,337) were only 84% of Exhibit D’s projected total revenues for that year (\$638,229). d. There was an actual net loss for Van Buskirk of \$164,409 in FY 2012-2013, 5% greater than Exhibit D’s projected net loss of \$156,991. <p>fn2: All projections and actual results reflected in Exhibits A through D are before the allocation of any City expenses to the Courses.</p>	<p>Franklin objects to the entirety of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Nelson’s perception and is not helpful to clearly understand Mr. Nelson’s testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert’s methodology). Franklin further objects to the statements in this paragraph because Mr. Nelson’s description of the Chin Report is not the best evidence of the contents of that document, which speaks for itself. FED. R. EVID. 1002.</p>

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<p>13. Based on the historical performance of and current projections for the Courses, it is extremely unlikely that the Courses could be made profitable without major capital investments. By largely ignoring this fact, the Chin Report significantly overestimates the value of the Courses. Further, the Chin Report uses projected revenue figures from obsolete projections created before the market underwent the shift outlined in paragraph 7 above. As demonstrated in paragraph 12 above, these are outdated projections based on obsolete assumptions, and further undermine the conclusions of the Chin Report.</p>	<p>Franklin objects to the entirety of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Nelson's perception and is not helpful to clearly understand Mr. Nelson's testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert's methodology). Furthermore, the statements in this paragraph are inadmissible because they assume facts not in evidence and lack foundation. FED. R. EVID. 602. Franklin also objects to the statements in this paragraph because Mr. Nelson's description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002.</p>
<p>14. The Chin Report makes occasional references to "certain capital improvements" (<i>see, e.g.</i>, Chin Report at 36, 38) but fails to account for the actual scope of improvements and maintenance needed at the Courses. Due to the City's overall financial and economic condition, as well as the consistent losses experienced by the Courses, the Courses have foregone important capital improvements and deferred maintenance for each of the eight years that I have been employed in Stockton. While this has saved the Courses and the City money in the short term, it has resulted in significant degradation of conditions at the Courses. Poor golfing conditions can have negative impacts on the number of rounds played and the price that the Courses can charge, both of which limit the revenue the Courses can generate and contribute to the Courses' lack of profitability. <i>Without substantial capital investment by the City, it is unclear when, if ever, the Courses could be operated at a profit.</i></p>	<p>Franklin objects to the entirety of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Nelson's perception and is not helpful to clearly understand Mr. Nelson's testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert's methodology). Franklin also objects to this paragraph because Mr. Nelson's description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002.</p>
<p>15. <u>At a rough estimate, approximately \$6 million to \$8 million in capital improvements and deferred maintenance would be required to make the Courses profitable again. Such improvements and maintenance are not mere window dressing. Rather, they represent investments in infrastructure that is critical – in fact fundamental – to golf courses, including basic irrigation, landscaping, cart paths, and equipment.</u> Just a few of these items are as follows:</p>	<p>Franklin objects to the underlined portions of this paragraph because they consist of improper opinion testimony that is not rationally based on Mr. Nelson's perception and is not helpful to clearly understand Mr. Nelson's testimony or to determine a fact in issue. FED. R. EVID. 701.</p>

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<p>1</p> <p>2 a) The Courses currently have no cart</p> <p>3 paths. This is extremely unusual for golf</p> <p>4 course, because carts cannot be used for</p> <p>5 several days after rain. The result is a</p> <p>6 loss of cart fees, which make up 20-</p> <p>7 21% of daily fees. It would cost</p> <p>8 approximately \$1 million to add a cart</p> <p>9 path to each of the Courses.</p> <p>10 b) The Courses need new irrigation</p> <p>11 systems. This will require dredging the</p> <p>12 lake because the silt would otherwise</p> <p>13 ruin the system's pipes. Irrigation and</p> <p>14 dredging for the Courses could cost</p> <p>15 upwards of several million dollars.</p> <p>16 c) Both the greens and bunkers at the</p> <p>17 Courses are of original design and</p> <p>18 construction. These old, "push up" style</p> <p>19 greens lack proper drainage and soil</p> <p>20 composition for optimal turf health. The</p> <p>21 bunkers' drainage systems have</p> <p>22 completely collapsed, preventing proper</p> <p>23 drainage and sand texture for</p> <p>24 playability. Restoring the greens and</p> <p>25 bunkers at the Courses could cost</p> <p>26 several million dollars.</p> <p>27 d) Due to the City's financial difficulties,</p> <p>28 Kemper has been unable to lease new</p> <p>equipment for course maintenance. It</p> <p>has instead had to rent substandard</p> <p>equipment, which produce substandard</p> <p>results and for which Kemper is</p> <p>responsible for a majority of repair</p> <p>costs. The cost of replacing course</p> <p>maintenance equipment would be</p> <p>approximately \$850,000.</p> <p>e) The perimeter fences at the Courses are</p> <p>in desperate need of repair or</p> <p>replacement, with many holes and</p> <p>failures allowing for easy access to the</p> <p>Courses and greatly increasing</p> <p>vandalism. Repairing or replacing the</p> <p>perimeter fences could cost \$75,000 to</p> <p>\$100,000 for each of the Courses.</p> <p>f) The Courses' food and beverage</p> <p>facilities need new kitchen equipment,</p> <p>including grills, ovens, and fryers, as</p> <p>well as seating and counters. The cost of</p> <p>these improvements could run anywhere</p> <p>from \$50,000 to \$80,000 per café.</p>	

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<p>g) The Courses need major landscaping work. There has been no annual tree maintenance at the Courses since I joined Kemper in August 2011. As a result, there have been numerous tree failures, which create safety concerns and hurt turf growth. An ongoing tree maintenance program would run \$75,000 to \$100,000 annually.</p> <p>h) The parking lots at both Courses are in great need of resurfacing. Each has large pot holes, cracks, and potentially dangerous trip hazards. Kemper has not estimated the costs of resurfacing the parking lots.</p>	
<p>16. All of these capital improvement and deferred maintenance items directly impact the product that makes you stand out in a competitive marketplace. <u>As a result, the Courses cannot be expected to turn a profit until each of these items is addressed.</u></p>	<p>Franklin objects to the underlined portions of this paragraph because they consist of improper opinion testimony that is not rationally based on Mr. Nelson’s perception and is not helpful to clearly understand Mr. Nelson’s testimony or to determine a fact in issue. FED. R. EVID. 701.</p>
<p>17. Even with these improvements, however, the Chin Report seriously exaggerates the potential to increase revenues at the Courses. The Chin Report projects that by increasing rates and making certain improvements (which are not identified), the Courses could achieve total revenues of \$1,955,000. Chin Report, at 39. This is a 14.4% increase over the combined revenues for the Courses in fiscal year 2012-13. See Toppenberg Decl., Ex. A. To be blunt, a golf course cannot just increase its revenues by more than a tenth without taking into consideration all of the factors, investments and expenses outlined above. The latest projections prepared by Kemper project an increase of 1.0%, which is itself considered aggressive. In the current price-driven market, aggravated by the dry winters that the Stockton area has recently experienced, any substantial increase in revenues is unlikely.</p>	<p>Franklin objects to the statements in this paragraph because they consist of improper opinion testimony that is not rationally based on Mr. Nelson’s perception and is not helpful to clearly understand Mr. Nelson’s testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert’s methodology). Furthermore, the statements in this paragraph are inadmissible because they assume facts not in evidence and lack foundation. FED. R. EVID. 602. Franklin also objects to the statements in this paragraph because Mr. Nelson’s description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002.</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>18. Yet another flaw of the Chin Report is its purported comparison of the rates at the Courses with the rates of local competitors. Chin Report, at 38. The rates listed in the Chin report are special discounted rates offered at the Courses during off-peak seasons, while the rates listed for local competitors are the competitors' full-price rack rates. The resulting comparison is essentially one of apples (the Courses' special rates) to oranges (competitors' rack rates). Such a comparison is improper and inaccurate.</p>	<p>Franklin objects to the statements in this paragraph because they consist of improper opinion testimony that is not rationally based on Mr. Nelson's perception and is not helpful to clearly understand Mr. Nelson's testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert's methodology). Franklin objects to the statements in this paragraph because Mr. Nelson's description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002.</p>
<p>19. While the Chin Report pays lip service to the financial and physical condition of the Courses, it essentially ignores these factors in developing its valuation. In particular, the Chin Report fails to account for the following critical facts:</p> <ul style="list-style-type: none"> a) The Courses have lost money every year for nearly a decade. b) The Courses cannot suddenly become profitable by simply raising prices. c) In order to even potentially return to positive margins, the Courses will first require anywhere from \$6 million to \$8 million in capital improvements and deferred maintenance. d) Even with such improvements and maintenance, the Courses can expect only modest revenue increases (and probably not the more than 10% increase that Chin claims) 	<p>Franklin objects to the statements in this paragraph because they consist of improper opinion testimony that is not rationally based on Mr. Nelson's perception and is not helpful to clearly understand Mr. Nelson's testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert's methodology). Franklin objects to the statements in this paragraph because Mr. Nelson's description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002.</p>
<p>20. Based on the Chin Report's refusal to properly account for these considerations into its valuation, the report vastly overestimates the value of the Courses. Any reasonable valuation would need to consider the price that a purchaser would pay for golf courses that have perennially operated at a deficit, would require millions of dollars of investments to become profitable, and would only be able to expect limited to moderate profits years down the road. By choosing to ignore these factors, I believe the Chin Report's conclusions are fatally flawed.</p>	<p>Franklin objects to the statements in this paragraph because they consist of improper opinion testimony that is not rationally based on Mr. Nelson's perception and is not helpful to clearly understand Mr. Nelson's testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert's methodology). Franklin also objects to the statements in this paragraph because Mr. Nelson's description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002.</p>

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Dated: April 25, 2014

JONES DAY

By: /s/ Joshua D. Morse

James O. Johnston

Joshua D. Morse

Charlotte S. Wasserstein

*Attorneys for Franklin High Yield Tax-Free
Income Fund and Franklin California High
Yield Municipal Fund*