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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 VAL TOPPENBERG IN SUPPORT OF CONFIRMATION OF FIRST AMENDED PLAN FOR THE ADJUSTMENT OF DEBTS OF CITY OF STOCKTON CALIFORNIA (NOVEMBER 15, 2013)**

23  
24 Date: May 12, 2014  
Time: 9:30 a.m.  
25 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 Val Toppenberg In Support Of Confirmation Of First Amended*  
 4 *Plan For The Adjustment Of Debts Of City Of Stockton, California (November 15, 2013)* [Docket  
 5 No. 1367 / Adv. Pro. Docket No. 62]. Franklin incorporates herein its concurrently filed *Motion To*  
 6 *Exclude Portions Of Testimony Of Val Toppenberg*.

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
8 3. Oak Park generates some revenue from 9 the baseball fields, tennis courts and the ice 10 rink, but this revenue is far short of the 11 expenditures for maintenance and operations. 12 All three properties have been able to cover 13 their operational deficits only through the 14 infusion of subsidies from the City. The golf 15 fund, comprised of costs and revenues related 16 to the two golf courses, lost \$335,341 in the 17 fiscal year ending June 30, 2013, \$275,441 in 18 FY 11-12, and \$365,879 in FY 10-11. See 19 Wren DTD, Exs. A, B. In fact, the golf courses have lost money every fiscal year going back to 2005-06. <u>Based on the City’s projections, the                      financial performance of the golf courses will                      not improve in the foreseeable future. This                      continued poor performance is due to many                      factors, including the recent economic                      downturn, limited disposable income available                      to residents in Stockton and San Joaquin                      County and recreational trends of younger                      populations moving away from golfing.</u>	Franklin objects to the underlined statements in this paragraph because they consist of opinion testimony that is inadmissible given that Mr. Toppenberg’s knowledge, skill, experience, training and education do not render him qualified as an expert regarding the matters to which he is testifying. FED. R. EVID. 702. Franklin incorporates herein its <i>Motion To</i> <i>Exclude Portions of Testimony of Val</i> <i>Toppenberg</i> .
20 4. The City has evaluated the leasehold value 21 of the Golf Course/Park Properties in order to 22 consider its options with regard to these 23 properties. The City initially retained two 24 appraisers, Kenneth Hopper of Real Property 25 Analysts and Kevin Ziegenmeyer of SeEVERS 26 Jordan Ziegenmeyer, to appraise the leasehold 27 interest of properties. While no appraisal was 28 ever completed, these appraisers, <u>during their                      conversations with me and other                      representatives of the City, informed the City                      that the golf course and park leases – subject as                      they are to both the terms of the leases and to                      various use restrictions, and in light of the fact                      that the leases of the park and golf courses                      have lost significant amounts of money solely                      on an operational basis (before debt service)                      every year for many years (and are projected</u>	Franklin objects to the underlined portions of this paragraph to the extent offered to prove the truth of the matters asserted, because they contain hearsay statements purportedly made by Kenneth Hopper and Kevin Ziegenmeyer. FED. R. EVID. 801, 802. Franklin further objects to the italicized portions of this paragraph because it consists of opinion testimony that is inadmissible given that Mr. Toppenberg’s knowledge, skill, experience, training and education do not render him qualified as an expert regarding the matters to which he is testifying. FED. R. EVID. 702. Franklin incorporates herein its <i>Motion To</i> <i>Exclude Portions of Testimony of Val</i> <i>Toppenberg</i> .

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>1 <u>to continue to lose money) – would likely result</u>                  2 <u>in a formal appraisal report showing that the</u>                  3 <u>leases have no value. As a result, the City and</u>                  4 <u>these appraisers mutually agreed that there was</u>                  no point to continuing with a full appraisal.</p>	
<p>5 5. Based on my personal experience with the                  6 City, my review of the historical operating                  7 information for the Golf Course/Park                  8 Properties, my review of documents discussing                  9 the issue of attempting to operate the Swenson                  10 and Van Buskirk golf courses at a profit,                  11 including the costs of deferred maintenance and                  12 capital improvements required, in view of the                  13 deferred maintenance and capital                  14 improvements required at Oak Park, the yearly                  subsidies that must be paid by the City to cover                  operational deficits run by the golf courses, my                  conversations with the City’s appraisers, and                  past, current, and projected economic                  conditions in the City, I believe that the                  prospect of ever operating the three properties                  at a profit are extremely remote and as a result,                  a lease of Oak Park, Swenson Golf Course and                  Van Buskirk Golf Course would have virtually                  no value to a third party.</p>	<p>Franklin objects to the statements in this                  paragraph because they consist of opinion                  testimony that is inadmissible given that Mr.                  Toppenberg’s knowledge, skill, experience,                  training and education do not render him                  qualified as an expert regarding the matters to                  which he is testifying. FED. R. EVID. 702.                  Franklin incorporates herein its <i>Motion To                  Exclude Portions of Testimony of Val                  Toppenberg</i>. To the extent Mr. Toppenberg                  offers the testimony in this paragraph in his                  capacity as a fact witness, Franklin objects to it                  because it is speculative, and lacks foundation.                  FED. R. EVID. 602. Franklin further objects                  to this paragraph because it contains improper                  opinion testimony that is not rationally based                  on Mr. Toppenberg’s perception and is not                  helpful to clearly understand his testimony or to                  determine a fact in issue. FED. R. EVID. 701.</p>
<p>15 14. <i>On pp. 46-47 of its brief, Franklin sets</i>                  16 <i>forth a chart purporting to characterize the</i>                  17 <i>distribution to various creditors. Many of these</i>                  18 <i>characterizations are incorrect or misleading. I</i>                  19 <i>can attest specifically that Franklin’s</i>                  20 <i>characterizations of the settlements with</i>                  21 <i>Assured and NCFG are based on flawed</i>                  22 <i>assumptions regarding the value of the</i>                  23 <i>property underlying each settlement.</i>                  24 <i>Franklin’s chart assumes certain values for the</i>                  25 <i>leased properties underlying the Assured and</i>                  26 <i>NCFG settlements. The property related to the</i>                  27 <i>Assured settlement is 400 E. Main, discussed</i>                  28 <i>above. The properties related to the NCFG</i>                  settlements include the Stewart/Eberhardt                  Building, an essential services building (as                  defined by Cal. Health &amp; Safety Code § 16007)                  that is home to several essential City                  operations, and the Stockton Arena, home to                  the Stockton Thunder and a variety of                  performing arts and other events. The City has                  not appraised any of these properties. This is in                  part because secured deals, like those with                  Assured and NCFG, don’t require appraisals.                  More importantly, it is because the City                  exercised its business judgment in determining                  that these assets were essential or could not be</p>	<p>Franklin objects to the statements in this                  paragraph because they consist of opinion                  testimony that is inadmissible given that Mr.                  Toppenberg’s knowledge, skill, experience,                  training and education do not render him                  qualified as an expert regarding the matters to                  which he is testifying. FED. R. EVID. 702.                  Franklin incorporates herein its <i>Motion To                  Exclude Portions of Testimony of Val                  Toppenberg</i>. Franklin further objects because                  this testimony misstates the arguments made in                  Franklin’s brief and is not the best evidence                  thereof. FED. R. EVID. 1002.</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>replaced. Finally, many of the properties related to the Assured and NCFG settlements are buildings designed for a specific purpose for which accurate typical market appraisals are impossible. How would one appraise the value to the City, for example, of a police communication building and fire stations, or of the Arena? These buildings are designed for specific purposes and would require extensive retrofitting to be used for any other purpose.</p>	
<p>15. The appraisal submitted by Franklin displays a clear lack of understanding of how cities value their assets. Because there are no comparable sales and no income to assess, the appraiser reverts to the cost approach. The value to the City is the inherent value of providing services to its citizens, while the general market value is what an informed buyer would pay for the property. Further, to assume a possessory value based on a lease is similar to a fee simple ownership is an inherently flawed assumption. Although the appraiser goes on to describe the challenges and associated risks, he continues to presume a perpetual possessory interest. The lease allows possession by the creditor only until they are repaid, then the property must be returned to the city in its current condition. Finally, the appraiser assumes that the city's interests would solely be based in supporting value maximizing changes in use displays a lack of appreciation for the political process of obtaining land use approvals.</p>	<p>Franklin objects to the entirety of this paragraph because it consists of opinion testimony, including legal conclusions, that is inadmissible given that Mr. Toppenberg's knowledge, skill, experience, training and education do not render him qualified as an expert regarding the matters to which he is testifying. FED. R. EVID. 702. Franklin incorporates herein its <i>Motion to Exclude Portions of Testimony of Val Toppenberg</i>. Franklin objects to the entirety of this paragraph because Mr. Toppenberg's testimony as to Franklin's brief or Franklin's expert's report is not the best evidence of those documents. FED. R. EVID. 1002.</p>

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*