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8	City of Stockton		
9	UNITED STATES BA	NKRUPTCY COURT	
10	EASTERN DISTRIC	T OF CALIFORNIA	
11	SACRAMENT	TO DIVISION	
12	In re:	Case No. 2012-32118	
13	CITY OF STOCKTON, CALIFORNIA,	D.C. No. OHS-15	
14	Debtor.	Chapter 9	
15		CITY OF STOCKTON'S RESPONSE TO FRANKLIN HIGH YIELD TAX-	
16		FREE INCOME FUND AND FRANKLIN CALIFORNIA HIGH	
17		YIELD MUNICIPAL FUND'S EVIDENTIARY OBJECTIONS TO	
18	DIRECT TESTIMONY DECLARATION OF ANN GOODRICH		
19		IN SUPPORT OF CONFIRMATION OF FIRST AMENDED PLAN FOR THE	
20		ADJUSTMENT OF DEBTS OF CITY OF STOCKTON CALIFORNIA	
21		(NOVEMBER 15, 2013)	
22	WELLS FARGO BANK, et al.	Adv. No. 2013-02315	
23	Plaintiffs, v.	Date: May 12, 2014	
24	CITY OF STOCKTON, CALIFORNIA,	Time: 9:30 a.m. Dept: Courtroom 35	
25	Defendant.	Judge: Hon. Christopher M. Klein	
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CITY OF STOCKTON'S RESPONSE TO FRANKLIN ET AL.'S OBJS. TO DIRECT TEST. DECL. OF ANN GOODRICH ISO FIRST AMENDED PLAN

Pursuant to paragraph 44 of the Order Governing The Disclosure And Use Of Discovery Information And Scheduling Dates, Etc. [Dkt. Nos. 1224 (Case), 16 (Proceeding)], as amended by the Order Modifying Order Governing The Disclosure And Use Of Discovery Information And Scheduling Dates, Etc. [Dkt. Nos. 1242 (Case), 18 (Proceeding)] (collectively, the "Orders"), the City of Stockton, California (the "City"), the debtor and defendant in the above-captioned case and adversary proceeding, hereby submits the following responses to Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal Fund's (collectively, "Franklin's") Evidentiary Objections to Direct Testimony Declaration of Ann Goodrich In Support Of Confirmation Of First Amended Plan For The Adjustment Of Debts Of City Of Stockton California (November 15, 2013) [Dkt. Nos. 1416 (Case), 105 (Proceeding)].

The City disagrees with all of Franklin's objections to Ms. Goodrich's declaration and submits that Franklin will have the opportunity to cross-examine Ms. Goodrich to address any alleged deficiencies in her declaration. However, to the extent the Court determines that any of Ms. Goodrich's statements in her declaration require clarification or additional foundational support, the City is prepared to provide live testimony at trial by Ms. Goodrich to clarify or lay any foundation the Court deems necessary.

The City's responses to Franklin's specific objections follow:

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
5. The SPOA MOU resolved the disputed issue of what claims SPOA members hold against the City. The SPOA asserted that its members have claims in the City's bankruptcy case relating to the City's modification of its 2009 MOU (pursuant to Declarations of Fiscal Emergency beginning on or about May 26, 2010 and continuing in effect thereafter) and in connection with the treatment of the SPOA and its members under the Pendency Plan. As	Franklin objects to the statements in this paragraph because Ms. Goodrich's description of the MOU is not the best evidence of that document. FED. R. EVID. 1002. Franklin further objects to the underlined statements in this paragraph because they lack foundation. FED. R. EVID. 602.	The statements in this paragraph do not violate FED. R. EVID. 1002 because they are not secondary evidence being offered to prove the content of a writing. See United States v. Mayans, 17 F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial court erred in sustaining best evidence objections to questions regarding witnesses' understanding of the terms of a written plea agreement). Even if they were, the document on which Ms. Goodrich's testimony is based

1 2	PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
3	discussed on page 55 of Exhibit A, SPOA alleges that		is attached as exhibit to her declaration, and Franklin has
4	these claims total more than \$13 million. The City disputes these claims, and asserts that,		not raised a genuine issue as to the authenticity of that document.
5	if the claims were allowed, they would be allowed in an		The underlined statements do
6	amount less than \$13 million. In consideration of resolving		not lack foundation under FED R. EVID. 602 because
7	their disagreement regarding this issue, the City, pursuant		they are based upon Ms. Goodrich's knowledge and experience as a consultant and
8	to the MOU, agreed that these claims will be deemed		labor relations project manager retained by the City
9	allowed in the bankruptcy case in the aggregate amount		since January 9, 2011, in which such capacity as the
10	of \$8.5 million and will credit 22 additional hours of paid leave in fiscal year ("FY")		City's labor relations project manager, she coordinates the
12	2012-13 to SPOA members who were employed during		City's labor negotiations with all of its employee groups and
13	FY 2010-2011 and/or 2011- 2012 and who were currently		prepares recommendations for the City regarding its
14	employed at the time of ratification of the MOU. The		negotiations, as described more fully in her declaration. To the extent necessary, the
15	MOU further deems that the claims of SPOA members		City will make an offer of proof at trial.
16	shall be satisfied under the Plan by crediting SPOA		proof at triain
17	members employed during FY 2010-2011 and/or FY		
18	2011-2012 11 additional paid leave hours in the fiscal year of approval of the Plan and 11		
19	additional paid leave hours in the fiscal year after approval		
20	of the Plan. This benefit shall only apply to those employees		
21	who were employed during some portion of the period		
22	July 1, 2010 and July 1, 2012 and who are current		
23	employees as of the date the Plan is approved by the		
24	Bankruptcy Court. Additionally, SPOA gave up		
25	all future retiree medical benefits for no additional		
26	compensation in bankruptcy.		
27	6. Thus, the MOU provides each eligible SPOA	Franklin objects to the statements in this paragraph	The statements in this paragraph do not violate FED.
28	provides each engible of OA	satements in this paragraph	paragraph do not violate PED.

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
member with 44 hours of	because Ms. Goodrich's	R. EVID. 1002 because they
additional paid leave time	description of the MOU is not the best evidence of that	are not secondary evidence
through FY 2014-15. The additional paid leave hours	document. FED. R. EVID.	being offered to prove the content of a writing. See
have no cash value and are	1002.	United States v. Mayans, 17
lost if not used during		F.3d 1174, 1184-85 (9th Cir.
employment. Pursuant to the MOU, the provision of these		1994) (holding that the trial court erred in sustaining best
hours shall be the sole		evidence objections to
compensation for the claims		questions regarding witnesses'
of SPOA and its members.		understanding of the terms of
The additional 22 hours additional paid leave credit in		a written plea agreement). Even if they were, the
the fiscal year of approval of		document on which Ms.
the Plan and the following		Goodrich's testimony is based
fiscal year are contingent		is attached as exhibit to her
upon confirmation of the Plan and on the Plan becoming		declaration, and Franklin has not raised a genuine issue as
effective. The City will honor		to the authenticity of that
the SPOA Claims held by		document.
SPOA members on the terms		
and conditions set forth in the SPOA MOU.		
or oa woo.		
. During the better	Franklin objects to the	The underlined statements are
economic times of the 1990s	underlined statements in this	valid lay opinion testimony
and 2000s, the City approved labor contracts that greatly	paragraph because they offer improper opinion testimony	under FED. R. EVID. 701 because they are rationally
expanded its retiree health	that is not rationally based on	based on Ms. Goodrich's
insurance commitments by	Ms. Goodrich's perception	perception, helpful to clearly
promising lifetime retiree	and not helpful to clearly	understanding her testimony
health benefits for a City retiree and one dependent	understand Ms. Goodrich's testimony or to determine a	and helpful to determining at least one fact in issue. The
without imposing any	fact in issue. FED. R.	underlined statements are also
minimum service	EVID. 701. Franklin further	based on Ms. Goodrich's
requirements. As Teresia Zadroga-Haase testified in her	objects to the statements in this paragraph because Ms.	knowledge and experience as a consultant and labor
first declaration in support of	Goodrich's description of	relations project manager
the City's eligibility for	Segal's analyses are not the	retained by the City since
bankruptcy relief [Dkt. No.	best evidence of those	January 9, 2011, in which
21], the retiree health benefits	documents. FED. R. EVID. 1002.	such capacity as the City's
promised in these agreements were generally uncapped. The	1002.	labor relations project manager, she coordinates the
total cost to the City of these		City's labor negotiations with
benefits for the approximately		all of its employee groups and
1100 retirees receiving		prepares recommendations for
benefits on July 1, 2012, over the course of their lifetime,		the City regarding its negotiations.
were estimated by the Segal		
Company ("Segal"), outside		The statements in this paragraph do not violate FED.
licensed actuaries and		R. EVID. 1002 because they
consultants to the City, to be		<u> </u>

1 2	PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
3	approximately \$545.9 million as of the date of the filing of		are not secondary evidence being offered to prove the
4	the Plan. See City's Amended		content of a writing. See
	List Of Creditors And Claims Pursuant To §§ 924 And 925		<i>United States v. Mayans</i> , 17 F.3d 1174, 1184-85 (9th Cir.
5	(Retiree Health Benefit Claims) [Dkt. No. 1150], p.		1994) (holding that the trial court erred in sustaining best
6	28. The Segal Company are licensed actuaries qualified to		evidence objections to questions regarding witnesses'
7	calculate medical claims and post-employment benefits and		understanding of the terms of a written plea agreement).
8	are a national firm with		Even if they were, the City
9	considerable experience in these type of calculations. The		has produced to Franklin all of the documents on which
10	methods used by Segal in calculating these claims were		Ms. Goodrich's testimony is based, and Franklin has not
11	within generally accepted standards used by licensed		raised a genuine issue as to the authenticity of any of
	actuaries in the United States		these documents.
12	and involved an internal peer review process.		
13	10. The City and the	Franklin objects to the	The underlined statements are
14	Retirees Committee subsequently entered into	underlined statements in this paragraph because they are	sufficiently clear and are neither speculative nor lack
15	extensive mediations refereed	vague, speculative, and lack	foundation under FED. R.
16	by Judge Perris. Judge Perris' mediation proved successful,	foundation. FED. R. EVID. 602. Franklin further objects	EVID. 602 because they are based on Ms. Goodrich's
17	and the City and the Committee entered into a	to the statements in this paragraph because they	knowledge and experience as a consultant and labor
18	settlement resolving the Retiree Health Benefit	contain improper opinion testimony that is not rationally	relations project manager retained by the City since
19	Claims. The Retirees	based on Ms. Goodrich's	January 9, 2011, in which
	Committee and their counsel reviewed the methods used by	perception and not helpful to clearly understand Ms.	such capacity as the City's labor relations project
20	the Segal Company in calculation of the claims.	Goodrich's testimony or to understand a fact in issue.	manager, she coordinates the City's labor negotiations with
21	Under the settlement, the City will pay the Retiree Health	FED. R. EVID. 701.	all of its employee groups and prepares recommendations for
22	Benefit Claimants \$5.1		the City regarding its
23	million in full satisfaction of the Retiree Health Benefit		negotiations, as described more fully in her declaration.
24	Claims. This \$5.1 million will be divided among the retirees,		To the extent necessary, the City will make an offer of
25	with some receiving a payment of approximately		proof at trial.
26	\$460 dollars and retirees with		The statements are valid lay opinion testimony under FED.
	the highest claims receiving approximately \$14,000. These		R. EVID. 701 because they are rationally based on Ms.
27	are small amounts compared to the lifetime benefits for a		Goodrich's perception,
28	fully paid medical plan for a		helpful to clearly

1 2	PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
3 4 5 6 7 8 9	retiree and one dependent. At the low end, the settlement payment would purchase approximately 1-3 months of a Medicare supplement plan for an elderly retiree and at the high end would purchase an under age 65 retiree with a spouse approximately 7-9 months of medical insurance. Approximately 30% of retirees are over age 65, while 70% are under. The terms of the City's settlement with the Committee are incorporated into the Plan.		understanding her testimony and helpful to determining at least one fact in issue. The statements are also based on Ms. Goodrich's knowledge and experience as described above. To the extent necessary, the City will make an offer of proof at trial.
11	11. In the Expert Report Of Charles M. Moore (the	Franklin objects to the statements in this paragraph	The statements in this paragraph do not violate FED.
12 13	"Moore Report"), Franklin's expert disputes the calculation of the retiree health benefit	because Ms. Goodrich's description of the Moore	R. EVID. 1002 because they are not secondary evidence
14	claims. See Moore Report, at 15-18. Moore, who appears to	Report is not the best evidence of that document. FED. R. EVID. 1002.	being offered to prove the content of a writing. See United States v. Mayans, 17
15	be an accountant with no local government experience and	Franklin further objects to the statements in this paragraph	F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial
16	who is not a licensed actuary, criticizes the method used by	because they assume facts not in evidence and misstate the	court erred in sustaining best evidence objections to
17	the Segal Company's licensed actuaries of using 3 years of	opinions of Mr. Moore. Franklin further objects to the	questions regarding witnesses' understanding of the terms of
18	claims to establish a base of medical claims in order to	underlined statements in this paragraph because they contain improper opinion	a written plea agreement). Even if they were, Franklin is in possession of the Moore
19	calculate the projection of future lifetime medical claims for the 1,100 retirees and their	testimony that is not rationally based on Ms. Goodrich's	
20	dependents. While Moore challenges this method, he	perception and not helpful to clearly understand Ms.	The statements do not assume
21	does not indicate what alternative method should	Goodrich's testimony or to determine a fact in issue.	facts not in evidence, and Franklin has not identified
22	have been used and does not provide any documentation	FED. R. EVID. 701; see also Britz Fertilizers, Inc. v. Bayer	what facts it alleges the statements assume. Further,
23	that this method violates any standards used by licensed	<i>Corp.</i> , 2009 U.S. Dist. LEXIS 57947, at *8-9 (E.D. Cal. June	the statements do not misstate the opinions of Mr. Moore.
24	actuaries in the calculation of future medical claims and	17, 2009) (fact witness not permitted to offer opinions to	The underlined statements are valid lay opinion testimony
25	post-employment benefit projections.	rebut expert's methodology).	under FED. R. EVID. 701 because they are rationally
26			based on Ms. Goodrich's perception, helpful to clearly
27			understanding her testimony and helpful to determining at
28		CITY OF S	least one fact in issue. The

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2	PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
3			statements are also based on Ms. Goodrich's knowledge
4			and experience as a consultant and labor relations project
			manager retained by the City
5			since January 9, 2011, in which such capacity as the
6			City's labor relations project manager, she coordinates the
7			City's labor negotiations with
8			all of its employee groups and prepares recommendations for
9			the City regarding its negotiations. To the extent
10			necessary, the City will make
			an offer of proof at trial. <i>Cf. Int'l Ass'n of Firefighters,</i>
11			Local 1186 v. City of Vallejo, 48 B.R. 208, 292-93 (B.A.P.
12			9th Cir. 2009) (upholding the
13			bankruptcy court's admission of the testimony of the City of
14			Vallejo's Assistant Finance Director regarding Vallejo's
15			financial conditions and
			constraints even though the testimony "arguably contained
16			legal conclusions" because the testimony pertained to the
17			"complex[]" area of municipal
18			accounting and promoted "judicial efficiency") (citing
19			FRE 701).
			Furthermore, expert testimony may be rebutted by the
20			testimony of lay witnesses.
21			United States v. Shackelford, 494 F.2d 67, 68, 75 (9th Cir.
22			1974) (holding that the government could rely
23			entirely on lay witnesses with
24			percipient knowledge to rebut the defendant's expert);
			United States v. Bennett, 908 F.2d 189, 195 (7th Cir. 1990)
25			(government was not required
26			to rebut expert testimony with its own expert because "it
27			may accomplish the same result by presenting lay
28			witnesses and other evidence

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$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
3			and by undermining the defense expert's credibility
4			through cross-examination."); <i>United States v. Mota</i> , 598 F.2d 995, 999 (5th Cir. 1979)
5			(jury may find expert testimony "adequately
6 7			rebutted by the observations of mere laymen"); <i>Carpenter</i> v. <i>United States</i> , 264 F.2d 565
8			(4th Cir. 1959); <i>Dusky v.</i> <i>United States</i> , 295 F.2d 743
9			(8th Cir. 1961).
10	12. Moore acknowledges that the City and Segal took into account that when a	Franklin objects to the statements in this paragraph because Ms. Goodrich's	The statements in this paragraph do not violate FED. R. EVID. 1002 because they
11	retiree turns age 65, the	description of the Moore Report is not the best	are not secondary evidence
12	federal Medicare program becomes the primary	evidence of that document.	being offered to prove the content of a writing. See
13	insurance for the retiree and the City medical plan becomes the secondary payor	FED. R. EVID. 1002. Franklin further objects to the underlined statements in this	United States v. Mayans, 17 F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial
14	of medical claims. This	paragraph because they	court erred in sustaining best
15	reduces the dollar amount of claims the City would have paid for the retiree and their	contain improper opinion testimony that is not rationally based on Ms. Goodrich's	evidence objections to questions regarding witnesses' understanding of the terms of
16	dependent from age 65 until the death of the retiree. Moore	perception and not helpful to	a written plea agreement).
17	does not note, however, that Segal also took into account	clearly understand Ms. Goodrich's testimony or to determine a fact in issue.	Even if they were, Franklin is in possession of the Moore
18	plan deductibles and copays	FED. R. EVID. 701; see also	Report, which it filed with the Court.
19	in the calculation of paid claims. Moore also ignores that, since the City's under 65	Britz Fertilizers, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to	The underlined statements are valid lay opinion testimony
20	retiree medical benefit is limited by union collective	offer opinions to rebut expert's methodology).	under FED. R. EVID. 701 because they are rationally
21	bargaining agreements to 15	Franklin further objects to the	based on Ms. Goodrich's perception, helpful to clearly
22	years (and lifetime once the retiree reaches age 65),	statements in this paragraph because they assume facts not	understanding her testimony and helpful to determining at
23	projections for young retirees who would have exhausted	in evidence and misstate the opinions of Mr. Moore.	least one fact in issue. The statements are also based on
24	their 15 years of benefits prior to age 65 were reduced as		Ms. Goodrich's knowledge and experience as a consultant
25	well to reflect that they would not have earned benefits for		and labor relations project manager retained by the City
26	those years.		since January 9, 2011, in
27			which such capacity as the City's labor relations project
28			manager, she coordinates the City's labor negotiations with

1	PARAGRAPH OBJECTED	GROUNDS FOR	RESPONSE TO
2	ТО	OBJECTION	OBJECTION
3			all of its employee groups and prepares recommendations for the City regarding its
4			negotiations. To the extent
5			necessary, the City will make an offer of proof at trial. <i>Cf.</i> <i>Int'l Ass'n of Firefighters</i> ,
6			Local 1186 v. City of Vallejo,
7			48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy court's admission
8			of the testimony of the City of
9			Vallejo's Assistant Finance Director regarding Vallejo's
10			financial conditions and constraints even though the testimony "arguably contained
11			legal conclusions" because the
12			testimony pertained to the "complex[]" area of municipal
13			accounting and promoted "judicial efficiency") (citing FRE 701).
14			Furthermore, expert testimony
15			may be rebutted by the testimony of lay witnesses.
16			United States v. Shackelford, 494 F.2d 67, 68, 75 (9th Cir.
17			1974) (holding that the government could rely
18			entirely on lay witnesses with percipient knowledge to rebut
19			the defendant's expert);
20			United States v. Bennett, 908 F.2d 189, 195 (7th Cir. 1990)
21			(government was not required to rebut expert testimony with
22			its own expert because "it may accomplish the same
23			result by presenting lay witnesses and other evidence
			and by undermining the defense expert's credibility
24			through cross-examination."); United States v. Mota, 598
25			F.2d 995, 999 (5th Cir. 1979)
26			(jury may find expert testimony "adequately
27			rebutted by the observations of mere laymen"); Carpenter
28			v. United States, 264 F.2d 565

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
		(4th Cir. 1959); Dusky v. United States, 295 F.2d 743 (8th Cir. 1961).
		The statements do not assume facts not in evidence, and Franklin has not identified what facts it alleges the statements assume. Further, the statements do not misstate the opinions of Mr. Moore.
13. Moore states that the City and Segal did not take	Franklin objects to the statements in this document	The statements in this paragraph do not violate FED.
nto account how the Affordable Care Act (ACA) Should have mitigated the	because Ms. Goodrich's description of the Moore Report is not the best	R. EVID. 1002 because they are not secondary evidence being offered to prove the
claim amounts. However, Moore does not explain how	evidence of that document. FED. R. EVID. 1002.	content of a writing. See United States v. Mayans, 17
the ACA would have reduced the medical claims the City	Franklin further objects to the statements in this paragraph	F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial
would have otherwise been obligated to pay over the	because they assume facts not in evidence and misstate the	court erred in sustaining best evidence objections to
lifetime of the retiree, and the City is not aware of any such	opinions of Mr. Moore. Franklin further objects to the	questions regarding witnesses' understanding of the terms of
effect. The ACA does not apply to persons who qualify	underlined statements in this paragraph because they	a written plea agreement). Even if they were, Franklin is
for Medicare, and thus is only available to persons under the	contain improper opinion testimony that is not rationally	in possession of the Moore Report, which it filed with the
age of 65. And there is no savings to the City for	based on Ms. Goodrich's perception and not helpful to	Court. The statements do not assume
<u>claimants under 65, because</u> while the ACA requires	clearly understand Ms. Goodrich's testimony or to	facts not in evidence, and Franklin has not identified
individuals to purchase insurance either through the	determine a fact in issue. FED. R. EVID. 701; see also	what facts it alleges the statements assume. Further,
private insurance market, through employer plans or	Britz Fertilizers, 2009 U.S. Dist. LEXIS 57947, at *8-9	the statements do not misstate the opinions of Mr. Moore.
through the federal or state insurance exchanges, this	(fact witness not permitted to offer opinions to rebut	The underlined statements are
does not obviate the City's previous promise to pay the	expert's methodology). Franklin further objects to the	valid lay opinion testimony under FED. R. EVID. 701
full cost of a premium for insurance for the retiree and	italicized statements in this paragraph because they are	because they are rationally based on Ms. Goodrich's
their one dependent for life. If a person buys insurance	inadmissible legal conclusions. FED. R. EVID.	perception, helpful to clearly understanding her testimony
through the federal and state exchanges, they may qualify	701.	and helpful to determining at least one fact in issue. The
depending on their income for a federal subsidy, but this		statements are also based on Ms. Goodrich's knowledge
would not have reduced the costs of the retiree enrolled in		and experience as a consultant and labor relations project
the City plan, since a person		manager retained by the City

1	PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
2	cannot be enrolled in both an	0202011011	since January 9, 2011, in
3	employer plan and a plan		which such capacity as the
4	from the exchange. Again, Moore does not explain how		City's labor relations project manager, she coordinates the
	the ACA would reduce the		City's labor negotiations with
5	claims costs that the City would otherwise have paid for		all of its employee groups and prepares recommendations for
6	the lifetime of the retiree and their dependent if the retiree		the City regarding its negotiations. <i>Cf. Int'l Ass'n</i>
7	medical program had not been eliminated.		of Firefighters, Local 1186 v. City of Vallejo, 48 B.R. 208,
8	<u>criminated.</u>		292-93 (B.A.P. 9th Cir. 2009)
9			(upholding the bankruptcy court's admission of the
10			testimony of the City of Vallejo's Assistant Finance
11			Director regarding Vallejo's financial conditions and
12			constraints even though the testimony "arguably contained
13			legal conclusions" because the testimony pertained to the
14			"complex[j" area of municipal accounting and promoted
15			"judicial efficiency") (citing FRE 701).
16			Furthermore, expert testimony may be rebutted by the
17			testimony of lay witnesses. United States v. Shackelford,
18			494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the
19			government could rely
20			entirely on lay witnesses with percipient knowledge to rebut
21			the defendant's expert); United States v. Bennett, 908
22			F.2d 189, 195 (7th Cir. 1990) (government was not required
23			to rebut expert testimony with its own expert because "it
			may accomplish the same result by presenting lay
24			witnesses and other evidence
25			and by undermining the defense expert's credibility
26			through cross-examination."); United States v. Mota, 598
27			F.2d 995, 999 (5th Cir. 1979) (jury may find expert
28			testimony "adequately

P	ARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
			rebutted by the observations of mere laymen"); Carpenter v. United States, 264 F.2d 565 (4th Cir. 1959); Dusky v. United States, 295 F.2d 743 (8th Cir. 1961).
			The italicized statements are not inadmissible legal
			conclusions under FED. R. EVID. 701 because they are based upon Ms. Goodrich's
			knowledge and experience as described above. <i>See Int'l</i>
			Ass'n of Firefighters, Local 1186, 48 B.R. at 292-93.
14 the	. Moore complains that e retiree medical benefits	Franklin objects to the statements in this paragraph	The statements in this paragraph do not violate FED.
the <u>Th</u>	e City provided were high. ne City has acknowledged	because Ms. Goodrich's description of the Moore	R. EVID. 1002 because they are not secondary evidence
	is itself, but those were the enefits the City committed	Report is not the best evidence of that document.	being offered to prove the content of a writing. See
av	. Moore complains that the erage claim for retiree	FED. R. EVID. 1002. Franklin further objects to the	United States v. Mayans, 17 F.3d 1174, 1184-85 (9th Cir.
\$5	salth benefits is around 600,000 over the retiree's	underlined statements in this paragraph because they	1994) (holding that the trial court erred in sustaining best
us	etime (for the retiree and ually the retiree's spouse), at this number should not be	contain improper opinion testimony that is not rationally based on Ms. Goodrich's	evidence objections to questions regarding witnesses' understanding of the terms of
su	rprising. As a former uman Resource Director, I	perception and not helpful to clearly understand Ms.	a written plea agreement). Even if they were, Franklin is
m	anaged health plans for ost of my career and am	Goodrich's testimony or to determine a fact in issue.	in possession of the Moore Report, which it filed with the
en	miliar with public employer, nployee and retiree medical	FED. R. EVID. 701; see also Britz Fertilizers, 2009 U.S.	Court. The underlined statements are
me	ans and their costs. Moore, eanwhile, seems unaware of	Dist. LEXIS 57947, at *8-9 (fact witness not permitted to	valid lay opinion testimony under FED. R. EVID. 701
ins	e high cost of medical surance in general, and in	offer opinions to rebut expert's methodology).	because they are rationally based on Ms. Goodrich's
fo	alifornia and in particular, r older persons and of the apact of inflation on medical	Franklin further objects to the statements in this paragraph because they assume facts not	perception, helpful to clearly understanding her testimony
cla	aims costs that in some ses are being projected as	in evidence and misstate the opinions of Mr. Moore.	and helpful to determining at least one fact in issue. The
m	uch as 60 years into the ture. Despite complaining	opinions of inf. intolic.	statements are also based on Ms. Goodrich's knowledge
ab	out the size of these imbers, Moore provides no		and experience as a consultant and labor relations project
ev	idence that the calculations the city's licensed		manager retained by the City since January 9, 2011, in
	tuaries, based on the actual		which such capacity as the City's labor relations project

1 2	PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
3	plan benefits, actual ages of the 1,100 retirees, generally		manager, she coordinates the City's labor negotiations with
4	accepted medical inflation projections and past actual		all of its employee groups and prepares recommendations for
5	claims costs, are in error.		the City regarding its
6			negotiations. Cf. Int'l Ass'n of Firefighters, Local 1186 v. City of Vallejo, 48 B.R. 208,
7			292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy court's admission of the
8			testimony of the City of
9			Vallejo's Assistant Finance Director regarding Vallejo's
10			financial conditions and constraints even though the testimony "arguably contained
11			legal conclusions" because the testimony pertained to the
12 13			"complex[]" area of municipal accounting and promoted "judicial efficiency") (citing
14			FRE 701).
15			The statements do not assume facts not in evidence, and Franklin has not identified
16			what facts it alleges the statements assume. Further, the statements do not misstate
17			the opinions of Mr. Moore.
18	15. In his exhibit 12, Moore	Franklin objects to the	The statements in this
19	lists 12 cities similar in size to Stockton with their current	statements in this paragraph because Ms. Goodrich's	paragraph do not violate FED. R. EVID. 1002 because they
20	and projected CalPERS rates for safety and miscellaneous	description of the Moore Report is not the best	are not secondary evidence being offered to prove the
21	employees that he gathered from published CalPERS	evidence of that document. FED. R. EVID. 1002.	content of a writing. See United States v. Mayans, 17
22	rates. Based on this table, Moore opines that Stockton's	Franklin further objects to the underlined statements in this	F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial
23	costs for postemployment benefits are high compared to	paragraph because they contain improper opinion	court erred in sustaining best evidence objections to
24	the average of the 12 listed cities and states in his expert	testimony that is not rationally based on Ms. Goodrich's	questions regarding witnesses' understanding of the terms of
25	opinion that Stockton's costs are "unsustainable." See	perception and not helpful to clearly understand Ms.	a written plea agreement). Even if they were, Franklin is
26	Moore Report, at 18-21. However, this comparison	Goodrich's testimony or to determine a fact in issue.	in possession of the Moore Report, which it filed with the
27	fails to account for the ways in which numerous	FED. R. EVID. 701; see also Britz Fertilizers, 2009 U.S.	Court.
28	differences in compensation	Dist. LEXIS 57947, at *8-9	The underlined statements are valid lay opinion testimony
			TOCUTON'S DESDONSE TO EDANIZI IN ET

	PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
	and benefit practices in	(fact witness not permitted to	under FED. R. EVID. 701
	different cities impact each	offer opinions to rebut	because they are rationally
	city's expenditures. Despite	expert's methodology).	based on Ms. Goodrich's
	stating that he is an expert in	Franklin further objects to the	perception, helpful to clearly
	OPEB matters and employee	statements in this paragraph	understanding her testimony
	benefits, Moore fails to take into account that a city's	because they assume facts not in evidence and misstate the	and helpful to determining at least one fact in issue. The
	CalPERS costs are only a	opinions of Mr. Moore.	statements are also based on
	portion of their total costs and	opinions of ivii. Whoore.	Ms. Goodrich's knowledge
	obligations for post-		and experience as a consultant
	employment compensation.		and labor relations project
	To get a truly accurate		manager retained by the City
	comparison, one would need		since January 9, 2011, in
	to also consider the following		which such capacity as the
	items in order to get an accurate comparison of cost		City's labor relations project manager, she coordinates the
	"sustainability" for Stockton		City's labor negotiations with
	compared to Moore's other		all of its employee groups and
	cities:		prepares recommendations for
	• Each City's Social		the City regarding its
	Security Costs. While		negotiations. Cf. Int'l Ass'n
	Stockton does not		of Firefighters, Local 1186 v.
	participate in Social		City of Vallejo, 48 B.R. 208,
	Security, several of the		292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy
	12 listed cities do. In		court's admission of the
	addition to the		testimony of the City of
	<u>CalPERS expenditures</u> listed by Moore, these		Vallejo's Assistant Finance
	cities are also		Director regarding Vallejo's
	obligated to pay		financial conditions and
	another 6.2% as the		constraints even though the testimony "arguably contained
	<u>legally required</u>		legal conclusions" because the
	employer's share of		testimony pertained to the
	Social Security. For example, the cities of		"complex[]" area of municipal
	Long Beach and		accounting and promoted
	Sacramento are in		"judicial efficiency") (citing
	Social Security and		FRE 701).
	pay an additional 6.2%		Furthermore, expert testimony
	for their employees in		may be rebutted by the
	addition to the		testimony of lay witnesses.
	CalPERS rates		United States v. Shackelford,
	identified by Moore.		494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the
	• Each City's Paid		government could rely
	Employee's Member		entirely on lay witnesses with
	Contribution costs. In		percipient knowledge to rebut
	<u>addition to the</u> Employer CalPERS		the defendant's expert);
	Cost listed by Moore,		United States v. Bennett, 908
	there is also a		F.2d 189, 195 (7th Cir. 1990)
ı	CalPERS Employee		(government was not required

1			
2	PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
3	Cost set by law. The Employee Cost is 7-		to rebut expert testimony with its own expert because "it
4	8% for Miscellaneous employees and 9% for		may accomplish the same result by presenting lay
	Safety employees. It is		witnesses and other evidence
5 6	common practice for cities to pay some or all of the Employee		and by undermining the defense expert's credibility through cross-examination.");
7	Costs that would otherwise be paid by		United States v. Mota, 598 F.2d 995, 999 (5th Cir. 1979)
8	their employees, in addition to paying the		(jury may find expert testimony "adequately
9	Employer Cost. Stockton does not pay		rebutted by the observations of mere laymen"); Carpenter
10	for any of the employee's share.		v. United States, 264 F.2d 565 (4th Cir. 1959); Dusky v.
11	Most of the cities listed in Moore's		United States, 295 F.2d 743 (8th Cir. 1961).
12	table, on the other hand, pay some or all		The statements do not assume
13	of their employees' CalPERS member's		facts not in evidence, and Franklin has not identified what facts it alleges the
14	costs, a fact readily discovered by		statements assume. Further, the statements do not misstate
15	checking the collective bargaining agreements		the opinions of Mr. Moore.
16	on the websites of these 12 cities.		
17	Modesto, for example, pays 6.6% for		
18	Miscellaneous and 7.5% for Safety for the		
19	majority of its employees.		
20	 Some cities pay into employees' deferred 		
21	compensation programs in addition		
22	to CalPERS. Some agencies pay into		
23	deferred compensation programs (401k or		
24	401a plans) for their employees in addition		
25	to the CalPERS program. For example,		
26	Modesto pays 1-2% of Miscellaneous		
27	employees salary, and \$425-525 per month		
28	for Safety employees,		

1 2	PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
3	into post-employment deferred compensation		
4	accounts for their employees.		
5	• All of the 12 cities provide some type of		
6	retiree medical		
7	benefits to their retirees and		
8	employees in addition to CalPERS benefits. While		
9	Stockton has		
10	eliminated all of its retiree medical benefit		
11	costs, most if not all of the agencies Moore		
12	compares to Stockton have considerable		
13	annual costs for their existing retiree		
14	medical benefits. These annual		
15	payments are listed on each City's CAFR.		
16	• Some cities have Pension Obligation		
17	Bond debt payments in addition to their		
18	CalPERS costs. It is also a common		
19	practice for cities in California to have		
20	Pension Obligation Bonds they have		
21	incurred to pay down their CalPERS		
22	unfunded liability. Oakland, for example,		
23	has approximately \$18 million dollars a year		
24	in POB payments. This information is		
25	available on each city's CAFR.		
26		Emplify abiases to the	The statements in this
	16. The Moore Report fails to account for any of these	Franklin objects to the statements in this paragraph	The statements in this paragraph do not violate FED.
27 28	other factors in comparing Stockton with these other agencies. In so doing, it	because Ms. Goodrich's description of the Moore Report is not the best	R. EVID. 1002 because they are not secondary evidence being offered to prove the
			ontitue to prove me

CITY OF STOCKTON'S RESPONSE TO FRANKLIN ET
AL.'S OBJS. TO DIRECT TEST. DECL. OF ANN
GOODRICH ISO FIRST AMENDED PLAN

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1 2	PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
3	ignores each city's full obligations, and consequently	evidence of that document. FED. R. EVID. 1002.	content of a writing. See United States v. Mayans, 17
4	reaches the erroneous conclusion that Stockton's	Franklin further objects to the statements in this paragraph	F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial
5	costs are less sustainable than those for these other agencies.	because they contain improper opinion testimony that is not	court erred in sustaining best evidence objections to
6	those for these other agencies.	rationally based on Ms. Goodrich's perception and not	questions regarding witnesses' understanding of the terms of
7		helpful to clearly understand Ms. Goodrich's testimony or	a written plea agreement). Even if they were, Franklin is
8		to determine a fact in issue. FED. R. EVID. 701; see also	in possession of the Moore Report, which it filed with the
9		Britz Fertilizers, 2009 U.S. Dist. LEXIS 57947, at *8-9	Court. The statements are valid lay
10		(fact witness not permitted to offer opinions to rebut expert's methodology).	opinion testimony under FED. R. EVID. 701 because they
11		Franklin further objects to the statements in this paragraph	are rationally based on Ms. Goodrich's perception,
12		because they assume facts not	helpful to clearly understanding her testimony
13		in evidence and misstate the opinions of Mr. Moore.	and helpful to determining at least one fact in issue. The
14			statements are also based on Ms. Goodrich's knowledge
15			and experience as a consultant
16			and labor relations project manager retained by the City since January 9, 2011, in
17			which such capacity as the
18			City's labor relations project manager, she coordinates the
19			City's labor negotiations with all of its employee groups and
20			prepares recommendations for the City regarding its
21			negotiations. Cf. Int'l Ass'n of Firefighters, Local 1186 v.
22			<i>Čity of Vallejo</i> , 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009)
			(upholding the bankruptcy court's admission of the
23			testimony of the City of Vallejo's Assistant Finance
24			Director regarding Vallejo's
25			financial conditions and constraints even though the
26			testimony "arguably contained legal conclusions" because the
27			testimony pertained to the "complex[]" area of municipal
28			accounting and promoted

$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
3			"judicial efficiency") (citing FRE 701).
4 5			Furthermore, expert testimony may be rebutted by the testimony of lay witnesses.
6			United States v. Shackelford, 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the
7			government could rely entirely on lay witnesses with
8			percipient knowledge to rebut the defendant's expert);
9			United States v. Bennett, 908 F.2d 189, 195 (7th Cir. 1990)
10			(government was not required to rebut expert testimony with its own expert because "it
11			may accomplish the same result by presenting lay
12			witnesses and other evidence and by undermining the
14			defense expert's credibility through cross-examination.");
15			United States v. Mota, 598 F.2d 995, 999 (5th Cir. 1979) (jury may find expert
16			testimony "adequately rebutted by the observations
17			of mere laymen"); Carpenter v. United States, 264 F.2d 565 (4th Cir. 1959); Dusky v.
18 19			<i>United States</i> , 295 F.2d 743 (8th Cir. 1961).
20			The statements do not assume facts not in evidence, and
21			Franklin has not identified what facts it alleges the
22			statements assume. Further, the statements do not misstate the opinions of Mr. Moore.
23	17. Moore also disputes the	Franklin objects to the	The statements in this
24	City's statements as to the reduction in pension benefits	statements in this paragraph because Ms. Goodrich's	paragraph do not violate FED. R. EVID. 1002 because they
25	that will result from the new pension tiers implemented by	description of the Moore Report is not the best	are not secondary evidence being offered to prove the
26	the City (including new state PEPRA tiers), but does not	evidence of that document. FED. R. EVID. 1002.	content of a writing. See United States v. Mayans, 17
27 28	provide his own calculation or data. <u>CalPERS</u> , in a pair of reports published in April	Franklin further objects to the underlined statements in this paragraph because they	F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial court erred in sustaining best

CITY OF STOCKTON'S RESPONSE TO FRANKLIN ET AL.'S OBJS. TO DIRECT TEST. DECL. OF ANN GOODRICH ISO FIRST AMENDED PLAN

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
2014, a true and correct copy	contain improper opinion	evidence objections to
of which is attached hereto as Exhibit B , supports the City's	testimony that is not rationally based on Ms. Goodrich's	questions regarding witnesses' understanding of the terms of
calculations as to the impact	perception and not helpful to	a written plea agreement).
of the new pension tiers. In fact, the City's pension	clearly understand Ms. Goodrich's testimony or to	Even if they were, Franklin is in possession of the Moore
reductions exceed state- mandated changes and will	determine a fact in issue. FED. R. EVID. 701; see also	Report, which it filed with the Court.
result in a greater pension reduction for persons hired	Britz Fertilizers, 2009 U.S. Dist. LEXIS 57947, at *8-9	The underlined statements are valid lay opinion testimony
after January 1, 2013.	(fact witness not permitted to offer opinions to rebut	under FED. R. EVID. 701
	expert's methodology). Franklin further objects to the statements in this paragraph	because they are rationally based on Ms. Goodrich's perception, helpful to clearly
	because they assume facts not in evidence and misstate the	understanding her testimony and helpful to determining at
	opinions of Mr. Moore.	least one fact in issue. The statements are also based on
		Ms. Goodrich's knowledge
		and experience as a consultant and labor relations project
		manager retained by the City
		since January 9, 2011, in which such capacity as the
		City's labor relations project
		manager, she coordinates the City's labor negotiations with
		all of its employee groups and
		prepares recommendations for the City regarding its
		negotiations. Cf. Int'l Ass'n
		of Firefighters, Local 1186 v. City of Vallejo, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009)
		(upholding the bankruptcy
		court's admission of the testimony of the City of
		Vallejo's Assistant Finance
		Director regarding Vallejo's financial conditions and
		constraints even though the
		testimony "arguably contained
		legal conclusions" because the testimony pertained to the
		"complex[]" area of municipal accounting and promoted
		"judicial efficiency") (citing FRE 701).
		Furthermore, expert testimony
		may be rebutted by the testimony of lay witnesses.

PARAGRAPH (DBJECTED	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
			United States v. Shackelford,
			494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the
			government could rely
			entirely on lay witnesses with percipient knowledge to rebut
			the defendant's expert); United States v. Bennett, 908
			F.2d 189, 195 (7th Cir. 1990)
			(government was not required to rebut expert testimony with
			its own expert because "it
			may accomplish the same
			result by presenting lay witnesses and other evidence
			and by undermining the defense expert's credibility
			through cross-examination.");
			<i>United States v. Mota</i> , 598 F.2d 995, 999 (5th Cir. 1979)
			(jury may find expert
			testimony "adequately
			rebutted by the observations of mere laymen"); Carpenter
			v. United States, 264 F.2d 565
			(4th Cir. 1959); Dusky v. United States, 295 F.2d 743
			(8th Cir. 1961).
			The statements do not assume
			facts not in evidence, and Franklin has not identified
			what facts it alleges the
			statements assume. Further, the statements do not misstate
			the opinions of Mr. Moore.
18. Based on the described above, I		Franklin objects to the statements in this paragraph	The statements in this paragraph are valid lay
conclusions as to	the City's	because they contain improper	opinion testimony under FED.
calculation of reti- benefits and the re	elative size	opinion testimony that is not rationally based on Ms.	R. EVID. 701 because they are rationally based on Ms.
of the City's post- employment bene		Goodrich's perception and not helpful to clearly understand	Goodrich's perception, helpful to clearly
flawed, and without		Ms. Goodrich's testimony or	understanding her testimony
		to determine a fact in issue. FED. R. EVID. 701; see also	and helpful to determining at least one fact in issue. The
		Britz Fertilizers, 2009 U.S.	statements are also based on
		Dist. LEXIS 57947, at *8-9 (fact witness not permitted to	Ms. Goodrich's knowledge and experience as a consultant
		offer opinions to rebut	and labor relations project
		expert's methodology).	manager retained by the City

1	DADACDADH OBJECTED	CDOLINDS FOR	DECDONGE TO
2	PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
3			since January 9, 2011, in which such capacity as the
			City's labor relations project
4			manager, she coordinates the City's labor negotiations with
5			all of its employee groups and
6			prepares recommendations for the City regarding its
7			negotiations. Cf. Int'l Ass'n of Firefighters, Local 1186 v.
8			City of Vallejo, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009)
9			(upholding the bankruptcy
9			court's admission of the testimony of the City of
10			Vallejo's Assistant Finance
11			Director regarding Vallejo's financial conditions and
12			constraints even though the
			testimony "arguably contained legal conclusions" because the
13			testimony pertained to the
14			"complex[]" area of municipal accounting and promoted
15			"judicial efficiency") (citing FRE 701).
16			Furthermore, expert testimony
17			may be rebutted by the testimony of lay witnesses.
18			United States v. Shackelford, 494 F.2d 67, 68, 75 (9th Cir.
			1974) (holding that the government could rely
19			entirely on lay witnesses with
20			percipient knowledge to rebut the defendant's expert);
21			United States v. Bennett, 908 F.2d 189, 195 (7th Cir. 1990)
22			(government was not required
			to rebut expert testimony with its own expert because "it
23			may accomplish the same
24			result by presenting lay witnesses and other evidence
25			and by undermining the
			defense expert's credibility
26			through cross-examination."); United States v. Mota, 598
27			F.2d 995, 999 (5th Cir. 1979)
28			(jury may find expert testimony "adequately
20			

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
		rebutted by the observations of mere laymen"); <i>Carpenter v. United States</i> , 264 F.2d 565 (4th Cir. 1959); <i>Dusky v.</i>
		United States, 295 F.2d 743 (8th Cir. 1961).
Dated: May 6, 2014	MARC A. LEV	
	NORMAN C. F PATRICK B. B	OCASH
	Ornek, Herring	ton & Sutcliffe LLP
	Ву:	/s/ Patrick B. Bocash
		ATRICK B. BOCASH Attorneys for Debtor
		City of Stockton