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

7 Attorneys for Debtor
 City of Stockton
 8

9 UNITED STATES BANKRUPTCY COURT
 10 EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION

12 In re:
 13 CITY OF STOCKTON, CALIFORNIA,
 14 Debtor.

Case No. 2012-32118
 D.C. No. OHS-15
 Chapter 9

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

23 WELLS FARGO BANK, et al.
 Plaintiffs,
 24 v.
 25 CITY OF STOCKTON, CALIFORNIA,
 Defendant.

Adv. No. 2013-02315

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

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 Kenneth Dieker In Support Of Confirmation Of First Amended Plan For The Adjustment Of Debts Of City Of Stockton California (November 15, 2013) [Dkt. Nos. 1415 (Case), 104 (Proceeding)].

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

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

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
2. In its Summary Objection of Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal Fund to Confirmation of First Amended Plan of Adjustment of Debts of City of Stockton, California (November 15, 2013) [Dkt. 1273] (“Summary Objection”), Franklin mischaracterizes the 2009 Golf Course/Park Bonds as a “loan” from Franklin to the City. This is a misstatement of the actual structure of the 2009 Golf Course/Park	Franklin objects to the statements in this paragraph because they consist of opinion testimony that is inadmissible given that Mr. Dieker’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 Kenneth Dieker</i> . Franklin also objects to this paragraph in its entirety	The statements in this paragraph are not expert testimony under FED. R. EVID. 702. To the extent Mr. Dieker’s testimony falls under FED. R. EVID. 702, he is qualified to offer such testimony because he has served as a financial advisor to the City continuously since March of 2011 in connection with this Case and related matters; has served as the City’s Interim Debt Manager; as a stand-alone engagement, during 2008 and 2009 was retained by the City as the

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<p>Bonds.</p>	<p>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.</p>	<p>financial advisor for the City on the 2009 Golf Course/Park Bonds; and has over 27 years of experience advising municipal issuers on their bond issuances, as more fully described in ¶ 1 of his declaration.</p> <p>The City incorporates herein its concurrently filed <i>Opposition To Motion Of Franklin High Yield Tax-Free Income Fund And Franklin California High Yield Municipal Fund To Exclude Portions Of Testimony Of Kenneth Dieker</i>.</p> <p>The statements in this paragraph are relevant because they have a tendency to make a fact of consequence more or less probable than it would be without the evidence.</p>
<p>3. Attached hereto as Exhibit A is a true and correct copy of the indenture for the 2009 Golf Course/Park Bonds (“Indenture”); attached hereto as Exhibit B is a true and correct copy of Stockton City Council Resolution No. 08-0372; and attached hereto as Exhibit C is a true and correct copy of Stockton Public Financing Authority Resolution No. 08-04. As reflected on page 1 of the Indenture, page 2 of the City Council Resolution, and page 2 of the PFA Resolution, the Financing Authority—not the City—authorized the issuance of the 2009 Golf Course/Park Bonds. It was the Financing Authority that issued the official statement for the 2009 Golf Course/Park Bonds (“Official Statement”), a true and correct copy of which is</p>	<p>Franklin objects to the statements in this paragraph because Mr. Dieker’s statements as to the terms and provisions of the referenced documents are not the best evidence thereof. FED. R. EVID. 1002.</p>	<p>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. <i>See United States v. Mayans</i>, 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 City has produced to Franklin all of the documents on which Mr. Dieker’s testimony is based, and Franklin has not raised a genuine issue as to the authenticity of any of these documents.</p>

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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15</p> <p>attached hereto as Exhibit D, on August 20, 2009. To accomplish the transaction, the City leased nonresidential real property to the Financing Authority, which subleased the property back to the City. Attached hereto as Exhibits E and F are true and correct copies of the lease to the Financing Authority and the sublease to the City, respectively. The Financing Authority then assigned its right to receive rental payments (along with certain other rights relevant to the enforcement of remedies) under the lease agreement to a trustee. Finally, the Financing Authority issued the 2009 Golf Course/Park Bonds and transferred the proceeds to the City for expenditure on capital improvements.</p>		
<p>16 17 18 19 20 21 22 23 24 25 26 27 28</p> <p>5. Franklin purchased the 2009 Golf Course/Park Bonds in 2009, in the middle of the “Great Recession.” In the Official Statement, Franklin was put on notice that the City’s economic condition was dire. The Official Statement contained a discussion of Councilmember Dale Fritchen’s request in February 2009 that the City Attorney’s Office prepare “an informational presentation on municipal bankruptcy,” noting how “everyday there’s individuals who bump into me and tell me, ‘why doesn’t the City just go bankrupt.’” Exhibit D, p. 27. <u>As a result, the 2009 Golf Course/Park Bonds reflect this higher risk by providing Franklin with a greater return.</u></p>	<p>Franklin objects to the statements in this paragraph because Mr. Dieker’s statements as to the terms and provisions of the Indenture are not the best evidence of that agreement. FED. R. EVID. 1002. Franklin objects to the underlined statements in this paragraph because they consist of opinion testimony that is inadmissible given that Mr. Dieker’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 Kenneth Dieker</i>.</p>	<p>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. <i>See United States v. Mayans</i>, 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 City has produced to Franklin all of the documents on which Mr. Dieker’s testimony is based, and Franklin has not raised a genuine issue as to the authenticity of any of these documents.</p> <p>The underlined statements in this paragraph are not expert testimony under FED. R.</p>

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		<p>EVID. 702. To the extent Mr. Dieker’s testimony falls under FED. R. EVID. 702, he is qualified to offer such testimony because he has served as a financial advisor to the City continuously since March of 2011 in connection with this Case and related matters; has served as the City’s Interim Debt Manager; as a stand-alone engagement, during 2008 and 2009 was retained by the City as the financial advisor for the City on the 2009 Golf Course/Park Bonds; and has over 27 years of experience advising municipal issuers on their bond issuances, as more fully described in ¶ 1 of his declaration.</p> <p>The City incorporates herein its concurrently filed <i>Opposition To Motion Of Franklin High Yield Tax-Free Income Fund And Franklin California High Yield Municipal Fund To Exclude Portions Of Testimony Of Kenneth Dieker.</i></p>
<p>6. A proper understanding of the 2009 Golf Course/Park Bonds requires some historical context. The Financing Authority originally approved the transaction on September 9, 2008. On September 15, 2008, however, Lehman Brothers filed for bankruptcy protection, leaving many investors shaken and many markets in free fall over the ensuing weeks. The Dow Jones Industrial Average dropped from 13,058 in the second quarter of 2008 to a low of 6,547 in the second quarter of 2009. Interest rates</p>	<p>Franklin objects to the statements in this paragraph because they are not relevant. FED. R. EVID. 401, 402. Franklin incorporates herein its <i>Motion To Exclude Portions Of Testimony Of Kenneth Dieker.</i></p>	<p>The statements in this paragraph are relevant because they have a tendency to make a fact of consequence more or less probable than it would be without the evidence.</p> <p>The City incorporates herein its concurrently filed <i>Opposition To Motion Of Franklin High Yield Tax-Free Income Fund And Franklin California High Yield Municipal Fund To Exclude Portions Of Testimony Of Kenneth Dieker.</i></p>

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<p>spiked as well. This is reflected in the pre-pricing book that I prepared for the August 2009 sale, which is described in greater detail below. Contained on page one of the pre-pricing book is a table of interest rates and on page two is a chart of the same interest rates showing the Bond Buyer 20-Bond Index, the Bond Buyer 11-Bond index and the Bond Buyer Revenue Bond index along with both 10-yr and 30-yr U.S. Treasury rates over the previous year. The Bond Buyer indices are published each Thursday and are reflective of a pool of underlying transactions that make up the respective index. As displayed on these two pages, the Bond Buyer Revenue Bond Index went up from 5.17% on August 28, 2008 to 6.48% on October 16, 2008. Id.</p>		
<p>7. The bond market in late 2008 through 2009 was understandably unstable. As one illustration of the bond market during this period, I was the Financial Advisor on an AA- Water Revenue Bond transaction for another Northern California city. The financing was to provide approximately \$18 million of new money for projects and be repaid over a 30-year period. The bonds were publicly offered in October 2008, but only a few buyers showed interest. Buyers appeared to be hoarding cash and sitting on the sidelines waiting to see the outcome of the financial crisis. The City was ultimately successful in placing the bonds as a private</p>	<p>Franklin objects to the statements in this paragraph because they are not relevant. FED. R. EVID. 401, 402. Franklin incorporates herein its <i>Motion To Exclude Portions Of Testimony Of Kenneth Dieker</i>.</p>	<p>The statements in this paragraph are relevant because they have a tendency to make a fact of consequence more or less probable than it would be without the evidence.</p> <p>The City incorporates herein its concurrently filed <i>Opposition To Motion Of Franklin High Yield Tax-Free Income Fund And Franklin California High Yield Municipal Fund To Exclude Portions Of Testimony Of Kenneth Dieker</i>.</p>

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<p>placement with a bank, but had to lower the amount issued to \$9.25 million and shorten the term to 25 years.</p>		
<p>8. The bond market did stabilize somewhat when President George W. Bush signed the Emergency Economic Stabilization Act (sometimes referred to as the Toxic Asset Relief Program (“TARP”)) into law on October 3, 2008, which provided up to \$700 billion to be used to purchase troubled assets. However, those same dollars were instead directly infused into the banking system to provide much needed liquidity. Interest rates remained very choppy through the end of 2008 with the Bond Buyer Revenue Bond Index dropping under 6.00% on November 13, 2008 but climbing again to 6.39% on December 11, 2008. At the beginning of 2009, interest rates began a steady decline reaching 5.67% on February 12, 2009.</p>	<p>Franklin objects to the statements in this paragraph because they are not relevant. FED. R. EVID. 401, 402. Franklin incorporates herein its <i>Motion To Exclude Portions Of Testimony Of Kenneth Dieker</i>.</p>	<p>The statements in this paragraph are relevant because they have a tendency to make a fact of consequence more or less probable than it would be without the evidence.</p> <p>The City incorporates herein its concurrently filed <i>Opposition To Motion Of Franklin High Yield Tax-Free Income Fund And Franklin California High Yield Municipal Fund To Exclude Portions Of Testimony Of Kenneth Dieker</i>.</p>
<p>9. In February of 2009, the City initially attempted to market the 2009 Golf Course/Park Bonds. On February 19, 2009, the 2009 Golf Course/Park Bonds were offered in a public offering, and the City entered into a Bond Purchase Agreement with RBC Capital Markets as the underwriter for the 2009 Golf Course / Park bonds, with closing (delivery of and payment for the 2009 Golf Course/Park Bonds) scheduled to occur approximately 2 weeks later. That same night, February 19, 2009, Councilmember Dale</p>	<p>Franklin objects to the statements in this paragraph because they are not relevant. FED. R. EVID. 401, 402. Franklin incorporates herein its <i>Motion To Exclude Portions Of Testimony Of Kenneth Dieker</i>. Franklin also objects to the underlined portions of this paragraph to the extent offered for the truth of the matters asserted, as they consist of inadmissible hearsay. FED. R. EVID. 801, 802.</p>	<p>The statements in this paragraph are relevant because they have a tendency to make a fact of consequence more or less probable than it would be without the evidence.</p> <p>The City incorporates herein its concurrently filed <i>Opposition To Motion Of Franklin High Yield Tax-Free Income Fund And Franklin California High Yield Municipal Fund To Exclude Portions Of Testimony Of Kenneth Dieker</i>.</p> <p>The underlined portions of this paragraph are not hearsay</p>

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<p>Fritchen requested information from the City Attorney’s office on municipal bankruptcy as described above. <u>The buyers of the 2009 Golf Course/Park Bonds who had placed orders with RBC Capital Markets, upon hearing this information, demanded that the City release them from those orders, and RBC was forced to request that the City cancel the sale pursuant to the Bond Purchase Agreement.</u> The City granted the buyers’ request. The deal then sat dormant for a number of months.</p>		<p>because they are statements that the declarant makes while testifying at the current trial or hearing pursuant to LR 9017-1. FED. R. EVID. 801.</p>
<p>10. Later that year, RBC Capital Markets investment banker Bob Williams approached me about reviving the deal. His firm had a potential buyer (Franklin) interested in the 2009 Golf Course/Park bonds. The City was still interested in moving forward and the financing team began the process of updating the official statement and the underlying rating. By that time, Councilmember Fritchen had publicly raised the risk of bankruptcy and developers had begun petitioning the City Council for lower development fees in response to the economic downturn. The City was in shaky economic condition, and the interest rates on the 2009 Golf Course/Park Bonds and their two-term bond structure reflect that risk.</p>	<p>Franklin objects to the statements in this paragraph because they are not relevant. FED. R. EVID. 401, 402. Franklin incorporates herein its <i>Motion To Exclude Portions Of Testimony Of Kenneth Dieker.</i></p>	<p>The statements in this paragraph are relevant because they have a tendency to make a fact of consequence more or less probable than it would be without the evidence.</p> <p>The City incorporates herein its concurrently filed <i>Opposition To Motion Of Franklin High Yield Tax-Free Income Fund And Franklin California High Yield Municipal Fund To Exclude Portions Of Testimony Of Kenneth Dieker.</i></p>
<p>11. Based on my 23 years of experience in this field (as of 2009), I believe that the 2009 Golf Course/Park Bonds, compared to the City’s</p>	<p>Franklin objects to the statements in this paragraph because they are not relevant. FED. R. EVID. 401, 402. Franklin incorporates herein</p>	<p>The statements in this paragraph are relevant because they have a tendency to make a fact of consequence more or less probable than it</p>

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<p>other existing bond issuances and to bond transactions of other issuers being offered at the time, were sold to Franklin at higher yields and with a term bond structure that clearly compensated Franklin for their risky investment. Attached hereto as Exhibit G is a true and correct copy of the pre-pricing book that I prepared for the August 2009 sale, which contains general market interest rate historical information and recent municipal market articles, and compares the 2009 Golf Course/Park Bonds with other bond deals from the same time period.</p>	<p>its <i>Motion To Exclude Portions Of Testimony Of Kenneth Dieker</i>.</p>	<p>would be without the evidence. The City incorporates herein its concurrently filed <i>Opposition To Motion Of Franklin High Yield Tax-Free Income Fund And Franklin California High Yield Municipal Fund To Exclude Portions Of Testimony Of Kenneth Dieker</i>.</p>
<p>12. It is part of my normal process when pricing bonds to prepare a pre-pricing book that shows general market interest rates, articles related to the bond market at the time of the sale, and several comparable sales for other transactions being sold around the same time. I use this book to educate the issuer at the time of sale as to the market conditions, allowing the issuer to make an informed decision about the final pricing. As the comparison in Exhibit G demonstrates, Franklin offered to purchase the deal with two term bonds: one with a coupon of 6.75% with a yield to maturity of 7.00% maturing in 2029 with sinking fund payments from 2013 to 2029, and another with a coupon of 7.00% with a yield to maturity of 7.15% maturing in 2038 with sinking fund payments from 2030 to 2038. Term Bonds are typically used to aggregate the</p>	<p>Franklin objects to the statements in this paragraph because they are not relevant. FED. R. EVID. 401, 402. Franklin incorporates herein its <i>Motion To Exclude Portions Of Testimony Of Kenneth Dieker</i>.</p>	<p>The statements in this paragraph are relevant because they have a tendency to make a fact of consequence more or less probable than it would be without the evidence. The City incorporates herein its concurrently filed <i>Opposition To Motion Of Franklin High Yield Tax-Free Income Fund And Franklin California High Yield Municipal Fund To Exclude Portions Of Testimony Of Kenneth Dieker</i>.</p>

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<p>principal amount of the offering into larger single maturities with a single interest rate based on the maturity date. Principal is amortized through sinking account payments that pay off portions of the term bond early. In my experience, this structure is preferred by large institutional buyers who want a large single maturity, and are not willing to accept a lower rate for earlier amortization. In contrast, a serial bond structure takes advantage of the yield curve (the fact that interest rates tend to be lower for shorter maturities) by breaking each principal amortization payment into a separate bond with its own maturity. This achieves a lower overall cost for the issuer, but means many smaller pieces of the bonds and a lower return to an institutional buyer who wants to buy a large amount of a transaction. The 2009 Golf Course/Park Bonds had only two large term bonds, and no serial bonds, because they were designed for a single purchaser – Franklin.</p>		
<p>13. When I compare this to the other deals from the same time period, all of them have both a serial and term structure where the serial maturities allow an issuer to take advantage of lower yields at the shorter end of the yield curve only terming bonds for a particular institution or at the long end of the yield curve where the curve flattens. The presentation I prepared uses the AAA Standard and Poor’s (“S&P”) scale published each day in the Bond Buyer and</p>	<p>Franklin objects to the statements in this paragraph because they are not relevant. FED. R. EVID. 401, 402. Franklin incorporates herein its <i>Motion To Exclude Portions Of Testimony Of Kenneth Dieker</i>.</p>	<p>The statements in this paragraph are relevant because they have a tendency to make a fact of consequence more or less probable than it would be without the evidence.</p> <p>The City incorporates herein its concurrently filed <i>Opposition To Motion Of Franklin High Yield Tax-Free Income Fund And Franklin California High Yield Municipal Fund To Exclude Portions Of Testimony Of</i></p>

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<p>1 compares, on a maturity by 2 maturity basis, the spread to 3 the AAA S&P scale from the 4 date of that sale to the spread 5 on the date of the 2009 Golf 6 Course/Park Bonds sale. The 7 tables also compare the actual 8 spreads between deals.</p>		<p><i>Kenneth Dieker.</i></p>
<p>7 14. At the time of the 8 issuance of the 2009 Golf 9 Course/Park Bonds, the City 10 was rated A by Standard & 11 Poor's with a Negative 12 Outlook. However, at that 13 time in general, the market 14 considered lease transactions 15 with a general fund promise 16 to pay and underlying leased 17 assets to be stronger than 18 other transactions, such as 19 redevelopment tax increment 20 or land-secured assessment 21 and Mello-Roos transactions, 22 but not as strong as general 23 obligation transactions with 24 the ability to put the full 25 amount of debt service on the 26 property tax role and collect 27 on property owner tax bills or 28 water and sewer bonds backed by the ability to increase user rates and charges.</p>	<p>Franklin objects to the statements in this paragraph because they are not relevant. FED. R. EVID. 401, 402. Franklin incorporates herein its <i>Motion To Exclude Portions Of Testimony Of Kenneth Dieker.</i></p>	<p>The statements in this paragraph are relevant because they have a tendency to make a fact of consequence more or less probable than it would be without the evidence.</p> <p>The City incorporates herein its concurrently filed <i>Opposition To Motion Of Franklin High Yield Tax-Free Income Fund And Franklin California High Yield Municipal Fund To Exclude Portions Of Testimony Of Kenneth Dieker.</i></p>
<p>20 15. Comparing the S&P 21 spread allows an issuer to 22 evaluate deals that may be 23 sold at different times. 24 Spreads do widen and narrow 25 from time to time so the 26 closer to the sale date, the less 27 likely the analysis will pick 28 up spread movements. This is not an exact science, and the municipal market is not as efficient as pricing on U.S. Treasuries and stocks. However, as reflected by the Comparable Sales analysis in Exhibit G, the spreads for the BBB-rated (lower rating than the 2009 Golf Course/Park</p>	<p>Franklin objects to the statements in this paragraph because they are not relevant. FED. R. EVID. 401, 402. Franklin incorporates herein its <i>Motion To Exclude Portions Of Testimony Of Kenneth Dieker.</i></p>	<p>The statements in this paragraph are relevant because they have a tendency to make a fact of consequence more or less probable than it would be without the evidence.</p> <p>The City incorporates herein its concurrently filed <i>Opposition To Motion Of Franklin High Yield Tax-Free Income Fund And Franklin California High Yield Municipal Fund To Exclude Portions Of Testimony Of Kenneth Dieker.</i></p>

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<p>Bonds) San Francisco Redevelopment Financing Authority, Tax Allocation Bonds deal sold on August 20, 2009 ranged anywhere from +217bp in 2013, +187bp in 2029 to +180bp in 2038 over the AAA S&P scale. Exhibit G at 1. Tax allocation bonds were considered weaker credits because the agencies have no taxing authority and are subject to movements in assessed values, compared with the City's General Fund, the source of payment for the 2009 Golf Course/Park Bonds, which can pay from all available resources. Even the S&P A-rated (same rating as the 2009 Golf Course/Park Bonds) Lancaster Redevelopment Agency deal sold on August 17, 2009 ranged from +225bp in 2013, +196bp in 2029 to +207bp in 2038.</p>		
<p>16. One can make the same comparison for each of the deals on the four comparable sales pages. The City of Oakland, General Obligation Bonds from July 22, 2009 show the narrowest spreads, ranging from +83bp in 2013, +92bp in 2029 to +105.2bp in 2038. In contrast, the 2009 Golf Course/Park Bonds range from +531bp in 2013, +243bp in 2029 to +221bp in 2038 for an average non-weighted spread of +308.5bp as compared to the +197.1bp for the San Francisco issue, +216bp for the Lancaster issue, and +101.1bp for the Oakland issue. Moreover, Franklin offered to buy these as two term bonds with sinking fund payments at</p>	<p>Franklin objects to the statements in this paragraph because they are not relevant. FED. R. EVID. 401, 402. Franklin incorporates herein its <i>Motion To Exclude Portions Of Testimony Of Kenneth Dieker</i>.</p>	<p>The statements in this paragraph are relevant because they have a tendency to make a fact of consequence more or less probable than it would be without the evidence.</p> <p>The City incorporates herein its concurrently filed <i>Opposition To Motion Of Franklin High Yield Tax-Free Income Fund And Franklin California High Yield Municipal Fund To Exclude Portions Of Testimony Of Kenneth Dieker</i>.</p>

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<p>6.75% and 7.00% respectively, meaning that the City pays that interest rate for the entire term of the bond, compared to transactions where a serial and term structure is used to reduce the cost to the issuer. The bottom line is that Franklin obtained a beneficial spread to other comparable issues of between 92.5 bp (.925%) and 207.4 bp (2.074%) for the 2009 Golf Course/Park Bonds.</p>		
<p>17. In light of this analysis, I believe Franklin saw an investment opportunity where other buyers were wary, and that in exchange, Franklin could obtain higher yields than other comparable issues pricing around the same time.</p>	<p>Franklin objects to the statements in this paragraph because they are not relevant. FED. R. EVID. 401, 402. Franklin incorporates herein its <i>Motion To Exclude Portions Of Testimony Of Kenneth Dieker</i>. To the extent Mr. Dieker 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. Dieker's perception and is not helpful to clearly understand his testimony or to determine a fact in issue. FED. R. EVID. 701.</p>	<p>The statements in this paragraph are relevant because they have a tendency to make a fact of consequence more or less probable than it would be without the evidence.</p> <p>The City incorporates herein its concurrently filed <i>Opposition To Motion Of Franklin High Yield Tax-Free Income Fund And Franklin California High Yield Municipal Fund To Exclude Portions Of Testimony Of Kenneth Dieker</i>.</p> <p>To the extent Mr. Dieker offers the testimony in this paragraph in his capacity as a fact witness, this testimony is neither speculative nor lacks foundation under FED R. EVID. 602 because it is based upon the fact that he has served as a financial advisor to the City continuously since March of 2011 in connection with this Case and related matters; has served as the City's Interim Debt Manager; as a stand-alone engagement, during 2008 and 2009 was retained by the City as the financial advisor for the City on the 2009 Golf Course/Park Bonds; and has over 27 years</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
		<p>of experience advising municipal issuers on their bond issuances, as more fully described in ¶ 1 of his declaration. To the extent necessary, the City will make an offer of proof at trial.</p> <p>The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Dieker’s perception, helpful to clearly understanding his testimony and helpful to determining at least one fact in issue. The statements are also based on Mr. Dieker’s knowledge and experience as described above.</p>
<p>19. On pp. 46-47 of its Summary Objection, Franklin presents a chart that purports to show the distributions that the City will make to Ambac, Assured, and NCFG. This chart is seriously misleading, and does not accurately characterize the settlements that the City reached with these creditors.</p>	<p>Franklin objects to the statements in this paragraph because Mr. Dieker misstates the contents of Franklin’s objection and his statements as to its contents are not the best evidence of that document. FED. R. EVID. 1002.</p>	<p>The statements in this paragraph do not misstate the contents of Franklin’s objection.</p> <p>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. <i>See United States v. Mayans</i>, 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 City has produced to Franklin all of the documents on which Mr. Dieker’s testimony is based, and Franklin has not raised a genuine issue as to the authenticity of any of these documents.</p>
<p>20. The first major flaw in Franklin’s characterization of</p>	<p>Franklin objects to the statements in this paragraph</p>	<p>The statements in this paragraph do not misstate the</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p>1 the settlement distributions to 2 Ambac, Assured, and NCFG 3 is that Franklin fails to take 4 into account the valuable 5 concessions that each 6 settlement gave the City. The 7 most valuable concession was 8 the reduction of the potential 9 exposure for the General Fund 10 to provide any subsidy to 11 make future debt service 12 payments on the restructured 13 transactions. Because of the 14 importance of the General 15 Fund to the City's financial 16 health, limiting its long-term 17 exposure is essential to the 18 City's continuing viability.</p>	<p>because Mr. Dieker misstates the contents of Franklin's objection and his statements as to its contents are not the best evidence of that document. FED. R. EVID. 1002. To the extent Mr. Dieker 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. Dieker's perception and is not helpful to clearly understand his testimony or to determine a fact in issue. FED. R. EVID. 701.</p>	<p>contents of Franklin's objection.</p> <p>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. <i>See</i> <i>United States v. Mayans</i>, 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 City has produced to Franklin all of the documents on which Mr. Dieker's testimony is based, and Franklin has not raised a genuine issue as to the authenticity of any of these documents.</p> <p>To the extent Mr. Dieker offers the testimony in this paragraph in his capacity as a fact witness, this testimony is neither speculative nor lacks foundation under FED R. EVID. 602 because it is based upon the fact that he has served as a financial advisor to the City continuously since March of 2011 in connection with this Case and related matters; has served as the City's Interim Debt Manager; as a stand-alone engagement, during 2008 and 2009 was retained by the City as the financial advisor for the City on the 2009 Golf Course/Park Bonds; and has over 27 years of experience advising municipal issuers on their bond issuances, as more fully described in ¶ 1 of his declaration. To the extent necessary, the City will make</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
		<p>an offer of proof at trial.</p> <p>The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Dieker's perception, helpful to clearly understanding his testimony and helpful to determining at least one fact in issue. The statements are also based on Mr. Dieker's knowledge and experience as described above.</p>
<p>21. Second, Franklin's chart fails to mention the collateral implicated by each deal. Ambac, Assured, and NCFG each control collateral that is significantly more valuable to the City's ongoing health than the leased properties underlying the 2009 Golf Course/Park Bonds. The properties underlying the debt insured by each of these creditors serve important municipal functions, and the City, in the exercise of its business judgment, has determined that they cannot be sacrificed.</p>	<p>Franklin objects to the statements in this paragraph because Mr. Dieker misstates the contents of Franklin's objection and his statements as to its contents are not the best evidence of that document. FED. R. EVID. 1002. To the extent Mr. Dieker 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. Dieker's perception and is not helpful to clearly understand his testimony or to determine a fact in issue. FED. R. EVID. 701.</p>	<p>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. <i>See United States v. Mayans</i>, 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 City has produced to Franklin all of the documents on which Mr. Dieker's testimony is based, and Franklin has not raised a genuine issue as to the authenticity of any of these documents.</p> <p>To the extent Mr. Dieker offers the testimony in this paragraph in his capacity as a fact witness, this testimony is neither speculative nor lacks foundation under FED R. EVID. 602 because it is based upon the fact that he has served as a financial advisor to the City continuously since March of 2011 in connection with this Case and related matters; has served as the</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
		<p>City’s Interim Debt Manager; as a stand-alone engagement, during 2008 and 2009 was retained by the City as the financial advisor for the City on the 2009 Golf Course/Park Bonds; and has over 27 years of experience advising municipal issuers on their bond issuances, as more fully described in ¶ 1 of his declaration. To the extent necessary, the City will make an offer of proof at trial.</p> <p>The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Dieker’s perception, helpful to clearly understanding his testimony and helpful to determining at least one fact in issue. The statements are also based on Mr. Dieker’s knowledge and experience as described above. To the extent necessary, the City will make an offer of proof at trial.</p>
<p>22. Finally, Franklin’s chart is simply wrong on some of the numbers for the settlements with Ambac, Assured, and NCFG:</p> <p><u>Ambac Settlement.</u> The Ambac Bonds, aka the Certificates of Participation, Series 2003 A&B (Housing Projects) (“2003 COPS”), are insured by Ambac. The 2003 COPS were sold as a General Fund lease transaction with the leased premises as the Main Police Facility, Fire Stations 1, 5 and 14 and the Maya Angelou Library. These are essential City assets that provide, at least in the case of the Main Police</p>	<p>Franklin objects to the statements in this paragraph because Mr. Dieker misstates the contents of Franklin’s objection and his statements as to its contents are not the best evidence of that document. FED. R. EVID. 1002. To the extent Mr. Dieker 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. Dieker’s</p>	<p>The statements in this paragraph do not misstate the contents of Franklin’s objection.</p> <p>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. <i>See United States v. Mayans</i>, 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 City has produced to Franklin all</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p>Facility and the three fire stations, a critical health and safety function for the City. In addition to the lease payments by the City, the 2003 COPs are payable under a Reimbursement Agreement from 20% housing set-aside tax increment which encompasses all of the City's project areas. The 2003 COPs are also subordinate to tax allocation housing bonds sold by the redevelopment agency in 2006. The City negotiated with Ambac to structure a deal that capped the amount of General Fund subsidy required in any given year to 80.50% of annual debt service. First, to the extent needed, the reserve fund for the bonds will be used to pay any shortfall of debt service until exhausted. If a shortfall remains, the General Fund will subsidize payments up to 80.50% of annual debt service. If the City reaches the 80.50% cap, Ambac will make any remaining payments until bondholders are paid in full. If and when tax increment grows in excess of annual debt service, the Ambac payments will be on the Recognized Obligation Payments Schedule ("ROPS"), a schedule delineating the enforceable obligations of Stockton's former Redevelopment Agency, to be repaid from tax increment. Once the Ambac payments are repaid in full, any draws on the reserve fund will also be on the ROPS to be repaid from tax increment. Since the structured transaction revolves around changes in assessed values within all the project areas</p>	<p>perception and is not helpful to clearly understand his testimony or to determine a fact in issue. FED. R. EVID. 701. Franklin also objects to this paragraph because Mr. Dieker's statements as to the terms and provisions of the referenced settlements are not the best evidence of that agreement. FED. R. EVID. 1002. Franklin incorporates herein its concurrently filed <i>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)</i> [Dkt. Nos. 1411 (case), 100 (Proceeding)].</p>	<p>of the documents on which Mr. Dieker's testimony is based, and Franklin has not raised a genuine issue as to the authenticity of any of these documents.</p> <p>To the extent Mr. Dieker offers the testimony in this paragraph in his capacity as a fact witness, this testimony is neither speculative nor lacks foundation under FED R. EVID. 602 because it is based upon the fact that he has served as a financial advisor to the City continuously since March of 2011 in connection with this Case and related matters; has served as the City's Interim Debt Manager; as a stand-alone engagement, during 2008 and 2009 was retained by the City as the financial advisor for the City on the 2009 Golf Course/Park Bonds; and has over 27 years of experience advising municipal issuers on their bond issuances, as more fully described in ¶ 1 of his declaration. To the extent necessary, the City will make an offer of proof at trial.</p> <p>The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Dieker's perception, helpful to clearly understanding his testimony and helpful to determining at least one fact in issue. The statements are also based on Mr. Dieker's knowledge and experience as described above. To the extent necessary, the City will make an offer of proof at trial.</p> <p>The statements as to the terms</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p>and the ultimate receipt of tax increment from those project areas, it is impossible to predict the present value impairment to Ambac. If economic growth in the City returns, it is likely this obligation will be paid in full. However, the timing of those repayments could be delayed depending on how much tax increment is available each year and how much the Ambac payments accrue interest before they are repaid.</p> <p><u><i>NPFG SEB Settlement.</i></u> The NPFG SEB Bonds, aka the 2006 Lease Revenue Refunding Bonds, Series A, were sold as a standard General Fund lease transaction with the Stewart/Eberhart Building and the adjacent parking garage as the leased premises. Also known as the Essential Services Building, the Stewart/Eberhart Building houses many essential city departments including Public Works. Because of the essential status of the leased premises, the City assumed this lease, has made all payments in full and on time and the bonds remain unimpaired.</p> <p><u><i>NPFG Arena Settlement.</i></u> The NPFG Arena Bonds, aka the Redevelopment Agency of the City of Stockton, Revenue Bonds, Series 2004, were sold as a General Fund lease transaction pursuant to which the City makes lease payments to the Redevelopment Agency (now the Successor Agency to the Redevelopment Agency) for the right to the use and occupancy of the Stockton</p>		<p>and provisions of the referenced settlements do not violate FED. R. EVID. 1002 because they are not secondary evidence being offered to prove the content of a writing. <i>See United States v. Mayans</i>, 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 City has produced to Franklin all of the documents on which Mr. Dieker's testimony is based, and Franklin has not raised a genuine issue as to the authenticity of any of these documents.</p> <p>The City incorporates herein its concurrently filed <i>Response to 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)</i>.</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p>Events Center and Arena. In addition, there is a pledge of tax increment from the West End Project Area where Pledge Payments are made to the City under a Pledge Agreement and those monies are used to pay debt service each year. If there is a shortfall, the General Fund provides a backstop to subsidize any required payment not otherwise satisfied. The City and NCFG negotiated knowing that the Pledge Payments will be paid regardless of the General Fund payments. Currently tax increment from the West End project area is not sufficient to fully repay the bonds each year. The City and NCFG agreed to a reduced schedule of payments and took this agreement to the California Department of Finance for approval under AB x1 26 and AB 1484 provisions. The General Fund remains as the backstop, but on a schedule that further reduces the need for future General Fund subsidies. The City was faced with a possible shuttering of the facility and the possible collateral economic damage to the downtown while the local taxpayers would still be paying for the obligation in full from property tax payments paid via tax increment. The actual repayment of this obligation, much like on the 2003 COPs, is dependent upon future assessed values and the flow of tax increment.</p> <p><i>NCFG Parking Settlement.</i> NCFG Parking Bonds aka Lease Revenue Bonds, Series 2004 (Parking</p>		

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<p>and Capital Projects). These bonds were sold as a standard lease transaction with three parking garages (Arena, Ed Coy and Market Street) serving as the leased premises. The City and NCFG agreed to form a new Parking Authority, the City agreed to move all of the City’s parking assets into the new Parking Authority, and NCFG agreed to a reduced payment schedule in exchange for a gross revenue pledge from the new Parking Authority revenues. The leased assets remain the same, and the City anticipates that the parking revenues—as opposed to the General Fund—will pay the debt service on the restructured obligation.</p> <p><i>Assured Guaranty Settlement.</i> The Assured Guaranty Settlement affects both the Pension Obligation Bonds, aka 2007 Taxable Pension Obligation Bonds, Series A and Series B (the “POBs”), and the Assured Office Bonds, aka the Variable Rate Demand Lease Revenue Bonds, 2007 Series A and Taxable 2007 Series B (Building Acquisition Financing Project) (the “VRDOs”). Assured Guaranty has asserted that the POBs have special status because they represent the same underlying liability as the City’s other pension funding obligations (which are being assumed under the Plan) and are thus obligations imposed by law (which City confirmed at the time of issuance of the POBs through a validation action under</p>		

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<p>California Code of Civil Procedure section 860 et seq.). The Assured Guaranty Settlement shifts the proposed “Ask” payments originally slated for the Assured Office Bonds to the POBs along with \$250,000 of additional payments each year starting in 2023. The City also agreed to pay the portion of debt service payable on the POBs from restricted funds to the POBs. These restricted fund payments would otherwise go to pay pension benefits or to repay the POBs; these restricted funds are not part of the General Fund.</p> <p>At the time of the “Ask”, the restricted fund payments were estimated at 17.38%, consisting primarily of water/sewer, gas tax, and Measure W funds. The ratio of City employees compensated solely or partially from the General Fund and those compensated from Restricted Funds varies from year to year, depending on, among other things, the number of employees paid from each fund. Based on historical and projected data, a reasonable estimate of the amount of pension obligations that are funded from Restricted Funds is about 17%. Assured and the City agreed on this percentage as a fixed amount each year. Because approximately 17% of City’s pension obligations may lawfully be funded by special fund revenue, such revenues may be used to pay 17% of the debt service obligations on the POBs.</p> <p>The VRDOs were sold as a standard General Fund</p>		

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p>lease with 400 E. Main serving as the leased premises. In exchange for shifting the “Ask” payments from the VRDOs to the POBs, Assured agreed to terminate the lease payments under the VRDOs. The City also entered into a near-term lease for office space in the building to turn such space into City Hall. Although from the City’s perspective the VRDOs obligation was terminated, the City agreed to possession by Assured of 400 E. Main with title to shift at some future date. The Assured POBs settlement was an essential part of the overall deal struck between the City and Assured, overseen by Judge Perris, which was necessary to ensure the City’s continued use of 400 E. Main for the next 12 years.</p> <p>The Assured POBs settlement provides for payments from the City’s restricted funds, which the City believes will be available to make those payments. The POBs funded payment of pension benefits for City employees, including current and retired City employees whose compensation and benefits were paid by monies from the General Fund as well as those whose compensation and benefits were paid by monies from Restricted Funds. As explained in the declaration of Vanessa Burke in support of the City’s eligibility for bankruptcy relief [Dkt. No. 62], such Restricted Funds may not be used to pay General Fund obligations unrelated to such Restricted Funds. They may,</p>		

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<p>however, be used to pay obligations related to the Restricted Funds.</p> <p>Assured also is entitled to certain Contingent Payments based on a formula that measures the amount of those payments by reference to the amount by which the City's general fund revenues exceed the City's budget forecast over time. There is no assurance that any contingent payments will be made and the amount of those payments cannot therefore be calculated or determined at the present time.</p>		
<p>Exhibit G (pre-pricing book)</p>	<p>Franklin objects to the admission of this pre-pricing book because it consists of opinion testimony that is inadmissible given that Mr. Dieker's knowledge, skill, experience training and education do not render him qualified as an expert regarding the matters contained therein. FED. R. EVID. 702. Franklin incorporates herein its <i>Motion To Exclude Portions Of Testimony Of Kenneth Dieker</i>.</p>	<p>The pre-pricing book is not expert testimony under FED. R. EVID. 702. To the extent Mr. Dieker's testimony falls under FED. R. EVID. 702, he is qualified to offer such testimony because he has served as a financial advisor to the City continuously since March of 2011 in connection with this Case and related matters; has served as the City's Interim Debt Manager; as a stand-alone engagement, during 2008 and 2009 was retained by the City as the financial advisor for the City on the 2009 Golf Course/Park Bonds; and has over 27 years of experience advising municipal issuers on their bond issuances, as more fully described in ¶ 1 of his declaration. To the extent necessary, the City will make an offer of proof at trial.</p> <p>The City incorporates herein its concurrently filed <i>Opposition To Motion Of Franklin High Yield Tax-Free Income Fund And Franklin California High Yield</i></p>

