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 City of Stockton

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 LAURIE
 MONTES 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.
 24 Plaintiffs,
 25 v.
 26 CITY OF STOCKTON, CALIFORNIA,
 27 Defendant.
 28

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 Laurie Montes In Support Of Confirmation Of First Amended Plan For The Adjustment Of Debts Of City Of Stockton California (November 15, 2013) [Dkt. Nos. 1419 (Case), 108 (Proceeding)].

The City disagrees with all of Franklin’s objections to Ms. Montes’ declaration and submits that Franklin will have the opportunity to cross-examine Ms. Montes to address any alleged deficiencies in her declaration. However, to the extent the Court determines that any of Ms. Montes’ statements in her declaration require clarification or additional foundational support, the City is prepared to provide live testimony at trial by Ms. Montes 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
<p>5. <u>The City has cut every expense that it can while remaining a viable city in an effort to ensure that the Plan will be feasible.</u> As I previously testified in my declaration in support of the City’s eligibility for bankruptcy relief [Dkt. No. 23] (“Eligibility Declaration”), from fiscal year 2008-09 through 2011-12, the City cut approximately \$90 million in General Fund expenses. The City dramatically reduced expenses by eliminating staff</p>	<p>Franklin objects to the underlined statements in this paragraph because they are vague and lack foundation. FED. R. EVID. 602. Franklin further objects to the underlined statements in this paragraph because they contain improper opinion testimony that is not rationally based on Ms. Montes’ perception and not helpful to clearly understand Ms. Montes’ testimony or to determinate a fact in issue. FED. R. EVID. 701. Franklin further objects to the italicized</p>	<p>The underlined statements in this paragraph are sufficiently clear and do not lack foundation under FED. R. EVID. 602 because they are based on the fact that Ms. Montes is the Deputy City Manager and has served in that capacity since June 2008, as more fully described in ¶ 1 of her declaration and in ¶ 1 of her Eligibility Declaration. To the extent necessary, the City will make an offer of proof at trial.</p> <p>The underlined statements in</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p>positions, slashing pay and benefits to the employees who remain, and taking other cost-cutting measures. The City has reached consensual agreements with all of its major creditors except for Franklin. <i>The City's settlement with the Retirees Committee, as representative of the Retiree Health Benefit Claimants, eliminates a liability of over \$500 million with a one-time payment of \$5.1 million.</i></p>	<p>statements in this paragraph because they are improper legal conclusions. FED. R. EVID. 701.</p>	<p>this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Ms. Montes' perception, helpful to clearly understanding her testimony, and helpful to determining at least one fact in issue. The statements are also based on Ms. Montes' knowledge and experience as described above. To the extent necessary, the City will make an offer of proof at trial.</p> <p>The italicized statements in this paragraph do not contain improper legal conclusions under FED. R. EVID. 701 because they are based on the fact that Ms. Montes is the Deputy City Manager, in which capacity she oversees the City's Human Resources Department, as more fully described in ¶ 1 of her declaration. <i>See Int'l Ass'n of Firefighters, Local 1186 v. City of Vallejo</i>, 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).</p>
<p>7. <u>Because median home prices remain low and foreclosure rates remain high, the recovery period for the City's Proposition 8 parcels³, which comprise 55.6% of</u></p>	<p>Franklin objects to the underlined statements in this paragraph because they are speculative and lack foundation. FED. R. EVID. 602. Franklin further objects</p>	<p>The underlined statements in this paragraph are sufficiently clear and do not lack foundation under FED. R. EVID. 602 because they are based on the fact that Ms.</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p>1 2 3 <u>City parcels according to</u> 4 <u>HdL, will be prolonged</u> 5 <u>compared to other</u> 6 <u>jurisdictions. As Vanessa</u> 7 <u>Burke testified in her initial</u> 8 <u>declaration in support of the</u> 9 <u>City's eligibility [Dkt. No.</u> 10 <u>62], the structure of</u> 11 <u>California's property tax</u> 12 <u>system is such that when a</u> 13 <u>change in ownership (like a</u> 14 <u>foreclosure or short sale)</u> 15 <u>results in a lower assessed</u> 16 <u>property value, the new base</u> 17 <u>is "locked in" at the lower</u> 18 <u>value and can only increase at</u> 19 <u>the lesser of the consumer</u> 20 <u>price index or two percent per</u> 21 <u>year. The continued high rate</u> 22 <u>of foreclosure sales and short</u> 23 <u>or distressed sales in Stockton</u> 24 <u>combines with the low</u> 25 <u>median home price to</u> 26 <u>penalize the City by slowing</u> 27 <u>the growth of property taxes</u> 28 <u>going forward.</u></p> <p><i>fn3: Under Proposition 8 of 1978, if a parcel's true market value is less than its Proposition 13-limited value, then it can be increased in future years as its true market value increases without respect to the 2% annual growth limit in assessed value that otherwise applies to properties that are not newly constructed or which undergo a change in ownership. At the point at which a "Prop 8 parcel" changes ownership, or increases in value to meet the value it would otherwise have been limited to under Proposition 13, that parcel resumes being restricted to 2% annual increases in assessed value.</i></p>	<p>to the underlined statements in this paragraph because they contain improper opinion testimony that is not rationally based on Ms. Montes's perception and not helpful to clearly understand Ms. Montes testimony or to determine a fact in issue. FED. R. EVID. 701. Franklin further objects to the italicized statements in this paragraph because they are improper legal conclusions. FED. R. EVID. 701.</p>	<p>Montes is the Deputy City Manager and has served in that capacity since June 2008, as more fully described in ¶ 1 of her declaration and in ¶ 1 of her Eligibility Declaration. To the extent necessary, the City will make an offer of proof at trial.</p> <p>The underlined statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Ms. Montes' perception, helpful to clearly understanding her testimony, and helpful to determining at least one fact in issue. The statements are also based on Ms. Montes' knowledge and experience as described above. To the extent necessary, the City will make an offer of proof at trial.</p> <p>The italicized statements in this paragraph do not contain improper legal conclusions under FED. R. EVID. 701 because they are based on the fact that Ms. Montes is the Deputy City Manager, as more fully described in ¶ 1 of her declaration. <i>See Int'l Ass'n of Firefighters, Local 1186 v. City of Vallejo</i>, 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</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
		FRE 701).

Dated: May 6, 2014

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