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

22 WELLS FARGO BANK, et al.
23 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

1 Pursuant to paragraph 44 of the Order Governing The Disclosure And Use Of Discovery
 2 Information And Scheduling Dates, Etc. [Dkt. Nos. 1224 (Case), 16 (Proceeding)], as amended
 3 by the Order Modifying Order Governing The Disclosure And Use Of Discovery Information
 4 And Scheduling Dates, Etc. [Dkt. Nos. 1242 (Case), 18 (Proceeding)] (collectively, the “Orders”),
 5 the City of Stockton, California (the “City”), the debtor and defendant in the above-captioned
 6 case and adversary proceeding, hereby submits the following responses to Franklin High Yield
 7 Tax-Free Income Fund and Franklin California High Yield Municipal Fund’s (collectively,
 8 “Franklin’s”) Evidentiary Objections to Direct Testimony Declaration of Robert Deis In Support
 9 Of Confirmation Of First Amended Plan For The Adjustment Of Debts Of City Of Stockton
 10 California (November 15, 2013) [Dkt. Nos. 1414 (Case), 103 (Proceeding)].

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

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

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
20 2. <u>Since before my</u> 21 <u>tenure as the City Manager,</u> 22 <u>Stockton had realized that</u> 23 <u>an essential part of its</u> 24 <u>recovery from the</u> 25 <u>intransigent economic</u> 26 <u>downturn of the Central</u> 27 <u>Valley would include</u> 28 <u>maximizing revenue</u> <u>increases and achieving</u> <u>expenditure reductions</u> <u>while still maintaining a</u> <u>viable city.</u> In early 2012, the City approached Fairbank, Maslin, Maullin, Metz & Associates (“FM3”), a public opinion	Franklin objects to the underlined statements in this paragraph because they lack foundation. FED. R. EVID. 602. Franklin further objects to the statements in this paragraph because Mr. Deis’s description of the FM3 report is not the best evidence of that document. FED. R. EVID. 1002.	The underlined statements do not lack foundation because they are based upon knowledge and experience that Mr. Deis gathered during his tenure as the City Manager of the City from July 1, 2010 through November 1, 2013, as more fully described in ¶ 1 of his declaration. To the extent necessary, the City will make an offer of proof at trial. The statements in this paragraph do not violate FED. R. EVID. 1002 because they

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<p>research and strategy firm, to conduct a poll of Stockton voters on the possibility of a tax increase measure on the November 2013 ballot. FM3 polled voter support for variations of major new increases in two tax sources—sales tax and/or utility users tax (“UUT”)—that would increase the City’s General Fund revenue base as much as was feasible. FM3’s research included questions specifically tailored to measure voter support for different types of measures under different circumstances, including a ¾- or ½-cent sales tax increase, a 2% increase in the UUT, or a combination of a ½-cent sales tax and 2% UUT increase. The polling also assessed voter reaction to different proposed uses for the revenues created by the tax measure, to the inclusion of a sunset provision in the measure, and to the effect of the City’s ongoing bankruptcy case. The City was extensively involved in the drafting of the questions included in the poll, with the goal of maximizing its chances of passing a new tax measure that would achieve the greatest possible increase in General Fund revenues. However, we also relied on the professional pollsters’ judgment to ensure that the results were statistically significant within acceptable margins for error and confidence factors.</p>		<p>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 document on which Mr. Deis’s testimony is based was attached as an exhibit to his Reply Declaration [Dkt. No. 708], and Franklin has not raised a genuine issue as to the authenticity of any of that document.</p>

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<p>3. The City received the results of FM3’s poll in September 2012. A true and correct copy of FM3’s polling report was attached as Exhibit B to the Reply Declaration. The City also received a summary of key findings from the FM3 survey, which was admitted into evidence as Exhibit 106 in the Eligibility Contest. Not surprisingly, the results confirmed that a ¾-cent sales tax measure had a greater probability of passing if all of the receipts went to public safety purposes, including hiring additional police. Fully 78% of voters indicated that they would support a ¾-cent sales tax increase that dedicated its funding to enhancing police protection and crime prevention. However, such a special tax measure would require two-thirds voter approval, and would not have provided funds to balance the General Fund budget without additional reductions in services. Such a “restricted tax” would not have allowed the City to pay creditors and to plug the structural deficit in the Plan.</p>	<p>Franklin objects to the statements in this paragraph because Mr. Deis’s description of the FM3 report is not the best evidence of that document. 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 document on which Mr. Deis’s testimony is based was attached as an exhibit to his Reply Declaration [Dkt. No. 708], and Franklin has not raised a genuine issue as to the authenticity of any of that document.</p>
<p>4. The poll results showed substantially lower support for a ¾-cent sales tax measure whose receipts would “primarily provide funding to existing debt holders, employee compensation and benefits, and city-paid retiree medical benefits, but would not provide funding to improve existing City services or</p>	<p>Franklin objects to the statements in this paragraph because Mr. Deis’s description of the FM3 report is not the best evidence of that document. 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</p>

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<p>restore services that have been previously cut,” as only 21% of those polled stated they would support such a measure. This question was geared towards determining voter sentiment for simply plugging the budgetary deficit of the current organization at the time, and either avoiding or exiting bankruptcy without addressing service and other needs. There was, however, a 71% level of polling support for a ¾-cent general sales tax measure that provided funding for both increased public safety funding and general services. As a general tax, this required only a majority level of voter support for approval, and thus was more likely ultimately to be enacted while also providing a funding solution that avoided further cuts in service at the same time as voters were paying more in taxes.</p>		<p>witnesses’ understanding of the terms of a written plea agreement). Even if they were, the document on which Mr. Deis’s testimony is based was attached as an exhibit to his Reply Declaration [Dkt. No. 708], and Franklin has not raised a genuine issue as to the authenticity of any of that document.</p>
<p>5. The poll results also showed other key facts. First, when voters were asked their opinion on increasing the UUT by 2%, support dropped to the 49% to 66% range depending on the version of the question. Second, when voters were asked their opinion on a measure including both a ½-cent sales tax increase and a 2% UUT increase, the level of support for both taxes dropped to 39%. Finally, when voters were questioned about their preferences after hearing possible negative campaign statements, voter support for</p>	<p>Franklin objects to the underlined statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis’s perception and not helpful to clearly understand Mr. Deis’s testimony or to determine a fact in issue. FED. R. EVID. 701. Franklin further objects to the statements in this paragraph because Mr. Deis’s description of the FM3 report is not the best evidence of that document. FED. R. EVID. 1002.</p>	<p>The underlined statements are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis’s perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The underlined statements are also based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states.</p>

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<p>the two sales tax options— ½-cent and ¾-cent— dropped to 62% and 66% respectively, and voter support for the UUT increase dropped to 52%. In light of the plus or minus 7% margin of error, the UUT increase was deemed not to be a viable option. <u>Thus, the only funding measure that would maximize revenues, provide flexibility to pay creditors, and enhance public safety, and which still had a reasonable probability for success, was a ¾-cent general sales tax.</u></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 document on which Mr. Deis’s testimony is based was attached as an exhibit to his Reply Declaration [Dkt. No. 708], and Franklin has not raised a genuine issue as to the authenticity of any of that document.</p>
<p>8. Based on FM3’s research, the City put Measures A and B on the November 2013 ballot. Measure A proposed to raise the sales tax by 0.75%, from 8.25% to 9%. Measure B was an advisory measure asking the electorate whether 65% of the proceeds from Measure A should be used to “pay for law enforcement and crime prevention services such as those described in Stockton’s Marshall Plan on Crime” and 35% to “help end the bankruptcy and restore other City services.”</p>	<p>Franklin objects to the statements in this paragraph because Mr. Deis’s description of Measures A and B is not the best evidence of those documents. 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. Deis’ testimony is based, and Franklin has not raised a genuine issue as to the authenticity of any of these documents.</p>
<p>12. Both Measures A and B passed. Measure A passed by an extremely slim</p>	<p>Franklin objects to the underlined statements in this paragraph because they are</p>	<p>The underlined statements are neither speculative nor lack foundation under FED R.</p>

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<p>margin. Just 51.86% of voters—14,939 out of a total of 28,808 voting—voted in favor of the measure. Had only 535 of the 14,939 voted yes instead voted no, Measure A would have failed. Measure B passed by a wider margin, with 59.27% of voters voting yes. <u>Measure A’s narrow victory confirmed the City’s business judgment that the voters likely would not tolerate a tax increase greater than 0.75%, while the comfortable passage of Measure B confirmed that the sales tax increase likely would not have passed if a larger portion of the revenues was dedicated to paying creditors instead of improving public safety and City services.</u></p>	<p>speculative 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 Mr. Deis’s perception and not helpful to clearly understand Mr. Deis’s testimony or to determine a fact in issue. FED. R. EVID. 701. Franklin further objects to the statements in this paragraph because Mr. Deis’s description of the election results is not the best evidence of documents providing those results. FED. R. EVID. 1002.</p>	<p>EVID. 602 because they are based upon Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states, 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 underlined statements are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis’s perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The underlined statements are also based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states, as more fully described in ¶ 1 of his declaration.</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</p>

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		agreement). Even if they were, the City has produced to Franklin all of the documents on which Mr. Deis' testimony is based, and Franklin has not raised a genuine issue as to the authenticity of any of these documents.
<p>13. Thanks to the passage of Measure A, the City projects that it will receive \$286 million in additional revenue over the next 10 years.³ While approximately 65% of these revenues are committed to the restoration of police services and crime prevention, the remainder will enable the City to balance its General Fund budget without resorting to additional cuts in vital City services, while at the same time building up the City's reserves. This will put the City on a much more secure financial footing by funding the Plan. It will also restore the viability of the City as a municipality and as a community. However, there will still be other unmet needs of the City that can be addressed only through growth in the local economy.</p> <p>fn3: <u>The tax will sunset when the City achieves economic recovery such that General Fund revenues regain the levels received in fiscal year 2008-09 adjusted for inflation, or in 10 years, whichever comes first. However, the tax may remain in effect longer than 10 years if economic conditions warrant. There</u></p>	<p>Franklin objects to the underlined statements in this paragraph because they are improper legal conclusions. FED. R. EVID. 701.</p>	<p>The underlined statements are not improper legal conclusions under FED. R. EVID. 701 because they are based upon Mr. Deis' knowledge and experience as Stockton's City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states, as more fully described in ¶ 1 of his declaration. See <i>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>

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<p><u>are review provisions that allow the tax to continue if findings are adopted at two noticed public hearings, after hearing the recommendation of the Citizens Advisory Committee, that the revenues are still necessary to carry out the purpose of the tax and that the total compensation of City employees is not excessive relative to other similar public sector employers.</u></p>		
<p>14. The City was barely able to sell voters on a tax increase that paid for some of the City’s most vital “products”: law enforcement, crime prevention, and the restoration of City services. In my experience, it would have been even more difficult, if not impossible, to pass a tax measure devoted solely to paying financial creditors such as Franklin. This was supported by the City’s polling. <u>In short, the City asked the voters to pass the highest tax increase that the City thought feasible, and then worked diligently to convince those voters to vote “yes.”</u></p>	<p>Franklin objects to the underlined statements in this paragraph because they offer improper opinion testimony that is not rationally based on Mr. Deis’s perception and not helpful to clearly understand Mr. Deis’s testimony or to determine a fact in issue. FED. R. EVID. 701.</p>	<p>The underlined statements are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis’s perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The underlined statements are also based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states, as more fully described in ¶ 1 of his declaration.</p>
<p>15. Having successfully, albeit barely, passed Measure A, <u>I believe that it is unlikely that the City’s residents would support another tax increase in the near future. I do not believe that Measure A would have passed without the strong but expensive campaign financed by the business community, and based on my extensive interaction</u></p>	<p>Franklin objects to the underlined statements in this paragraph because they assume facts not in evidence, misstate Franklin’s arguments, are speculative and lack foundation. FED. R. EVID. 602. Franklin further objects to the underlined statements in this paragraph because they offer improper opinion testimony that is not rationally based on Mr. Deis’s perception</p>	<p>The underlined statements do not assume facts not in evidence, are not speculative, and do not lack foundation under FED R. EVID. 602 because they are based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal</p>

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<p><u>with that community, I do not believe that it has the interest or wherewithal to fund another campaign for more tax increases. Were the City’s bankruptcy case dismissed, it could not, as Franklin seems to suggest, raise yet more tax revenue at the drop of a hat.</u> Following the passage of Measure A, the City’s 9% sales tax rate is now among the highest in the state.⁴ More importantly, it is among the highest among nearby cities, which compete with Stockton for business. Manteca, Sacramento and Tracy all have an 8.5% sales tax rate, and Lodi and Elk Grove have an 8% rate. Modesto, whose attempt to increase its sales tax rate by 1% was rejected by voters in the November 2013 election, has a 7.625% rate. These cities now have a measurable advantage in the competition for business by virtue of their lower sales tax rates.</p> <p>fn4: There are 125 cities with a 9% tax statewide, representing 10.93 million of the total 30.78 million residents of cities, or 35.5% of the total city population in California. There are 258 cities with a lower sales tax rate, and only 18 with a rate higher than 9%. A true and correct copy of a table collecting the Board of Equalization’s data on tax rates with the California Department of Finance’s data on population is attached hereto as Exhibit A.</p>	<p>and not helpful to clearly understand Mr. Deis’s testimony or to determine a fact in issue. FED. R. EVID. 701.</p>	<p>and county finances in three states, as more fully described in ¶ 1 of his declaration. To the extent necessary, the City will make an offer of proof at trial. Further, whether the underlined statements misstate Franklin’s arguments – which they do not – is not a proper objection under FED. R. EVID. 602 and should be disregarded.</p> <p>The underlined statements are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis’s perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The underlined statements are also based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states.</p>
<p>16. Moreover, the City</p>	<p>Franklin objects to the</p>	<p>The underlined statements are</p>

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<p>must now demonstrate that it will use the revenues created by Measure A to set Stockton on a secure fiscal path. <u>The City’s voters will surely view any additional tax increases in the near term with skepticism. The City needs to prove that it is a good steward of the new sales tax proceeds and must follow through on its commitments of reducing crime and implementing the Marshall Plan on Crime. This will take years to accomplish. Before any more taxes are considered, the City will also have to identify future needs that resonate with the citizenry. Paying more money to creditors will likely not be one of them.</u></p>	<p>underlined statements in this paragraph because they are speculative and lack foundation. FED. R. EVID. 602. Franklin further objects to the statements in this paragraph because they offer improper opinion testimony that is not rationally based on Mr. Deis’s perception and not helpful to clearly understand Mr. Deis’s testimony or to determine a fact in issue. FED. R. EVID. 701.</p>	<p>not speculative and do not lack foundation under FED R. EVID. 602 because they are based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states, 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. Deis’s perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The underlined statements are also based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states.</p>
<p>17. <u>Franklin’s arguments that the City should raise its UUT rate miss the mark.</u> In 2004, the City was forced to reduce the UUT from 8% to 6% in order to prevent challengers from bringing a ballot measure to reduce the UUT to 2% or 0%. Political pressure against increasing the UUT remains strong. The City placed Measure U on the November 4, 2008</p>	<p>Franklin objects to the underlined statements in this paragraph because they assume facts not in evidence and misstate Franklin’s arguments.</p>	<p>The underlined statements do not assume facts not in evidence, and Franklin has not identified what facts it alleges the statements assume.</p> <p>Further, whether the underlined statements misstate Franklin’s arguments – which they do not – is not a proper objection under FED. R. EVID. 602 and should be disregarded.</p>

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<p>ballot, which the voters passed. The purpose of Measure U was to modernize the current UUT ordinance to treat taxpayers equally regardless of what technology they used for telecommunication and video services. Specifically, it was intended to protect the tax from litigation alleging that local phone taxes should have been repealed when the federal government ceased taxing long-distance calls in 2006. It also was intended to extend the tax to new technologies such as text messaging. In order to convince voters to support the extension of the UUT to new technologies, Measure U included a commitment to maintain the UUT at no higher than 6%.</p>		
<p>18. Any subsequent effort to increase the UUT would run afoul of this pledge, and the FM3 polling results discussed above indicated a low a probability of a UUT increase passing. The language of Measure A polled initially at 71% support and wound up with only 51.86% “yes” votes after a bitter campaign. The 2% UUT alone polled initially at only 49%-66% support, which indicates it would not have survived a hard-fought electoral battle like the one that occurred in November 2013. A 2% UUT, <i>combined</i> with a ½-cent sales tax, secured only 39% polling support in the FM3 poll. <u>Voters are as unlikely to be supportive of enacting two different taxes</u></p>	<p>Franklin objects to the underlined statements in this paragraph because they are vague, speculative and lack foundation. FED. R. EVID. 602. Franklin further objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis’s perception and not helpful to clearly understand Mr. Deis’s testimony or to determine a fact in issue. FED. R. EVID. 701. Franklin further objects to the statements in this paragraph because Mr. Deis’s description of the FM3 report is not the best evidence of that document. FED. R. EVID. 1002.</p>	<p>The underlined statements are sufficiently clear and are neither speculative nor lack foundation under FED. R. EVID. 602 because they are based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states, 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.</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p><u>through two back-to-back elections as they would be doing it in a single election, and would accuse the City of misleading them on Measures A and B. As I mention above, the UUT is neither a popular tax nor one that is well understood by the voting public. The UUT has little chance of being increased in the near future, and raising it is simply not a viable option.</u></p>		<p>Deis’s perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The statements are also based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states.</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 document on which Mr. Deis’s testimony is based was attached as an exhibit to his Reply Declaration [Dkt. No. 708], and Franklin has not raised a genuine issue as to the authenticity of any of that document.</p>
<p>20. It has been a long and difficult journey to wrestle control of the City’s finances back from the vested interests that had shoved City management aside and pursued their own goals with vigor and success. When I arrived at Stockton, the staff was demoralized and unsure of the future, mediocrity was</p>	<p>Franklin objects to the statements in this paragraph because they are vague and lack foundation. FED. R. EVID. 602. Franklin further objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis’s perception and not helpful to clearly determine a fact in issue. FED. R. EVID. 701.</p>	<p>The statements in this paragraph are sufficiently clear and do not lack foundation under FED. R. EVID. 602 because they are based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and</p>

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<p>the norm, and very few staff took seriously the need to be disciplined and good stewards of the public trust and resources. I took this assignment on July 1, 2010, because the relatively new City Council understood that there was something wrong, and because they shared a similar “good government” value system. They just needed help in getting to the bottom of things and to be provided options for dealing with the City’s problems. This was a key start to the City’s turnaround. That is why I was willing to take on this challenge. The interplay between financial self-interests (e.g. labor, developers, etc.) and the governing body and senior management often goes unnoticed. In my opinion, this interplay and how the City makes decisions with large financial consequences, are key to evaluating future viability and the relative risk of the City winding up in bankruptcy court again.</p>		<p>trouble-shooting municipal and county finances in three states, 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. Deis’s perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The statements are also based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states.</p>
<p>21. <u>Practitioners of local government management, i.e. International City Management Association (ICMA), measure municipal sustainability according to four criteria: cash solvency, budgetary solvency, service-level solvency and long-term solvency.</u> Cash solvency is the relative ability to generate cash to pay bills when they become due. Budgetary solvency is the relative ability to fully budget and generate</p>	<p>Franklin objects to the underlined statements in this paragraph because they lack foundation. FED. R. EVID. 602.</p>	<p>The underlined statements in this paragraph do not lack foundation under FED. R. EVID. 602 because they are based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states, as more fully described in ¶ 1 of his declaration. To the extent necessary, the City</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p>adequate resources to cover expenditures over a budget cycle. Service insolvency is the relative ability to provide adequate services to meet the health, safety and welfare needs of its citizens. Long-term solvency is the ability to balance revenues and spending, meet future obligations and handle unknown financial challenges in the long run. I will address these criteria as they apply to Stockton in the balance of this Declaration. I believe that I am well-qualified to do so because most of the Plan was formulated under my watch and the team that will transition the City from insolvency to solvency was hired by me. I am very familiar with the City's efforts to achieve each of the four types of solvency.</p>		<p>will make an offer of proof at trial.</p>
<p>22. <u>It is notable that Franklin does not appear to directly challenge the City's ability to meet the cash, budget and service solvency standards. To the contrary, Franklin's expert, Charles M. Moore ("Moore"), opines that the City is actually more cash solvent than it is letting on, and suggests that the City is actually underestimating its ability to pay its debts. I believe that his opinions suffer from his lack of experience in managing local governments, a lack of understanding of state law regarding Public Facility Fees ("PFFs"), and a lack of knowledge of the City's specific financial situation. Specifically, Moore claims</u></p>	<p>Franklin objects to the underlined statements in this paragraph because they assume facts not in evidence and misstate Franklin's arguments and the opinions of Mr. Moore. Franklin further objects to the italicized statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis's perception and not helpful to clearly understand Mr. Deis's testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers, Inc. v. Bayer Corp.</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (E.D. Cal. June 17, 2009) (fact witness not permitted to offer opinions to rebut expert's methodology).</p>	<p>The underlined statements do not assume facts not in evidence and neither misstate Franklin's arguments nor the opinions of Mr. Moore. Franklin does not identify what facts it alleges the statements assume. Further, whether the underlined statements misstate Franklin's arguments – which they do not – is not a proper objection under FED. R. EVID. 602 and should be disregarded.</p> <p>The italicized statements are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis's perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The</p>

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<p><u>that the City can simply pay Franklin hundreds of thousands of dollars a year in PFFs (which it could not legally do, even if PFF revenues hadn't plummeted), and that the City need not provide for an annual buffer against typical variations in multiple revenue and expenditure line-items or future recessions (which is the proper way to provide service reliability and avoid future financial catastrophes). Moreover, it is clear that Franklin cares little about the City's community health, ability to provide services to its residents, or capacity to weather future financial downturns, since the Moore Report appears to argue that any spare dollar should be paid to Franklin, rather than ensuring the City's long-term fiscal health. Moore seems to ignore the competing priorities for scarce General Fund dollars and the fact that it is the City Council that determines budgetary priorities.</u></p>		<p>italicized statements are also based on Mr. Deis' knowledge and experience as Stockton's City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states. Cf. <i>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>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 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); <i>United States v. Bennett</i>, 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)</p>

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		(jury may find expert testimony “adequately rebutted by the observations of mere laymen”); <i>Carpenter v. United States</i> , 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i> , 295 F.2d 743 (8th Cir. 1961).
<p>23. <u>Despite insisting that the City has boatloads of available funds, Franklin makes passing reference to one of the favored talking points of Moody’s and other pundits; namely, that the Plan cannot be feasible unless it impairs its CalPERS contract. Franklin, Moody’s and the rest cite the City of Vallejo, which did not impair its CalPERS contract, as an argument that Stockton must cut its pensions. <i>These arguments are nothing more than an inaccurate comparison between cities drawn to support ideological arguments about government pensions. Moreover, it appears Moody’s used old data to support their assertion, and Vallejo’s City Manager refutes the perception that they are near bankruptcy. Further, Vallejo used a five-year planning horizon, and to my knowledge, did not hire an outside retirement actuary. Stockton used a prominent outside actuary and developed a thirty-year planning horizon with more conservative estimates than what CalPERS uses now. City leadership cannot manage based on an ideology, but instead must rely on facts and the practical realities of the</i></u></p>	<p>Franklin objects to the underlined statements in this paragraph because they assume facts not in evidence and misstate Franklin’s arguments and the opinions of Mr. Moore. Franklin objects to the italicized statements in this paragraph because they are vague, speculative 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 Mr. Deis’s perception and not helpful to clearly understand Mr. Deis’s testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert’s methodology).</p>	<p>The underlined statements do not assume facts not in evidence and neither misstate Franklin’s arguments nor the opinions of Mr. Moore. Franklin does not identify what facts it alleges the statements assume. Further, whether the underlined statements misstate Franklin’s arguments – which they do not – is not a proper objection under FED. R. EVID. 602 and should be disregarded.</p> <p>The italicized statements are sufficiently clear and are neither speculative nor lack foundation under FED. R. EVID. 602 because they are based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states, 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 underlined statements are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis’s perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The</p>

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<p><i>labor market. As Police Chief Eric Jones and I have stated in prior declarations, if the City cut its pensions, it is extremely likely that it would lose a large number of experienced police officers and other public employees. Stockton already lost 100 experienced officers during the last exodus, and to lose any more would be untenable. I believe the City would also risk losing the senior managers that are tasked with restoring the City to service solvency. <u>Neither Franklin nor its expert have offered any feasible, cheaper alternative to the City's CalPERS plan that would allow the City to continue providing competitive pensions to its employees and thereby retain its valued labor force.</u></i></p>		<p>italicized statements are also based on Mr. Deis' knowledge and experience as Stockton's City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states. <i>Cf. 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>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 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); <i>United States v. Bennett</i>, 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)</p>

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		(jury may find expert testimony “adequately rebutted by the observations of mere laymen”); <i>Carpenter v. United States</i> , 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i> , 295 F.2d 743 (8th Cir. 1961).
<p>24. The Long-Range Financial Plan (“LRFP”) attached to the Disclosure Statement demonstrates how the City will achieve cash and budget solvency under the Plan. The LRFP is discussed in detail in the Direct Testimony Declaration Of Robert Leland In Support Of Confirmation Of First Amended Plan For The Adjustment Of Debts Of City Of Stockton, California (November 15, 2013) (“Leland DTD”), which is being submitted concurrently. The LRFP’s projections are appropriately conservative, as the City cannot risk the excessive optimism that caused it to collapse into bankruptcy in the first place. <u>The Moore Report suggests that estimated revenues in the LRFP are too low by comparing Stockton’s forecasted increases to the previous 15 years. This is simply the wrong approach. It would be foolhardy to predict that the next 15 years will mirror the last 15 years. Instead, the LRFP accounts for what will likely continue to be a slow economic recovery, as most economists have predicted for the Central Valley. As a long-time public servant, I can say with certainty that a</u></p>	<p>Franklin objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis’s perception and not helpful to clearly understand Mr. Deis’s testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert’s methodology). Franklin objects to the underlined statements in this paragraph because they assume facts not in evidence and misstate Franklin’s arguments and the opinions of Mr. Moore.</p>	<p>The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis’s perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The statements are also based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states. <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). <i>Cf. 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</p>

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<p><u>city never wants to get caught short on revenues, because this would require a commensurate cut in budgeted expenditures within the same year. Otherwise, the city would violate state law. Conversely, a city does not want to constantly “find money” at the end of the year due to underestimating revenues, because it will lose credibility with labor groups and other vested interest groups that are constantly looking for financial support.</u></p>		<p>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>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 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); <i>United States v. Bennett</i>, 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”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p> <p>The underlined statements do not assume facts not in evidence and neither misstate Franklin’s arguments nor the opinions of Mr. Moore. Franklin does not identify what facts it alleges the statements assume. Further, whether the underlined</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
		statements misstate Franklin’s arguments – which they do not – is not a proper objection under FED. R. EVID. 602 and should be disregarded.
<p>26. The City also has made great strides in reducing expenditures and increasing expenditure predictability. Whereas much of the City’s General Fund budget was on auto-pilot upon my arrival (including, for instance, long-term labor contracts with automatic wage increases, mandatory staffing levels, complete coverage of employee and retiree medical, and growing “back loaded” debt payments), the Plan provides the City with much more control over its future expenditures. Labor contracts are now short term, and almost all formulas for automatic cost increases have been removed. Through difficult negotiations, the City eliminated a massive retiree health obligation, and the City’s contributions towards active employee medical costs are now a fixed stipend. All of these changes will help to ensure that the City does not fall back into the trap of ballooning costs.</p>	<p>Franklin objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis’s perception and not helpful to clearly understand Mr. Deis’s testimony or to determine a fact in issue. FED. R. EVID. 701.</p>	<p>The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis’s perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The statements are also based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states.</p>
<p>27. The City has forecasted roughly 30 years of costs. Granted, it is very difficult to project costs that far out into the future; however, since the renegotiated debt payments stretch that far out, we believed that it was incumbent upon the City to</p>	<p>Franklin objects to the underlined statements in this paragraph because they lack foundation. FED. R. EVID. 602.</p>	<p>The underlined statements do not lack foundation because they are based upon Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013, his other experience, including 33 years of managing and trouble-shooting municipal and</p>

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<p>show that it can pay for these debts when they come due. I note that the City of Vallejo looked at a five-year planning horizon, and Detroit (Mr. Moore’s client) is looking at a ten-year period. What is most critical is that the City has a model that shows the long-term impacts of its decisions. Stockton has changed its paradigm for discussing and disclosing the impacts of City decisions. Our review of past key financial commitments found inadequate public disclosure and staff understanding of the long-term cost implications of items like retiree health and new labor contracts. The new value system at the City is full disclosure and evaluation of long-term financial impacts. The governing body is well versed on many of these components. As an added check, the independent Council Audit Committee has been reconstituted and reinvigorated with a robust support contract with Moss Adams LLP, a public accountancy firm is constantly ranked in the top 15 in the nation for size.</p>		<p>county finances in three states, and his experience in this case, as more fully described in his declaration. To the extent necessary, the City will make an offer of proof at trial.</p>
<p>28. The Moore Report also takes issue with the City’s provision in its LRFP for its unrestricted fund balance to increase to 16.67%, and for the City to maintain an annual contingency of \$2 million. As described in detail in the Leland DTD, both of these aspects of the LRFP are critical to the City’s long-term fiscal stability. The</p>	<p>Franklin objects to the statements in this paragraph because they assume facts not in evidence and misstate Franklin’s arguments and the opinions of Mr. Moore. Franklin further objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis’s perception and not helpful to clearly understand Mr. Deis’s</p>	<p>The statements in this paragraph do not assume facts not in evidence and neither misstate Franklin’s arguments nor the opinions of Mr. Moore. Franklin has not identified what facts it alleges the statements assume. Further, whether the statements misstate Franklin’s arguments – which they do not – is not a proper objection under FED. R. EVID. 602 and</p>

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<p>16.67% unrestricted fund balance is recommended by the Government Finance Officers Association, and will provide a buffer for the City in typical economic cycles. Moreover, it must be noted that over the next decade, the unrestricted fund balance will remain low, and will not reach its target for several decades. The \$2 million annual contingency is also critical. It is also important to understand that every year, the City must forecast approximately \$160 million in revenues and roughly another \$160 million in expenditures. To cushion against the potential impact of deviations in these projections, the City is setting aside only \$2 million. If staff was short just 1 percent in revenues and 1 percent over in expenditures in a given year (totaling \$3.2 million), the annual contingency will be more than consumed. Moreover, the LRFP maintains a \$2 million annual contingency well into future years, when annual budgets are expected to increase to \$300 million, at which time the contingency will account for less than 1 percent of the budget. Contrary to Moore’s contention, this is a very small cushion to address surprises throughout the year. When planning a General Fund budget over multiple years, city governments must set aside funds – in the form of unrestricted fund balances, annual contingencies, or other mechanisms – to</p>	<p>testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert’s methodology).</p>	<p>should be disregarded. The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis’s perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The statements are also based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states. <i>Cf. 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). Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 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); <i>United States v. Bennett</i>, 908 F.2d 189, 195 (7th Cir. 1990) (government was not required</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p>protect against unexpected, and often catastrophic, events, such as uninsured lawsuits, floods, economic crashes, etc. The City’s inclusion of these items in its LRFP is good business.</p>		<p>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”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p>
<p>29. While the City has limited control over its CalPERS obligation, the simple fact is that the City cannot simply cut and run from the CalPERS program. <u>Ninety-nine percent of government employees in California are in the CalPERS program or something very similar.</u> Thus, CalPERS is the market standard. No viable, less-expensive alternative exists. However, while the City cannot cut its CalPERS contract directly without risking the loss of essential personnel, the City <i>has</i> lowered its pension obligations indirectly, by aggressively reducing employee compensation by 7-23% depending on the position. Factoring in reduced benefits, some employees, such as police, have lost as much as 30% of their take home pay. These compensation reductions were, and continue to be, a severe burden on City employees.</p>	<p>Franklin objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis’s perception and not helpful to clearly understand Mr. Deis’s testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert’s methodology). Franklin objects to the underlined statements in this paragraph because they are vague and lack foundation. FED. R. EVID. 602</p>	<p>The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis’s perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The statements are also based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states. <i>Cf. 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</p>

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		<p>“complex[]” area of municipal accounting and promoted “judicial efficiency” (citing FRE 701).</p> <p>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 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); <i>United States v. Bennett</i>, 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”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p> <p>The underlined statements are sufficiently clear and do not lack foundation because they are based upon Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states, as more fully described in ¶ 1 of his declaration. To the extent necessary, the City will make an offer of proof at</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p>30. These reductions already have led to the departure of a large number of police officers, who either retired early or left for positions in other cities. If the City were to impair its CalPERS contract on top of all of the other compensation benefits already imposed on its employees, more employees will leave. This is simply not a viable option given the City's existing difficulty in recruiting and retaining qualified employees, and in particular its difficulty in maintaining an adequate and experienced police force in light of continued crime and public safety issues. The standards for police officers are very high in California. The labor market for police officers is very competitive amongst California cities. <u>There are typically 100 applicants for every officer who makes it through the rigorous testing process.</u></p>	<p>Franklin objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis's perception and not helpful to clearly understand Mr. Deis's testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert's methodology). Franklin objects to the underlined statements in this paragraph because they are vague and lack foundation. FED. R. EVID. 602.</p>	<p>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. Deis's perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The statements are also based on Mr. Deis' knowledge and experience as Stockton's City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states. <i>Cf. 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>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 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); <i>United States v. Bennett</i>, 908 F.2d 189, 195 (7th Cir. 1990)</p>

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		<p>(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”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p> <p>The underlined statements are sufficiently clear and do not lack foundation because they are based upon Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states, 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>31. It should not be ignored that impairing CalPERS would cause the immediate reduction of benefits to current and future retirees by the unpaid shortfall. <u>This would leave many of the City’s retirees living below the poverty line.</u> Moreover, it would make Stockton extremely unattractive to prospective employees.</p>	<p>Franklin objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis’s perception and not helpful to clearly understand Mr. Deis’s testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert’s methodology). Franklin objects</p>	<p>The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis’s perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The statements are also based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to</p>

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	<p>to the underlined statements in this paragraph because they are vague and lack foundation. FED. R. EVID. 602.</p>	<p>November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states. <i>Cf. 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>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 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); <i>United States v. Bennett</i>, 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"); <i>Carpenter v. United States</i>, 264 F.2d 565</p>

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		<p>(4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p> <p>The underlined statements are sufficiently clear and do not lack foundation because they are based upon Mr. Deis' knowledge and experience as Stockton's City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states, 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>32. The City believes that current and future retirees have paid their fair share of the City's restructuring. It just wasn't in the way the pundits wanted or expected. <u>Those retirees without City paid medical insurance are receiving an average pension of \$24,000.</u> Given California's high cost of living, the City felt this was a modest amount, and did not change their benefits. However, <u>retirees that benefitted from enhanced retirement benefits, including City paid retiree medical benefits, received a 34% cut in their compensation package. This group is receiving an average pension of \$51,000, and was receiving a retiree medical plan worth \$26,000.</u> The Plan eliminates the retiree medical plan. <u>Most of these employees are not eligible for social security benefits. Most current</u></p>	<p>Franklin objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis's perception and not helpful to clearly understand Mr. Deis's testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert's methodology). Franklin objects to underlined the statements in this paragraph because they are vague, speculative and lack foundation. FED. R. EVID. 602.</p>	<p>The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis's perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The statements are also based on Mr. Deis' knowledge and experience as Stockton's City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states. <i>Cf. 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</p>

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<p><u>employees have lost their ability for 7 to 9 percent spiking, and they have seen reductions in pay, which by Council policy will not be recovered in the future. The City estimates the impact on current employees' retirement package to be a 30-50% reduction. When the State's recent retirement reform package for new employees is taken into account, employees hired after January 1, 2013, will experience a 50-70% reduction in their retirement package.</u></p>		<p>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>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 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); <i>United States v. Bennett</i>, 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”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p> <p>The underlined statements are sufficiently clear and are neither speculative nor lack foundation because they are based upon Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
		states, as more fully described in ¶ 1 of his declaration. To the extent necessary, the City will make an offer of proof at trial.
<p>35. If the City was to experience additional revenues, as the former City Manager, I would recommend they consider more robustly addressing of the City’s capital improvement needs for roads, parks, etc. However, it is the City Council’s right and duty to set priorities for the City, not Mr. Moore or Franklin.</p>	<p>Franklin objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis’s perception and not helpful to clearly understand Mr. Deis’s testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert’s methodology).</p>	<p>The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis’s perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The statements are also based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states. <i>Cf. 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>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the government could rely entirely on lay witnesses with</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
		percipient knowledge to rebut the defendant’s expert); <i>United States v. Bennett</i> , 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”); <i>Carpenter v. United States</i> , 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i> , 295 F.2d 743 (8th Cir. 1961).
36. Bankruptcy is not just a budget and finance issue. It is a reflection on, and a result of, senior management decisions, political decisions by the governing body, and the organizational and cultural capacity of city leaders. In other words, for a city to recover, it must repair the entire organization, and not just produce budgets that balance. It must look itself in the mirror, admit its mistakes, and make amends.	Franklin objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis’s perception and not helpful to clearly understand Mr. Deis’s testimony or to determine a fact in issue,. FED. R. EVID. 701.	The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis’s perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The statements are also based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states.
38. <u>In summary, the City’s Plan, which is the result of major cuts, hard fought negotiations, and revenue increases, is feasible, as shown by the LRF. I would not have</u>	Franklin objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis’s perception and not helpful to clearly understand Mr. Deis’s	The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis’s perception, helpful to clearly understand his

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p>approved the initial Plan, nor left my position at the City, were this not the case.</p>	<p>testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also Britz Fertilizers</i>, 2009 U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert’s methodology). Franklin further objects to the underlined statements in this paragraph because they are improper legal conclusions. FED. R. EVID. 701</p>	<p>testimony, and helpful to determine at least one fact in issue. The statements are also based on Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states. <i>Cf. 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>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 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); <i>United States v. Bennett</i>, 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.”);</p>

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		<p><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”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p> <p>The underlined statements are not improper legal conclusions under FED. R. EVID. 701 because they are based upon Mr. Deis’ knowledge and experience as Stockton’s City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and troubleshooting municipal and county finances in three states. <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>

