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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

**DIRECT TESTIMONY
 DECLARATION OF KURT WILSON
 IN SUPPORT OF CONFIRMATION OF
 FIRST AMENDED PLAN FOR THE
 ADJUSTMENT OF DEBTS OF CITY
 OF STOCKTON, CALIFORNIA
 (NOVEMBER 15, 2013)¹**

15
 16 WELLS FARGO BANK, NATIONAL
 ASSOCIATION, FRANKLIN HIGH
 YIELD TAX-FREE INCOME FUND,
 17 AND FRANKLIN CALIFORNIA
 HIGH YIELD MUNICIPAL FUND,
 18

Adv. No. 2013-02315
 Date: May 12, 2014
 Time: 9:30 a.m.
 Dept: Courtroom 35
 Judge: Hon. Christopher M. Klein

19 Plaintiffs,

20 v.

21 CITY OF STOCKTON, CALIFORNIA,
 22 Defendant.
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 28 ¹ While this declaration is made in support of confirmation of the Plan, out of an abundance of caution, and because the evidentiary hearing on Plan confirmation and the trial in the adversary proceeding share common issues, it is being filed in both the main case and the adversary proceeding.

1 I, Kurt Wilson, hereby declare:

2 1. I am the City Manager of the City of Stockton, California (the “City” or
3 “Stockton”). I joined the City as a Deputy City Manager in September 2012. My responsibilities
4 in that role included overseeing the operational departments of Community Development,
5 Economic Development, Public Works, and Municipal Utilities. I served as Interim City
6 Manager from November 2013 until late January 2014, when I became City Manager. In my role
7 as City Manager, I serve as the chief administrative officer of the City, in which capacity I
8 manage the City's resources and personnel, with the exceptions of the City Attorney, City
9 Auditor, and City Clerk's offices. This includes supervising a variety of professional staff with
10 expertise in various disciplines and managing those talents to implement the policy decisions of
11 the Mayor and Council.

12 2. Before joining the City, I was City Manager of Ridgecrest, California, and served
13 in local government in both San Bernardino and Rialto. I also served in state government, where
14 I served in two senior executive positions in the Schwarzenegger administration. Additionally, I
15 have an extensive background in the private sector, as a business owner and nonprofit executive.
16 I hold a Bachelor of Science degree in Organizational Management and a Master of Business
17 Administration from University of La Verne, and a Master of Education from California Coast
18 University, as well as several post graduate certifications from UCLA, Berkeley, and various
19 professional organizations.

20 *The City's Deals With Ambac, Assured, And NCFG Preserve Important Civic Properties*

21 3. Franklin attacks the deals that the City, through arduous mediation and after
22 thousands of hours of work by the City's management team and outside professionals, has struck
23 with Ambac, Assured, and NCFG. But Franklin ignores one of the critical elements of these
24 deals. These agreements are vital to the City because they each ensure the City's continued use
25 of properties that are important, and often essential, to the City's operations.

26 4. The City's agreement with Ambac allows the City to maintain possession of three
27 fire stations, the City's Main Police Facility, and the Maya Angelou Southeast Branch Library.
28 The City, in the exercise of its business judgment, has determined that it cannot relinquish control

1 of these properties because of their importance to the City. Likewise, the City's agreement with
2 Assured allows the City to continue its current tenancy and capture the benefits of previous
3 investments made for its use of 400 E. Main. The City intended to make this building its new
4 City Hall, replacing the dilapidated City Hall built nearly 100 years ago. Although 400 E. Main
5 did not become the City Hall as planned, it now houses the City's information technology
6 division. The City has invested several million dollars in upgrades at 400 E. Main to provide the
7 necessary cabling and chillers for its main computer services and related equipment for the
8 information technology division to support the full array of City Departments. The City's
9 settlement with Assured is thus essential to the City's operations. In addition, the City's new
10 lease of its space at 400 E. Main is on more favorable terms than it would have been able to
11 achieve outside of its settlement with Assured. The new negotiated lease rate is less than half the
12 current rate.

13 5. The City's deals with NCFG also allow the City to continue its use of essential
14 civic properties. Those deals allow the City to remain in use of the Stewart/Eberhardt Building,
15 an essential services building (as defined by Cal. Health & Safety Code § 16007) that is home to
16 the City's Human Resources, Police Emergency Communications (911 Dispatch), Police
17 Investigations, and Public Works departments, as well as the Police Crime Lab. They also allow
18 the City to retain the Stockton Arena, home to the Stockton Thunder professional sports team and
19 host to a variety of events such as ice hockey, indoor football, indoor soccer, and concerts. The
20 Arena is part of the Stockton Events Center in downtown Stockton and defines the city's
21 downtown waterfront redevelopment program, which is a critical component of the City's future
22 economic viability and recovery. Finally, the NCFG deals allow for the City's continued use of
23 three parking structure properties in downtown Stockton: (1) the Edmond S. Coy Parking
24 Structure, a six-story structure with about 575 parking spaces, as well as ground commercial
25 space, for workers in and visitors to the Central Business District; (2) the Stockton Events Center
26 Parking Structure, a seven-story structure with about 600 parking spaces for sports fans, concert
27 goers, and event attendees; and (3) the Market Street Garage, a four-story structure with about
28 780 parking spaces, which provides monthly parking for employees of downtown businesses and

1 hourly parking for patrons of downtown businesses. Each of these facilities is important either to
2 the City's operations or to the City's viability as a liveable City.

3 6. The NPMFG Settlements were contingent on the City obtaining the required
4 approval of the State of California Department of Finance of the restructuring of the Arena Pledge
5 Agreement. The City has received this approval, which continues the non-General Fund payment
6 stream to service this debt.

7 7. The properties underlying the City's deals with Ambac, Assured, and NPMFG are
8 important civic facilities, and the City, in the exercise of its business judgment, has determined
9 that they cannot be sacrificed. There is one deal with Assured, the Pension Obligation Bond
10 (POB) settlement, which does not directly involve an underlying property. However, the City
11 entered into the POBs settlement as part of a global settlement with Assured that ensured the
12 City's continued use of 400 E. Main under favorable lease terms. The City believes that Assured
13 would not have entered into the new 400 E. Main lease on the same terms had it not reached an
14 acceptable settlement on the POB Claims.

15 8. In contrast, the properties underlying the 2009 Bonds – Swenson Golf Course, Van
16 Buskirk Golf Course, and Oak Park – are not essential to the City's operations or continued
17 viability. The City has determined, in the exercise of its business judgment, that these properties
18 can be sacrificed.

19 9. The City has disclosed the major terms of the deals with Ambac, Assured, and
20 NPMFG, and has filed near-final drafts of each settlement in the Plan Supplement [Dkt. No. 1236]
21 and the Supplemental Plan Supplement [Dkt. No. 1259]. The City intends to file final drafts of
22 all settlement documents, as approved by the City Council, before the Confirmation Hearing. The
23 City does not believe that any modifications of the documents that have already been filed will be
24 material. The City also does not believe that any documents that have not yet been filed will
25 affect the treatment of the 2009 Bond Claim or that Franklin has been prejudiced in any way.

26 *The City Has Made Its Best Effort To Raise Additional Tax Revenues*

27 10. The City has made its best efforts to raise taxes in light of its fiscal crisis and
28 bankruptcy case. The City realized several years ago that it needed to pursue additional revenues.

1 At the time, however, the justification for new taxes did not meet the expectations of the
2 community. As a result, on more than one occasion voters rejected calls for new taxes, even to
3 support important public items. Subsequently, the City engaged FM3, a reputable national firm
4 with more than 30 years of experience specializing in opinion research to support the passage of
5 finance measures to fund local public services. The City enlisted FM3 to survey likely Stockton
6 voters in September 2012 on the level of support for sales and/or utility user tax increases,
7 structured either as special taxes (with earmarked proceeds) or general taxes (without earmarked
8 proceeds). A true and correct copy of the results of FM3's research is attached as Exhibit B to the
9 declaration of former City Manager Robert Deis in support of the City's eligibility for bankruptcy
10 relief ("Deis Decl.", [Dkt. No. 708]). A summary of FM3's key findings was also admitted into
11 evidence as Exhibit 106 at the Eligibility Hearing. Those results showed that the measure had a
12 greater probability of passing if a portion of the receipts went to public safety purposes, including
13 the hiring of additional police. It also showed substantially lower support for a tax measure
14 whose receipts would be dedicated solely to paying the City's creditors.

15 11. Based on FM3's research, the City put Measures A and B on the November 2013
16 ballot. Measure A, a ballot measure to raise the sales tax by 0.75%, narrowly passed in
17 November 2013, with 51.86% of voters voting yes. Measure B, an advisory measure asking the
18 electorate whether 65% of the proceeds from Measure A should be used to "pay for law
19 enforcement and crime prevention services such as those described in the Stockton's Marshall
20 Plan on Crime" and 35% to "help end the bankruptcy and restore other City services," passed by
21 a wider margin, with 59.27% of voters voting yes. Measure A's narrow victory confirmed the
22 City's business judgment that the voters likely would not tolerate a tax increase higher than
23 0.75%, while Measure B's wider margin of victory confirmed that the sales tax increase likely
24 would not have passed if a larger portion of the revenues was spent on paying creditors instead of
25 public safety and City services.

26 12. I agree with the testimony of former City Manager Robert Deis when he stated that
27 "for a tax increase measure to be successful it is essential that a city have a compelling argument
28 or a specific 'product' that will be funded by the tax increase which resonates with the voters."

1 Deis Decl. at 9. It was critical to the passage of Measure A that the public see that the resulting
2 revenues would go to hiring police officers and improving public safety. At the same time,
3 however, the City was barely able to sell a tax increase that paid for the some of the City's most
4 vital "products": law enforcement, crime prevention, and the restoration of City services. In my
5 experience, it would be impossible to pass a tax measure devoted solely to paying creditors like
6 Franklin, particularly considering the likelihood of a much stronger organized opposition than
7 what we saw with Measure A. The City has acted in good faith by asking the voters to pass the
8 highest tax increase that the City thought feasible and by presenting voters with a "product" they
9 would support. Were the City's bankruptcy case dismissed, it could not, as Franklin suggests it
10 might, be able to raise yet more tax revenue at the drop of a hat.

11 13. Franklin's arguments that the City should raise its utility users' tax ("UUT") rate
12 likewise miss the mark. In November 2008, the City placed Measure U on the ballot, which the
13 voters passed. The purpose of Measure U was to modernize the current user utility tax ordinance
14 to treat taxpayers equally regardless of the technology used for telecommunication and video
15 services. Specifically, it was intended to protect the tax from litigation alleging that local phone
16 taxes should have been repealed when the federal government ceased taxing long-distance calls in
17 2006. It was also intended to extend the tax to new technologies such as text messaging. In order
18 to address public concern, Measure U reduced the overall UUT rate from 8% to 6%. This action
19 likely relieved some political pressure, which allowed the City an opportunity to garner additional
20 support for the later tax measure.

21 14. Any UUT increase requires voter approval. The FM3 poll indicated lower support
22 for a UUT than a sales tax. A sales tax measure initially polled at 71% support, but wound up
23 with only 51.86% "yes" votes. A 2% UUT increase initially polled at 58% support, so it seems
24 likely such a proposal would not succeed after a hard fought ballot campaign. This may be in part
25 due to the City's promise with Measure U that the UUT would remain at 6%. Putting a 2% UUT
26 rate increase on the ballot would run counter to that promise.

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1 *The City Cannot Reject Its Contract With CalPERS*

2 15. Franklin criticizes the City's decision not to impair CalPERS, which is the market
3 standard for government employee pensions in California. The point Franklin misses or ignores
4 is that there is not much in the way of a decision involved. A "decision" implies a choice
5 between two or more options. But there is, in reality, no feasible alternative to CalPERS for
6 Stockton, and Franklin fails to propose one. If the City wishes to retain its employees, and wishes
7 to avoid the \$1.6 billion² judgment that would immediately result from rejecting its CalPERS
8 obligations, it must honor its debts to CalPERS as the trustee for the City's retirees. The City's
9 ability to retain and attract a qualified workforce is dependent, among other things, on the
10 competitiveness of its total compensation package. We have witnessed the negative impact on
11 recruitment and retention within the police department, for example, that can be caused by even
12 the hint of losing the ability to provide a competitive compensation package. Other departments
13 are experiencing similar challenges. As an example, the City is currently unable to fully operate
14 its new Delta Water Supply Project because of an inability to attract and retain qualified
15 employees. In the absence of CalPERS or an equivalent plan, the City would be unable to
16 compete with other employers. The search for a comparable plan that also produces a cost
17 savings for the City has not identified any options. Even if such an option did exist, however, the
18 termination liability that the City would owe to CalPERS would more than offset any
19 hypothetical savings.

20 16. However, while the City's Plan does not impair CalPERS, the City *has* reduced its
21 CalPERS obligation through other means. The City's CalPERS obligation is based on a variety
22 of factors, such as the number of employees enrolled in the system, the amount of pay received by
23 those employees, the tier in which they are enrolled, who pays for the employee share of the
24 obligation, the ability to spike pay, etc. The City has taken actions to reduce costs in each of
25 these areas, and these actions have resulted in a dramatic decrease in the City's long-term
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28 ² Unfunded termination liability for the Safety Plan is \$1.042 billion and for the Miscellaneous Plan is \$576 million,
for a total of \$1.618 billion, according to the 6/30/12 actuarial valuation by CalPERS (page 28 of each plan's report).

1 CalPERS obligation. Franklin's implication that the City has done nothing to address its pension
2 costs is therefore incorrect.

3 The City's Annual Contingency And Minimum Fund Balance Are Necessary For Its Long-Term
4 Sustainability

5 17. I have reviewed the Expert Report of Charles M. Moore ("Moore Report"). Moore
6 opines that the City may not able to absorb what he describes as "very high, growing, and
7 unpredictable" costs related to CalPERS. At the same time, however, he contradictorily attacks
8 the City's modest annual contingency and minimum fund balance as excessive. The City has an
9 obligation to propound a Plan that ensures its long-term fiscal stability. The Long-Range
10 Financial Plan ("LRFP") prepared by Robert Leland details how the City will be able maintain a
11 balanced budget over the next several decades and accounts for the City's CalPERS obligations
12 (which grow in the short term and then drop in the out years). The annual contingency and
13 minimum fund balance are critical components of the LRFP. Long-term economic projections
14 are, by their nature, uncertain. They therefore require the use of mechanisms, such as the annual
15 contingency and minimum fund balance, to address unforeseen circumstances. One of the
16 reasons Stockton was unable to endure the Great Recession as well as other cities is the fact that
17 we had operated on a slim margin with no room for error. Without a significant contingency or
18 fund balance, Stockton had no buffer to absorb the recent economic downturn. The purpose of
19 including a contingency and fund balance in the LRFP is to ensure that the City does not find
20 itself in the same position again.

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23 Executed this 20th day of April 2014, at Stockton, California. I declare under penalty of
24 perjury under the laws of the State of California and the United States of America that the
25 foregoing is true and correct.

26 
27 _____
Kurt Wilson