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7 *Income Fund and Franklin California High*
8 *Yield Municipal Fund*

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. 12-32118 (CMK)
D.C. No. OHS-15
Chapter 9
Adv. Proceeding No. 13-02315-C

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

19 Plaintiffs.

20 v.

21 CITY OF STOCKTON, CALIFORNIA,
22 Defendant.

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

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

1 Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal
 2 Fund (collectively, “Franklin”) respectfully submit the following evidentiary objections to the
 3 *Direct Testimony Declaration of Stephen Chase In Support Of Confirmation Of First Amended Plan*
 4 *For The Adjustment Of Debts Of City Of Stockton, California (November 15, 2013)* [Docket
 5 No. 1384 / Adv. Pro. Docket No. 79].

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
6 7 2. PFFs are charges levied on new 8 development to pay for development’s fair 9 share of infrastructure needs to mitigate the 10 incremental impacts of the development. 11 They are governed by the California 12 Mitigation Fee Act of 1987 (the “Act,” also 13 known as California Assembly Bill 1600, or 14 “AB 1600”), codified at Cal. Gov’t Code § 66000 <i>et seq.</i> , which allows cities to charge fees, among them PFFs, to provide a certain level of service or for public infrastructure related to new development. The Act imposes several key requirements on the City’s PFF system.	Franklin objects to this paragraph because it consists of improper legal conclusions. FED. R. EVID. 701.
15 3. First, the Act requires that there be a 16 “nexus” between the level of service and/or 17 infrastructure costs and the fee charged. In 18 order to establish the nexus for a new PFF, 19 the City must identify the purpose of the fee, 20 identify the use to which the fee is to be put, 21 and determine how there is a reasonable 22 relationship between the fee’s use and the type of development project on which the fee is imposed. These findings are contained in a fee study prepared by or for the Community Development Department and the Administrative Services Department and submitted to the City Council for approval.	Franklin objects to this paragraph because it consists of improper legal conclusions. FED. R. EVID. 701.
23 4. Because of the Act’s nexus requirement, 24 the permissible uses of PFF receipts are 25 restricted to the purposes for which the PFFs 26 were imposed—in other words, the purposes set forth in the fee study that was required to be undertaken by the City in order to levy the charges.	Franklin objects to this paragraph because it consists of improper legal conclusions. FED. R. EVID. 701.

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>5. A second key requirement of the Act is that PFF receipts be placed in separate funds allocated to each specific fee purpose. As described in the Vanessa Burke declaration being submitted concurrently, these funds are restricted, meaning that these types of fees can only be collected and used for mitigating the impacts of new development upon infrastructure needs and/or service level demands.</p>	<p>Franklin objects to this paragraph because it consists of improper legal conclusions. FED. R. EVID. 701. Franklin also objects to the statements in this paragraph because they lack foundation. FED. R. EVID. 602.</p>
<p>6. Finally the Act requires that PFF receipts be allocated within five years of their collection to a nexus-based capital improvement program, such as the land acquisition, engineering and eventual construction of a freeway interchange. Reimbursement claims are eligible for consideration beyond the five year window.</p>	<p>Franklin objects to this paragraph because it consists of improper legal conclusions. FED. R. EVID. 701.</p>
<p>7. The proceeds of the 2009 Golf Course/Park Bonds funded certain infrastructure improvements that would have otherwise been eligible for funding from certain PFF funds. Because of this, the PFF funds from which the improvements would have otherwise been eligible for funding may reimburse the General Fund for the portions of the lease payments on the principal of (but not interest on, as explained below) the 2009 Golf Course/Park Bonds that are allocable to those improvements. The authority to use PFF receipts to refund the principal payments on the 2009 Golf Course/Park Bonds is based on the use of bond proceeds to finance fee-eligible improvements.</p>	<p>Franklin objects to this paragraph because it consists of improper legal conclusions. FED. R. EVID. 701.</p>
<p>8. It is important to note that the City is not <i>required</i> to use PFF funds to reimburse the General Fund principal payments. This is because there is no separate pledge agreement <i>committing</i> PFF receipts to refund the principal payments made by the General Fund to Franklin. Rather, the City is <i>permitted</i> to use PFF funds for this purpose, if it so elects.</p>	<p>Franklin objects to this paragraph because it consists of improper legal conclusions. FED. R. EVID. 701.</p>
<p>9. The City's ability to use PFF receipts to refund the principal payments on the 2009 Golf Course/Park Bonds is limited by the City's obligations to use PFFs to pay for new infrastructure. There is no requirement that any particular improvements be given priority over other improvements, and the City has not assigned priority to repayment of the 2009</p>	<p>Franklin objects to this paragraph because it consists of improper legal conclusions. FED. R. EVID. 701. Franklin also objects to the statements in this paragraph because they are vague, speculative and lack foundation. FED. R. EVID. 602.</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>1 Golf Course/Park Bonds ahead of other 2 obligations. Another limiting factor is that 3 PFFs are received only when property is 4 developed, which is beyond the City's 5 control. The City thus has no control over the 6 timing or amount of PFF revenues in any 7 given period. Because the improvements to be 8 funded by PFFs are intended to mitigate the 9 impacts of new development, the City cannot feasibly allocate all or even a substantial portion of future PFFs to refund the principal payments on the 2009 Golf Course/Park Bonds, lest it fail to have funding to pay for the infrastructure required to serve the new developments that will generate the fees.</p>	
<p>10 10. As noted above, PFF receipts may be 11 used to refund the principal payments of, and 12 not the interest on, the 2009 Golf Course/Park 13 Bonds. This is because the fee study for the 14 projects funded by the proceeds of the 2009 15 Golf Course/Park Bonds did not establish fees in an amount designed to cover interest carried on the cost of the improvements. Because of this, PFFs cannot be used to refund the General Fund for payments for the interest component of the amounts due under the 2009 Golf Course/Park Bonds.</p>	<p>Franklin objects to this paragraph because it consists of improper legal conclusions. FED. R. EVID. 701.</p>
<p>16 12. By the beginning of the AB 506 neutral 17 evaluation process, the City was aware that 18 PFF revenues had fallen from their peak in 19 2003-2006. <u>However, it was not until later, in</u> 20 <u>June 2013, that the City received information</u> 21 <u>showing the extent of the down-market</u> 22 <u>effects on development activities going</u> <u>forward into future years, and, therefore, the</u> <u>drastically reduced projections for the</u> <u>generation of PFF revenues. The City now</u> <u>recognizes that PFF receipts have reached a</u> <u>new low, and because of multiple factors, are</u> <u>likely to remain low for many years to come.</u></p>	<p>Franklin objects to the underlined statements in this paragraph because they assume facts not in evidence, are speculative and lack foundation. FED. R. EVID. 602. Franklin also objects to the underlined portions of this paragraph because they consist of improper opinion testimony that is not rationally based on Mr. Chase's perception and is not helpful to clearly understand Mr. Chase's testimony or to determine a fact in issue. FED. R. EVID. 701.</p>
<p>23 14. In January of 2013, the City 24 commissioned the consulting firm Economic 25 & Planning Systems, Inc. ("EPS") to prepare 26 a development impact review report as part of 27 a comprehensive review of development 28 impact fees. A true and correct copy of this report, which was presented to the City's Development Oversight Commission on June 6, 2013, is attached hereto as Exhibit A. Based on the data available at the time, the EPS econometric supply and demand model</p>	<p>Any statement made by EPS in its report offered by Mr. Chase for the truth of the matters asserted constitutes inadmissible hearsay. FED. R. EVID. 801, 802. Franklin also objects to the statements in this paragraph because Mr. Chase's description of the EPS report is not the best evidence of the contents of that document. FED. R. EVID. 1002. Franklin further objects to the underlined statements because they assume facts not in evidence and misstate Franklin's arguments. FED. R. EVID. 602.</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>1 for new permit activity projected that the City 2 would be issuing approximately 700 units per 3 year by year 2017 of all types of residential 4 housing, provided that all assumptions hold 5 true. The study further forecast a sharp 6 increase beginning in 2014, based on pent up 7 market demand for new housing. However, 8 this projection has not borne out: the City has 9 issued only 64 building permits for residential 10 units in the first 9 months of the current fiscal 11 year. Accordingly, the amount of PFFs that 12 the City will receive this year will be considerably lower than what had been forecasted. Further, at least two of the PFF funds, Fund 940 and Fund 960, which the City proposed to use as a source of debt repayment for the 2009 Golf Course/Park Bonds, currently have negative balances. <u>As a result, the millions of dollars of PFFs that Franklin argues are available to pay them from PFF funds simply do not exist.</u></p>	
<p>13 15. The EPS model and its forecast of a 14 substantial downgraded demand cycle bring 15 into question the City's former projections of 16 the number of permits that could produce PFF 17 revenues. The EPS projection of 700 units per 18 year was dependent on certain economic 19 factors being met, such as a drop in 20 unemployment and increase in the price point for home sales. Unemployment in Stockton remains high as of February 2014, at 15.9%, and job formation remains slow. Further, price points for new homes remain closer to the \$200,000 level, not \$300,000. <i>See Exhibit A at 48, 72.</i> The City's financial consultants forecast that economic conditions in Stockton will remain depressed for years to come.</p>	<p>Any statement made by EPS in its report offered by Mr. Chase for the truth of the matters asserted constitutes inadmissible hearsay. FED. R. EVID. 801, 802. Franklin also objects to the statements in this paragraph because Mr. Chase's description of the EPS report is not the best evidence of the contents of that document. FED. R. EVID. 1002.</p>
<p>21 17. <i>The 2035 General Plan is premised on</i> 22 <i>an out-dated development plan that does not</i> 23 <i>reflect present economic conditions in</i> 24 <i>Stockton, and must be overhauled to reflect</i> 25 <i>the new reality. Further, the General Plan</i> 26 <u>must be amended to satisfy new state</u> 27 <u>mandates. Recent state mandates related to</u> 28 <u>climate action planning, floodplain</u> <u>management, and carbon footprints ([AB 32,</u> <u>SB 375, and SB 5]), along with the City's</u> <u>settlements with the Attorney General's</u> <u>Office and Sierra Club in October 2008 to</u> <u>cure alleged defects in that plan, required the</u> <u>City to analyze and draft modifications to</u> <u>encourage infill and/or adaptive reuse of</u></p>	<p>Franklin objects to the underlined portions of this paragraph because they consist of improper legal conclusions. FED. R. EVID. 701. Furthermore, the italicized portions of this paragraph are inadmissible because they assume facts not in evidence and lack foundation. FED. R. EVID. 602.</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>1 <u>vacant and underutilized properties and</u> 2 <u>structures, as opposed to greenfield</u> 3 <u>development.</u> “Infill” describes the 4 development of undeveloped areas already 5 within a city’s infrastructure grid. 6 “Greenfield” development, in contrast, is the 7 development of previously undeveloped lands 8 beyond a city’s infrastructure grid. <i>Because</i> 9 <i>the highest PFFs are those issued for permits</i> 10 <i>for the new infrastructure associated with</i> 11 <i>greenfield development, the shift to infill in</i> 12 <i>the updated general plan may constrict both</i> 13 <i>the number of development permits issued</i> 14 <i>and the amount of PFF receipts raised by</i> 15 <i>their issuance.</i></p>	
<p>10 19. Franklin’s assertion that PFF receipts 11 would be sufficient to pay its claim if 12 development permits average 650 per year is 13 thus a world away from Stockton’s reality. 14 For example, for park projects, the General 15 Plan standard for park acreage per 1000 16 residents imposes a new park construction 17 cost burden that alone is in excess of what 18 700 housing units per year would generate in 19 income.</p>	<p>Franklin objects to the statements in this paragraph because they assume facts not in evidence, misstate Franklin’s arguments and lack foundation. FED. R. EVID. 602.</p>
<p>15 20. <i>Finally, another important variable will</i> 16 <i>inhibit future PFF growth: the intense</i> 17 <i>political pressure in Stockton to reduce PFFs</i> 18 <i>and other developer fees in an effort to</i> 19 <i>encourage development.</i> Development is 20 essential to the City’s recovery following 21 bankruptcy. <i>Many citizens, among them a</i> 22 <i>number of influential and well-financed</i> 23 <i>developers, believe that to encourage</i> 24 <i>development it is necessary to reduce the</i> 25 <i>amount of fees imposed on new development.</i> 26 The City reduced the Streets PFF rate by half 27 in 2010 as an incentive for development, with 28 the discount scheduled to end on December 3, 2013. However, the City Council extended that 50% rate discount for another year, through December 31, 2014. <u>Because revenue foregone through rate discounts cannot legally be made up through higher levies on future development, these four years of lost revenue cannot be regained.</u> And the political pressure is ongoing: The City’s Strategic Initiative III.3 provides policy direction to simplify and reduce development impact fees, so as to stimulate economic development. In 2013, the City conducted a Phase 1 fee study that provided a legal and policy framework to</p>	<p>Franklin objects to the underlined portions of this paragraph because they consist of improper legal conclusions. FED. R. EVID. 701. Furthermore, the italicized portions of this paragraph are inadmissible because they assume facts not in evidence and lack foundation. FED. R. EVID. 602.</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>1 reopen the Fee Schedule accordingly. In 2 2014, a Phase 2 fee study is now evaluating 3 processing fees. Programmed for 2015 is a 4 Phase 3 study of PFFs. The entirety of these 5 analyses will be updated once a new General Plan and Capital Improvement Program emerge in the 2016 timeframe.</p>	
<p>6 <u>21. The restrictions on the use of the Golf</u> 7 <u>Course/Park Bonds Properties severely limit</u> 8 <u>their value, either in leasehold or in fee</u> 9 <u>simple.</u> All three properties are designated as 10 Parks and Recreation by the City’s 2035 11 General Plan. Allowed uses under the Parks 12 and Recreation designation include “City and 13 county parks, golf courses, marinas, 14 community centers, public and quasi-public 15 uses, and other similar and compatible uses.” 16 <i>See Stockton General Plan 2035 Goals &</i> 17 <i>Policies Report, at 3-7, available at</i> 18 <i>http://www.stocktongov.com/files/</i> 19 <i>GoalPolicyReport.pdf.</i> The properties are also 20 designated as Public Facilities by the City’s 21 zoning ordinance, the Stockton Development 22 Code. Although the permissible uses for Public Facilities, which include offices, auditoriums, libraries, and similar civic uses, are broader than those for Parks and Recreation properties, these additional uses are typically permitted only with a discretionary permit, which must be approved either by the Planning Commission or by me in my role as Community Development Director after issuing a written finding that the permit is consistent with the 2035 General Plan. <i>Given the limited uses permitted by the</i> 2035 General Plan, <i>a permit allowing</i> <i>residential development of the Golf</i> <i>Course/Park Bonds Properties would be</i> <i>inconsistent with the General Plan and would</i> <i>not be granted.</i></p>	<p>Franklin objects to the underlined portions of this paragraph because they consist of improper opinion testimony that is not rationally based on Mr. Chase’s perception and is not helpful to clearly understand Mr. Chase’s testimony or to determine a fact in issue. FED. R. EVID. 701. Furthermore, the italicized portions of this paragraph are inadmissible because they consist of improper legal conclusions. FED. R. EVID. 701.</p>
<p>23 22. Any changes to the General Plan 24 designation and Zoning District Map 25 designation would require legislative action 26 by the City Council. Those actions and the 27 process that begets them must comport with 28 the strict provisions of the California Planning and Zoning Act (Government Code) and the California Environmental Quality Act (Resources Code). The process requires formal initiation, staffing and funding of the work program, hearings, discretionary decision-making based on the process record</p>	<p>Franklin objects to this paragraph because it consists of improper legal conclusions. FED. R. EVID. 701.</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>1 and, generally, 18 to 24 months of time. By 2 law, outcomes of this process cannot be pre- 3 determined.</p>	
<p>4 23. <u>The City's zoning ordinance and</u> 5 <u>General Plan are not the only restrictions on</u> 6 <u>the use of the properties.</u> Van Buskirk Golf 7 Course, for instance, sits in a floodplain of the 8 San Joaquin River. Federal Emergency 9 Management Agency ("FEMA") standards prevent construction on the floodplain. <u>The</u> 10 <u>City is required to ensure that all new land</u> 11 <u>uses and structures meet FEMA standards as</u> 12 <u>well as emerging State mandated provisions</u> 13 <u>under SB5 that require 200-year flood zone</u> 14 <u>protections.</u></p>	<p>Franklin objects to the underlined portions of this paragraph because they consist of improper legal conclusions. FED. R. EVID. 701.</p>
<p>15 24. The deed by which Charles and Bertha 16 Van Buskirk conveyed the property on which 17 Van Buskirk Golf Course sits to the City 18 imposes further restraints on the use of the Property. A true and correct copy of the Van Buskirk deed is attached hereto as Exhibit B. It includes conditions subsequent that the "property shall be maintained and used only for public recreation or public park purposes" and that "no intoxicating liquor shall be sold or offered for sale upon the premises." <i>Id.</i> at 2-3. A violation of either condition subsequent for more than 180 days results in a reversion of the portion of the property that is in violation back to the heirs and successors of the Van Buskirks.</p>	<p>Franklin objects to the statements in this paragraph because Mr. Chase's descriptions of the deed is not the best evidence of that document. FED. R. EVID. 1002. Franklin objects to this paragraph because it consists of improper legal conclusions. FED. R. EVID. 701.</p>
<p>19 25. I have reviewed the Expert Report Of 20 Charles M. Moore (the "Moore Report") submitted by Franklin on March 26, 2014. 21 The Moore Report posits that the City can use 22 PFFs to essentially pay Franklin in full. Moore Report at 10-12. This conclusion is 23 simply wrong, for all of the reasons outlined 24 in this Declaration. The Moore Report ignores 25 the fundamental economic and legal realities 26 that constrain the City's use of PFFs.</p>	<p>Franklin objects to the entirety of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Chase's perception and is not helpful to clearly understand Mr. Chase's testimony or to determine a fact in issue. FED. R. EVID. 701; 27 <i>see also Britz Fertilizers, Inc. v. Bayer Corp.</i>, 28 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). Franklin further objects to the statements in this paragraph because they assume facts not in evidence and misstate the statements contained in the Moore Report. FED. R. EVID. 602. Franklin also objects to the statements in this paragraph because Mr. Chase's description of Mr. Moore's report is not the best evidence of that document. FED. R. EVID. 1002.</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>26. First, the Moore Report’s projections for PFF revenues is completely exaggerated Moore incorrectly assumes (1) that new, PFF-generating housing production will occur at an average rate of 700 units per year (the City has averaged less than 130 units per year over the last five years, and is stuck on 64 units for the current fiscal year-to-date); (2) that the expected 700 units per year accounts only for single family unit production (it actually applies to all housing types); and (3) that new unit production will occur only in greenfield expansion areas that require PFF generation (state mandates call for compact urban infill where infrastructure already exists, and where there is a reduced need for capital improvement projects and related PFF generation). Moore further assumes that PFF revenues will increase sharply in the near future, despite the many factors that are likely to suppress development and PFF revenue, including the City’s slow ongoing recovery from recession, continuing high unemployment, depressed price points for new home sales.</p>	<p>Franklin objects to the entirety of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Chase’s perception and is not helpful to clearly understand Mr. Chase’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 further objects to the statements in this paragraph because they assume facts not in evidence and misstate the statements contained in the Moore Report. FED. R. EVID. 602. Franklin also objects to the statements in this paragraph because Mr. Chase’s description of Mr. Moore’s report is not the best evidence of that document. FED. R. EVID. 1002.</p>
<p>27. The Moore Report also ignores constraints on the use of PFFs, and assumes that any PFFs in the specified funds could be handed over to Franklin. First, the Moore Report inaccurately suggests that PFFs are somehow pledged to pay Franklin. They are not. Further, the Moore Report fails to acknowledge that the City <i>must</i> use PFFs to cover capital improvements, including those it is committed to in various Develop Agreements and Vested Tract Maps. The Moore Report also appears to treat PFFs as a pool, rather than as existing in segregated funds.</p>	<p>Franklin objects to the entirety of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Chase’s perception and is not helpful to clearly understand Mr. Chase’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 further objects to the statements in this paragraph because they assume facts not in evidence and misstate the statements contained in the Moore Report. FED. R. EVID. 602. Franklin also objects to the statements in this paragraph because Mr. Chase’s description of Mr. Moore’s report is not the best evidence of that document. FED. R. EVID. 1002.</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>28. The Moore Report demonstrates a basic misunderstanding of the PFF system, and Moore’s assertion that the City could pay Franklin’s claim using PFF revenues is fundamentally flawed.</p>	<p>Franklin objects to the entirety of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Chase’s perception and is not helpful to clearly understand Mr. Chase’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 further objects to the statements in this paragraph because they assume facts not in evidence and misstate the statements contained in the Moore Report. FED. R. EVID. 602. Franklin also objects to the statements in this paragraph because Mr. Chase’s description of Mr. Moore’s report is not the best evidence of that document. FED. R. EVID. 1002.</p>

Dated: April 25, 2014

JONES DAY

By: /s/ Joshua D. Morse

James O. Johnston

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Income Fund and Franklin California High
Yield Municipal Fund*