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 MOVANT, NATIONAL PUBLIC FINANCE
 11 GUARANTEE CORPORATION

12 **UNITED STATES BANKRUPTCY COURT**
 13 **EASTERN DISTRICT OF CALIFORNIA**
 14 **SACRAMENTO DIVISION**

15 In re:
 16 CITY OF STOCKTON, CALIFORNIA,
 17 Debtor.

Case No. 12-32118
 DC No. OHS-4
 Chapter 9

**JOINDER OF CREDITOR
 NATIONAL PUBLIC FINANCE
 GUARANTEE CORPORATION TO
 INDENTURE TRUSTEE'S LIMITED
 OBJECTION TO THE DEBTOR'S
 EMERGENCY MOTION FOR
 LEAVE TO INTRODUCE
 EVIDENCE RELATING TO
 NEUTRAL EVALUATION
 PROCESS UNDER GOVERNMENT
 CODE SECTION 53760.3(Q)**

Date: Friday, July 6, 2012
 Time: 10:00 a.m.
 Place: United States Courthouse
 Dept. A, Courtroom 28
 501 I Street
 Sacramento, CA 95814

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1 National Public Finance Guarantee Corporation (“National”), a creditor and party in interest
2 of the City of Stockton, California (the “Debtor,” or the “City”), respectfully submits this Joinder
3 (the “Joinder”) to the Limited Objection of Wells Fargo Bank, National Association, as Indenture
4 Trustee (the “Limited Objection”) to the Debtor’s Emergency Motion (the “Motion”) for Leave to
5 Introduce Evidence relating to Neutral Evaluation Process Under Government Code Section
6 53760.3(q) and respectfully represents as follows:

7 **Introduction**

8 1. National¹ is a leading provider of financial guaranty insurance. National
9 guarantees scheduled principal and interest payments when due on municipal financings issued in
10 the United States.

11 2. Financial guaranty insurance is a type of insurance whereby an insurer
12 guarantees scheduled payments of interest and principal as and when due on a bond, warrant or other
13 security in the event of a payment default by the issuer of the bond, warrant or other security. As
14 compensation for its insurance, the insurer is paid a premium (as a lump sum or in installments) by
15 the issuer or owner of the security to be insured. Financial guaranty insurance is a form of “credit
16 enhancement” that generally results in the rating of the insured security being the higher of (i) the
17 claims-paying rating of the insurer and (ii) the rating the bond would have absent insurance (also
18 known as the “underlying” or “shadow” rating).

19 3. Historically municipalities have taken advantage of financial guaranty
20 insurance as it significantly enhances their ability to raise funds. The economic value of financial
21 guaranty insurance to the governmental unit, agency, or other issuer offering bonds, warrants or
22 other securities is a saving in interest costs reflecting the difference in yield payable on an insured
23 security from that on the same security if uninsured. The economic value of financial guaranty
24 insurance to the investor purchasing or holding insured securities is based upon (i) the additional
25 payment source provided by the insurer if the issuer fails to pay principal or interest when due

26 _____
27 ¹ National Public Finance Guarantee Corporation, a stock insurance corporation, duly organized and existing under the
28 laws of the State of New York, is the reinsurer pursuant to the Quota Share Reinsurance Agreement, effective as of
January 1, 2009, by and between MBIA Insurance Corporation (“MBIA”) and MBIA Insurance Corp. of Illinois, now
known as National Public Finance Guarantee Corporation.

1 (which reduces the probability of a missed payment to the joint probability that both the issuer and
2 insurer default), (ii) rating downgrade protection so long as the insurer is more highly rated than the
3 issuer, (iii) improved liquidity, and (iv) services provided by the insurer such as credit underwriting,
4 due diligence, negotiation of terms, surveillance, and remediation.

5 4. National is the insurer in respect of certain issuances of debt related to the
6 City. National insures both the underlying City related debt issuances and also is the provider of
7 certain debt service reserve policies in connection with such issuances (the “Policies”). Notably,
8 National’s overall exposure of City related debt is at least \$224 million, plus related interest and
9 costs.

10 5. Among other issuances related to the City, National insures (1) those certain
11 Lease Revenue Bonds, Series 2004 (Parking and Capital Projects) issued by the Authority in the
12 aggregate principal amount of \$32,785,000 (the “Parking and Capital Bonds”) pursuant to that
13 certain Indenture of Trust dated as of June 1, 2004 by and between the Stockton Public Financing
14 Authority (the “Authority”) and Wells Fargo Bank, National Association, as Trustee (the “2004
15 Parking and Capital Projects Indenture”); (2) those certain Lease Revenue Refunding Bonds, 2006
16 Series A in the aggregate principal amount of \$13,965,000 (the “Building/Parking Facility Bonds”) pursuant to that certain Indenture of Trust, dated as of March 1, 2006, by and between the Authority
17 and Wells Fargo Bank, National Association, as Trustee (the “2006 Building/Parking Facility
18 Indenture”); and (3) those certain Revenue Bonds, Series 2004 (Stockton Events Center-Arena
19 Project) in the aggregate amount of \$47,000,000 (the “Events Center Bonds,” and collectively with
20 the Parking and Capital Bonds and Building/Parking Facility Bonds, the “Lease Finance Bonds”),
21 issued by the Redevelopment Agency of the City of Stockton (the “Agency”) pursuant to that certain
22 Indenture of Trust, dated as of March 1, 2004, by and between the Agency and Wells Fargo Bank,
23 National Association, as Trustee (the “2004 Events Center Indenture,” and collectively with the
24 2004 Parking and Capital Projects Indenture and the 2006 Building/Parking Facility Indenture , the
25 “Stockton Lease Indentures”).

26
27 6. In connection with the Lease Finance Bonds, the respective issuers entered
28 into leases with the City of Stockton, as lessee (the “City Leases”), whereby the City is obligated to

1 makes payments to the issuer of the bonds to fund payment of the bonds under the Stockton Lease
2 Indentures. Under the respective City Leases and Stockton Lease Indentures all rights of each issuer
3 were assigned to the Trustee.

4 7. Events of default have occurred under the City Leases and the Stockton Lease
5 Indentures in several respects. For example, prior to the commencement of the City's chapter 9
6 case, an event of default occurred and is continuing under the 2004 Parking and Capital Projects
7 Indenture triggered by the City's failure to make the required lease payments under the City Lease.²
8 In addition, events of default have occurred on all other Stockton Lease Indentures as a result of the
9 City's filing of its chapter 9 case.

10 8. Pursuant to Sections 7.05 and 11.01(e) of the 2004 Parking and Capital
11 Projects Indenture and similar relevant provisions of the remaining Stockton Lease Indentures,
12 National is deemed to be the sole owner of all of the Lease Finance Bonds and directs the exercise of
13 remedies under all of the Stockton Lease Indentures. Further, under relevant provisions of the
14 Stockton Lease Indentures and related insurance agreements with the issuer, to the extent National
15 makes any payments under the Policies, National is subrogated to the rights of the bondholders and
16 effectively steps into the shoes of such bondholders. Notably, National is also entitled to
17 reimbursement for all expenses incurred by National in connection with the enforcement of the
18 obligations of the issuers of the Lease Finance Bonds.

19 9. Moreover, National insures the following additional debt related to the City
20 with similar rights of direction, subrogation and reimbursement: (a) \$101,650,000 City of Stockton
21 Revenue COPs 1998 Series A (Wastewater System Project) issued by the Stockton Public Financing
22 Authority; (b) \$24,230,000 Stockton Public Financing Authority, 2005 Water Revenue Bonds,
23 Series A issued by the Stockton Public Financing Authority; (c) \$28,350,000 City of Stockton
24 Community Facilities District No. 90-2 (Brookside Estates) 2005 Special Tax Refunding Bonds
25 issued by the City of Stockton Community Facilities District No. 90-2; and (d) \$28,630,000 City of
26 _____

27 ² On March 1, 2012, the Trustee notified the City of certain Events of Default including an Event of Default under
28 Section 9.1 of the Parking Lease due to the City's failure to make the lease payment due on February 25, 2012, and an
Event of Default under Section 7.01 (d) of the 2004 Parking and Capital Projects Indenture which provides that the
occurrence of an event of default under the Parking Lease is an Event of Default under the 2004 Parking and Capital
Projects Indenture.

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1 Stockton Community Facilities District No. 1 (Weston Ranch) Special Tax Refunding Bonds, Series
2 2006 issued by City of Stockton Community Facilities District No. 1.

3 10. Thus, National is a creditor and the ultimate party in interest under section
4 1109 of the Bankruptcy Code,³ in respect of at least \$224 million of City related Debt. To the extent
5 the City does not satisfy its obligations under the any of debt issuances insured by National, National
6 will be responsible to bondholders for the full principal and interest payments when due as required
7 by the Policies.

8 **National’s Joinder to Trustee’s Limited Objection**

9 11. National joins the arguments made in the Indenture Trustee’s Limited
10 Objection to the City’s Motion.

11 12. Further, as the City explains in its Motion, California Government Code
12 section 54760 et seq. (“AB 506”) sets forth a neutral evaluation process that is intended to be
13 conducted in confidence. However, AB 506 provides a mechanism in which any participating party
14 may introduce otherwise confidential information:

15 The parties shall maintain the confidentiality of the neutral evaluation process . . .
16 during any bankruptcy proceeding unless . . . either of the following occur:

- 17 (1) All persons that conduct or otherwise participate in the neutral evaluation
- 18 expressly agree in writing . . . to disclosure of the communication, document, or
- 19 writing.
- 20 (2) The information is deemed necessary by a judge presiding over a bankruptcy
- 21 proceeding pursuant to Chapter 9 of Title 11 of the United States Code to
- 22 determine eligibility of a municipality to proceed with a bankruptcy proceeding
- 23 pursuant to Section 109(c) of Title 11 of the United States Code.

22 13. AB 506 does not distinguish between the Debtor and any other participants
23 with respect to the confidentiality provisions, nor does AB 506 limit the use of otherwise
24 confidential information to any one party. Thus, the relief the City seeks is too narrow in that it fails
25 to provide a reciprocal right of National or any other participating party to use the confidential
26 information to the extent determined by the Court.

27 _____
28 ³ Section 1109 of the Bankruptcy Code is explicitly made applicable in chapter 9 cases by section 901 of the Bankruptcy Code.

1 Wherefore, National respectfully requests that any relief granted by this Court be in
2 conformity with the Trustee's Limited Objection and the form of Proposed Order attached thereto,
3 and this Joinder.

4
5 Dated: July 5, 2012

WINSTON & STRAWN LLP

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7 By: /s/ Lawrence A. Larose
8 Lawrence A. Larose
(admitted pro hac vice)

9 and

10 /s/ Richard A. Lapping
11 Richard A. Lapping

12 Attorneys for Movant,
13 National Public Finance
14 Guarantee Corporation

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