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

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.
I, Kurt Wilson, hereby declare:

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

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

The City’s Deals With Ambac, Assured, And NPFG Preserve Important Civic Properties

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

4. The City’s agreement with Ambac allows the City to maintain possession of three fire stations, the City’s Main Police Facility, and the Maya Angelou Southeast Branch Library. The City, in the exercise of its business judgment, has determined that it cannot relinquish control
of these properties because of their importance to the City. Likewise, the City’s agreement with
Assured allows the City to continue its current tenancy and capture the benefits of previous
investments made for its use of 400 E. Main. The City intended to make this building its new
City Hall, replacing the dilapidated City Hall built nearly 100 years ago. Although 400 E. Main
did not become the City Hall as planned, it now houses the City’s information technology
division. The City has invested several million dollars in upgrades at 400 E. Main to provide the
necessary cabling and chillers for its main computer services and related equipment for the
information technology division to support the full array of City Departments. The City’s
settlement with Assured is thus essential to the City’s operations. In addition, the City’s new
lease of its space at 400 E. Main is on more favorable terms than it would have been able to
achieve outside of its settlement with Assured. The new negotiated lease rate is less than half the
current rate.

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

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

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

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

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

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

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

11. Based on FM3’s research, the City put Measures A and B on the November 2013 ballot. Measure A, a ballot measure to raise the sales tax by 0.75%, narrowly passed in November 2013, with 51.86% of voters voting yes. Measure B, 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 the Stockton’s Marshall Plan on Crime” and 35% to “help end the bankruptcy and restore other City services,” passed by a wider margin, with 59.27% of voters voting yes. Measure A’s narrow victory confirmed the City’s business judgment that the voters likely would not tolerate a tax increase higher than 0.75%, while Measure B’s wider margin of victory confirmed that the sales tax increase likely would not have passed if a larger portion of the revenues was spent on paying creditors instead of public safety and City services.

12. I agree with the testimony of former City Manager Robert Deis when he stated that “for a tax increase measure to be successful it is essential that a city have a compelling argument or a specific ‘product’ that will be funded by the tax increase which resonates with the voters.”
Deis Decl. at 9. It was critical to the passage of Measure A that the public see that the resulting revenues would go to hiring police officers and improving public safety. At the same time, however, the City was barely able to sell a tax increase that paid for the some of the City’s most vital “products”: law enforcement, crime prevention, and the restoration of City services. In my experience, it would be impossible to pass a tax measure devoted solely to paying creditors like Franklin, particularly considering the likelihood of a much stronger organized opposition than what we saw with Measure A. The City has acted in good faith by asking the voters to pass the highest tax increase that the City thought feasible and by presenting voters with a “product” they would support. Were the City’s bankruptcy case dismissed, it could not, as Franklin suggests it might, be able to raise yet more tax revenue at the drop of a hat.

13. Franklin’s arguments that the City should raise its utility users’ tax (“UUT”) rate likewise miss the mark. In November 2008, the City placed Measure U on the ballot, which the voters passed. The purpose of Measure U was to modernize the current user utility tax ordinance to treat taxpayers equally regardless of the technology 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 was also intended to extend the tax to new technologies such as text messaging. In order to address public concern, Measure U reduced the overall UUT rate from 8% to 6%. This action likely relieved some political pressure, which allowed the City an opportunity to garner additional support for the later tax measure.

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

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The City Cannot Reject Its Contract With CalPERS

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

16. However, while the City’s Plan does not impair CalPERS, the City has reduced its CalPERS obligation through other means. The City’s CalPERS obligation is based on a variety of factors, such as the number of employees enrolled in the system, the amount of pay received by those employees, the tier in which they are enrolled, who pays for the employee share of the obligation, the ability to spike pay, etc. The City has taken actions to reduce costs in each of these areas, and these actions have resulted in a dramatic decrease in the City’s long-term

\(^2\) 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).
CalPERS obligation. Franklin’s implication that the City has done nothing to address its pension costs is therefore incorrect.

_Sustainability_

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

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

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Kurt Wilson