

9

1 James O. Johnston (SBN 167330)  
Charlotte S. Wasserstein (SBN 279442)  
2 JONES DAY  
555 South Flower Street, 50th Floor  
3 Los Angeles, CA 90071  
Telephone: (213) 489-3939  
4 Facsimile: (213) 243-2539  
Email: jjohnston@jonesday.com  
5 cswasserstein@jonesday.com

Joshua D. Morse (SBN 211050)  
JONES DAY  
555 California Street, 26th Floor  
San Francisco, CA 94104  
Telephone: (415) 626-3939  
Facsimile: (415) 875-5700  
Email: jmorse@jonesday.com

6 *Attorneys for Franklin High Yield Tax-Free*  
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 ANN GOODRICH IN SUPPORT OF CONFIRMATION OF FIRST AMENDED PLAN FOR THE ADJUSTMENT OF DEBTS OF CITY OF STOCKTON CALIFORNIA (NOVEMBER 15, 2013)**

Date: May 12, 2014  
Time: 9:30 a.m.  
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 Ann Goodrich 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. 1381 / Adv. Pro. Docket No. 75].

| PARAGRAPH OBJECTED TO   | GROUNDS FOR OBJECTION  |
|---|--|
| 7 5. The SPOA MOU resolved the disputed<br>8 issue of what claims SPOA members hold<br>9 against the City. The SPOA asserted that its<br>10 members have claims in the City's bankruptcy<br>11 case relating to the City's modification of its<br>12 2009 MOU (pursuant to Declarations of Fiscal<br>13 Emergency beginning on or about May 26,<br>14 2010 and continuing in effect thereafter) and in<br>15 connection with the treatment of the SPOA and<br>16 its members under the Pendency Plan. As<br>17 discussed on page 55 of Exhibit A, SPOA<br>18 alleges that these claims total more than \$13<br>19 million. The City disputes these claims, and<br>20 asserts that, if the claims were allowed, they<br>21 would be allowed in an amount less than \$13<br>22 million. In consideration of resolving their<br>23 disagreement regarding this issue, the City,<br>24 pursuant to the MOU, agreed that these claims<br>25 will be deemed allowed in the bankruptcy case<br>26 in the aggregate amount of \$8.5 million and<br>27 will credit 22 additional hours of paid leave in<br>28 fiscal year ("FY") 2012-13 to SPOA members<br>who were employed during FY 2010-2011<br>and/or 2011-2012 and who were currently<br>employed at the time of ratification of the<br>MOU. The MOU further deems that the claims<br>of SPOA members shall be satisfied under the<br>Plan by crediting SPOA members employed<br>during FY 2010-2011 and/or FY 2011-2012 11<br>additional paid leave hours in the fiscal year of<br>approval of the Plan and 11 additional paid<br>leave hours in the fiscal year after approval of<br>the Plan. This benefit shall only apply to those<br>employees who were employed during some<br>portion of the period July 1, 2010 and July 1,<br>2012 and who are current employees as of the<br>date the Plan is approved by the Bankruptcy<br>Court. <u>Additionally, SPOA gave up all future<br/>                     retiree medical benefits for no additional<br/>                     compensation in bankruptcy.</u> | Franklin objects to the statements in this<br>paragraph because Ms. Goodrich's description<br>of the MOU is not the best evidence of that<br>document. FED. R. EVID. 1002. Franklin<br>further objects to the underlined statements in<br>this paragraph because they lack foundation.<br>FED. R. EVID. 602. |

| PARAGRAPH OBJECTED TO   | GROUNDS FOR OBJECTION   |
|---|---|
| <p>6. Thus, the MOU provides each eligible SPOA member with 44 hours of additional paid leave time through FY 2014-15. The additional paid leave hours have no cash value and are lost if not used during employment. Pursuant to the MOU, the provision of these hours shall be the sole compensation for the claims of SPOA and its members. The additional 22 hours additional paid leave credit in the fiscal year of approval of the Plan and the following fiscal year are contingent upon confirmation of the Plan and on the Plan becoming effective. The City will honor the SPOA Claims held by SPOA members on the terms and conditions set forth in the SPOA MOU.</p>   | <p>Franklin objects to the statements in this paragraph because Ms. Goodrich's description of the MOU is not the best evidence of that document. FED. R. EVID. 1002.</p>  |
| <p>7. During the better economic times of the 1990s and 2000s, the City approved labor contracts that greatly expanded its retiree health insurance commitments by promising lifetime retiree health benefits for a City retiree and one dependent without imposing any minimum service requirements. As Teresia Zadroga-Haase testified in her first declaration in support of the City's eligibility for bankruptcy relief [Dkt. No. 21], the retiree health benefits promised in these agreements were generally uncapped. The total cost to the City of these benefits for the approximately 1100 retirees receiving benefits on July 1, 2012, over the course of their lifetime, were estimated by the Segal Company ("Segal"), outside licensed actuaries and consultants to the City, to be approximately \$545.9 million as of the date of the filing of the Plan. See City's Amended List Of Creditors And Claims Pursuant To §§ 924 And 925 (Retiree Health Benefit Claims) [Dkt. No. 1150], p. 28. <u>The Segal Company are licensed actuaries qualified to calculate medical claims and post-employment benefits and are a national firm with considerable experience in these type of calculations. The methods used by Segal in calculating these claims were within generally accepted standards used by licensed actuaries in the United States and involved an internal peer review process.</u></p> | <p>Franklin objects to the underlined statements in this paragraph because they offer improper opinion testimony that is not rationally based on Ms. Goodrich's perception and not helpful to clearly understand Ms. Goodrich's testimony or to determine a fact in issue. FED. R. EVID. 701. Franklin further objects to the statements in this paragraph because Ms. Goodrich's description of Segal's analyses are not the best evidence of those documents. FED. R. EVID. 1002.</p> |

| PARAGRAPH OBJECTED TO   | GROUNDS FOR OBJECTION  |
|---|--|
| <p>10. The City and the Retirees Committee subsequently entered into extensive mediations refereed by Judge Perris. Judge Perris' mediation proved successful, and the City and the Committee entered into a settlement resolving the Retiree Health Benefit Claims. The Retirees Committee and their counsel reviewed the methods used by the Segal Company in calculation of the claims. Under the settlement, the City will pay the Retiree Health Benefit Claimants \$5.1 million in full satisfaction of the Retiree Health Benefit Claims. This \$5.1 million will be divided among the retirees, with some receiving a payment of approximately \$460 dollars and retirees with the highest claims receiving approximately \$14,000. <u>These are small amounts compared to the lifetime benefits for a fully paid medical plan for a retiree and one dependent. At the low end, the settlement payment would purchase approximately 1-3 months of a Medicare supplement plan for an elderly retiree and at the high end would purchase an under age 65 retiree with a spouse approximately 7-9 months of medical insurance. Approximately 30% of retirees are over age 65, while 70% are under.</u> The terms of the City's settlement with the Committee are incorporated into the Plan.</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 Ms. Goodrich's perception and not helpful to clearly understand Ms. Goodrich's testimony or to understand a fact in issue. FED. R. EVID. 701.</p>   |
| <p>11. In the Expert Report Of Charles M. Moore (the "Moore Report"), Franklin's expert disputes the calculation of the retiree health benefit claims. See Moore Report, at 15-18. <u>Moore, who appears to be an accountant with no local government experience and who is not a licensed actuary, criticizes the method used by the Segal Company's licensed actuaries of using 3 years of claims to establish a base of medical claims in order to calculate the projection of future lifetime medical claims for the 1,100 retirees and their dependents. While Moore challenges this method, he does not indicate what alternative method should have been used and does not provide any documentation that this method violates any standards used by licensed actuaries in the calculation of future medical claims and post-employment benefit projections.</u></p>   | <p>Franklin objects to the statements in this paragraph because Ms. Goodrich's description of the Moore Report is not the best evidence of that document. FED. R. EVID. 1002. Franklin further objects to the statements in this paragraph because they assume facts not in evidence and misstate the opinions of Mr. Moore. Franklin further objects to the underlined statements in this paragraph because they contain improper opinion testimony that is not rationally based on Ms. Goodrich's perception and not helpful to clearly understand Ms. Goodrich'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> |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

| PARAGRAPH OBJECTED TO  | GROUNDS FOR OBJECTION  |
|--|--|
| <p>12. Moore acknowledges that the City and Segal took into account that when a retiree turns age 65, the federal Medicare program becomes the primary insurance for the retiree and the City medical plan becomes the secondary payor of medical claims. <u>This reduces the dollar amount of claims the City would have paid for the retiree and their dependent from age 65 until the death of the retiree. Moore does not note, however, that Segal also took into account plan deductibles and copays in the calculation of paid claims. Moore also ignores that, since the City's under 65 retiree medical benefit is limited by union collective bargaining agreements to 15 years (and lifetime once the retiree reaches age 65), projections for young retirees who would have exhausted their 15 years of benefits prior to age 65 were reduced as well to reflect that they would not have earned benefits for those years.</u></p>   | <p>Franklin objects to the statements in this paragraph because Ms. Goodrich's description of the Moore Report is not the best evidence of that document. FED. R. EVID. 1002. Franklin further objects to the underlined statements in this paragraph because they contain improper opinion testimony that is not rationally based on Ms. Goodrich's perception and not helpful to clearly understand Ms. Goodrich'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 opinions of Mr. Moore.</p>  |
| <p>13. Moore states that the City and Segal did not take into account how the Affordable Care Act (ACA) should have mitigated the claim amounts. <u>However, Moore does not explain how the ACA would have reduced the medical claims the City would have otherwise been obligated to pay over the lifetime of the retiree, and the City is not aware of any such effect. <i>The ACA does not apply to persons who qualify for Medicare, and thus is only available to persons under the age of 65. And there is no savings to the City for claimants under 65, because while the ACA requires individuals to purchase insurance either through the private insurance market, through employer plans or through the federal or state insurance exchanges, this does not obviate the City's previous promise to pay the full cost of a premium for insurance for the retiree and their one dependent for life. If a person buys insurance through the federal and state exchanges, they may qualify depending on their income for a federal subsidy, but this would not have reduced the costs of the retiree enrolled in the City plan, since a person cannot be enrolled in both an employer plan and a plan from the exchange. Again, Moore does not explain how the ACA would reduce the claims costs that the City would otherwise have paid for the lifetime of the retiree and their dependent if the retiree medical program had not been eliminated.</i></u></p> | <p>Franklin objects to the statements in this document because Ms. Goodrich's description of the Moore Report is not the best evidence of that document. FED. R. EVID. 1002. Franklin further objects to the statements in this paragraph because they assume facts not in evidence and misstate the opinions of Mr. Moore. Franklin further objects to the underlined statements in this paragraph because they contain improper opinion testimony that is not rationally based on Ms. Goodrich's perception and not helpful to clearly understand Ms. Goodrich'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 italicized statements in this paragraph because they are inadmissible legal conclusions. FED. R. EVID. 701.</p> |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

| PARAGRAPH OBJECTED TO  | GROUNDS FOR OBJECTION   |
|--|---|
| <p>14. <u>Moore complains that the retiree medical benefits the City provided were high. The City has acknowledged this itself, but those were the benefits the City committed to. Moore complains that the average claim for retiree health benefits is around \$500,000 over the retiree's lifetime (for the retiree and usually the retiree's spouse), but this number should not be surprising. As a former Human Resource Director, I managed health plans for most of my career and am familiar with public employer, employee and retiree medical plans and their costs. Moore, meanwhile, seems unaware of the high cost of medical insurance in general, and in California and in particular, for older persons and of the impact of inflation on medical claims costs that in some cases are being projected as much as 60 years into the future. Despite complaining about the size of these numbers, Moore provides no evidence that the calculations by the city's licensed actuaries, based on the actual plan benefits, actual ages of the 1,100 retirees, generally accepted medical inflation projections and past actual claims costs, are in error.</u></p>   | <p>Franklin objects to the statements in this paragraph because Ms. Goodrich's description of the Moore Report is not the best evidence of that document. FED. R. EVID. 1002. Franklin further objects to the underlined statements in this paragraph because they contain improper opinion testimony that is not rationally based on Ms. Goodrich's perception and not helpful to clearly understand Ms. Goodrich'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 opinions of Mr. Moore.</p> |
| <p>15. <u>In his exhibit 12, Moore lists 12 cities similar in size to Stockton with their current and projected CalPERS rates for safety and miscellaneous employees that he gathered from published CalPERS rates. Based on this table, Moore opines that Stockton's costs for postemployment benefits are high compared to the average of the 12 listed cities and states in his expert opinion that Stockton's costs are "unsustainable." See Moore Report, at 18-21. However, this comparison fails to account for the ways in which numerous differences in compensation and benefit practices in different cities impact each city's expenditures. Despite stating that he is an expert in OPEB matters and employee benefits, Moore fails to take into account that a city's CalPERS costs are only a portion of their total costs and obligations for post-employment compensation. To get a truly accurate comparison, one would need to also consider the following items in order to get an accurate comparison of cost "sustainability" for Stockton compared to Moore's other cities:</u></p> <ul style="list-style-type: none"> <li>• <u><b>Each City's Social Security Costs.</b> While Stockton does not participate in Social Security, several of the 12 listed cities do. In addition to the CalPERS</u></li> </ul> | <p>Franklin objects to the statements in this paragraph because Ms. Goodrich's description of the Moore Report is not the best evidence of that document. FED. R. EVID. 1002. Franklin further objects to the underlined statements in this paragraph because they contain improper opinion testimony that is not rationally based on Ms. Goodrich's perception and not helpful to clearly understand Ms. Goodrich'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 opinions of Mr. Moore.</p> |

| PARAGRAPH OBJECTED TO  | GROUNDS FOR OBJECTION |
|--|-----------------------|
| <p>1 expenditures listed by Moore, these</p> <p>2 cities are also obligated to pay another</p> <p>3 6.2% as the legally required employer's</p> <p>4 share of Social Security. For example,</p> <p>5 the cities of Long Beach and</p> <p>6 Sacramento are in Social Security and</p> <p>7 pay an additional 6.2% for their</p> <p>8 employees in addition to the CalPERS</p> <p>9 rates identified by Moore.</p> <p>10</p> <ul style="list-style-type: none"> <li>11 • <b><u>Each City's Paid Employee's</u></b></li> <li>12 <b><u>Member Contribution costs.</u></b> In</li> <li>13 addition to the Employer CalPERS Cost</li> <li>14 listed by Moore, there is also a</li> <li>15 CalPERS Employee Cost set by law.</li> <li>16 The Employee Cost is 7-8% for</li> <li>17 Miscellaneous employees and 9% for</li> <li>18 Safety employees. It is common</li> <li>19 practice for cities to pay some or all of</li> <li>20 the Employee Costs that would</li> <li>21 otherwise be paid by their employees,</li> <li>22 in addition to paying the Employer</li> <li>23 Cost. Stockton does not pay for any of</li> <li>24 the employee's share. Most of the cities</li> <li>25 listed in Moore's table, on the other</li> <li>26 hand, pay some or all of their</li> <li>27 employees' CalPERS member's costs, a</li> <li>28 fact readily discovered by checking the</li> <li>collective bargaining agreements on the</li> <li>websites of these 12 cities. Modesto, for</li> <li>example, pays 6.6% for Miscellaneous</li> <li>and 7.5% for Safety for the majority of</li> <li>its employees.</li> </ul> <ul style="list-style-type: none"> <li>• <u>Some cities pay into employees'</u></li> <li><u>deferred compensation programs in</u></li> <li><u>addition to CalPERS. Some agencies</u></li> <li><u>pay into deferred compensation</u></li> <li><u>programs (401k or 401a plans) for their</u></li> <li><u>employees in addition to the CalPERS</u></li> <li><u>program. For example, Modesto pays 1-</u></li> <li><u>2% of Miscellaneous employees salary,</u></li> <li><u>and \$425-525 per month for Safety</u></li> <li><u>employees, into post-employment</u></li> <li><u>deferred compensation accounts for</u></li> <li><u>their employees.</u></li> </ul> <ul style="list-style-type: none"> <li>• <b><u>All of the 12 cities provide some type</u></b></li> <li><b><u>of retiree medical benefits to their</u></b></li> <li><b><u>retirees and employees in addition to</u></b></li> <li><b><u>CalPERS benefits.</u></b> While Stockton has</li> <li>eliminated all of its retiree medical</li> <li>benefit costs, most if not all of the</li> <li>agencies Moore compares to Stockton</li> <li>have considerable annual costs for their</li> <li>existing retiree medical benefits. These</li> </ul> |                       |

| PARAGRAPH OBJECTED TO  | GROUNDS FOR OBJECTION   |
|--|---|
| <p>1                    <u>annual payments are listed on each</u></p> <p>2                    <u>City's CAFR.</u></p> <p>3                    • <b><u>Some cities have Pension Obligation</u></b></p> <p>4                    <b><u>Bond debt payments in addition to</u></b></p> <p>5                    <b><u>their CalPERS costs.</u></b> It is also a</p> <p>6                    <u>common practice for cities in California</u></p> <p>7                    <u>to have Pension Obligation Bonds they</u></p> <p>8                    <u>have incurred to pay down their</u></p> <p>                     <u>CalPERS unfunded liability. Oakland,</u></p> <p>                     <u>for example, has approximately \$18</u></p> <p>                     <u>million dollars a year in POB payments.</u></p> <p>                     <u>This information is available on each</u></p> <p>                     <u>city's CAFR.</u></p>   |   |
| <p>9                    16. The Moore Report fails to account for</p> <p>10                    any of these other factors in comparing</p> <p>11                    Stockton with these other agencies. In so doing,</p> <p>12                    it ignores each city's full obligations, and</p> <p>13                    consequently reaches the erroneous conclusion</p> <p>14                    that Stockton's costs are less sustainable than</p> <p>15                    those for these other agencies.</p>  | <p>Franklin objects to the statements in this paragraph because Ms. Goodrich's description of the Moore Report is not the best evidence of that document. FED. R. EVID. 1002. Franklin further objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Ms. Goodrich's perception and not helpful to clearly understand Ms. Goodrich'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 opinions of Mr. Moore.</p>            |
| <p>18                    17. Moore also disputes the City's statements</p> <p>19                    as to the reduction in pension benefits that will</p> <p>20                    result from the new pension tiers implemented</p> <p>21                    by the City (including new state PEPPA tiers),</p> <p>22                    but does not provide his own calculation or</p> <p>23                    data. <u>CalPERS, in a pair of reports published</u></p> <p>24                    <u>in April 2014, a true and correct copy of which</u></p> <p>25                    <u>is attached hereto as <b>Exhibit B</b>, supports the</u></p> <p>26                    <u>City's calculations as to the impact of the new</u></p> <p>27                    <u>pension tiers. In fact, the City's pension</u></p> <p>28                    <u>reductions exceed state-mandated changes and</u></p> <p>                     <u>will result in a greater pension reduction for</u></p> <p>                     <u>persons hired after January 1, 2013.</u></p> | <p>Franklin objects to the statements in this paragraph because Ms. Goodrich's description of the Moore Report is not the best evidence of that document. FED. R. EVID. 1002. Franklin further objects to the underlined statements in this paragraph because they contain improper opinion testimony that is not rationally based on Ms. Goodrich's perception and not helpful to clearly understand Ms. Goodrich'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 opinions of Mr. Moore.</p> |

| PARAGRAPH OBJECTED TO   | GROUNDS FOR OBJECTION  |
|---|--|
| <p>18. Based on the errors described above, Moore’s conclusions as to the City’s calculation of retiree health benefits and the relative size of the City’s post-employment benefits are flawed, and without merit.</p> | <p>Franklin objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Ms. Goodrich’s perception and not helpful to clearly understand Ms. Goodrich’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> |

Dated: April 25, 2014

JONES DAY

By:           /s/ Joshua D. Morse            
 James O. Johnston  
 Joshua D. Morse  
 Charlotte S. Wasserstein

*Attorneys for Franklin High Yield Tax-Free  
 Income Fund and Franklin California High  
 Yield Municipal Fund*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28