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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

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

22 WELLS FARGO BANK, et al.  
 23 Plaintiffs,  
 24 v.  
 25 CITY OF STOCKTON, CALIFORNIA,  
 Defendant.

Adv. No. 2013-02315

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

Pursuant to paragraph 44 of the Order Governing The Disclosure And Use Of Discovery Information And Scheduling Dates, Etc. [Dkt. Nos. 1224 (Case), 16 (Proceeding)], as amended by the Order Modifying Order Governing The Disclosure And Use Of Discovery Information And Scheduling Dates, Etc. [Dkt. Nos. 1242 (Case), 18 (Proceeding)] (collectively, the “Orders”), the City of Stockton, California (the “City”), the debtor and defendant in the above-captioned case and adversary proceeding, hereby submits the following responses to Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal Fund’s (collectively, “Franklin’s”) Evidentiary Objections to Direct Testimony Declaration of Tom Nelson In Support Of Confirmation Of First Amended Plan For The Adjustment Of Debts Of City Of Stockton California (November 15, 2013) [Dkt. Nos. 1420 (Case), 109 (Proceeding)].

The City disagrees with all of Franklin’s objections to Mr. Nelson’s declaration and submits that Franklin will have the opportunity to cross-examine Mr. Nelson to address any alleged deficiencies in his declaration. However, to the extent the Court determines that any of Mr. Nelson’s statements in his declaration require clarification or additional foundational support, the City is prepared to provide live testimony at trial by Mr. Nelson to clarify or lay any foundation the Court deems necessary.

The City’s responses to Franklin’s specific objections follow:

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
5. I have reviewed the Chin Report submitted by Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal Fund (together, “Franklin”). Mr. Chin did not contact me as part of the preparation of the Chin Report, nor to my knowledge did he contact anyone else at either of the Courses or at Kemper. <u>Mr. Chin’s report is seriously flawed, and either omits or glosses over critical considerations relevant to the profitability and value of the</u>	Franklin objects to the underlined portions of this paragraph because they consist of improper opinion testimony that is not rationally based on Mr. Nelson’s perception and is not helpful to clearly understand Mr. Nelson’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).	The underlined portions of this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Nelson’s perception, helpful to clearly understanding his testimony and helpful to determining at least one fact in issue. The statements are also based on Mr. Nelson’s knowledge and experience as General Manager of Swenson Park and Van Buskirk golf courses (together, the “Courses”) as well as a golf professional for the past 30

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<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</p> <p><u>Courses. Specifically, Mr. Chin’s “valuation” ignores (1) the market conditions that place extreme price pressures on the Courses, (2) the continued projected shortfalls for the Courses, and (3) the millions of dollars in capital improvements and deferred maintenance that would have to be undertaken in order for the Courses to turn a profit.</u></p>	<p>Furthermore, the underlined portions of this paragraph are inadmissible because they assume facts not in evidence and lack foundation. FED. R. EVID. 602. Franklin also objects to the statements in this paragraph because Mr. Nelson’s description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002.</p>	<p>years, who for the past three years has been employed by KemperSports, Inc. managing the Courses, as more fully described in ¶¶ 1-2 of his declaration. <i>Cf. Int’l Ass’n of Firefighters, Local 1186 v. City of Vallejo</i>, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy court’s admission of the testimony of the City of Vallejo’s Assistant Finance Director regarding Vallejo’s financial conditions and constraints even though the testimony “arguably contained legal conclusions” because the testimony pertained to the “complex[]” area of municipal accounting and promoted “judicial efficiency”) (citing FRE 701).</p> <p>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the government could rely entirely on lay witnesses with percipient knowledge to rebut the defendant’s expert); <i>United States v. Bennett</i>, 908 F.2d 189, 195 (7th Cir. 1990) (government was not required to rebut expert testimony with its own expert because “it may accomplish the same result by presenting lay witnesses and other evidence and by undermining the defense expert’s credibility through cross-examination.”); <i>United States v. Mota</i>, 598 F.2d 995, 999 (5th Cir. 1979) (jury may find expert testimony “adequately rebutted by the</p>

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		<p>observations of mere laymen”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p> <p>The underlined portions of this paragraph do not assume facts not in evidence and do not lack foundation under FED R. EVID. 602 because they are based on Mr. Nelson’s knowledge and experience as described above. To the extent necessary, the City will make an offer of proof at trial.</p> <p>The statements in this paragraph do not violate FED. R. EVID. 1002 because they are not secondary evidence being offered to prove the content of a writing. <i>See United States v. Mayans</i>, 17 F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial court erred in sustaining best evidence objections to questions regarding witnesses’ understanding of the terms of a written plea agreement). Even if they were, Franklin is in possession of a copy of the Chin Report, which it filed in the Proceeding.</p>
<p>6. The Chin Report suggests that revenues at the Courses could be increased by simply increasing course fees. Chin Report, at 36-38. However, <u>this conclusion ignores the realities of the market in which the Courses compete.</u></p>	<p>Franklin objects to the underlined portion of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Nelson’s perception and is not helpful to clearly understand Mr. Nelson’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</p>	<p>The underlined portion of this paragraph is valid lay opinion testimony under FED. R. EVID. 701 because it is rationally based on Mr. Nelson’s perception, helpful to clearly understanding his testimony and helpful to determining at least one fact in issue. The underlined portion is also based on Mr. Nelson’s knowledge and experience as General Manager of the Courses as well as a golf</p>

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	<p>methodology). Franklin also objects to the statements in this paragraph because Mr. Nelson’s description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002.</p>	<p>professional for the past 30 years, who for the past three years has been employed by KemperSports, Inc. managing the Courses. <i>Cf. Int’l Ass’n of Firefighters, Local 1186 v. City of Vallejo</i>, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy court’s admission of the testimony of the City of Vallejo’s Assistant Finance Director regarding Vallejo’s financial conditions and constraints even though the testimony “arguably contained legal conclusions” because the testimony pertained to the “complex[]” area of municipal accounting and promoted “judicial efficiency”) (citing FRE 701).</p> <p>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the government could rely entirely on lay witnesses with percipient knowledge to rebut the defendant’s expert); <i>United States v. Bennett</i>, 908 F.2d 189, 195 (7th Cir. 1990) (government was not required to rebut expert testimony with its own expert because “it may accomplish the same result by presenting lay witnesses and other evidence and by undermining the defense expert’s credibility through cross-examination.”); <i>United States v. Mota</i>, 598 F.2d 995, 999 (5th Cir. 1979) (jury may find expert testimony “adequately rebutted by the</p>

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		<p>observations of mere laymen”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p> <p>The statements in this paragraph do not violate FED. R. EVID. 1002 because they are not secondary evidence being offered to prove the content of a writing. <i>See United States v. Mayans</i>, 17 F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial court erred in sustaining best evidence objections to questions regarding witnesses’ understanding of the terms of a written plea agreement). Even if they were, Franklin is in possession of a copy of the Chin Report, which it filed in the Proceeding.</p>
<p>7. Shortly after Kemper took over management of the Courses, there were several important changes to the golf industry in the Stockton area. Elkhorn Golf Club in north Stockton, which had previously declared bankruptcy and ceased operations, was purchased by former members and Sierra Golf Management and re-opened as a public, heavily-discounted facility. Similarly, Micke Grove Golf Links in Lodi changed management to Fore Golf Partners, a very aggressive discount firm. Lockeford Springs Golf Course in Lodi also began heavily discounting its fees due to local market pressure. During this period, The Reserve at Spanos in Stockton began discounting its fees for the first time due to market changes. <i>Due to these</i></p>	<p>Franklin objects to the italicized portions of this paragraph because they assume facts not in evidence and lack foundation. FED. R. EVID. 602. Franklin also objects to the italicized portion of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Nelson’s perception and is not helpful to clearly understand Mr. Nelson’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.</p>	<p>The italicized portions of this paragraph do not assume facts not in evidence and do not lack foundation under FED R. EVID. 602 because they are based on Mr. Nelson’s knowledge and experience as General Manager of the Courses as well as a golf professional for the past 30 years, who for the past three years has been employed by KemperSports, Inc. managing the Courses, as more fully described in ¶¶ 1-2 of his declaration. To the extent necessary, the City will make an offer of proof at trial.</p> <p>The italicized portion of this paragraph is valid lay opinion testimony under FED. R. EVID. 701 because it is rationally based on Mr. Nelson’s perception, helpful to clearly understanding his testimony</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p><i>changes, the ability to charge full-price, or “rack,” rate has virtually been eliminated, requiring constant discounts and deals in order to attract play and reasonably compete with the Stockton area golf market.</i></p>		<p>and helpful to determining at least one fact in issue. The italicized portion is also based on Mr. Nelson’s knowledge and experience as described above. To the extent necessary, the City will make an offer of proof at trial. <i>Cf. Int’l Ass’n of Firefighters, Local 1186 v. City of Vallejo</i>, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy court’s admission of the testimony of the City of Vallejo’s Assistant Finance Director regarding Vallejo’s financial conditions and constraints even though the testimony “arguably contained legal conclusions” because the testimony pertained to the “complex[]” area of municipal accounting and promoted “judicial efficiency”) (citing FRE 701).</p> <p>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the government could rely entirely on lay witnesses with percipient knowledge to rebut the defendant’s expert); <i>United States v. Bennett</i>, 908 F.2d 189, 195 (7th Cir. 1990) (government was not required to rebut expert testimony with its own expert because “it may accomplish the same result by presenting lay witnesses and other evidence and by undermining the defense expert’s credibility through cross-examination.”); <i>United States v. Mota</i>, 598 F.2d 995, 999 (5th Cir. 1979) (jury may</p>

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		find expert testimony “adequately rebutted by the observations of mere laymen”); <i>Carpenter v. United States</i> , 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i> , 295 F.2d 743 (8th Cir. 1961).
<p>8. <i>As a result of this increased competitiveness, it would be difficult, if not impossible, for either of the Courses to increase revenues by merely raising their fees, because doing so would cause golfers to take their business elsewhere.</i> Even with Kemper’s aggressive marketing, players search the local area for the best deal. By way of example, after I recently sent an e-mail blast to Kemper’s mailing list offering a discounted rate, one of my local competitors send an e-mail blast just hours later, offering prices a dollar or two lower in order to combat my offer. It is not unusual for players to bring in offers from my competitors and state they will play at the Courses only if we match their offer.</p>	<p>Franklin objects to the italicized portions of this paragraph because they are speculative and lack foundation. FED. R. EVID. 602. Franklin also objects to the italicized portion of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Nelson’s perception and is not helpful to clearly understand Mr. Nelson’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.</p>	<p>The italicized portions of this paragraph are not speculative and do not lack foundation under FED. R. EVID. 602 because they are based on Mr. Nelson’s knowledge and experience as General Manager of the Courses as well as a golf professional for the past 30 years, who for the past three years has been employed by KemperSports, Inc. managing the Courses, as more fully described in ¶¶ 1-2 of his declaration. To the extent necessary, the City will make an offer of proof at trial.</p> <p>The italicized portion of this paragraph is valid lay opinion testimony under FED. R. EVID. 701 because it is rationally based on Mr. Nelson’s perception, helpful to clearly understanding his testimony and helpful to determining at least one fact in issue. The italicized portion is also based on Mr. Nelson’s knowledge and experience as described above. To the extent necessary, the City will make an offer of proof at trial. <i>Cf. Int’l Ass’n of Firefighters, Local 1186 v. City of Vallejo</i>, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy court’s admission of the testimony of the City of Vallejo’s Assistant Finance Director regarding Vallejo’s financial conditions and constraints even though the</p>



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		<p>testimony “arguably contained legal conclusions” because the testimony pertained to the “complex[]” area of municipal accounting and promoted “judicial efficiency”) (citing FRE 701).</p> <p>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the government could rely entirely on lay witnesses with percipient knowledge to rebut the defendant’s expert); <i>United States v. Bennett</i>, 908 F.2d 189, 195 (7th Cir. 1990) (government was not required to rebut expert testimony with its own expert because “it may accomplish the same result by presenting lay witnesses and other evidence and by undermining the defense expert’s credibility through cross-examination.”); <i>United States v. Mota</i>, 598 F.2d 995, 999 (5th Cir. 1979) (jury may find expert testimony “adequately rebutted by the observations of mere laymen”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p>
<p>9. The Chin Report briefly acknowledges that the Courses have consistently lost money for nearly a decade, but appears to give this fact little to no weight in his valuation of the Courses. <u>This is a critical omission, as any legitimate valuation must</u></p>	<p>Franklin objects to the statements in this paragraph because Mr. Nelson’s description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002. Franklin also objects to the underlined portions of this</p>	<p>The statements in this paragraph do not violate FED. R. EVID. 1002 because they are not secondary evidence being offered to prove the content of a writing. See <i>United States v. Mayans</i>, 17 F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial</p>

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<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</p> <p><u>consider the financial realities at the Courses.</u></p>	<p>paragraph because they consist of improper opinion testimony that is not rationally based on Mr. Nelson's perception and is not helpful to clearly understand Mr. Nelson'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>	<p>court erred in sustaining best evidence objections to questions regarding witnesses' understanding of the terms of a written plea agreement). Even if they were, Franklin is in possession of a copy of the Chin Report, which it filed on the Court's docket.</p> <p>The underlined portions of this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Nelson's perception, helpful to clearly understanding his testimony and helpful to determining at least one fact in issue. The underlined portions are also based on Mr. Nelson's knowledge and experience as General Manager of the Courses as well as a golf professional for the past 30 years, who for the past three years has been employed by KemperSports, Inc. managing the Courses. To the extent necessary, the City will make an offer of proof at trial. <i>Cf. Int'l Ass'n of Firefighters, Local 1186 v. City of Vallejo</i>, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy court's admission of the testimony of the City of Vallejo's Assistant Finance Director regarding Vallejo's financial conditions and constraints even though the testimony "arguably contained legal conclusions" because the testimony pertained to the "complex[]" area of municipal accounting and promoted "judicial efficiency") (citing FRE 701).</p> <p>Furthermore, expert testimony may be rebutted by the</p>

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		<p>testimony of lay witnesses. <i>United States v. Shackelford</i>, 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the government could rely entirely on lay witnesses with percipient knowledge to rebut the defendant’s expert); <i>United States v. Bennett</i>, 908 F.2d 189, 195 (7th Cir. 1990) (government was not required to rebut expert testimony with its own expert because “it may accomplish the same result by presenting lay witnesses and other evidence and by undermining the defense expert’s credibility through cross-examination.”); <i>United States v. Mota</i>, 598 F.2d 995, 999 (5th Cir. 1979) (jury may find expert testimony “adequately rebutted by the observations of mere laymen”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p>
<p>10. Over the past five years, each of the Courses has operated at a loss and has required a subsidy from the City’s General Fund. See Declaration of Val Toppenberg In Support Of City’s Supplemental Memorandum Of Law In Support Of Confirmation Of First Amended Plan For The Adjustment Of Debts Of City Of Stockton, California (November 15, 2013) (“Toppenberg Decl.”), ¶ 2, Exs. A, B, C. In addition, while Swenson operated at a small profit during fiscal years 2005-06, 2006-07, and</p>	<p>Franklin incorporates herein its concurrently-filed <i>Evidentiary Objections To Direct Testimony Declaration Of Val Toppenberg In Support Of Confirmation Of First Amended Plan For The Adjustment Of Debts Of City Of Stockton, California</i> (November 15, 2013).</p>	<p>The City incorporates herein its concurrently filed <i>Response to Evidentiary Objections To Direct Testimony Declaration Of Val Toppenberg In Support Of Confirmation Of First Amended Plan For The Adjustment Of Debts Of City Of Stockton, California</i> (November 15, 2013).</p>

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<p>2007-08, these profits were insufficient to cover losses at Van Buskirk. <i>Id.</i> As a result, the Courses together have lost money every year for the past eight years. <i>Id.</i></p>		
<p>12. Attached hereto as <b>Exhibits C and D</b> are true and correct copies of pro forma summary profit and loss projections prepared by Kemper during FY 2011-2012 for Swenson and Van Buskirk, respectively.<sup>2</sup> These two documents contain projections of revenues and expenses for FY 2012-2013, FY 2014-2015, and FY 2015-16. The projections on page 35 of the Chin Report of net income for FY 2014-2015 and FY 2015-16 rely upon the projections in Exhibits C and D for those years. But a comparison of the projections in Exhibits C and D for FY 2012-2013 against the actual FY 2012-2013 results reflected in Exhibits A and B reveals that the forecasts in Exhibits C and D are obsolete.</p> <p>a. Actual total revenues for Swenson in FY 2012-2013 (\$1,170,185) were only 86% of Exhibit C's projected total revenues for that year (\$1,354,343).</p> <p>b. There was an actual net loss for Swenson of \$169,679 in FY 2012-2013, in contrast to Exhibit C's projected net income of \$17,275.</p> <p>c. Actual total revenues for Van Buskirk in</p>	<p>Franklin objects to the entirety of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Nelson's perception and is not helpful to clearly understand Mr. Nelson'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 Mr. Nelson's description of the Chin Report is not the best evidence of the contents of that document, which speaks for itself. FED. R. EVID. 1002.</p>	<p>This paragraph is valid lay opinion testimony under FED. R. EVID. 701 because it is rationally based on Mr. Nelson's perception, helpful to clearly understanding his testimony and helpful to determining at least one fact in issue. The paragraph is also based on Mr. Nelson's knowledge and experience as General Manager of the Courses as well as a golf professional for the past 30 years, who for the past three years has been employed by KemperSports, Inc. managing the Courses. <i>Cf. Int'l Ass'n of Firefighters, Local 1186 v. City of Vallejo</i>, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy court's admission of the testimony of the City of Vallejo's Assistant Finance Director regarding Vallejo's financial conditions and constraints even though the testimony "arguably contained legal conclusions" because the testimony pertained to the "complex[]" area of municipal accounting and promoted "judicial efficiency") (citing FRE 701).</p> <p>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the government could rely entirely on lay witnesses with</p>

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<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</p> <p>FY 2012-2013 (\$538,337) were only 84% of Exhibit D's projected total revenues for that year (\$638,229).</p> <p>d. There was an actual net loss for Van Buskirk of \$164,409 in FY 2012-2013, 5% greater than Exhibit D's projected net loss of \$156,991.</p> <p>fn2: All projections and actual results reflected in Exhibits A through D are before the allocation of any City expenses to the Courses.</p>		<p>percipient knowledge to rebut the defendant's expert); <i>United States v. Bennett</i>, 908 F.2d 189, 195 (7th Cir. 1990) (government was not required to rebut expert testimony with its own expert because "it may accomplish the same result by presenting lay witnesses and other evidence and by undermining the defense expert's credibility through cross-examination."); <i>United States v. Mota</i>, 598 F.2d 995, 999 (5th Cir. 1979) (jury may find expert testimony "adequately rebutted by the observations of mere laymen"); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p> <p>The statements in this paragraph do not violate FED. R. EVID. 1002 because they are not secondary evidence being offered to prove the content of a writing. See <i>United States v. Mayans</i>, 17 F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial court erred in sustaining best evidence objections to questions regarding witnesses' understanding of the terms of a written plea agreement). Even if they were, Franklin is in possession of a copy of the Chin Report, which it filed in the Proceeding.</p>
<p>25 26 27 28</p> <p>13. Based on the historical performance of and current projections for the Courses, it is extremely unlikely that the Courses could be made profitable without major capital investments. By</p>	<p>Franklin objects to the entirety of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Nelson's perception and is not helpful to clearly understand Mr.</p>	<p>This paragraph is valid lay opinion testimony under FED. R. EVID. 701 because it is rationally based on Mr. Nelson's perception, helpful to clearly understanding his testimony</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p>largely ignoring this fact, the Chin Report significantly overestimates the value of the Courses. Further, the Chin Report uses projected revenue figures from obsolete projections created before the market underwent the shift outlined in paragraph 7 above. As demonstrated in paragraph 12 above, these are outdated projections based on obsolete assumptions, and further undermine the conclusions of the Chin Report.</p>	<p>Nelson’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). Furthermore, the statements in this paragraph are inadmissible because they assume facts not in evidence and lack foundation. FED. R. EVID. 602. Franklin also objects to the statements in this paragraph because Mr. Nelson’s description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002.</p>	<p>and helpful to determining at least one fact in issue. The paragraph is also based on Mr. Nelson’s knowledge and experience as General Manager of the Courses as well as a golf professional for the past 30 years, who for the past three years has been employed by KemperSports, Inc. managing the Courses. <i>Cf. Int’l Ass’n of Firefighters, Local 1186 v. City of Vallejo</i>, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy court’s admission of the testimony of the City of Vallejo’s Assistant Finance Director regarding Vallejo’s financial conditions and constraints even though the testimony “arguably contained legal conclusions” because the testimony pertained to the “complex[]” area of municipal accounting and promoted “judicial efficiency”) (citing FRE 701).</p> <p>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the government could rely entirely on lay witnesses with percipient knowledge to rebut the defendant’s expert); <i>United States v. Bennett</i>, 908 F.2d 189, 195 (7th Cir. 1990) (government was not required to rebut expert testimony with its own expert because “it may accomplish the same result by presenting lay witnesses and other evidence and by undermining the defense expert’s credibility through</p>

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		<p>cross-examination.”); <i>United States v. Mota</i>, 598 F.2d 995, 999 (5th Cir. 1979) (jury may find expert testimony “adequately rebutted by the observations of mere laymen”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p> <p>The statements do not assume facts not in evidence and do not lack foundation under FED R. EVID. 602 because they are based on Mr. Nelson’s knowledge and experience as described above. To the extent necessary, the City will make an offer of proof at trial.</p> <p>The statements in this paragraph do not violate FED. R. EVID. 1002 because they are not secondary evidence being offered to prove the content of a writing. <i>See United States v. Mayans</i>, 17 F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial court erred in sustaining best evidence objections to questions regarding witnesses’ understanding of the terms of a written plea agreement). Even if they were, Franklin is in possession of a copy of the Chin Report, which it filed in the Proceeding.</p>
<p>14. The Chin Report makes occasional references to “certain capital improvements” (<i>see, e.g.</i>, Chin Report at 36, 38) but fails to account for the actual scope of improvements and maintenance needed at the Courses. Due to the City’s overall financial and</p>	<p>Franklin objects to the entirety of this paragraph because it consists of improper opinion testimony that is not rationally based on Mr. Nelson’s perception and is not helpful to clearly understand Mr. Nelson’s testimony or to determine a fact in issue. FED. R. EVID. 701; <i>see also</i></p>	<p>This paragraph is valid lay opinion testimony under FED. R. EVID. 701 because it is rationally based on Mr. Nelson’s perception, helpful to clearly understanding his testimony and helpful to determining at least one fact in issue. The paragraph is also based on</p>

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<p>economic condition, as well as the consistent losses experienced by the Courses, the Courses have foregone important capital improvements and deferred maintenance for each of the eight years that I have been employed in Stockton. While this has saved the Courses and the City money in the short term, it has resulted in significant degradation of conditions at the Courses. Poor golfing conditions can have negative impacts on the number of rounds played and the price that the Courses can charge, both of which limit the revenue the Courses can generate and contribute to the Courses' lack of profitability. <i>Without substantial capital investment by the City, it is unclear when, if ever, the Courses could be operated at a profit.</i></p>	<p><i>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 also objects to this paragraph because Mr. Nelson's description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002.</p>	<p>Mr. Nelson's knowledge and experience as General Manager of the Courses as well as a golf professional for the past 30 years, who for the past three years has been employed by KemperSports, Inc. managing the Courses. <i>Cf. Int'l Ass'n of Firefighters, Local 1186 v. City of Vallejo</i>, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy court's admission of the testimony of the City of Vallejo's Assistant Finance Director regarding Vallejo's financial conditions and constraints even though the testimony "arguably contained legal conclusions" because the testimony pertained to the "complex[]" area of municipal accounting and promoted "judicial efficiency") (citing FRE 701).</p> <p>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the government could rely entirely on lay witnesses with percipient knowledge to rebut the defendant's expert); <i>United States v. Bennett</i>, 908 F.2d 189, 195 (7th Cir. 1990) (government was not required to rebut expert testimony with its own expert because "it may accomplish the same result by presenting lay witnesses and other evidence and by undermining the defense expert's credibility through cross-examination."); <i>United States v. Mota</i>, 598 F.2d 995, 999 (5th Cir. 1979) (jury may</p>



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		<p>find expert testimony “adequately rebutted by the observations of mere laymen”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p> <p>The statements in this paragraph do not violate FED. R. EVID. 1002 because they are not secondary evidence being offered to prove the content of a writing. <i>See United States v. Mayans</i>, 17 F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial court erred in sustaining best evidence objections to questions regarding witnesses’ understanding of the terms of a written plea agreement). Even if they were, Franklin is in possession of a copy of the Chin Report, which it filed in the Proceeding.</p>
<p>15. <u>At a rough estimate, approximately \$6 million to \$8 million in capital improvements and deferred maintenance would be required to make the Courses profitable again. Such improvements and maintenance are not mere window dressing. Rather, they represent investments in infrastructure that is critical – in fact fundamental – to golf courses, including basic irrigation, landscaping, cart paths, and equipment.</u> Just a few of these items are as follows:</p> <p>a) The Courses currently have no cart paths. This is extremely unusual for golf course, because carts cannot</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. Nelson’s perception and is not helpful to clearly understand Mr. Nelson’s testimony or to determine a fact in issue. FED. R. EVID. 701.</p>	<p>This paragraph is valid lay opinion testimony under FED. R. EVID. 701 because it is rationally based on Mr. Nelson’s perception, helpful to clearly understanding his testimony and helpful to determining at least one fact in issue. The paragraph is also based on Mr. Nelson’s knowledge and experience as General Manager of the Courses as well as a golf professional for the past 30 years, who for the past three years has been employed by KemperSports, Inc. managing the Courses.</p>

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<p>be used for several days after rain. The result is a loss of cart fees, which make up 20-21% of daily fees. It would cost approximately \$1 million to add a cart path to each of the Courses.</p> <p>b) The Courses need new irrigation systems. This will require dredging the lake because the silt would otherwise ruin the system's pipes. Irrigation and dredging for the Courses could cost upwards of several million dollars.</p> <p>c) Both the greens and bunkers at the Courses are of original design and construction. These old, "push up" style greens lack proper drainage and soil composition for optimal turf health. The bunkers' drainage systems have completely collapsed, preventing proper drainage and sand texture for playability. Restoring the greens and bunkers at the Courses could cost several million dollars.</p> <p>d) Due to the City's financial difficulties, Kemper has been unable to lease new equipment for course maintenance. It has</p>		

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<p>instead had to rent substandard equipment, which produce substandard results and for which Kemper is responsible for a majority of repair costs. The cost of replacing course maintenance equipment would be approximately \$850,000.</p> <p>e) The perimeter fences at the Courses are in desperate need of repair or replacement, with many holes and failures allowing for easy access to the Courses and greatly increasing vandalism. Repairing or replacing the perimeter fences could cost \$75,000 to \$100,000 for each of the Courses.</p> <p>f) The Courses' food and beverage facilities need new kitchen equipment, including grills, ovens, and fryers, as well as seating and counters. The cost of these improvements could run anywhere from \$50,000 to \$80,000 per café.</p> <p>g) The Courses need major landscaping work. There has been no annual tree</p>		

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<p>maintenance at the Courses since I joined Kemper in August 2011. As a result, there have been numerous tree failures, which create safety concerns and hurt turf growth. An ongoing tree maintenance program would run \$75,000 to \$100,000 annually.</p> <p>h) The parking lots at both Courses are in great need of resurfacing. Each has large pot holes, cracks, and potentially dangerous trip hazards. Kemper has not estimated the costs of resurfacing the parking lots.</p>		
<p>16. All of these capital improvement and deferred maintenance items directly impact the product that makes you stand out in a competitive marketplace. <u>As a result, the Courses cannot be expected to turn a profit until each of these items is addressed.</u></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. Nelson’s perception and is not helpful to clearly understand Mr. Nelson’s testimony or to determine a fact in issue. FED. R. EVID. 701.</p>	<p>This paragraph is valid lay opinion testimony under FED. R. EVID. 701 because it is rationally based on Mr. Nelson’s perception, helpful to clearly understanding his testimony and helpful to determining at least one fact in issue. The paragraph is also based on Mr. Nelson’s knowledge and experience as General Manager of the Courses as well as a golf professional for the past 30 years, who for the past three years has been employed by KemperSports, Inc. managing the Courses.</p>
<p>17. Even with these improvements, however, the Chin Report seriously exaggerates the potential to increase revenues at the</p>	<p>Franklin objects to the statements in this paragraph because they consist of improper opinion testimony that is not rationally based on</p>	<p>This paragraph is valid lay opinion testimony under FED. R. EVID. 701 because it is rationally based on Mr. Nelson’s perception,</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p>1 Courses. The Chin Report 2 projects that by increasing 3 rates and making certain 4 improvements (which are not 5 identified), the Courses could 6 achieve total revenues of 7 \$1,955,000. Chin Report, at 8 39. This is a 14.4% increase 9 over the combined revenues 10 for the Courses in fiscal year 11 2012-13. See Toppenberg 12 Decl., Ex. A. To be blunt, a 13 golf course cannot just 14 increase its revenues by more 15 than a tenth without taking 16 into consideration all of the 17 factors, investments and 18 expenses outlined above. The 19 latest projections prepared by 20 Kemper project an increase of 21 1.0%, which is itself 22 considered aggressive. In the 23 current price-driven market, 24 aggravated by the dry winters 25 that the Stockton area has 26 recently experienced, any 27 substantial increase in 28 revenues is unlikely.</p>	<p>Mr. Nelson's perception and is not helpful to clearly understand Mr. Nelson'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). Furthermore, the statements in this paragraph are inadmissible because they assume facts not in evidence and lack foundation. FED. R. EVID. 602. Franklin also objects to the statements in this paragraph because Mr. Nelson's description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002.</p>	<p>helpful to clearly understanding his testimony and helpful to determining at least one fact in issue. The paragraph is also based on Mr. Nelson's knowledge and experience as General Manager of the Courses as well as a golf professional for the past 30 years, who for the past three years has been employed by KemperSports, Inc. managing the Courses. <i>Cf. Int'l Ass'n of Firefighters, Local 1186 v. City of Vallejo</i>, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy court's admission of the testimony of the City of Vallejo's Assistant Finance Director regarding Vallejo's financial conditions and constraints even though the testimony "arguably contained legal conclusions" because the testimony pertained to the "complex[]" area of municipal accounting and promoted "judicial efficiency") (citing FRE 701).</p> <p>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the government could rely entirely on lay witnesses with percipient knowledge to rebut the defendant's expert); <i>United States v. Bennett</i>, 908 F.2d 189, 195 (7th Cir. 1990) (government was not required to rebut expert testimony with its own expert because "it may accomplish the same result by presenting lay witnesses and other evidence and by undermining the defense</p>

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		<p>expert’s credibility through cross-examination.”); <i>United States v. Mota</i>, 598 F.2d 995, 999 (5th Cir. 1979) (jury may find expert testimony “adequately rebutted by the observations of mere laymen”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p> <p>The statements do not assume facts not in evidence and do not lack foundation under FED R. EVID. 602 because they are based on Mr. Nelson’s knowledge and experience as described above. To the extent necessary, the City will make an offer of proof at trial.</p> <p>The statements in this paragraph do not violate FED. R. EVID. 1002 because they are not secondary evidence being offered to prove the content of a writing. <i>See United States v. Mayans</i>, 17 F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial court erred in sustaining best evidence objections to questions regarding witnesses’ understanding of the terms of a written plea agreement). Even if they were, Franklin is in possession of a copy of the Chin Report, which it filed in the Proceeding.</p>
<p>18. Yet another flaw of the Chin Report is its purported comparison of the rates at the Courses with the rates of local competitors. Chin Report, at 38. The rates listed in the Chin report are special discounted rates offered at the Courses during off-peak</p>	<p>Franklin objects to the statements in this paragraph because they consist of improper opinion testimony that is not rationally based on Mr. Nelson’s perception and is not helpful to clearly understand Mr. Nelson’s testimony or to determine a</p>	<p>The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Nelson’s perception, helpful to clearly understanding his testimony and helpful to determining at</p>

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
<p>seasons, while the rates listed for local competitors are the competitors' full-price rack rates. The resulting comparison is essentially one of apples (the Courses' special rates) to oranges (competitors' rack rates). Such a comparison is improper and inaccurate.</p>	<p>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 objects to the statements in this paragraph because Mr. Nelson's description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002.</p>	<p>least one fact in issue. The statements are also based on Mr. Nelson's knowledge and experience as General Manager of the Courses as well as a golf professional for the past 30 years, who for the past three years has been employed by KemperSports, Inc. managing the Courses. <i>Cf. Int'l Ass'n of Firefighters, Local 1186 v. City of Vallejo</i>, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy court's admission of the testimony of the City of Vallejo's Assistant Finance Director regarding Vallejo's financial conditions and constraints even though the testimony "arguably contained legal conclusions" because the testimony pertained to the "complex[]" area of municipal accounting and promoted "judicial efficiency") (citing FRE 701).</p> <p>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the government could rely entirely on lay witnesses with percipient knowledge to rebut the defendant's expert); <i>United States v. Bennett</i>, 908 F.2d 189, 195 (7th Cir. 1990) (government was not required to rebut expert testimony with its own expert because "it may accomplish the same result by presenting lay witnesses and other evidence and by undermining the defense expert's credibility through cross-examination."); <i>United</i></p>

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		<p><i>States v. Mota</i>, 598 F.2d 995, 999 (5th Cir. 1979) (jury may find expert testimony “adequately rebutted by the observations of mere laymen”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p> <p>The statements in this paragraph do not violate FED. R. EVID. 1002 because they are not secondary evidence being offered to prove the content of a writing. See <i>United States v. Mayans</i>, 17 F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial court erred in sustaining best evidence objections to questions regarding witnesses’ understanding of the terms of a written plea agreement). Even if they were, Franklin is in possession of a copy of the Chin Report, which it filed in the Proceeding.</p>
<p>19. While the Chin Report pays lip service to the financial and physical condition of the Courses, it essentially ignores these factors in developing its valuation. In particular, the Chin Report fails to account for the following critical facts:</p> <ul style="list-style-type: none"> <li>a) The Courses have lost money every year for nearly a decade.</li> <li>b) The Courses cannot suddenly become profitable by simply raising prices.</li> <li>c) In order to even potentially return to positive margins, the</li> </ul>	<p>Franklin objects to the statements in this paragraph because they consist of improper opinion testimony that is not rationally based on Mr. Nelson’s perception and is not helpful to clearly understand Mr. Nelson’s testimony or to determine a fact in issue. FED. R. EVID. 701; see also <i>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 objects to the statements in this paragraph because Mr. Nelson’s description of the Chin Report is not the best evidence of the contents of that document.</p>	<p>The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Nelson’s perception, helpful to clearly understand his testimony and helpful to determining at least one fact in issue. The statements are also based on Mr. Nelson’s knowledge and experience as General Manager of the Courses as well as a golf professional for the past 30 years, who for the past three years has been employed by KemperSports, Inc. managing the Courses. Cf. <i>Int’l Ass’n of Firefighters, Local 1186 v. City of Vallejo</i>, 48 B.R. 208, 292-93 (B.A.P.</p>



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<p>Courses will first require anywhere from \$6 million to \$8 million in capital improvements and deferred maintenance.</p> <p>d) Even with such improvements and maintenance, the Courses can expect only modest revenue increases (and probably not the more than 10% increase that Chin claims)</p>	<p>FED. R. EVID. 1002.</p>	<p>9th Cir. 2009) (upholding the bankruptcy court’s admission of the testimony of the City of Vallejo’s Assistant Finance Director regarding Vallejo’s financial conditions and constraints even though the testimony “arguably contained legal conclusions” because the testimony pertained to the “complex[]” area of municipal accounting and promoted “judicial efficiency”) (citing FRE 701).</p> <p>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the government could rely entirely on lay witnesses with percipient knowledge to rebut the defendant’s expert); <i>United States v. Bennett</i>, 908 F.2d 189, 195 (7th Cir. 1990) (government was not required to rebut expert testimony with its own expert because “it may accomplish the same result by presenting lay witnesses and other evidence and by undermining the defense expert’s credibility through cross-examination.”); <i>United States v. Mota</i>, 598 F.2d 995, 999 (5th Cir. 1979) (jury may find expert testimony “adequately rebutted by the observations of mere laymen”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p> <p>The statements in this paragraph do not violate FED.</p>

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		<p>R. EVID. 1002 because they are not secondary evidence being offered to prove the content of a writing. <i>See United States v. Mayans</i>, 17 F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial court erred in sustaining best evidence objections to questions regarding witnesses' understanding of the terms of a written plea agreement). Even if they were, Franklin is in possession of a copy of the Chin Report, which it filed in the Proceeding.</p>
<p>20. Based on the Chin Report's refusal to properly account for these considerations into its valuation, the report vastly overestimates the value of the Courses. Any reasonable valuation would need to consider the price that a purchaser would pay for golf courses that have perennially operated at a deficit, would require millions of dollars of investments to become profitable, and would only be able to expect limited to moderate profits years down the road. By choosing to ignore these factors, I believe the Chin Report's conclusions are fatally flawed.</p>	<p>Franklin objects to the statements in this paragraph because they consist of improper opinion testimony that is not rationally based on Mr. Nelson's perception and is not helpful to clearly understand Mr. Nelson'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 also objects to the statements in this paragraph because Mr. Nelson's description of the Chin Report is not the best evidence of the contents of that document. FED. R. EVID. 1002.</p>	<p>The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Nelson's perception, helpful to clearly understand his testimony and helpful to determining at least one fact in issue. The statements are also based on Mr. Nelson's knowledge and experience as General Manager of the Courses as well as a golf professional for the past 30 years, who for the past three years has been employed by KemperSports, Inc. managing the Courses. <i>Cf. Int'l Ass'n of Firefighters, Local 1186 v. City of Vallejo</i>, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy court's admission of the testimony of the City of Vallejo's Assistant Finance Director regarding Vallejo's financial conditions and constraints even though the testimony "arguably contained legal conclusions" because the testimony pertained to the "complex[]" area of municipal accounting and promoted "judicial efficiency") (citing</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
		<p>FRE 701).</p> <p>Furthermore, expert testimony may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i>, 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the government could rely entirely on lay witnesses with percipient knowledge to rebut the defendant’s expert); <i>United States v. Bennett</i>, 908 F.2d 189, 195 (7th Cir. 1990) (government was not required to rebut expert testimony with its own expert because “it may accomplish the same result by presenting lay witnesses and other evidence and by undermining the defense expert’s credibility through cross-examination.”); <i>United States v. Mota</i>, 598 F.2d 995, 999 (5th Cir. 1979) (jury may find expert testimony “adequately rebutted by the observations of mere laymen”); <i>Carpenter v. United States</i>, 264 F.2d 565 (4th Cir. 1959); <i>Dusky v. United States</i>, 295 F.2d 743 (8th Cir. 1961).</p> <p>The statements in this paragraph do not violate FED. R. EVID. 1002 because they are not secondary evidence being offered to prove the content of a writing. <i>See United States v. Mayans</i>, 17 F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial court erred in sustaining best evidence objections to questions regarding witnesses’ understanding of the terms of a written plea agreement). Even if they were, Franklin is</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION
		in possession of a copy of the Chin Report, which it filed in the Proceeding.

Dated: May 6, 2014

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