|    | 35  |  |
|----|---|--|
| 1  | MARC A. LEVINSON (STATE BAR NO. 5761                              | 3)   |
| 2  | malevinson@orrick.com<br>NORMAN C. HILE (STATE BAR NO. 57299)     |  |
| 3  | nhile@orrick.com<br>PATRICK B. BOCASH (STATE BAR NO. 2627         | 763)   |
| 4  | pbocash@orrick.com<br>ORRICK, HERRINGTON & SUTCLIFFE LLP          |  |
| 5  | 400 Capitol Mall, Suite 3000<br>Sacramento, California 95814-4497 |  |
| 6  | Telephone: +1-916-447-9200<br>Facsimile: +1-916-329-4900          |  |
| 7  | Attorneys for Debtor  |  |
| 8  | City of Stockton  |  |
| 9  | UNITED STATES BA  | NKRUPTCY COURT   |
| 10 | EASTERN DISTRIC   | T OF CALIFORNIA  |
| 11 | SACRAMENT   |  |
| 12 | In re:  | Case No. 2012-32118                                      |
| 13 | CITY OF STOCKTON, CALIFORNIA,                                     | D.C. No. OHS-15  |
| 14 | Debtor.   | Chapter 9  |
| 15 |   | CITY OF STOCKTON'S RESPONSE                              |
| 16 |   | TO FRANKLIN HIGH YIELD TAX-<br>FREE INCOME FUND AND      |
| 17 |   | FRANKLIN CALIFORNIA HIGH<br>YIELD MUNICIPAL FUND'S       |
| 18 |   | EVIDENTIARY OBJECTIONS TO DIRECT TESTIMONY               |
| 19 |   | DECLARATION OF ROBERT DEIS IN SUPPORT OF CONFIRMATION OF |
| 20 |   | FIRST AMENDED PLAN FOR THE ADJUSTMENT OF DEBTS OF CITY   |
| 21 |   | OF STOCKTON CALIFORNIA<br>(NOVEMBER 15, 2013)            |
| 22 | WELLS FARGO BANK, et al.  | Adv. No. 2013-02315                                      |
| 23 | Plaintiffs,   | Date: May 12, 2014                                       |
| 24 | v.<br>CITY OF STOCKTON, CALIFORNIA,                               | Time: 9:30 a.m. Dept: Courtroom 35                       |
| 25 | Defendant. Defendant.   | Judge: Hon. Christopher M. Klein                         |
| 26 |   |  |
| 27 |   |  |
| 28 |   |  |
|    |   |  |

CITY OF STOCKTON'S RESPONSE TO FRANKLIN ET AL.'S OBJS. TO DIRECT TEST. DECL. OF ROBERT DEIS ISO FIRST AMENDED PLAN

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 Robert Deis In Support Of Confirmation Of First Amended Plan For The Adjustment Of Debts Of City Of Stockton California (November 15, 2013) [Dkt. Nos. 1414 (Case), 103 (Proceeding)].

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

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

| PARAGRAPH  | GROUNDS FOR   | RESPONSE TO  |
|--|---|--|
| OBJECTED TO  | OBJECTION   | OBJECTION  |
| 2. Since before my tenure as the City Manager, Stockton had realized that an essential part of its recovery from the intransigent economic downturn of the Central Valley would include maximizing revenue increases and achieving expenditure reductions while still maintaining a viable city. In early 2012, the City approached Fairbank, Maslin, Maullin, Metz & Associates ("FM3"), a public opinion | Franklin objects to the underlined statements in this paragraph because they lack foundation. FED. R. EVID. 602. Franklin further objects to the statements in this paragraph because Mr. Deis's description of the FM3 report is not the best evidence of that document. FED. R. EVID. 1002. | The underlined statements do not lack foundation because they are based upon knowledge and experience that Mr. Deis gathered during his tenure as the City Manager of the City from July 1, 2010 through November 1, 2013, as more fully described in ¶ 1 of his declaration. To the extent necessary, the City will make an offer of proof at trial.  The statements in this paragraph do not violate FED. R. EVID. 1002 because they |

| 1  | PARAGRAPH   | GROUNDS FOR | RESPONSE TO  |
|----|---|-------------|--|
| 2  | OBJECTED TO   | OBJECTION   | OBJECTION  |
| 3  | research and strategy firm, to conduct a poll of  |             | are not secondary evidence being offered to prove the            |
|    | Stockton voters on the  |             | content of a writing. See  |
| 4  | possibility of a tax increase measure on the November   |             | <i>United States v. Mayans</i> , 17 F.3d 1174, 1184-85 (9th Cir. |
| 5  | 2013 ballot. FM3 polled   |             | 1994) (holding that the trial                                    |
| 6  | voter support for variations of major new increases in  |             | court erred in sustaining best evidence objections to            |
| 7  | two tax sources—sales tax   |             | questions regarding  |
| ′  | and/or utility users tax ("UUT")—that would   |             | witnesses' understanding of<br>the terms of a written plea       |
| 8  | increase the City's General Fund revenue base as much   |             | agreement). Even if they   |
| 9  | as was feasible. FM3's  |             | were, the document on which Mr. Deis's testimony is based        |
| 10 | research included questions specifically tailored to  |             | was attached as an exhibit to his Reply Declaration [Dkt.        |
|    | measure voter support for   |             | No. 708], and Franklin has                                       |
| 11 | different types of measures under different   |             | not raised a genuine issue as to the authenticity of any of      |
| 12 | circumstances, including a  |             | that document.   |
| 13 | <sup>3</sup> / <sub>4</sub> - or <sup>1</sup> / <sub>2</sub> -cent sales tax increase, a 2% increase in |             |  |
|    | the UUT, or a combination   |             |  |
| 14 | of a ½-cent sales tax and 2% UUT increase. The polling  |             |  |
| 15 | also assessed voter reaction  |             |  |
| 16 | to different proposed uses for the revenues created by  |             |  |
| 17 | the tax measure, to the   |             |  |
| 17 | inclusion of a sunset provision in the measure,   |             |  |
| 18 | and to the effect of the  |             |  |
| 19 | City's ongoing bankruptcy case. The City was  |             |  |
|    | extensively involved in the   |             |  |
| 20 | drafting of the questions included in the poll, with the  |             |  |
| 21 | goal of maximizing its  |             |  |
| 22 | chances of passing a new tax measure that would   |             |  |
| 23 | achieve the greatest possible   |             |  |
|    | increase in General Fund revenues. However, we also   |             |  |
| 24 | relied on the professional  |             |  |
| 25 | pollsters' judgment to ensure that the results were   |             |  |
| 26 | statistically significant   |             |  |
|    | within acceptable margins for error and confidence  |             |  |
| 27 | factors.  |             |  |
| 28 |   |             |  |

28

| .   |   |   |  |
|-----|---|---|--|
| 1 2 | PARAGRAPH<br>OBJECTED TO  | GROUNDS FOR OBJECTION   | RESPONSE TO OBJECTION  |
| 3   | 3. The City received the results of FM3's poll in                                   | Franklin objects to the statements in this paragraph  | The statements in this paragraph do not violate FED.                             |
| 4   | September 2012. A true and correct copy of FM3's polling report was attached        | because Mr. Deis's description of the FM3 report is not the best evidence of that document. | R. EVID. 1002 because they are not secondary evidence being offered to prove the |
| 5   | as Exhibit B to the Reply Declaration. The City also                                | FED. R. EVID. 1002.   | content of a writing. See<br>United States v. Mayans, 17                         |
| 7   | received a summary of key findings from the FM3                                     |   | F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial                       |
| 8   | survey, which was admitted into evidence as Exhibit 106 in the Eligibility Contest. |   | court erred in sustaining best<br>evidence objections to<br>questions regarding  |
| 9   | Not surprisingly, the results confirmed that a 34-cent                              |   | witnesses' understanding of<br>the terms of a written plea                       |
| 10  | sales tax measure had a greater probability of                                      |   | agreement). Even if they were, the document on which                             |
| 11  | passing if all of the receipts went to public safety                                |   | Mr. Deis's testimony is based was attached as an exhibit to                      |
| 12  | purposes, including hiring additional police. Fully 78%                             |   | his Reply Declaration [Dkt. No. 708], and Franklin has not                       |
| 13  | of voters indicated that they would support a 3/4-cent                              |   | raised a genuine issue as to the authenticity of any of that                     |
| 14  | sales tax increase that dedicated its funding to                                    |   | document.  |
| 15  | enhancing police protection and crime prevention.                                   |   |  |
| 16  | However, such a special tax measure would require two-                              |   |  |
| 17  | thirds voter approval, and would not have provided                                  |   |  |
| 18  | funds to balance the General Fund budget without                                    |   |  |
| 19  | additional reductions in services. Such a "restricted                               |   |  |
| 20  | tax" would not have allowed the City to pay creditors and                           |   |  |
| 21  | to plug the structural deficit in the Plan.   |   |  |
| 22  | 4. The poll results   | Franklin objects to the   | The statements in this   |
| 23  | showed substantially lower support for a 3/4-cent sales                             | statements in this paragraph because Mr. Deis's description                                 | paragraph do not violate FED.<br>R. EVID. 1002 because they                      |
| 24  | tax measure whose receipts would "primarily provide                                 | of the FM3 report is not the best evidence of that document.                                | are not secondary evidence<br>being offered to prove the                         |
| 25  | funding to existing debt<br>holders, employee                                       | FED. R. EVID. 1002.   | content of a writing. See United States v. Mayans, 17                            |
| 26  | compensation and benefits, and city-paid retiree medical                            |   | F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial                       |
| 27  | benefits, but would not provide funding to improve                                  |   | court erred in sustaining best evidence objections to                            |
| 28  | existing City services or   |   | questions regarding  |

| 1 2 | PARAGRAPH<br>OBJECTED TO                                 | GROUNDS FOR<br>OBJECTION                                       | RESPONSE TO<br>OBJECTION                                     |
|-----|--|--|--|
| 3   | restore services that have been previously cut," as      |  | witnesses' understanding of<br>the terms of a written plea   |
| 4   | only 21% of those polled                                 |  | agreement). Even if they                                     |
|     | stated they would support such a measure. This           |  | were, the document on which Mr. Deis's testimony is based    |
| 5   | question was geared towards determining voter sentiment  |  | was attached as an exhibit to his Reply Declaration [Dkt.    |
| 6   | for simply plugging the budgetary deficit of the         |  | No. 708], and Franklin has not raised a genuine issue as     |
| 7   | current organization at the                              |  | to the authenticity of any of                                |
| 8   | time, and either avoiding or exiting bankruptcy without  |  | that document.   |
| 9   | addressing service and other needs. There was, however,  |  |  |
| 10  | a 71% level of polling support for a 3/4-cent general    |  |  |
| 11  | sales tax measure that provided funding for both         |  |  |
|     | increased public safety                                  |  |  |
| 12  | funding and general services. As a general tax,          |  |  |
| 13  | this required only a majority level of voter support for |  |  |
| 14  | approval, and thus was more likely ultimately to be      |  |  |
| 15  | enacted while also providing a funding solution that     |  |  |
| 16  | avoided further cuts in                                  |  |  |
| 17  | service at the same time as voters were paying more in   |  |  |
| 18  | taxes.   |  |  |
| 19  | 5. The poll results also showed other key facts.         | Franklin objects to the underlined statements in this          | The underlined statements are valid lay opinion testimony    |
| 20  | First, when voters were                                  | paragraph because they contain                                 | under FED. R. EVID. 701                                      |
|     | asked their opinion on increasing the UUT by 2%,         | improper opinion testimony that is not rationally based on     | because they are rationally based on Mr. Deis's              |
| 21  | support dropped to the 49% to 66% range depending on     | Mr. Deis's perception and not helpful to clearly understand    | perception, helpful to clearly understand his testimony, and |
| 22  | the version of the question.<br>Second, when voters were | Mr. Deis's testimony or to determine a fact in issue. FED.     | helpful to determine at least one fact in issue. The         |
| 23  | asked their opinion on a                                 | R. EVID. 701. Franklin further                                 | underlined statements are also based on Mr. Deis'            |
| 24  | measure including both a ½-cent sales tax increase and a | objects to the statements in this paragraph because Mr. Deis's | knowledge and experience as                                  |
| 25  | 2% UUT increase, the level of support for both taxes     | description of the FM3 report is not the best evidence of that | Stockton's City Manager from July 1, 2010 to                 |
| 26  | dropped to 39%. Finally, when voters were                | document. FED. R. EVID. 1002.                                  | November 1, 2013 and his other experience, including 33      |
| 27  | questioned about their preferences after hearing         |  | years of managing and<br>trouble-shooting municipal          |
| 28  | possible negative campaign                               |  | and county finances in three                                 |
| ۷٥  | statements, voter support for                            |  | states.  |

| 1  | PARAGRAPH<br>OBJECTED TO  | GROUNDS FOR<br>OBJECTION                                 | RESPONSE TO<br>OBJECTION                                   |
|----|---|--|--|
| 2  |   | OBJECTION  | OBJECTION  |
| 3  | the two sales tax options— 1/2-cent and 3/4-cent—                           |  | The statements in this                                     |
| ,  | dropped to 62% and 66%  |  | paragraph do not violate FED.                              |
| 4  | respectively, and voter support for the UUT                                 |  | R. EVID. 1002 because they are not secondary evidence      |
| 5  | increase dropped to 52%. In   |  | being offered to prove the                                 |
| 6  | light of the plus or minus 7% margin of error, the                          |  | content of a writing. See<br>United States v. Mayans, 17   |
|    | UUT increase was deemed   |  | F.3d 1174, 1184-85 (9th Cir.                               |
| 7  | not to be a viable option.  |  | 1994) (holding that the trial                              |
| 8  | Thus, the only funding measure that would                                   |  | court erred in sustaining best evidence objections to      |
|    | maximize revenues, provide  |  | questions regarding  |
| 9  | flexibility to pay creditors, and enhance public safety,                    |  | witnesses' understanding of<br>the terms of a written plea |
| 10 | and which still had a   |  | agreement). Even if they                                   |
| 11 | reasonable probability for success, was a <sup>3</sup> / <sub>4</sub> -cent |  | were, the document on which Mr. Deis's testimony is based  |
|    | general sales tax.  |  | was attached as an exhibit to                              |
| 12 |   |  | his Reply Declaration [Dkt. No. 708], and Franklin has     |
| 13 |   |  | not raised a genuine issue as                              |
| 14 |   |  | to the authenticity of any of that document.               |
|    |   |  | that document.   |
| 15 | 8. Based on FM3's research, the City put                                    | Franklin objects to the statements in this paragraph     | The statements in this paragraph do not violate FED.       |
| 16 | Measures A and B on the   | because Mr. Deis's description                           | R. EVID. 1002 because they                                 |
| 17 | November 2013 ballot.   | of Measures A and B is not the best evidence of those    | are not secondary evidence                                 |
|    | Measure A proposed to raise the sales tax by 0.75%, from                    | documents. FED. R. EVID.                                 | being offered to prove the content of a writing. See       |
| 18 | 8.25% to 9%. Measure B  | 1002.  | United States v. Mayans, 17                                |
| 19 | was an advisory measure asking the electorate                               |  | F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial |
| 20 | whether 65% of the  |  | court erred in sustaining best                             |
| 20 | proceeds from Measure A should be used to "pay for                          |  | evidence objections to questions regarding                 |
| 21 | law enforcement and crime   |  | witnesses' understanding of                                |
| 22 | prevention services such as those described in                              |  | the terms of a written plea agreement). Even if they       |
|    | Stockton's Marshall Plan on   |  | were, the City has produced                                |
| 23 | Crime" and 35% to "help end the bankruptcy and                              |  | to Franklin all of the documents on which Mr.              |
| 24 | restore other City services."   |  | Deis' testimony is based, and                              |
| 25 |   |  | Franklin has not raised a                                  |
|    |   |  | genuine issue as to the authenticity of any of these       |
| 26 |   |  | documents.   |
| 27 | 12. Both Measures A and   | Franklin objects to the                                  | The underlined statements are                              |
| 28 | B passed. Measure A passed by an extremely slim                             | underlined statements in this paragraph because they are | neither speculative nor lack foundation under FED R.       |
|    | by an extremely simi  |  | TOURIGATION UNDER THE RANKI IN ET                          |

CITY OF STOCKTON'S RESPONSE TO FRANKLIN ET AL.'S OBJS. TO DIRECT TEST. DECL. OF ROBERT DEIS ISO FIRST AMENDED PLAN

| 1   |  |   |  |
|-----|--|---|--|
| 1 2 | PARAGRAPH<br>OBJECTED TO   | GROUNDS FOR<br>OBJECTION  | RESPONSE TO OBJECTION  |
| 3   | margin. Just 51.86% of voters—14,939 out of a total                                | speculative and lack foundation. FED. R. EVID.  | EVID. 602 because they are based upon Mr. Deis'  |
|     | of 28,808 voting—voted in  | 602. Franklin further objects to  | knowledge and experience as  |
| 5   | favor of the measure. Had<br>only 535 of the 14,939 voted<br>yes instead voted no, | the underlined statements in<br>this paragraph because they<br>contain improper opinion | Stockton's City Manager<br>from July 1, 2010 to<br>November 1, 2013 and his              |
| 6   | Measure A would have failed. Measure B passed by                                   | testimony that is not rationally based on Mr. Deis's perception                         | other experience, including 33 years of managing and                                     |
| 7   | a wider margin, with 59.27% of voters voting yes.                                  | and not helpful to clearly understand Mr. Deis's  | trouble-shooting municipal and county finances in three                                  |
| 8   | Measure A's narrow victory confirmed the City's                                    | testimony or to determine a fact in issue. FED. R. EVID. 701.                           | states, as more fully described in ¶ 1 of his declaration. To                            |
| 9   | business judgment that the voters likely would not                                 | Franklin further objects to the statements in this paragraph                            | the extent necessary, the City will make an offer of proof at                            |
| 10  | tolerate a tax increase greater than 0.75%, while                                  | because Mr. Deis's description of the election results is not the                       | trial.   |
| 11  | the comfortable passage of Measure B confirmed that the sales tax increase likely  | best evidence of documents providing those results. FED. R. EVID. 1002.                 | The underlined statements are valid lay opinion testimony under FED. R. EVID. 701        |
| 12  | would not have passed if a   | K. EVID. 1002.  | because they are rationally  |
| 13  | larger portion of the revenues was dedicated to                                    |   | based on Mr. Deis's perception, helpful to clearly                                       |
| 14  | paying creditors instead of improving public safety and                            |   | understand his testimony, and<br>helpful to determine at least<br>one fact in issue. The |
| 15  | <u>City services.</u>  |   | underlined statements are also based on Mr. Deis'  |
| 16  |  |   | knowledge and experience as<br>Stockton's City Manager                                   |
| 17  |  |   | from July 1, 2010 to<br>November 1, 2013 and his   |
| 18  |  |   | other experience, including 33 years of managing and                                     |
| 19  |  |   | trouble-shooting municipal and county finances in three                                  |
| 20  |  |   | states, as more fully described in ¶ 1 of his declaration.                               |
| 21  |  |   | The statements in this   |
| 22  |  |   | paragraph do not violate FED.  |
| 23  |  |   | R. EVID. 1002 because they are not secondary evidence                                    |
| 24  |  |   | being offered to prove the content of a writing. See                                     |
| 25  |  |   | <i>United States v. Mayans</i> , 17 F.3d 1174, 1184-85 (9th Cir.                         |
| 26  |  |   | 1994) (holding that the trial court erred in sustaining best                             |
| 27  |  |   | evidence objections to questions regarding   |
| 28  |  |   | witnesses' understanding of  |
| 20  |  |   | the terms of a written plea  |

| 1 2    | PARAGRAPH<br>OBJECTED TO   | GROUNDS FOR<br>OBJECTION  | RESPONSE TO OBJECTION   |
|--------|--|---|---|
| 3 4    |  |   | agreement). Even if they were, the City has produced to Franklin all of the documents on which Mr.                    |
| 5<br>6 |  |   | Deis' testimony is based, and<br>Franklin has not raised a<br>genuine issue as to the<br>authenticity of any of these |
| 7      |  |   | documents.  |
| 8      | 13. Thanks to the passage of Measure A, the City   | Franklin objects to the underlined statements in this                     | The underlined statements are not improper legal  |
| 9      | projects that it will receive<br>\$286 million in additional<br>revenue over the next 10 | paragraph because they are improper legal conclusions. FED. R. EVID. 701. | conclusions under FED. R. EVID. 701 because they are based upon Mr. Deis'   |
| 0      | years. <sup>3</sup> While approximately 65% of these                                     | 1 LB. N. L v B. 701.  | knowledge and experience as Stockton's City Manager   |
| 1      | revenues are committed to the restoration of police                                      |   | from July 1, 2010 to<br>November 1, 2013 and his  |
| 2      | services and crime prevention, the remainder   |   | other experience, including 33 years of managing and  |
| 3      | will enable the City to<br>balance its General Fund                                      |   | trouble-shooting municipal and county finances in three   |
| 4      | budget without resorting to additional cuts in vital City                                |   | states, as more fully described in ¶ 1 of his declaration. See  |
| 15     | services, while at the same time building up the City's                                  |   | Int'l Ass'n of Firefighters,<br>Local 1186 v. City of Vallejo,  |
| 6      | reserves. This will put the City on a much more secure                                   |   | 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) (upholding the   |
| 7      | financial footing by funding<br>the Plan. It will also restore                           |   | bankruptcy court's admission of the testimony of the City of  |
| 8      | the viability of the City as a municipality and as a                                     |   | Vallejo's Assistant Finance Director regarding Vallejo's  |
| 9      | community. However, there will still be other unmet                                      |   | financial conditions and constraints even though the  |
| 20     | needs of the City that can be addressed only through                                     |   | testimony "arguably contained legal conclusions" because the  |
| 21     | growth in the local economy.   |   | testimony pertained to the "complex[]" area of municipal  |
| 22     | fn3: The tax will sunset   |   | accounting and promoted "judicial efficiency") (citing  |
| 3      | when the City achieves<br>economic recovery such that                                    |   | FRE 701).   |
| 4      | General Fund revenues regain the levels received in                                      |   |   |
| 5      | fiscal year 2008-09 adjusted for inflation, or in 10 years,                              |   |   |
| 6      | whichever comes first. However, the tax may  |   |   |
| 7      | remain in effect longer than 10 years if economic  |   |   |
| 8      | conditions warrant. There  |   |   |

| 1 2 | PARAGRAPH<br>OBJECTED TO  | GROUNDS FOR<br>OBJECTION                                      | RESPONSE TO OBJECTION  |
|-----|---|---|--|
| 3   | are review provisions that allow the tax to continue if                         |   |  |
| 4   | findings are adopted at two<br>noticed public hearings, after                   |   |  |
| 5   | hearing the recommendation<br>of the Citizens Advisory                          |   |  |
| 6   | Committee, that the revenues are still necessary                                |   |  |
| 7   | to carry out the purpose of the tax and that the total                          |   |  |
| 8   | compensation of City<br>employees is not excessive<br>relative to other similar |   |  |
| 9   | public sector employers.  |   |  |
| 10  | 14. The City was barely able to sell voters on a tax                            | Franklin objects to the underlined statements in this         | The underlined statements are valid lay opinion testimony      |
| 11  | increase that paid for some of the City's most vital                            | paragraph because they offer improper opinion testimony that  | under FED. R. EVID. 701<br>because they are rationally         |
| 12  | "products": law<br>enforcement, crime   | is not rationally based on Mr. Deis's perception and not      | based on Mr. Deis's perception, helpful to clearly             |
| 13  | prevention, and the restoration of City services.                               | helpful to clearly understand Mr. Deis's testimony or to      | understand his testimony, and<br>helpful to determine at least |
| 14  | In my experience, it would have been even more                                  | determine a fact in issue. FED. R. EVID. 701.                 | one fact in issue. The underlined statements are also          |
| 15  | difficult, if not impossible, to pass a tax measure                             |   | based on Mr. Deis' knowledge and experience as                 |
| 16  | devoted solely to paying financial creditors such as                            |   | Stockton's City Manager from July 1, 2010 to                   |
| 17  | Franklin. This was supported by the City's                                      |   | November 1, 2013 and his other experience, including 33        |
| 18  | polling. <u>In short, the City</u> asked the voters to pass the                 |   | years of managing and trouble-shooting municipal               |
| 19  | highest tax increase that the City thought feasible, and                        |   | and county finances in three states, as more fully described   |
| 20  | then worked diligently to convince those voters to                              |   | in ¶ 1 of his declaration.                                     |
| 21  | vote "yes."   |   |  |
| 22  | 15. Having successfully, albeit barely, passed                                  | Franklin objects to the underlined statements in this         | The underlined statements do not assume facts not in           |
| 23  | Measure A, I believe that it is unlikely that the City's                        | paragraph because they assume facts not in evidence, misstate | evidence, are not speculative, and do not lack foundation      |
| 24  | residents would support<br>another tax increase in the                          | Franklin's arguments, are speculative and lack                | under FED R. EVID. 602 because they are based on Mr.           |
| 25  | near future. I do not believe<br>that Measure A would have                      | foundation. FED. R. EVID. 602. Franklin further objects to    | Deis' knowledge and experience as Stockton's City              |
| 26  | passed without the strong<br>but expensive campaign                             | the underlined statements in this paragraph because they      | Manager from July 1, 2010 to<br>November 1, 2013 and his       |
| 27  | financed by the business community, and based on                                | offer improper opinion testimony that is not rationally       | other experience, including 33 years of managing and           |

| 1 2 | PARAGRAPH<br>OBJECTED TO                                  | GROUNDS FOR<br>OBJECTION                                      | RESPONSE TO OBJECTION  |
|-----|---|---|--|
|     | with that community, I do                                 | and not helpful to clearly                                    | and county finances in three                                 |
| 3   | not believe that it has the                               | understand Mr. Deis's   | states, as more fully described                              |
| 4   | interest or wherewithal to                                | testimony or to determine a fact in issue. FED. R. EVID. 701. | in ¶ 1 of his declaration. To the extent necessary, the City |
| 7   | fund another campaign for more tax increases. Were        | III Issue. FED. R. EVID. 701.                                 | will make an offer of proof at                               |
| 5   | the City's bankruptcy case                                |   | trial. Further, whether the                                  |
|     | dismissed, it could not, as                               |   | underlined statements  |
| 6   | Franklin seems to suggest,                                |   | misstate Franklin's arguments                                |
| 7   | raise yet more tax revenue at                             |   | - which they do not - is not a                               |
| ′   | the drop of a hat. Following the passage of Measure A,    |   | proper objection under FED.<br>R. EVID. 602 and should be    |
| 8   | the City's 9% sales tax rate                              |   | disregarded.   |
|     | is now among the highest in                               |   |  |
| 9   | the state. <sup>4</sup> More                              |   | The underlined statements are                                |
| 10  | importantly, it is among the                              |   | valid lay opinion testimony                                  |
| 10  | highest among nearby cities,                              |   | under FED. R. EVID. 701                                      |
| 11  | which compete with Stockton for business.                 |   | because they are rationally based on Mr. Deis's              |
|     | Manteca, Sacramento and                                   |   | perception, helpful to clearly                               |
| 12  | Tracy all have an 8.5% sales                              |   | understand his testimony, and                                |
| 1.2 | tax rate, and Lodi and Elk                                |   | helpful to determine at least                                |
| 13  | Grove have an 8% rate.                                    |   | one fact in issue. The                                       |
| 14  | Modesto, whose attempt to increase its sales tax rate by  |   | underlined statements are also based on Mr. Deis'            |
| -   | 1% was rejected by voters in                              |   | knowledge and experience as                                  |
| 15  | the November 2013   |   | Stockton's City Manager                                      |
|     | election, has a 7.625% rate.                              |   | from July 1, 2010 to   |
| 16  | These cities now have a                                   |   | November 1, 2013 and his                                     |
| 17  | measurable advantage in the competition for business by   |   | other experience, including 33 years of managing and         |
| 1 / | virtue of their lower sales                               |   | trouble-shooting municipal                                   |
| 18  | tax rates.  |   | and county finances in three                                 |
| 4.0 | fn4: There are 125 cities                                 |   | states.  |
| 19  | with a 9% tax statewide,                                  |   |  |
| 20  | representing 10.93 million of                             |   |  |
| 20  | the total 30.78 million                                   |   |  |
| 21  | residents of cities, or 35.5%                             |   |  |
|     | of the total city population in California. There are 258 |   |  |
| 22  | cities with a lower sales tax                             |   |  |
| 23  | rate, and only 18 with a rate                             |   |  |
| 23  | higher than 9%. A true and                                |   |  |
| 24  | correct copy of a table                                   |   |  |
|     | collecting the Board of                                   |   |  |
| 25  | Equalization's data on tax rates with the California      |   |  |
| 26  | Department of Finance's                                   |   |  |
| 26  | data on population is                                     |   |  |
| 27  | attached hereto as Exhibit A.                             |   |  |
|     | 16. Moreover, the City                                    | Franklin objects to the                                       | The underlined statements are                                |
| 28  | 10. Moreover, the City                                    | Trankini objects to the                                       | The difference statements are                                |

|                            | PARAGRAPH<br>OBJECTED TO                                     | GROUNDS FOR<br>OBJECTION   | RESPONSE TO<br>OBJECTION                                      |
|----------------------------|--|--|---|
| 11 1                       | nust now demonstrate that                                    | underlined statements in this                                    | not speculative and do not                                    |
| 11 1                       | t will use the revenues created by Measure A to set          | paragraph because they are speculative and lack foundation.      | lack foundation under FED R. EVID. 602 because they are       |
| $\  \cdot \ $ S            | Stockton on a secure fiscal                                  | FED. R. EVID. 602. Franklin                                      | based on Mr. Deis'  |
|                            | oath. The City's voters will urely view any additional       | further objects to the statements in this paragraph because they | knowledge and experience as Stockton's City Manager           |
| <u>ta</u>                  | ax increases in the near erm with skepticism. The            | offer improper opinion   | from July 1, 2010 to  |
| $\  \cdot   \underline{C}$ | City needs to prove that it is                               | testimony that is not rationally based on Mr. Deis's perception  | November 1, 2013 and his other experience, including 33       |
|                            | ales tax proceeds and must                                   | and not helpful to clearly understand Mr. Deis's                 | years of managing and trouble-shooting municipal              |
| <u>f</u>                   | ollow through on its   | testimony or to determine a fact                                 | and county finances in three                                  |
|                            | commitments of reducing crime and implementing the           | in issue. FED. R. EVID. 701.                                     | states, as more fully described in ¶ 1 of his declaration. To |
| N                          | Marshall Plan on Crime.                                      |  | the extent necessary, the City                                |
|                            | This will take years to ecomplish. Before any                |  | will make an offer of proof at trial.                         |
| <u>n</u>                   | nore taxes are considered,<br>he City will also have to      |  | The statements in this  |
|                            | dentify future needs that                                    |  | paragraph are valid lay                                       |
|                            | esonate with the citizenry. Paying more money to             |  | opinion testimony under FED. R. EVID. 701 because they        |
| <u>C</u> 1                 | reditors will likely not be                                  |  | are rationally based on Mr.                                   |
| 0                          | one of them.   |  | Deis's perception, helpful to clearly understand his          |
|                            |  |  | testimony, and helpful to                                     |
|                            |  |  | determine at least one fact in issue. The underlined          |
|                            |  |  | statements are also based on Mr. Deis' knowledge and          |
|                            |  |  | experience as Stockton's City                                 |
|                            |  |  | Manager from July 1, 2010 to<br>November 1, 2013 and his      |
|                            |  |  | other experience, including 33                                |
|                            |  |  | years of managing and trouble-shooting municipal              |
|                            |  |  | and county finances in three states.                          |
|                            |  |  |   |
|                            | 7. <u>Franklin's arguments</u> hat the City should raise its | Franklin objects to the underlined statements in this            | The underlined statements do not assume facts not in          |
| U                          | JUT rate miss the mark. In                                   | paragraph because they assume                                    | evidence, and Franklin has                                    |
|                            | 2004, the City was forced to educe the UUT from 8% to        | facts not in evidence and misstate Franklin's arguments.         | not identified what facts it alleges the statements assume.   |
| 6                          | 5% in order to prevent                                       | · · · · · · · · · · · · · · · · · · ·                            | Further, whether the  |
|                            | challengers from bringing a ballot measure to reduce the     |  | underlined statements   |
|                            | JUT to 2% or 0%. Political pressure against increasing       |  | misstate Franklin's arguments – which they do not – is not a  |
| tł                         | he UUT remains strong.                                       |  | proper objection under FED. R. EVID. 602 and should be        |
| T                          | The City placed Measure U                                    |  | disregarded.  |

| 1  | PARAGRAPH   | GROUNDS FOR  | RESPONSE TO   |
|----|---|--|---|
| 2  | OBJECTED TO   | OBJECTION  | OBJECTION   |
| 3  | ballot, which the voters passed. The purpose of             |  |   |
| 4  | Measure U was to  |  |   |
|    | modernize the current UUT ordinance to treat taxpayers      |  |   |
| 5  | equally regardless of what technology they used for         |  |   |
| 6  | telecommunication and                                       |  |   |
| 7  | video services. Specifically, it was intended to protect    |  |   |
|    | the tax from litigation                                     |  |   |
| 8  | alleging that local phone taxes should have been            |  |   |
| 9  | repealed when the federal                                   |  |   |
| 10 | government ceased taxing long-distance calls in 2006.       |  |   |
| 11 | It also was intended to extend the tax to new               |  |   |
|    | technologies such as text                                   |  |   |
| 12 | messaging. In order to convince voters to support           |  |   |
| 13 | the extension of the ÛÛT to                                 |  |   |
| 14 | new technologies, Measure<br>U included a commitment to     |  |   |
| 15 | maintain the UUT at no                                      |  |   |
|    | higher than 6%.   |  |   |
| 16 | 18. Any subsequent effort to increase the UUT would         | Franklin objects to the underlined statements in this          | The underlined statements are sufficiently clear and are      |
| 17 | run afoul of this pledge, and                               | paragraph because they are                                     | neither speculative nor lack                                  |
| 18 | the FM3 polling results discussed above indicated a         | vague, speculative and lack foundation. FED. R. EVID.          | foundation under FED. R. EVID. 602 because they are           |
| 19 | low a probability of a UUT                                  | 602. Franklin further objects to                               | based on Mr. Deis'  |
|    | increase passing. The language of Measure A                 | the statements in this paragraph because they contain improper | knowledge and experience as Stockton's City Manager           |
| 20 | polled initially at 71% support and wound up with           | opinion testimony that is not rationally based on Mr. Deis's   | from July 1, 2010 to<br>November 1, 2013 and his              |
| 21 | only 51.86% "yes" votes                                     | perception and not helpful to                                  | other experience, including 33                                |
| 22 | after a bitter campaign. The 2% UUT alone polled            | clearly understand Mr. Deis's testimony or to determine a fact | years of managing and trouble-shooting municipal              |
| 23 | initially at only 49%-66%                                   | in issue. FED. R. EVID. 701.                                   | and county finances in three                                  |
|    | support, which indicates it would not have survived a       | Franklin further objects to the statements in this paragraph   | states, as more fully described in ¶ 1 of his declaration. To |
| 24 | hard-fought electoral battle like the one that occurred in  | because Mr. Deis's description of the FM3 report is not the    | the extent necessary, the City will make an offer of proof at |
| 25 | November 2013. A 2%   | best evidence of that document.                                | trial.  |
| 26 | UUT, combined with a ½-cent sales tax, secured only         | FED. R. EVID. 1002.  | The statements in this  |
| 27 | 39% polling support in the                                  |  | paragraph are valid lay opinion testimony under FED.          |
|    | FM3 poll. <u>Voters are as</u> unlikely to be supportive of |  | R. EVID. 701 because they                                     |
| 28 | enacting two different taxes                                |  | are rationally based on Mr.                                   |

| 1  | D. D. C.             | an commercial  | <b>D</b>  |
|----|--|--|---|
| 2  | PARAGRAPH<br>OBJECTED TO                                 | GROUNDS FOR<br>OBJECTION   | RESPONSE TO<br>OBJECTION  |
| 3  | through two back-to-back elections as they would be      |  | Deis's perception, helpful to clearly understand his                              |
| 4  | doing it in a single election, and would accuse the City |  | testimony, and helpful to determine at least one fact in                          |
| 5  | of misleading them on<br>Measures A and B. As I          |  | issue. The statements are also based on Mr. Deis'                                 |
| 6  | mention above, the UUT is neither a popular tax nor one  |  | knowledge and experience as Stockton's City Manager                               |
| 7  | that is well understood by<br>the voting public. The UUT |  | from July 1, 2010 to<br>November 1, 2013 and his                                  |
| 8  | has little chance of being increased in the near future, |  | other experience, including 33 years of managing and                              |
| 9  | and raising it is simply not a viable option.            |  | trouble-shooting municipal and county finances in three states.                   |
| 10 |  |  | The statements in this  |
| 11 |  |  | paragraph do not violate FED.<br>R. EVID. 1002 because they                       |
| 12 |  |  | are not secondary evidence being offered to prove the                             |
| 13 |  |  | content of a writing. See<br>United States v. Mayans, 17                          |
| 14 |  |  | F.3d 1174, 1184-85 (9th Cir. 1994) (holding that the trial                        |
| 15 |  |  | court erred in sustaining best evidence objections to                             |
| 16 |  |  | questions regarding<br>witnesses' understanding of<br>the terms of a written plea |
| 17 |  |  | agreement). Even if they were, the document on which                              |
| 18 |  |  | Mr. Deis's testimony is based was attached as an exhibit to                       |
| 19 |  |  | his Reply Declaration [Dkt. No. 708], and Franklin has                            |
| 20 |  |  | not raised a genuine issue as<br>to the authenticity of any of                    |
| 21 |  |  | that document.  |
| 22 | 20. It has been a long and difficult journey to wrestle  | Franklin objects to the  | The statements in this  |
| 23 | difficult journey to wrestle control of the City's       | statements in this paragraph<br>because they are vague and lack  | paragraph are sufficiently clear and do not lack                                  |
| 24 | finances back from the vested interests that had         | foundation. FED. R. EVID. 602. Franklin further objects to       | foundation under FED. R. EVID. 602 because they are                               |
| 25 | shoved City management aside and pursued their own       | the statements in this paragraph because they contain improper   | based on Mr. Deis' knowledge and experience as                                    |
| 26 | goals with vigor and success. When I arrived at          | opinion testimony that is not rationally based on Mr. Deis's     | Stockton's City Manager from July 1, 2010 to                                      |
| 27 | Stockton, the staff was demoralized and unsure of        | perception and not helpful to clearly determine a fact in issue. | November 1, 2013 and his other experience, including 33                           |
| 28 | the future, mediocrity was                               | FED. R. EVID. 701.   | years of managing and   |

| 1 2 | PARAGRAPH<br>OBJECTED TO                                 | GROUNDS FOR<br>OBJECTION                              | RESPONSE TO<br>OBJECTION                                      |
|-----|--|---|---|
|     | the norm, and very few staff                             |   | trouble-shooting municipal                                    |
| 3   | took seriously the need to be                            |   | and county finances in three                                  |
| 4   | disciplined and good stewards of the public trust        |   | states, as more fully described in ¶ 1 of his declaration. To |
|     | and resources. I took this                               |   | the extent necessary, the City                                |
| 5   | assignment on July 1, 2010,                              |   | will make an offer of proof at                                |
| 6   | because the relatively new<br>City Council understood    |   | trial.  |
|     | that there was something                                 |   | The statements in this  |
| 7   | wrong, and because they                                  |   | paragraph are valid lay opinion testimony under FED.          |
| 8   | shared a similar "good government" value system.         |   | R. EVID. 701 because they                                     |
|     | They just needed help in                                 |   | are rationally based on Mr.                                   |
| 9   | getting to the bottom of                                 |   | Deis's perception, helpful to clearly understand his          |
| 10  | things and to be provided options for dealing with the   |   | testimony, and helpful to                                     |
|     | City's problems. This was a                              |   | determine at least one fact in issue. The statements are also |
| 11  | key start to the City's                                  |   | based on Mr. Deis'  |
| 12  | turnaround. That is why I was willing to take on this    |   | knowledge and experience as                                   |
|     | challenge. The interplay                                 |   | Stockton's City Manager from July 1, 2010 to                  |
| 13  | between financial self-                                  |   | November 1, 2013 and his                                      |
| 14  | interests (e.g. labor, developers, etc.) and the         |   | other experience, including 33                                |
|     | governing body and senior                                |   | years of managing and trouble-shooting municipal              |
| 15  | management often goes                                    |   | and county finances in three                                  |
| 16  | unnoticed. In my opinion, this interplay and how the     |   | states.   |
|     | City makes decisions with                                |   |   |
| 17  | large financial consequences, are key to                 |   |   |
| 18  | evaluating future viability                              |   |   |
| 10  | and the relative risk of the                             |   |   |
| 19  | City winding up in bankruptcy court again.               |   |   |
| 20  | 1 2 6  | Evantsin abjects to the                               | The underlined statements in                                  |
| 21  | 21. <u>Practitioners of local</u> government management, | Franklin objects to the underlined statements in this | The underlined statements in this paragraph do not lack       |
| 22  | i.e. International City                                  | paragraph because they lack                           | foundation under FED. R.                                      |
| 22  | Management Association (ICMA), measure municipal         | foundation. FED. R. EVID. 602.                        | EVID. 602 because they are based on Mr. Deis'                 |
| 23  | sustainability according to                              | 002.  | knowledge and experience as                                   |
| 24  | four criteria: cash solvency,                            |   | Stockton's City Manager                                       |
| 24  | budgetary solvency, service-<br>level solvency and long- |   | from July 1, 2010 to<br>November 1, 2013 and his              |
| 25  | term solvency. Cash                                      |   | other experience, including 33                                |
| 26  | solvency is the relative                                 |   | years of managing and   |
| 20  | ability to generate cash to pay bills when they become   |   | trouble-shooting municipal and county finances in three       |
| 27  | due. Budgetary solvency is                               |   | states, as more fully described                               |
| 28  | the relative ability to fully budget and generate        |   | in ¶ 1 of his declaration. To the extent necessary, the City  |
| 20  | buuget and generate                                      |   | the extent necessary, the City                                |

| 1  | PARAGRAPH<br>OBJECTED TO  | GROUNDS FOR<br>OBJECTION                                     | RESPONSE TO<br>OBJECTION                                    |
|----|---|--|---|
| 2  |   | 0202011011   |   |
| 3  | adequate resources to cover expenditures over a budget          |  | will make an offer of proof at trial.                       |
|    | cycle. Service insolvency is                                    |  |   |
| 4  | the relative ability to   |  |   |
| _  | provide adequate services to                                    |  |   |
| 5  | meet the health, safety and welfare needs of its citizens.      |  |   |
| 6  | Long-term solvency is the                                       |  |   |
|    | ability to balance revenues                                     |  |   |
| 7  | and spending, meet future                                       |  |   |
| 8  | obligations and handle unknown financial                        |  |   |
| 8  | challenges in the long run. I                                   |  |   |
| 9  | will address these criteria as                                  |  |   |
| 10 | they apply to Stockton in the                                   |  |   |
| 10 | balance of this Declaration. I believe that I am well-          |  |   |
| 11 | qualified to do so because                                      |  |   |
|    | most of the Plan was  |  |   |
| 12 | formulated under my watch                                       |  |   |
| 13 | and the team that will  |  |   |
| 13 | transition the City from insolvency to solvency was             |  |   |
| 14 | hired by me. I am very  |  |   |
|    | familiar with the City's  |  |   |
| 15 | efforts to achieve each of                                      |  |   |
| 16 | the four types of solvency.                                     |  |   |
|    | 22. <u>It is notable that</u>                                   | Franklin objects to the                                      | The underlined statements do                                |
| 17 | Franklin does not appear to                                     | underlined statements in this                                | not assume facts not in                                     |
| 18 | directly challenge the City's                                   | paragraph because they assume                                | evidence and neither misstate                               |
| 16 | ability to meet the cash,<br>budget and service solvency        | facts not in evidence and misstate Franklin's arguments      | Franklin's arguments nor the opinions of Mr. Moore.         |
| 19 | standards. To the contrary,                                     | and the opinions of Mr. Moore.                               | Franklin does not identify                                  |
| 20 | Franklin's expert, Charles                                      | Franklin further objects to the                              | what facts it alleges the                                   |
| 20 | M. Moore ("Moore"),   | italicized statements in this paragraph because they contain | statements assume. Further, whether the underlined          |
| 21 | opines that the City is actually more cash solvent              | improper opinion testimony that                              | statements misstate Franklin's                              |
|    | than it is letting on, and                                      | is not rationally based on Mr.                               | arguments – which they do                                   |
| 22 | suggests that the City is                                       | Deis's perception and not                                    | not – is not a proper objection                             |
| 23 | actually underestimating its ability to pay its debts. <i>I</i> | helpful to clearly understand Mr. Deis's testimony or to     | under FED. R. EVID. 602 and should be disregarded.          |
|    | believe that his opinions                                       | determine a fact in issue. FED.                              | · ·   |
| 24 | suffer from his lack of   | R. EVID. 701; see also Britz                                 | The italicized statements are                               |
| 25 | experience in managing  | Fertilizers, Inc. v. Bayer Corp.,                            | valid lay opinion testimony under FED. R. EVID. 701         |
| 25 | local governments, a lack of                                    | 2009 U.S. Dist. LEXIS 57947,                                 | because they are rationally                                 |
| 26 | understanding of state law regarding Public Facility            | at *8-9 (E.D. Cal. June 17, 2009) (fact witness not          | based on Mr. Deis's   |
|    | Fees ("PFFs"), and a lack                                       | permitted to offer opinions to                               | perception, helpful to clearly                              |
| 27 | of knowledge of the City's                                      | rebut expert's methodology).                                 | understand his testimony, and helpful to determine at least |
| 28 | specific financial situation. Specifically, Moore claims        |  | one fact in issue. The                                      |
| 20 | Specifically, Moore claims                                      |  |   |

| 1                                      |   |                          |   |
|--|---|--------------------------|---|
| $\begin{bmatrix} 1 \\ 2 \end{bmatrix}$ | PARAGRAPH<br>OBJECTED TO                                      | GROUNDS FOR<br>OBJECTION | RESPONSE TO OBJECTION   |
| 3                                      | that the City can simply pay<br>Franklin hundreds of          |                          | italicized statements are also based on Mr. Deis'                   |
| 4                                      | thousands of dollars a year<br>in PFFs (which it could not    |                          | knowledge and experience as<br>Stockton's City Manager              |
| 5                                      | legally do, even if PFF revenues hadn't                       |                          | from July 1, 2010 to November 1, 2013 and his                       |
| 6                                      | plummeted), and that the<br>City need not provide for an      |                          | other experience, including 33 years of managing and                |
| 7                                      | annual buffer against<br>typical variations in                |                          | trouble-shooting municipal and county finances in three             |
| 8                                      | multiple revenue and expenditure line-items or                |                          | states. <i>Cf. Int'l Ass'n of</i><br>Firefighters, Local 1186 v.    |
| 9                                      | future recessions (which is the proper way to provide         |                          | <i>City of Vallejo</i> , 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009) |
| 10                                     | service reliability and avoid future financial                |                          | (upholding the bankruptcy court's admission of the                  |
| 11                                     | catastrophes). Moreover, it is clear that Franklin cares      |                          | testimony of the City of<br>Vallejo's Assistant Finance             |
| 12                                     | little about the City's community health, ability to          |                          | Director regarding Vallejo's financial conditions and               |
| 13                                     | provide services to its<br>residents, or capacity to          |                          | constraints even though the testimony "arguably contained           |
| 14                                     | weather future financial downturns, since the Moore           |                          | legal conclusions" because the testimony pertained to the           |
| 15                                     | Report appears to argue that any spare dollar should          |                          | "complex[]" area of municipal accounting and promoted               |
| 16                                     | be paid to Franklin, rather than ensuring the City's          |                          | "judicial efficiency") (citing FRE 701).                            |
| 17                                     | long-term fiscal health.  Moore seems to ignore the           |                          | Furthermore, expert testimony                                       |
| 18                                     | <u>competing priorities for</u><br><u>scarce General Fund</u> |                          | may be rebutted by the testimony of lay witnesses.                  |
| 19                                     | dollars and the fact that it is the City Council that         |                          | United States v. Shackelford,<br>494 F.2d 67, 68, 75 (9th Cir.      |
| 20                                     | determines budgetary priorities.                              |                          | 1974) (holding that the government could rely                       |
| 21                                     |   |                          | entirely on lay witnesses with percipient knowledge to rebut        |
| 22                                     |   |                          | the defendant's expert); United States v. Bennett, 908              |
| 23                                     |   |                          | F.2d 189, 195 (7th Cir. 1990)<br>(government was not required       |
| 24                                     |   |                          | to rebut expert testimony with its own expert because "it           |
| 25                                     |   |                          | may accomplish the same result by presenting lay                    |
| 26                                     |   |                          | witnesses and other evidence<br>and by undermining the              |
| 27                                     |   |                          | defense expert's credibility through cross-examination.");          |
| 28                                     |   |                          | United States v. Mota, 598<br>F.2d 995, 999 (5th Cir. 1979)         |
| 20                                     |   |                          | 1.20 775, 777 (Jui Cii. 17/9)                                       |

| PARAGRAPH<br>OBJECTED TO  | GROUNDS FOR<br>OBJECTION   | RESPONSE TO OBJECTION  |
|---|--|--|
|   |  | (jury may find expert testimony "adequately  |
|   |  | rebutted by the observations of mere laymen"); Carpenter                               |
|   |  | v. United States, 264 F.2d 565 (4th Cir. 1959); Dusky v. United States, 295 F.2d 743   |
|   |  | (8th Cir. 1961).   |
| 23. <u>Despite insisting that</u> the City has boatloads of                   | Franklin objects to the underlined statements in this              | The underlined statements do not assume facts not in                                   |
| available funds, Franklin<br>makes passing reference to                       | paragraph because they assume facts not in evidence and            | evidence and neither misstate<br>Franklin's arguments nor the                          |
| one of the favored talking points of Moody's and other                        | misstate Franklin's arguments and the opinions of Mr. Moore.       | opinions of Mr. Moore. Franklin does not identify                                      |
| pundits; namely, that the Plan cannot be feasible                             | Franklin objects to the italicized statements in this paragraph    | what facts it alleges the statements assume. Further,                                  |
| unless it impairs its CalPERS contract. Franklin,                             | because they are vague, speculative and lack foundation.           | whether the underlined statements misstate Franklin's                                  |
| Moody's and the rest cite<br>the City of Vallejo, which                       | FED. R. EVID. 602. Franklin further objects to the underlined      | arguments – which they do<br>not – is not a proper objection                           |
| did not impair its CalPERS contract, as an argument that                      | statements in this paragraph<br>because they contain improper      | under FED. R. EVID. 602 and should be disregarded.                                     |
| Stockton must cut its pensions. These arguments                               | opinion testimony that is not rationally based on Mr. Deis's       | The italicized statements are  |
| are nothing more than an inaccurate comparison                                | perception and not helpful to clearly understand Mr. Deis's        | sufficiently clear and are<br>neither speculative nor lack<br>foundation under FED. R. |
| between cities drawn to support ideological                                   | testimony or to determine a fact in issue. FED. R. EVID. 701;      | EVID. 602 because they are based on Mr. Deis'  |
| arguments about government pensions.  | see also Britz Fertilizers, 2009<br>U.S. Dist. LEXIS 57947, at *8- | knowledge and experience as  |
| Moreover, it appears Moody's used old data to                                 | 9 (fact witness not permitted to offer opinions to rebut expert's  | Stockton's City Manager from July 1, 2010 to   |
| support their assertion, and<br>Vallejo's City Manager                        | methodology).  | November 1, 2013 and his other experience, including 33                                |
| refutes the perception that they are near bankruptcy.                         |  | years of managing and trouble-shooting municipal                                       |
| Further, Vallejo used a five-<br>year planning horizon, and                   |  | and county finances in three states, as more fully described                           |
| to my knowledge, did not hire an outside retirement                           |  | in ¶ 1 of his declaration. To the extent necessary, the City                           |
| actuary. Stockton used a  |  | will make an offer of proof at trial.  |
| prominent outside actuary<br>and developed a thirty-year                      |  | The underlined statements are  |
| planning horizon with more conservative estimates than what CalPERS uses now. |  | valid lay opinion testimony under FED. R. EVID. 701                                    |
| City leadership cannot  |  | because they are rationally based on Mr. Deis's  |
| manage based on an ideology, but instead must                                 |  | perception, helpful to clearly understand his testimony, and                           |
| rely on facts and the practical realities of the                              |  | helpful to determine at least one fact in issue. The                                   |

| 1  |   |                          |  |
|----|---|--------------------------|--|
| 2  | PARAGRAPH<br>OBJECTED TO  | GROUNDS FOR<br>OBJECTION | RESPONSE TO<br>OBJECTION   |
| 3  | labor market. As Police<br>Chief Eric Jones and I have            |                          | italicized statements are also based on Mr. Deis'                                    |
| 4  | stated in prior declarations,<br>if the City cut its pensions, it |                          | knowledge and experience as<br>Stockton's City Manager                               |
| 5  | is extremely likely that it would lose a large number             |                          | from July 1, 2010 to November 1, 2013 and his  |
| 6  | of experienced police<br>officers and other public                |                          | other experience, including 33 years of managing and                                 |
| 7  | employees. Stockton already<br>lost 100 experienced officers      |                          | trouble-shooting municipal and county finances in three                              |
| 8  | during the last exodus, and to lose any more would be             |                          | states. Cf. Int'l Ass'n of Firefighters, Local 1186 v.                               |
| 9  | untenable. I believe the City would also risk losing the          |                          | City of Vallejo, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009)                          |
| 10 | senior managers that are tasked with restoring the                |                          | (upholding the bankruptcy court's admission of the                                   |
| 11 | City to service solvency. <u>Neither Franklin nor its</u>         |                          | testimony of the City of Vallejo's Assistant Finance                                 |
| 12 | expert have offered any feasible, cheaper alternative             |                          | Director regarding Vallejo's financial conditions and                                |
| 13 | to the City's CalPERS plan<br>that would allow the City to        |                          | constraints even though the testimony "arguably contained                            |
| 14 | continue providing competitive pensions to its                    |                          | legal conclusions" because the testimony pertained to the                            |
| 15 | employees and thereby retain its valued labor force.              |                          | "complex[]" area of municipal accounting and promoted "judicial efficiency") (citing |
| 16 |   |                          | FRE 701).  |
| 17 |   |                          | Furthermore, expert testimony  |
| 18 |   |                          | may be rebutted by the testimony of lay witnesses.                                   |
| 19 |   |                          | United States v. Shackelford,<br>494 F.2d 67, 68, 75 (9th Cir.                       |
| 20 |   |                          | 1974) (holding that the government could rely  |
| 21 |   |                          | entirely on lay witnesses with percipient knowledge to rebut                         |
| 22 |   |                          | the defendant's expert); United States v. Bennett, 908                               |
| 23 |   |                          | F.2d 189, 195 (7th Cir. 1990)<br>(government was not required                        |
| 24 |   |                          | to rebut expert testimony with its own expert because "it                            |
|    |   |                          | may accomplish the same  |
| 25 |   |                          | result by presenting lay witnesses and other evidence                                |
| 26 |   |                          | and by undermining the defense expert's credibility                                  |
| 27 |   |                          | through cross-examination.");  |
| 28 |   |                          | United States v. Mota, 598<br>F.2d 995, 999 (5th Cir. 1979)                          |
|    |   | CITY OF S                | TOCKTON'S RESPONSE TO FRANKLIN ET  |

| $\begin{bmatrix} 1 \\ 2 \end{bmatrix}$ | PARAGRAPH<br>OBJECTED TO   | GROUNDS FOR<br>OBJECTION   | RESPONSE TO<br>OBJECTION  |
|--|--|--|---|
| 3                                      |  |  | (jury may find expert testimony "adequately   |
| 4<br>5                                 |  |  | rebutted by the observations<br>of mere laymen"); Carpenter<br>v. United States, 264 F.2d 565<br>(4th Cir. 1959); Dusky v.<br>United States, 295 F.2d 743 |
| 6                                      |  |  | (8th Cir. 1961).  |
| 7                                      | 24. The Long-Range Financial Plan ("LRFP")   | Franklin objects to the statements in this paragraph   | The statements in this paragraph are valid lay  |
| 8                                      | attached to the Disclosure<br>Statement demonstrates how<br>the City will achieve cash | because they contain improper opinion testimony that is not rationally based on Mr. Deis's         | opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr.  |
| 9   0                                  | and budget solvency under<br>the Plan. The LRFP is                                     | perception and not helpful to clearly understand Mr. Deis's  | Deis's perception, helpful to clearly understand his  |
| 1                                      | discussed in detail in the Direct Testimony  | testimony or to determine a fact in issue. FED. R. EVID. 701;                                      | testimony, and helpful to determine at least one fact in  |
| 2                                      | Declaration Of Robert Leland In Support Of Confirmation Of First                       | see also Britz Fertilizers, 2009<br>U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to | issue. The statements are also based on Mr. Deis' knowledge and experience as   |
| 3                                      | Amended Plan For The<br>Adjustment Of Debts Of   | offer opinions to rebut expert's methodology). Franklin objects                                    | Stockton's City Manager<br>from July 1, 2010 to   |
| 4                                      | City Of Stockton, California (November 15, 2013)                                       | to the underlined statements in this paragraph because they  | November 1, 2013 and his other experience, including 33   |
| 5                                      | ("Leland DTD"), which is being submitted   | assume facts not in evidence<br>and misstate Franklin's  | years of managing and<br>trouble-shooting municipal   |
| 6                                      | concurrently. The LRFP's projections are appropriately conservative, as the City       | arguments and the opinions of Mr. Moore.   | and county finances in three states. See Int'l Ass'n of Firefighters, Local 1186 v.   |
| 7 8                                    | cannot risk the excessive optimism that caused it to                                   |  | <i>City of Vallejo</i> , 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009)   |
| 9                                      | collapse into bankruptcy in the first place. The Moore                                 |  | (upholding the bankruptcy court's admission of the  |
| .0                                     | Report suggests that estimated revenues in the LRFP are too low by                     |  | testimony of the City of<br>Vallejo's Assistant Finance<br>Director regarding Vallejo's   |
| 1                                      | comparing Stockton's forecasted increases to the                                       |  | financial conditions and constraints even though the  |
| 2                                      | previous 15 years. This is simply the wrong approach.                                  |  | testimony "arguably contained legal conclusions" because the  |
| 3                                      | It would be foolhardy to predict that the next 15                                      |  | testimony pertained to the "complex[]" area of municipal  |
| 4                                      | years will mirror the last 15 years. Instead, the LRFP                                 |  | accounting and promoted "judicial efficiency") (citing  |
| 5                                      | accounts for what will likely continue to be a slow economic recovery, as most         |  | FRE 701). Cf. Int'l Ass'n of<br>Firefighters, Local 1186 v.<br>City of Vallejo, 48 B.R. 208,  |
| 6                                      | economists have predicted<br>for the Central Valley. As a                              |  | 292-93 (B.A.P. 9th Cir. 2009)<br>(upholding the bankruptcy  |
| 7                                      | long-time public servant, I can say with certainty that a                              |  | court's admission of the testimony of the City of   |

| 1 2 | PARAGRAPH<br>OBJECTED TO  | GROUNDS FOR<br>OBJECTION | RESPONSE TO OBJECTION   |
|-----|---|--------------------------|---|
|     | city never wants to get   |                          | Vallejo's Assistant Finance                                       |
| 3   | caught short on revenues,<br>because this would require a                     |                          | Director regarding Vallejo's financial conditions and             |
| 4   | commensurate cut in budgeted expenditures                                     |                          | constraints even though the testimony "arguably contained         |
| 5   | within the same year.   |                          | legal conclusions" because the                                    |
| 6   | Otherwise, the city would violate state law.                                  |                          | testimony pertained to the "complex[]" area of municipal          |
| 7   | Conversely, a city does not want to constantly "find money" at the end of the |                          | accounting and promoted "judicial efficiency") (citing FRE 701).  |
| 8   | year due to underestimating   |                          | Furthermore, expert testimony                                     |
| 9   | revenues, because it will lose credibility with labor                         |                          | may be rebutted by the  |
| 10  | groups and other vested interest groups that are                              |                          | testimony of lay witnesses. <i>United States v. Shackelford</i> , |
|     | constantly looking for  |                          | 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the             |
| 11  | financial support.  |                          | government could rely   |
| 12  |   |                          | entirely on lay witnesses with percipient knowledge to rebut      |
| 13  |   |                          | the defendant's expert);<br>United States v. Bennett, 908         |
| 14  |   |                          | F.2d 189, 195 (7th Cir. 1990)<br>(government was not required     |
| 15  |   |                          | to rebut expert testimony with its own expert because "it         |
| 16  |   |                          | may accomplish the same result by presenting lay                  |
| 17  |   |                          | witnesses and other evidence and by undermining the               |
| 18  |   |                          | defense expert's credibility through cross-examination.");        |
| 19  |   |                          | United States v. Mota, 598<br>F.2d 995, 999 (5th Cir. 1979)       |
| 20  |   |                          | (jury may find expert testimony "adequately                       |
| 21  |   |                          | rebutted by the observations of mere laymen"); Carpenter          |
| 22  |   |                          | v. United States, 264 F.2d 565 (4th Cir. 1959); Dusky v.          |
| 23  |   |                          | <i>United States</i> , 295 F.2d 743 (8th Cir. 1961).              |
| 24  |   |                          | The underlined statements do                                      |
| 25  |   |                          | not assume facts not in evidence and neither misstate             |
| 26  |   |                          | Franklin's arguments nor the opinions of Mr. Moore.               |
| 27  |   |                          | Franklin does not identify what facts it alleges the              |
| 28  |   |                          | statements assume. Further, whether the underlined                |
|     |   |                          |   |

| $\begin{bmatrix} 1 \\ 2 \end{bmatrix}$ | PARAGRAPH<br>OBJECTED TO  | GROUNDS FOR<br>OBJECTION  | RESPONSE TO OBJECTION  |
|--|---|---|--|
| 3<br>4<br>5                            |   |   | statements misstate Franklin's arguments – which they do not – is not a proper objection under FED. R. EVID. 602 and should be disregarded.  |
| 66                                     | 26. The City also has made great strides in reducing expenditures and increasing expenditure predictability. Whereas much of the City's General Fund budget was on autopilot upon my arrival (including, for instance, long-term labor contracts with automatic wage increases, mandatory staffing levels, complete coverage of employee and retiree medical, and growing "back loaded" debt payments), the Plan provides the City with much more control over its future expenditures. Labor contracts are now short term, and almost all formulas for automatic cost increases have been removed. Through difficult negotiations, the City eliminated a massive retiree health obligation, and the City's contributions towards active employee medical costs are now a fixed stipend. All of these changes will help to ensure that the City does not fall back into the trap of ballooning costs. | Franklin objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis's perception and not helpful to clearly understand Mr. Deis's testimony or to determine a fact in issue. FED. R. EVID. 701. | The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis's perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The statements are also based on Mr. Deis' knowledge and experience as Stockton's City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states. |
| 23<br>24<br>25<br>26                   | 27. The City has forecasted roughly 30 years of costs. Granted, it is very difficult to project costs that far out into the future; however, since the  | Franklin objects to the underlined statements in this paragraph because they lack foundation. FED. R. EVID. 602.  | The underlined statements do not lack foundation because they are based upon Mr. Deis' knowledge and experience as Stockton's City Manager from July 1, 2010 to November 1,  |
| 27                                     | renegotiated debt payments<br>stretch that far out, we<br>believed that it was<br>incumbent upon the City to  |   | 2013, his other experience, including 33 years of managing and trouble-shooting municipal and  |

| .                                      |   |  |   |
|--|---|--|---|
| $\begin{bmatrix} 1 \\ 2 \end{bmatrix}$ | PARAGRAPH<br>OBJECTED TO                                | GROUNDS FOR<br>OBJECTION                                     | RESPONSE TO OBJECTION                                     |
|  | show that it can pay for                                |  | county finances in three                                  |
| 3                                      | these debts when they come due. I note that the City of |  | states, and his experience in this case, as more fully    |
| 4                                      | Vallejo looked at a five-year                           |  | described in his declaration.                             |
| 5                                      | planning horizon, and                                   |  | To the extent necessary, the                              |
| 3                                      | Detroit (Mr. Moore's client) is looking at a ten-year   |  | City will make an offer of proof at trial.                |
| 6                                      | period. What is most critical                           |  |   |
| 7                                      | is that the City has a model that shows the long-term   |  |   |
|  | impacts of its decisions.                               |  |   |
| 8                                      | Stockton has changed its                                |  |   |
| 9                                      | paradigm for discussing and disclosing the impacts of   |  |   |
| 10                                     | City decisions. Our review                              |  |   |
| 10                                     | of past key financial commitments found                 |  |   |
| 11                                     | inadequate public disclosure                            |  |   |
| 12                                     | and staff understanding of                              |  |   |
| 12                                     | the long-term cost implications of items like           |  |   |
| 13                                     | retiree health and new labor                            |  |   |
| 14                                     | contracts. The new value system at the City is full     |  |   |
|  | disclosure and evaluation of                            |  |   |
| 15                                     | long-term financial impacts.                            |  |   |
| 16                                     | The governing body is well versed on many of these      |  |   |
| 1.7                                    | components. As an added                                 |  |   |
| 17                                     | check, the independent<br>Council Audit Committee       |  |   |
| 18                                     | has been reconstituted and                              |  |   |
| 19                                     | reinvigorated with a robust                             |  |   |
| 19                                     | support contract with Moss<br>Adams LLP, a public       |  |   |
| 20                                     | accountancy firm is                                     |  |   |
| 21                                     | constantly ranked in the top 15 in the nation for size. |  |   |
| 22                                     | 28. The Moore Report                                    | Franklin objects to the                                      | The statements in this                                    |
|  | also takes issue with the                               | statements in this paragraph                                 | paragraph do not assume facts                             |
| 23                                     | City's provision in its LRFP for its unrestricted fund  | because they assume facts not in evidence and misstate       | not in evidence and neither misstate Franklin's arguments |
| 24                                     | balance to increase to                                  | Franklin's arguments and the                                 | nor the opinions of Mr.                                   |
| 25                                     | 16.67%, and for the City to                             | opinions of Mr. Moore.                                       | Moore. Franklin has not                                   |
|  | maintain an annual contingency of \$2 million.          | Franklin further objects to the statements in this paragraph | identified what facts it alleges the statements assume.   |
| 26                                     | As described in detail in the                           | because they contain improper                                | Further, whether the                                      |
| 27                                     | Leland DTD, both of these aspects of the LRFP are       | opinion testimony that is not rationally based on Mr. Deis's | statements misstate Franklin's arguments – which they do  |
|  | critical to the City's long-                            | perception and not helpful to                                | not – is not a proper objection                           |
| 28                                     | term fiscal stability. The                              | clearly understand Mr. Deis's                                | under FED. R. EVID. 602 and                               |

| 1 2 | PARAGRAPH<br>OBJECTED TO                                  | GROUNDS FOR<br>OBJECTION                                      | RESPONSE TO OBJECTION  |
|-----|---|---|--|
|     | 16.67% unrestricted fund                                  | testimony or to determine a fact                              | should be disregarded.   |
| 3   | balance is recommended by the Government Finance          | in issue. FED. R. EVID. 701; see also Britz Fertilizers, 2009 | The statements in this   |
| 4   | Officers Association, and                                 | U.S. Dist. LEXIS 57947, at *8-                                | paragraph are valid lay opinion testimony under FED.           |
| 5   | will provide a buffer for the                             | 9 (fact witness not permitted to                              | R. EVID. 701 because they                                      |
| 3   | City in typical economic cycles. Moreover, it must be     | offer opinions to rebut expert's methodology).                | are rationally based on Mr.                                    |
| 6   | noted that over the next                                  | 227   | Deis's perception, helpful to clearly understand his           |
| 7   | decade, the unrestricted fund balance will remain low,    |   | testimony, and helpful to                                      |
|     | and will not reach its target                             |   | determine at least one fact in issue. The statements are also  |
| 8   | for several decades. The \$2 million annual contingency   |   | based on Mr. Deis'   |
| 9   | is also critical. It is also                              |   | knowledge and experience as                                    |
| 10  | important to understand that                              |   | Stockton's City Manager from July 1, 2010 to                   |
| 10  | every year, the City must forecast approximately \$160    |   | November 1, 2013 and his                                       |
| 11  | million in revenues and                                   |   | other experience, including 33 years of managing and           |
| 12  | roughly another \$160 million in expenditures. To         |   | trouble-shooting municipal                                     |
|     | cushion against the potential                             |   | and county finances in three states. <i>Cf. Int'l Ass'n of</i> |
| 13  | impact of deviations in these                             |   | Firefighters, Local 1186 v.                                    |
| 14  | projections, the City is setting aside only \$2           |   | City of Vallejo, 48 B.R. 208,                                  |
| 1.5 | million. If staff was short                               |   | 292-93 (B.A.P. 9th Cir. 2009) (upholding the bankruptcy        |
| 15  | just 1 percent in revenues and 1 percent over in          |   | court's admission of the                                       |
| 16  | expenditures in a given year                              |   | testimony of the City of Vallejo's Assistant Finance           |
| 17  | (totaling \$3.2 million), the annual contingency will be  |   | Director regarding Vallejo's                                   |
|     | more than consumed.                                       |   | financial conditions and constraints even though the           |
| 18  | Moreover, the LRFP maintains a \$2 million                |   | testimony "arguably contained                                  |
| 19  | annual contingency well                                   |   | legal conclusions" because the                                 |
| 20  | into future years, when                                   |   | testimony pertained to the "complex[]" area of municipal       |
| 20  | annual budgets are expected to increase to \$300 million, |   | accounting and promoted  |
| 21  | at which time the   |   | "judicial efficiency") (citing FRE 701).                       |
| 22  | contingency will account for less than 1 percent of the   |   | Furthermore, expert testimony                                  |
|     | budget. Contrary to Moore's                               |   | may be rebutted by the testimony of lay witnesses.             |
| 23  | contention, this is a very small cushion to address       |   | United States v. Shackelford,                                  |
| 24  | surprises throughout the                                  |   | 494 F.2d 67, 68, 75 (9th Cir.                                  |
| 25  | year. When planning a                                     |   | 1974) (holding that the government could rely                  |
| 25  | General Fund budget over multiple years, city             |   | entirely on lay witnesses with                                 |
| 26  | governments must set aside                                |   | percipient knowledge to rebut the defendant's expert);         |
| 27  | funds – in the form of unrestricted fund balances,        |   | United States v. Bennett, 908                                  |
|     | annual contingencies, or                                  |   | F.2d 189, 195 (7th Cir. 1990)                                  |
| 28  | other mechanisms – to                                     |   | (government was not required                                   |

| 1        | PARAGRAPH   | GROUNDS FOR  | RESPONSE TO  |
|----------|---|--|--|
| 2        | OBJECTED TO   | OBJECTION  | OBJECTION  |
| 3        | protect against unexpected, and often catastrophic,                                 |  | to rebut expert testimony with its own expert because "it  |
| 4        | events, such as uninsured lawsuits, floods, economic                                |  | may accomplish the same result by presenting lay   |
| 5        | crashes, etc. The City's inclusion of these items in                                |  | witnesses and other evidence and by undermining the  |
| 6        | its LRFP is good business.  |  | defense expert's credibility through cross-examination.");   |
| 7        |   |  | United States v. Mota, 598<br>F.2d 995, 999 (5th Cir. 1979)  |
| 8        |   |  | (jury may find expert testimony "adequately  |
| 9        |   |  | rebutted by the observations of mere laymen"); <i>Carpenter</i> v. <i>United States</i> , 264 F.2d 565 |
| 10<br>11 |   |  | (4th Cir. 1959); Dusky v.<br>United States, 295 F.2d 743   |
|          | 29. While the City has  | Franklin objects to the  | (8th Cir. 1961). The statements in this  |
| 12       | limited control over its CalPERS obligation, the                                    | statements in this paragraph<br>because they contain improper    | paragraph are valid lay opinion testimony under FED.   |
| 13       | simple fact is that the City cannot simply cut and run                              | opinion testimony that is not rationally based on Mr. Deis's     | R. EVID. 701 because they are rationally based on Mr.  |
| 14       | from the CalPERS program.   | perception and not helpful to                                    | Deis's perception, helpful to  |
| 15       | Ninety-nine percent of government employees in                                      | clearly understand Mr. Deis's testimony or to determine a fact   | clearly understand his<br>testimony, and helpful to  |
| 16       | California are in the CalPERS program or  | in issue. FED. R. EVID. 701;<br>see also Britz Fertilizers, 2009 | determine at least one fact in issue. The statements are also  |
| 17       | something very similar. Thus, CalPERS is the  | U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to   | based on Mr. Deis' knowledge and experience as   |
| 18       | market standard. No viable, less-expensive alternative                              | offer opinions to rebut expert's methodology). Franklin objects  | Stockton's City Manager from July 1, 2010 to   |
| 19       | exists. However, while the City cannot cut its CalPERS                              | to the underlined statements in this paragraph because they are  | November 1, 2013 and his other experience, including 33  |
| 20       | contract directly without risking the loss of essential                             | vague and lack foundation.<br>FED. R. EVID. 602                  | years of managing and trouble-shooting municipal   |
| 21       | personnel, the City has lowered its pension   | 120.14.2   10.002  | and county finances in three states. Cf. Int'l Ass'n of  |
| 22       | obligations indirectly, by aggressively reducing                                    |  | Firefighters, Local 1186 v.<br>City of Vallejo, 48 B.R. 208,   |
| 23       | employee compensation by 7-23% depending on the                                     |  | 292-93 (B.A.P. 9th Cir. 2009)<br>(upholding the bankruptcy   |
| 24       | position. Factoring in  |  | court's admission of the   |
| 25       | reduced benefits, some<br>employees, such as police,<br>have lost as much as 30% of |  | testimony of the City of<br>Vallejo's Assistant Finance  |
| 26       | have lost as much as 30% of their take home pay. These                              |  | Director regarding Vallejo's financial conditions and  |
|          | compensation reductions were, and continue to be, a                                 |  | constraints even though the testimony "arguably contained  |
| 27       | severe burden on City   |  | legal conclusions" because the   |
| 28       | employees.  |  | testimony pertained to the   |

| 1   | PARAGRAPH<br>OR IECTED TO | GROUNDS FOR | RESPONSE TO  |
|-----|---------------------------|-------------|--|
| 2   | OBJECTED TO               | OBJECTION   | OBJECTION  |
| 3 4 |                           |             | "complex[]" area of municipal accounting and promoted "judicial efficiency") (citing FRE 701).         |
| 5   |                           |             | Furthermore, expert testimony may be rebutted by the   |
| 6   |                           |             | testimony of lay witnesses.  United States v. Shackelford,   |
| 7   |                           |             | 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the  |
| 8   |                           |             | government could rely<br>entirely on lay witnesses with  |
| 9   |                           |             | percipient knowledge to rebut the defendant's expert);   |
| 10  |                           |             | United States v. Bennett, 908<br>F.2d 189, 195 (7th Cir. 1990)   |
| 11  |                           |             | (government was not required to rebut expert testimony with  |
| 12  |                           |             | its own expert because "it   |
|     |                           |             | may accomplish the same result by presenting lay   |
| 13  |                           |             | witnesses and other evidence   |
| 14  |                           |             | and by undermining the defense expert's credibility  |
| 15  |                           |             | through cross-examination."); United States v. Mota, 598   |
| 16  |                           |             | F.2d 995, 999 (5th Cir. 1979) (jury may find expert  |
| 17  |                           |             | testimony "adequately  |
| 18  |                           |             | rebutted by the observations of mere laymen"); <i>Carpenter</i> v. <i>United States</i> , 264 F.2d 565 |
| 19  |                           |             | (4th Cir. 1959); <i>Dusky v.</i><br><i>United States</i> , 295 F.2d 743                                |
| 20  |                           |             | (8th Cir. 1961).   |
| 21  |                           |             | The underlined statements are sufficiently clear and do not  |
| 22  |                           |             | lack foundation because they are based upon Mr. Deis'  |
| 23  |                           |             | knowledge and experience as<br>Stockton's City Manager from  |
| 24  |                           |             | July 1, 2010 to November 1, 2013 and his other experience,   |
| 25  |                           |             | including 33 years of managing and trouble-  |
| 26  |                           |             | shooting municipal and county finances in three  |
| 27  |                           |             | states, as more fully described in ¶ 1 of his declaration. To  |
| 28  |                           |             | the extent necessary, the City will make an offer of proof at  |
| -   | <u> </u>                  | <u> </u>    | mane an offer of proof at  |

| 1  | PARAGRAPH   | GROUNDS FOR   | RESPONSE TO  |
|----|---|---|--|
| 2  | OBJECTED TO   | OBJECTION   | OBJECTION  |
| 3  |   |   | trial.   |
| 4  | 30. These reductions already have led to the                                      | Franklin objects to the statements in this paragraph  | The statements in this paragraph are valid lay                         |
| 5  | departure of a large number of police officers, who                               | because they contain improper opinion testimony that is not                                     | opinion testimony under FED. R. EVID. 701 because they                 |
| 6  | either retired early or left for positions in other cities. If                    | rationally based on Mr. Deis's perception and not helpful to                                    | are rationally based on Mr. Deis's perception, helpful to              |
| 7  | the City were to impair its<br>CalPERS contract on top of                         | clearly understand Mr. Deis's testimony or to determine a fact                                  | clearly understand his testimony, and helpful to                       |
| 8  | all of the other compensation benefits  | in issue. FED. R. EVID. 701;<br>see also Britz Fertilizers, 2009                                | determine at least one fact in issue. The statements are also          |
| 9  | already imposed on its<br>employees, more employees<br>will leave. This is simply | U.S. Dist. LEXIS 57947, at *8-9 (fact witness not permitted to offer opinions to rebut expert's | based on Mr. Deis' knowledge and experience as Stockton's City Manager |
| 10 | not a viable option given the City's existing difficulty in                       | methodology). Franklin objects to the underlined statements in                                  | from July 1, 2010 to November 1, 2013 and his                          |
| 11 | recruiting and retaining qualified employees, and in                              | this paragraph because they are vague and lack foundation.                                      | other experience, including 33 years of managing and                   |
| 12 | particular its difficulty in maintaining an adequate and                          | FED. R. EVID. 602.  | trouble-shooting municipal and county finances in three                |
| 13 | experienced police force in light of continued crime and                          |   | states. Cf. Int'l Ass'n of<br>Firefighters, Local 1186 v.              |
| 14 | public safety issues. The standards for police officers                           |   | City of Vallejo, 48 B.R. 208, 292-93 (B.A.P. 9th Cir. 2009)            |
| 15 | are very high in California.  The labor market for police                         |   | (upholding the bankruptcy court's admission of the                     |
| 16 | officers is very competitive amongst California cities.                           |   | testimony of the City of Vallejo's Assistant Finance                   |
| 17 | There are typically 100 applicants for every officer                              |   | Director regarding Vallejo's financial conditions and                  |
| 18 | who makes it through the rigorous testing process.                                |   | constraints even though the testimony "arguably contained              |
| 19 |   |   | legal conclusions" because the testimony pertained to the              |
| 20 |   |   | "complex[]" area of municipal accounting and promoted                  |
| 21 |   |   | "judicial efficiency") (citing FRE 701).                               |
| 22 |   |   | Furthermore, expert testimony may be rebutted by the                   |
| 23 |   |   | testimony of lay witnesses.  United States v. Shackelford,             |
| 24 |   |   | 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the                  |
| 25 |   |   | government could rely<br>entirely on lay witnesses with                |
| 26 |   |   | percipient knowledge to rebut<br>the defendant's expert);              |
| 27 |   |   | United States v. Bennett, 908<br>F.2d 189, 195 (7th Cir. 1990)         |
| 28 |   | <u> </u>  | (/ m cm / 1//0)  |

| $\begin{bmatrix} 1 \\ 2 \end{bmatrix}$ | PARAGRAPH<br>OBJECTED TO                                | GROUNDS FOR<br>OBJECTION   | RESPONSE TO OBJECTION  |
|--|---|--|--|
| 3                                      |   |  | (government was not required to rebut expert testimony with                          |
|  |   |  | its own expert because "it   |
| 4                                      |   |  | may accomplish the same result by presenting lay                                     |
| 5<br>6                                 |   |  | witnesses and other evidence<br>and by undermining the                               |
|  |   |  | defense expert's credibility through cross-examination.");                           |
| 7                                      |   |  | <i>United States v. Mota</i> , 598<br>F.2d 995, 999 (5th Cir. 1979)                  |
| 8                                      |   |  | (jury may find expert testimony "adequately  |
| 9                                      |   |  | rebutted by the observations   |
| 10                                     |   |  | of mere laymen"); Carpenter v. United States, 264 F.2d 565 (4th Cir. 1959); Dusky v. |
| 11                                     |   |  | United States, 295 F.2d 743 (8th Cir. 1961).   |
| 12                                     |   |  | The underlined statements are  |
| 13                                     |   |  | sufficiently clear and do not lack foundation because they                           |
| 14                                     |   |  | are based upon Mr. Deis' knowledge and experience as                                 |
| 15                                     |   |  | Stockton's City Manager from   |
| 16                                     |   |  | July 1, 2010 to November 1, 2013 and his other experience,                           |
| 17                                     |   |  | including 33 years of managing and trouble-  |
|  |   |  | shooting municipal and county finances in three                                      |
| 18                                     |   |  | states, as more fully described  |
| 19                                     |   |  | in ¶ 1 of his declaration. To the extent necessary, the City                         |
| 20                                     |   |  | will make an offer of proof at trial.  |
| 21                                     | 31. It should not be                                    | Franklin objects to the  | The statements in this   |
| 22                                     | ignored that impairing                                  | statements in this paragraph                                       | paragraph are valid lay  |
| 23                                     | CalPERS would cause the immediate reduction of          | because they contain improper opinion testimony that is not        | opinion testimony under FED. R. EVID. 701 because they                               |
| 24                                     | benefits to current and future retirees by the unpaid   | rationally based on Mr. Deis's perception and not helpful to       | are rationally based on Mr. Deis's perception, helpful to                            |
|  | shortfall. This would leave many of the City's retirees | clearly understand Mr. Deis's testimony or to determine a fact     | clearly understand his testimony, and helpful to                                     |
| 25                                     | living below the poverty                                | in issue. FED. R. EVID. 701;                                       | determine at least one fact in   |
| 26                                     | line. Moreover, it would make Stockton extremely        | see also Britz Fertilizers, 2009<br>U.S. Dist. LEXIS 57947, at *8- | issue. The statements are also based on Mr. Deis'                                    |
| 27                                     | unattractive to prospective employees.                  | 9 (fact witness not permitted to offer opinions to rebut expert's  | knowledge and experience as Stockton's City Manager                                  |
| 28                                     |   | methodology). Franklin objects                                     | from July 1, 2010 to   |

| 1        | PARAGRAPH   | GROUNDS FOR   | RESPONSE TO  |
|----------|-------------|---|--|
| 2        | OBJECTED TO | OBJECTION   | OBJECTION  |
| 3        |             | to the underlined statements in this paragraph because they are | November 1, 2013 and his other experience, including 33      |
|          |             | vague and lack foundation.                                      | years of managing and  |
| 4        |             | FED. R. EVID. 602.  | trouble-shooting municipal and county finances in three      |
| 5        |             |   | states. Cf. Int'l Ass'n of                                   |
| 6        |             |   | Firefighters, Local 1186 v.<br>City of Vallejo, 48 B.R. 208, |
| 7        |             |   | 292-93 (B.A.P. 9th Cir. 2009)                                |
| <i>'</i> |             |   | (upholding the bankruptcy court's admission of the           |
| 8        |             |   | testimony of the City of                                     |
| 9        |             |   | Vallejo's Assistant Finance<br>Director regarding Vallejo's  |
| 10       |             |   | financial conditions and                                     |
|          |             |   | constraints even though the testimony "arguably contained    |
| 11       |             |   | legal conclusions" because the testimony pertained to the    |
| 12       |             |   | "complex[]" area of municipal                                |
| 13       |             |   | accounting and promoted "judicial efficiency") (citing       |
|          |             |   | FRE 701).  |
| 14       |             |   | Furthermore, expert testimony                                |
| 15       |             |   | may be rebutted by the testimony of lay witnesses.           |
| 16       |             |   | United States v. Shackelford,                                |
| 17       |             |   | 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the        |
|          |             |   | government could rely<br>entirely on lay witnesses with      |
| 18       |             |   | percipient knowledge to rebut                                |
| 19       |             |   | the defendant's expert); United States v. Bennett, 908       |
| 20       |             |   | F.2d 189, 195 (7th Cir. 1990)                                |
|          |             |   | (government was not required to rebut expert testimony with  |
| 21       |             |   | its own expert because "it                                   |
| 22       |             |   | may accomplish the same result by presenting lay             |
| 23       |             |   | witnesses and other evidence                                 |
|          |             |   | and by undermining the defense expert's credibility          |
| 24       |             |   | through cross-examination.");                                |
| 25       |             |   | United States v. Mota, 598<br>F.2d 995, 999 (5th Cir. 1979)  |
| 26       |             |   | (jury may find expert  |
| 27       |             |   | testimony "adequately rebutted by the observations           |
|          |             |   | of mere laymen"); Carpenter                                  |
| 28       |             |   | v. United States, 264 F.2d 565                               |

| $\begin{bmatrix} 1 \\ 2 \end{bmatrix}$ | PARAGRAPH<br>OBJECTED TO                                    | GROUNDS FOR<br>OBJECTION   | RESPONSE TO OBJECTION   |
|--|---|--|---|
| 3                                      |   |  | (4th Cir. 1959); <i>Dusky v.</i><br><i>United States</i> , 295 F.2d 743<br>(8th Cir. 1961). |
| 4<br>5                                 |   |  | The underlined statements are sufficiently clear and do not lack foundation because they    |
| 6                                      |   |  | are based upon Mr. Deis' knowledge and experience as  |
| 7                                      |   |  | Stockton's City Manager from July 1, 2010 to November 1,                                    |
| 8                                      |   |  | 2013 and his other experience, including 33 years of  |
| 9                                      |   |  | managing and trouble-<br>shooting municipal and   |
| 0                                      |   |  | county finances in three states, as more fully described in ¶ 1 of his declaration. To      |
| 1                                      |   |  | the extent necessary, the City will make an offer of proof at                               |
| 2                                      |   |  | trial.  |
| 3                                      | 32. The City believes that                                  | Franklin objects to the  | The statements in this  |
| 4                                      | current and future retirees have paid their fair share of   | statements in this paragraph because they contain improper         | paragraph are valid lay opinion testimony under FED.  |
| 5                                      | the City's restructuring. It just wasn't in the way the     | opinion testimony that is not rationally based on Mr. Deis's       | R. EVID. 701 because they are rationally based on Mr.                                       |
| 6                                      | pundits wanted or expected. Those retirees without City     | perception and not helpful to clearly understand Mr. Deis's        | Deis's perception, helpful to clearly understand his  |
| 7                                      | paid medical insurance are receiving an average             | testimony or to determine a fact in issue. FED. R. EVID. 701;      | testimony, and helpful to determine at least one fact in                                    |
| 8                                      | pension of \$24,000. Given California's high cost of        | see also Britz Fertilizers, 2009<br>U.S. Dist. LEXIS 57947, at *8- | issue. The statements are also based on Mr. Deis'   |
| 9                                      | living, the City felt this was a modest amount, and did     | 9 (fact witness not permitted to offer opinions to rebut expert's  | knowledge and experience as<br>Stockton's City Manager                                      |
| 0                                      | not change their benefits. However, retirees that           | methodology). Franklin objects to underlined the statements in     | from July 1, 2010 to<br>November 1, 2013 and his  |
| 1                                      | benefitted from enhanced                                    | this paragraph because they are                                    | other experience, including 33  |
| $_{2}$                                 | retirement benefits,<br>including City paid retiree         | vague, speculative and lack foundation. FED. R. EVID.              | years of managing and trouble-shooting municipal  |
| 3                                      | medical benefits, received a 34% cut in their               | 602.   | and county finances in three states. <i>Cf. Int'l Ass'n of</i>                              |
| 4                                      | compensation package. This group is receiving an            |  | Firefighters, Local 1186 v.<br>City of Vallejo, 48 B.R. 208,                                |
|  | average pension of \$51,000,<br>and was receiving a retiree |  | 292-93 (B.A.P. 9th Cir. 2009)<br>(upholding the bankruptcy                                  |
| 5                                      | medical plan worth \$26,000.                                |  | court's admission of the  |
| 6                                      | The Plan eliminates the retiree medical plan. Most          |  | testimony of the City of Vallejo's Assistant Finance  |
| 7                                      | of these employees are not eligible for social security     |  | Director regarding Vallejo's financial conditions and                                       |
| 8                                      | benefits. Most current                                      |  | constraints even though the   |

| 1 2 | PARAGRAPH<br>OBJECTED TO   | GROUNDS FOR<br>OBJECTION | RESPONSE TO OBJECTION   |
|-----|--|--------------------------|---|
| 3   | employees have lost their ability for 7 to 9 percent                                 |                          | testimony "arguably contained legal conclusions" because the              |
| 4   | spiking, and they have seen reductions in pay, which by                              |                          | testimony pertained to the "complex[]" area of municipal                  |
| 5   | Council policy will not be recovered in the future. The City estimates the impact on |                          | accounting and promoted "judicial efficiency") (citing FRE 701).          |
| 6   | current employees'   |                          | Furthermore, expert testimony   |
| 7   | retirement package to be a 30-50% reduction. When the State's recent retirement      |                          | may be rebutted by the testimony of lay witnesses.                        |
| 8   | reform package for new   |                          | United States v. Shackelford,<br>494 F.2d 67, 68, 75 (9th Cir.            |
| 9   | employees is taken into<br>account, employees hired<br>after January 1, 2013, will   |                          | 1974) (holding that the government could rely                             |
| 10  | experience a 50-70%  |                          | entirely on lay witnesses with percipient knowledge to rebut              |
| 11  | reduction in their retirement package.   |                          | the defendant's expert); United States v. Bennett, 908                    |
| 12  |  |                          | F.2d 189, 195 (7th Cir. 1990)   |
| 13  |  |                          | (government was not required to rebut expert testimony with               |
|     |  |                          | its own expert because "it may accomplish the same                        |
| 14  |  |                          | result by presenting lay  |
| 15  |  |                          | witnesses and other evidence and by undermining the                       |
| 16  |  |                          | defense expert's credibility through cross-examination.");                |
| 17  |  |                          | United States v. Mota, 598  |
| 18  |  |                          | F.2d 995, 999 (5th Cir. 1979)<br>(jury may find expert                    |
| 19  |  |                          | testimony "adequately rebutted by the observations                        |
|     |  |                          | of mere laymen"); <i>Carpenter</i> v. <i>United States</i> , 264 F.2d 565 |
| 20  |  |                          | (4th Cir. 1959); <i>Dusky v.</i><br><i>United States</i> , 295 F.2d 743   |
| 21  |  |                          | (8th Cir. 1961).  |
| 22  |  |                          | The underlined statements are   |
| 23  |  |                          | sufficiently clear and are neither speculative nor lack                   |
| 24  |  |                          | foundation because they are based upon Mr. Deis'                          |
| 25  |  |                          | knowledge and experience as Stockton's City Manager from                  |
| 26  |  |                          | July 1, 2010 to November 1, 2013 and his other experience,                |
| 27  |  |                          | including 33 years of managing and trouble-                               |
| 28  |  |                          | shooting municipal and  |
| 20  |  |                          | county finances in three  |

| 1 2      | PARAGRAPH<br>OBJECTED TO   | GROUNDS FOR<br>OBJECTION   | RESPONSE TO<br>OBJECTION   |
|----------|--|--|--|
| 3        |  |  | states, as more fully described in ¶ 1 of his declaration. To                            |
| 4        |  |  | the extent necessary, the City will make an offer of proof at trial.                     |
| 5<br>6   | 35. If the City was to experience additional                         | Franklin objects to the  | The statements in this paragraph are valid lay   |
| 7        | revenues, as the former City<br>Manager, I would                     | statements in this paragraph<br>because they contain improper<br>opinion testimony that is not | opinion testimony under FED. R. EVID. 701 because they                                   |
| 8        | recommend they consider<br>more robustly addressing of               | rationally based on Mr. Deis's perception and not helpful to                                   | are rationally based on Mr. Deis's perception, helpful to                                |
| 9        | the City's capital improvement needs for roads, parks, etc. However, | clearly understand Mr. Deis's testimony or to determine a fact in issue. FED. R. EVID. 701;    | clearly understand his<br>testimony, and helpful to<br>determine at least one fact in    |
| 10       | it is the City Council's right<br>and duty to set priorities for     | see also Britz Fertilizers, 2009<br>U.S. Dist. LEXIS 57947, at *8-                             | issue. The statements are also based on Mr. Deis'  |
| 11       | the City, not Mr. Moore or Franklin.                                 | 9 (fact witness not permitted to offer opinions to rebut expert's                              | knowledge and experience as<br>Stockton's City Manager                                   |
| 12<br>13 |  | methodology).  | from July 1, 2010 to<br>November 1, 2013 and his   |
| 14       |  |  | other experience, including 33 years of managing and trouble-shooting municipal          |
| 15       |  |  | and county finances in three states. Cf. Int'l Ass'n of                                  |
| 16       |  |  | Firefighters, Local 1186 v. City of Vallejo, 48 B.R. 208,                                |
| 17       |  |  | 292-93 (B.A.P. 9th Cir. 2009)<br>(upholding the bankruptcy<br>court's admission of the   |
| 18       |  |  | testimony of the City of<br>Vallejo's Assistant Finance                                  |
| 19<br>20 |  |  | Director regarding Vallejo's financial conditions and constraints even though the        |
| 21       |  |  | testimony "arguably contained legal conclusions" because the                             |
| 22       |  |  | testimony pertained to the "complex[]" area of municipal                                 |
| 23       |  |  | accounting and promoted "judicial efficiency") (citing                                   |
| 24       |  |  | FRE 701). Furthermore, expert testimony  |
| 25       |  |  | may be rebutted by the testimony of lay witnesses. <i>United States v. Shackelford</i> , |
| 26       |  |  | 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the                                    |
| 27<br>28 |  |  | government could rely<br>entirely on lay witnesses with                                  |

| 2  | PARAGRAPH<br>OBJECTED TO   | GROUNDS FOR<br>OBJECTION   | RESPONSE TO OBJECTION  |
|--|--|--|--|
| 3  |  |  | percipient knowledge to rebut  |
|  |  |  | the defendant's expert); United States v. Bennett, 908   |
| 4  |  |  | F.2d 189, 195 (7th Cir. 1990)<br>(government was not required  |
| 5  |  |  | to rebut expert testimony with its own expert because "it may accomplish the same  |
| 7  |  |  | result by presenting lay witnesses and other evidence  |
| 8  |  |  | and by undermining the defense expert's credibility  |
| 9  |  |  | through cross-examination."); United States v. Mota, 598   |
| 10   |  |  | F.2d 995, 999 (5th Cir. 1979)<br>(jury may find expert<br>testimony "adequately  |
| 11   |  |  | rebutted by the observations of mere laymen"); Carpenter   |
| 12   |  |  | v. United States, 264 F.2d 565 (4th Cir. 1959); Dusky v.   |
| 13   |  |  | United States, 295 F.2d 743 (8th Cir. 1961).   |
| 14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23 | 36. Bankruptcy is not just a budget and finance issue. It is a reflection on, and a result of, senior management decisions, political decisions by the governing body, and the organizational and cultural capacity of city leaders. In other words, for a city to recover, it must repair the entire organization, and not just produce budgets that balance. It must look itself in the mirror, admit its mistakes, and make amends. | Franklin objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis's perception and not helpful to clearly understand Mr. Deis's testimony or to determine a fact in issue,. FED. R. EVID. 701. | The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis's perception, helpful to clearly understand his testimony, and helpful to determine at least one fact in issue. The statements are also based on Mr. Deis' knowledge and experience as Stockton's City Manager from July 1, 2010 to November 1, 2013 and his other experience, including 33 years of managing and trouble-shooting municipal and county finances in three states. |
| 25<br>26<br>27   | 38. <u>In summary, the</u> City's Plan, which is the result of major cuts, hard fought negotiations, and revenue increases, is feasible, as shown by the LRFP. I would not have  | Franklin objects to the statements in this paragraph because they contain improper opinion testimony that is not rationally based on Mr. Deis's perception and not helpful to clearly understand Mr. Deis's  | The statements in this paragraph are valid lay opinion testimony under FED. R. EVID. 701 because they are rationally based on Mr. Deis's perception, helpful to clearly understand his   |

| 1 2 | PARAGRAPH<br>OBJECTED TO                               | GROUNDS FOR<br>OBJECTION   | RESPONSE TO OBJECTION   |
|-----|--|--|---|
| 3   | approved the initial Plan, nor left my position at the | testimony or to determine a fact in issue. FED. R. EVID. 701;      | testimony, and helpful to determine at least one fact in                                    |
| 4   | City, were this not the case.                          | see also Britz Fertilizers, 2009<br>U.S. Dist. LEXIS 57947, at *8- | issue. The statements are also based on Mr. Deis'   |
| 5   |  | 9 (fact witness not permitted to offer opinions to rebut expert's  | knowledge and experience as<br>Stockton's City Manager                                      |
| 6   |  | methodology). Franklin further objects to the underlined           | from July 1, 2010 to November 1, 2013 and his   |
| 7   |  | statements in this paragraph because they are improper legal       | other experience, including 33 years of managing and  |
| 8   |  | conclusions. FED. R. ÉVID. 701                                     | trouble-shooting municipal and county finances in three                                     |
| 9   |  |  | states. Cf. Int'l Ass'n of Firefighters, Local 1186 v.                                      |
| 10  |  |  | City of Vallejo, 48 B.R. 208,<br>292-93 (B.A.P. 9th Cir. 2009)<br>(upholding the bankruptcy |
| 11  |  |  | court's admission of the testimony of the City of   |
| 12  |  |  | Vallejo's Assistant Finance Director regarding Vallejo's                                    |
| 13  |  |  | financial conditions and constraints even though the  |
| 14  |  |  | testimony "arguably contained legal conclusions" because the                                |
| 15  |  |  | testimony pertained to the "complex[]" area of municipal                                    |
| 16  |  |  | accounting and promoted "judicial efficiency") (citing                                      |
| 17  |  |  | FRE 701).   |
| 18  |  |  | Furthermore, expert testimony may be rebutted by the  |
| 19  |  |  | testimony of lay witnesses. <i>United States v. Shackelford</i> ,                           |
| 20  |  |  | 494 F.2d 67, 68, 75 (9th Cir. 1974) (holding that the                                       |
| 21  |  |  | government could rely entirely on lay witnesses with  |
| 22  |  |  | percipient knowledge to rebut the defendant's expert);                                      |
| 23  |  |  | <i>United States v. Bennett</i> , 908 F.2d 189, 195 (7th Cir. 1990)                         |
| 24  |  |  | (government was not required to rebut expert testimony with                                 |
| 25  |  |  | its own expert because "it may accomplish the same  |
| 26  |  |  | result by presenting lay witnesses and other evidence                                       |
| 27  |  |  | and by undermining the defense expert's credibility   |
| 28  |  |  | through cross-examination.");   |

| $\begin{bmatrix} 1 \\ 2 \end{bmatrix}$ | PARAGRAPH<br>OBJECTED TO | GROUNDS FOR<br>OBJECTION | RESPONSE TO<br>OBJECTION   |
|--|--------------------------|--------------------------|--|
| 3                                      |                          |                          | <i>United States v. Mota</i> , 598<br>F.2d 995, 999 (5th Cir. 1979)                  |
| 4                                      |                          |                          | (jury may find expert testimony "adequately  |
| 5                                      |                          |                          | rebutted by the observations of mere laymen"); Carpenter                             |
| 6                                      |                          |                          | v. United States, 264 F.2d 565 (4th Cir. 1959); Dusky v. United States, 295 F.2d 743 |
| 7                                      |                          |                          | (8th Cir. 1961).   |
| 8                                      |                          |                          | The underlined statements are not improper legal                                     |
| 9                                      |                          |                          | conclusions under FED. R. EVID. 701 because they are                                 |
| 10                                     |                          |                          | based upon Mr. Deis' knowledge and experience as                                     |
| 11                                     |                          |                          | Stockton's City Manager from July 1, 2010 to November 1,                             |
| 12                                     |                          |                          | 2013 and his other experience, including 33 years of                                 |
| 13                                     |                          |                          | managing and trouble-<br>shooting municipal and                                      |
| 14                                     |                          |                          | county finances in three states. See Int'l Ass'n of                                  |
| 15                                     |                          |                          | Firefighters, Local 1186 v.<br>City of Vallejo, 48 B.R. 208,                         |
| 16                                     |                          |                          | 292-93 (B.A.P. 9th Cir. 2009)<br>(upholding the bankruptcy                           |
| 17                                     |                          |                          | court's admission of the testimony of the City of                                    |
| 18                                     |                          |                          | Vallejo's Assistant Finance Director regarding Vallejo's                             |
| 19                                     |                          |                          | financial conditions and   |
| 20                                     |                          |                          | constraints even though the testimony "arguably contained                            |
| 21                                     |                          |                          | legal conclusions" because the testimony pertained to the                            |
| 22                                     |                          |                          | "complex[]" area of municipal accounting and promoted "judicial efficiency") (citing |
| 23                                     |                          |                          | FRE 701).  |
|  |                          |                          |  |

24

25

26

27

28

## Case 12-32118 Filed 05/06/14 Doc 1469

| 1  | Dated: May 6, 2014 | MARC A. LEVINSON<br>NORMAN C. HILE                   |
|----|--------------------|--|
| 2  |                    | PATRICK B. BOCASH Orrick, Herrington & Sutcliffe LLP |
| 3  |                    | Offick, Herrington & Sutcline LLi                    |
| 4  |                    | By:/s/ Patrick B. Bocash                             |
| 5  |                    | PATRICK B. BOCASH                                    |
| 6  |                    | Attorneys for Debtor<br>City of Stockton             |
| 7  |                    |  |
| 8  |                    |  |
| 9  |                    |  |
| 10 |                    |  |
| 11 |                    |  |
| 12 |                    |  |
| 13 |                    |  |
| 14 |                    |  |
| 15 |                    |  |
| 16 |                    |  |
| 17 |                    |  |
| 18 |                    |  |
| 19 |                    |  |
| 20 |                    |  |
| 21 |                    |  |
| 22 |                    |  |
| 23 |                    |  |
| 24 |                    |  |
| 25 |                    |  |
| 26 |                    |  |
| 27 |                    |  |
| 28 |                    |  |

OHSUSA:757752924.2