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1 James O. Johnston (Cal. Bar No. 167330)
Joshua D. Morse (Cal. Bar. No. 211050)
2 JONES DAY
555 South Flower Street, 50th Floor
3 Los Angeles, California 90071
Telephone: (213) 489-3939
4 Facsimile: (213) 243-2539
Email: jjohnston@jonesday.com
5 jmorse@jonesday.com

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

9 **UNITED STATES BANKRUPTCY COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **SACRAMENTO DIVISION**

12 In re:) Case No. 12-32118
13 CITY OF STOCKTON, CALIFORNIA,) D.C. No. OHS-11
14 Debtor.) Chapter 9

15) **OBJECTION OF FRANKLIN HIGH**
16) **YIELD TAX-FREE INCOME FUND**
17) **AND FRANKLIN CALIFORNIA**
18) **HIGH YIELD MUNICIPAL FUND**
19) **TO CITY OF STOCKTON'S**
20) **MOTION FOR AN ORDER**
21) **APPROVING DISCLOSURE**
22) **STATEMENT WITH RESPECT TO**
23) **THE PLAN FOR THE**
24) **ADJUSTMENT OF DEBTS OF CITY**
25) **OF STOCKTON, CALIFORNIA,**
26) **DATED OCTOBER 10, 2013, AND**
27) **SETTING CONFIRMATION**
28) **PROCEDURES**

Date: November 18, 2013
Time: 1:00 p.m.
Dept: C, Courtroom 35
Judge: Hon. Christopher M. Klein

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1 Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal
 2 Fund (collectively, “Franklin”), the sole holders of the \$35,080,000 Stockton Public Financing
 3 Authority Lease Revenue Bonds, 2009 Series A (Capital Improvement Projects) (the “2009 Golf
 4 Course/Park Bonds”), hereby object to the *Motion For An Order Approving Disclosure Statement*
 5 *With Respect To The Plan For The Adjustment Of Debts Of City Of Stockton, California, Dated*
 6 *October 10, 2013, And Setting Confirmation Procedures* [Docket No. 1137] (the “Motion”), by
 7 which the City of Stockton, California (the “City”), seeks approval of the *Disclosure Statement With*
 8 *Respect To Plan For The Adjustment Of Debts Of City Of Stockton, California (October 10, 2013)*
 9 [Docket No. 1134] (the “Disclosure Statement”) to accompany the *Plan For The Adjustment Of*
 10 *Debts Of City Of Stockton, California (October 10, 2013)* [Docket No. 1133] (the “Plan”),¹ and
 11 various notice and objection procedures related to the Confirmation Hearing.

PRELIMINARY STATEMENT

12 The Disclosure Statement describes a Plan with two foundational anchors:

- 13 • The unimpairment and reinstatement of the City’s unfunded pension obligations. The
 14 City previously listed those obligations as its single largest liability – in the amount of \$147.5
 15 million – but curiously never discloses that figure in the Disclosure Statement. The City, however,
 16 does state that it now projects more than \$1.09 billion in payments to CalPERS over the thirty-year
 17 projection period of the Disclosure Statement, with annual payments to CalPERS projected to
 18 increase by 254% in just nine years and ultimately to rise to more than 329% of their current level.
- 19 • Settlement agreements with the insurers who insured six of the seven bond issues
 20 subject to impairment in the chapter 9 case and with the SPOA. Although the Disclosure Statement
 21 fails to value the consideration to be distributed, it appears that the Plan will provide the insurers
 22 with recoveries ranging from at least 52% to potentially 100% of the amount of their claims. The
 23 Plan also incorporates a settlement with the SPOA and its members, allowing a previously-disputed
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 27 ¹ Capitalized terms not defined in this Objection have the meanings given to them in the
 28 Disclosure Statement, the Solicitation Motion or the Plan, as applicable.

1 claim of \$8.5 million and providing for the satisfaction of that claim through 44 hours of paid leave
2 to each settling claimant, a distribution that the Disclosure Statement does not value.

3 In contrast, the City proposes to pay approximately \$95,000 in satisfaction and discharge of
4 all of its payment obligations in respect of Franklin's \$35 million in 2009 Golf Course/Park Bonds, a
5 recovery of a mere 0.27%. Franklin objects to that proposed treatment and will object to
6 confirmation of the Plan in due course at the appropriate time. Franklin reserves all rights in that
7 regard and does not raise confirmation issues in this Objection.

8 At this stage, Franklin objects to the adequacy of the information in the Disclosure Statement
9 because the City has failed to provide certain rudimentary information that is essential for any
10 informed judgment regarding the Plan. Among other things, as explained in more detail below, the
11 Disclosure Statement must be amended to provide clear, readily-accessible information regarding:

- 12 • The amount and nature of the City's unfunded pension liabilities and other
13 obligations in respect of current and future retirees.
- 14 • The amount and nature of the claims of Ambac, Assured Guaranty, NPF, G,
15 SPOA members, and Marina Towers with respect to the liabilities to be settled under the Plan
16 and the value of the consideration to be distributed on account of such claims.
- 17 • Financial projections that actually and accurately reflect the City's future
18 obligations upon effectiveness of the Plan and disclosure regarding the risk, among other
19 things, that the City has underestimated the nature and extent of those liabilities.
- 20 • The existence and ramifications of the adversary proceeding that Franklin has
21 commenced with respect to the agreements that form the basis for its claims.

22 Franklin also objects to certain of the procedural relief requested by the Motion, which seeks an
23 unreasonably short timetable for confirmation and related proceedings.

24 Franklin raised these issues with the City more than two weeks ago but the City declined to
25 engage in any meaningful discussion regarding supplemental disclosures. Franklin remains ready
26 and willing to work with the City to resolve this Objection through revised disclosures and a
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1 modified confirmation schedule. Absent such amendments, Franklin objects to the adequacy of the
2 information in the Disclosure Statement and the relief requested in the Motion.

3 **BACKGROUND**

4 In September 2009, through the 2009 Golf Course/Park Bonds and related agreements, the
5 City raised \$35 million to finance construction of Fire Station No. 13, construction of the Police
6 Communications Center, capital improvements to Fire Station No. 7, acquisition and construction of
7 seven City parks, and numerous paving, bridge, widening, lighting, landscaping and other projects
8 throughout the City. Franklin purchased the 2009 Golf Course/Park Bonds upon issuance and
9 remains the sole holder of the bonds, which are not insured.

10 On October 3, 2013, the City filed the proposed Disclosure Statement, the Plan, and the
11 Motion, which seeks, among other things, “an order approving the Disclosure Statement” and
12 establishing various procedures and deadlines relating to the Confirmation Hearing.
13 Motion at 1, 3, 5-6.

14 The Disclosure Statement describes the Plan as “a Spartan one,” Disclosure Statement at 12,
15 and that is certainly true with respect to Franklin’s claims in respect of the \$35 million 2009 Golf
16 Course/Park Bonds. The Plan proposes to permanently discharge those claims through a *de minimis*
17 payment of approximately \$95,000, a recovery of a fraction of a cent on the dollar. Specifically,
18 through the Plan the City asserts that the agreements underlying the 2009 Golf Course/Park Bonds
19 constitute leases of nonresidential real property within the meaning of section 365 of the Bankruptcy
20 Code and seeks to reject them and to apply the limitations of section 502(b)(6) of the Bankruptcy
21 Code to the resulting claim for damages, thereby limiting the claim for amounts due in respect of
22 the 2009 Golf Course/Park Bonds – which mature in 2038 – to a maximum of three years of debt
23 service. *Id.* at 33, 57-58. Then, the City proposes to make a distribution of 0.93578% of that capped
24 claim as the only consideration provided for discharge of its obligations to Franklin. *Id.* at 74-75.

25 In contrast, the Plan provides much less “Spartan” treatment for other, similarly-situated
26 creditors. In particular, the Plan provides for the following treatment of other major creditors (with
27 recoveries as best as can be estimated from the inadequate information provided to date):
28

Creditor/Class	Claim Amount	Treatment	Recovery
Ambac Fire/Police/ Library Certificates (Class 1)	Not disclosed; original principal amount \$13,300,000	Assignment of rights to Housing Set Aside Amounts, with general fund backstop; payment of attorneys' fees	Not valued; appears to be 100% plus attorneys' fees
NCFG SEB Bonds (Class 2)	Not disclosed; original principal amount \$13,965,000	Unimpaired	100%
NCFG Arena Bonds (Class 3)	Not disclosed; original principal amount \$47,000,000	Paid from tax increment revenues with general fund backstop providing for modified debt service schedule with "slightly lower payments"	Not valued; appears to be 100%
NCFG Parking Bonds (Class 4)	Not disclosed; original principal amount \$32,785,000	Rights to payment from new parking authority with additional revenues not currently pledged to the debt	Not valued; appears to be 100% or greater
Assured Guaranty Office Building Bonds (Class 5)	Not disclosed; original principal amount \$40,770,000	Transfer of fee title in 400 East Main Building Property	Not valued; appears to be 100% or greater
Assured Guaranty Pension Obligation Bonds (Class 6)	Not disclosed; petition date principal amount \$124,280,000	Modified debt service schedule plus Contingent Payments	Not valued; appears to be 52% guaranteed plus contingent payments that "may result in Assured Guaranty receiving payment in full "
CalPERS Claims (Class 15)	Not disclosed; previously listed at \$147,500,000	Unimpaired	100%
SPOA Claims (Class 18)	\$8,500,000; previously disputed in full	Provision of 44 hours of paid leave for each applicable SPOA member	Not valued
Marina Towers (not classified)	\$1,875,000	Transfer of property valued at \$973,500	52%

(Recoveries discounted to present value with a 5% discount rate per the City's methodology)

1 On October 14, 2013, Franklin and the Indenture Trustee for the 2009 Golf Course/Park
2 Bonds initiated an adversary proceeding against the City, styled *Wells Fargo Bank, National*
3 *Association, et al. v. City of Stockton, California (In re City of Stockton, California)* and pending
4 before this Court as Adversary Proceeding Number 13-02315 (the “Adversary Proceeding”), in
5 which Franklin requests, among other things, (a) a declaration that the so-called “Golf Course/Park
6 Lease Out” and “Golf Course/Park Lease Back” are not unexpired leases of nonresidential real
7 property within the meaning of sections 365 and 502(b)(6) of the Bankruptcy Code; (b) valuation of
8 the collateral securing Franklin’s claims; and (c) alternatively, a claim for administrative rent.

9 Thereafter, heeding the City’s request for early disclosure of “suggest[ed] changes,
10 comments, additions or modifications,”² Franklin wrote to the City on October 23 to identify a
11 number of material deficiencies in the information contained in the Disclosure Statement, among
12 other issues. Ex. A. The City did not respond until November 2, at which time the City indicated
13 that it was not interested in discussing Franklin’s objections because the Disclosure Statement “has
14 provided [Franklin] more than adequate information to know that it’s going to vote no on the plan.”
15 Ex. B. The City indicated that it will “make some changes” in response to Franklin’s letter but that
16 it “doubt[ed] that the changes the City will make will totally satisfy Franklin.” *Id.*

17 Counsel for Franklin and the City subsequently participated in a conference call on
18 November 7, at which the City indicated that it would provide additional disclosure regarding the
19 Adversary Proceeding and make minor revisions to Exhibit B to the Disclosure Statement, but was
20 not inclined to address Franklin’s other requested disclosures. To date, the City has not provided
21 any of its intended changes to Franklin, thus necessitating this Objection.

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25 ² Notice of Motion at 2-3 (“The City requests that creditors and parties in interest who intend to
26 suggest changes, comments, additions, or modifications not delay notifying the City and one
27 another until such deadline. Rather, the City requests that any suggestions be communicated
28 formally or informally as soon as possible, as the City likely will file an amended plan and
amended disclosure statement prior to the November 18 hearing. The City’s goal is to
accommodate as many changes as possible in any revised versions.”) [Docket No. 1138].

OBJECTION

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2 “Disclosure is the ‘pivotal’ concept in [a bankruptcy] reorganization.” *Kunica v. St. Jean*
3 *Fin., Inc.*, 233 B.R. 46, 54 (S.D.N.Y. 1999) (quoting 5 COLLIER ON BANKRUPTCY, ¶ 1125.03 (15th
4 ed. 1992)); *accord In re Oneida Motor Freight, Inc.*, 848 F.2d 414, 417 (3d Cir. 1988) (citing same).
5 In particular, in the context of a proposed plan of adjustment, section 1125 of the Bankruptcy Code
6 requires that plan proponent provide information that would enable “a hypothetical investor of the
7 relevant class to make an informed judgment about the plan.” 11 U.S.C. § 1125(a)(1); *see, e.g.*,
8 *Oneida*, 848 F.2d at 417 (“The importance of full disclosure is underlaid by the reliance placed upon
9 the disclosure statement by the creditors and the court. Given this reliance, we cannot
10 overemphasize the debtor’s obligation to provide sufficient data to satisfy the Code standard of
11 ‘adequate information.’”).

12 “[T]he purpose of the disclosure statement is ‘to give all creditors a source of information
13 which allows them to make an informed choice regarding the approval or rejection of a plan.’” *In re*
14 *County of Orange*, 219 B.R. 543, 560 (Bankr. C.D. Cal. 1997) (citing *Duff v. United States Trustee*
15 *(In re California Fidelity, Inc.)*, 198 B.R. 567, 571 (9th Cir. BAP 1996)). At the core, and in the
16 most basic terms, a creditor must be able to determine “what it is going to get, when it is going to get
17 it, and what contingencies there are to getting its distribution.” *In re Ferretti*, 128 B.R. 16, 19
18 (Bankr. D.N.H. 1991).

19 In assessing the adequacy of a proposed disclosure statement, the standard is not whether a
20 failure to disclose certain information would harm creditors. Rather, the appropriate measure is
21 whether “hypothetical reasonable investors receive such information as will enable them to evaluate
22 for themselves what impact the information might have on their claims and on the outcome of the
23 case, and to decide for themselves what course of action to take.” *In re Applegate Prop., Ltd.*, 133
24 B.R. 827, 831 (Bankr. W.D. Tex. 1991) (emphasis in original); *see also In re Michelson*, 141 B.R.
25 715, 718-19 (Bankr. E.D. Cal. 1992) (at an “irreducible minimum,” a disclosure statement must
26 include an “explanation of why the proposed means of implementation [of the underlying plan] will
27 be adequate to the task”).
28

1 Similarly, there is no exemption from the requirement of adequate disclosure for creditors
2 who intend to object to a plan, as the City has suggested in its recent correspondence with Franklin.
3 To the contrary, adequate disclosure “is required even if all parties are subject to cram down,
4 because ‘the opportunity for parties to appear and express a dissenting voice would be drastically
5 reduced’” otherwise. 7 COLLIER ON BANKRUPTCY, ¶ 1125.02[1] (16th ed. 2013) (quoting *In re*
6 *Jeppson*, 66 B.R. 269, 297 (Bankr. D. Utah 1986)).

7 “[T]he plan proponent bears the ultimate risk of nonpersuasion on the question of compliance
8 with the requirement to disclose adequate information.” *Michelson*, 141 B.R. at 720. The City has
9 not met its burden with respect to the Disclosure Statement at hand.

10
11 **A. The Disclosure Statement Must Provide Clear, Understandable Information About The
Amount And Nature Of Claims To Be Allowed Under The Plan.**

12 One elemental aspect of adequate disclosure is an identification of the nature of the debtor’s
13 liabilities, particularly the amount of claims and the basis for the liabilities. *See, e.g., In re Oxford*
14 *Homes, Inc.*, 204 B.R. 264, 269 n.17 (Bankr. D. Me. 1997) (disclosure must include “[i]nformation
15 regarding claims against the estate, including those allowed, disputed, and estimated.”); *Ferretti*, 128
16 B.R. at 18 (same); *Jeppson*, 66 B.R. at 292 (same). Indeed, Congress long ago recognized that “[a]
17 plan is necessarily predicated on knowledge of the assets and liabilities being dealt with.” S. REP.
18 No. 95-989, at 121 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5907. The Disclosure Statement
19 fails to provide this basic information.

20 Bond Claims. For example, the City has failed to disclose the amount of any of the claims
21 that it proposes to allow through its settlements with Ambac, NPFPG and Assured Guaranty. The
22 Disclosure Statement should specify the proposed allowed amount of the claims relating to the
23 Ambac Fire/Police/ Library Certificates, the NPFPG SEB Bonds, the NPFPG Arena Bonds, the NPFPG
24 Parking Bonds, the Assured Guaranty Office Building Bonds, and the Assured Guaranty Pension
25 Obligation Bonds.

26 CalPERS/Unfunded Pension Claims. The Disclosure Statement indicates that, under the
27 Plan, “[t]he City will continue to honor its obligations to its employees and retirees to fund employee
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1 retirement benefits under the CalPERS Pension Plan, and CalPERS as trustee and the CalPERS
2 Pension Plan Participants retain all of their rights and remedies under applicable nonbankruptcy
3 law.” Disclosure Statement at 76. The Disclosure Statement, however, never reveals the amount of
4 those obligations, which the City previously identified as its single largest liability in the amount of
5 \$147.5 million.³ Nor does it describe the nature of the liability, except to state that “[t]he City’s
6 General Fund CalPERS obligation for the funding of retirement benefits for its employees in fiscal
7 years 2008-09 through 2010-11, before the City’s pension reforms were fully implemented,
8 averaged 13.3% of total General Fund expenditures.” *Id.* at 22. The wholesale assumption of the
9 City’s largest liability obviously is material to the decision of creditors regarding the Plan,
10 particularly those creditors (like Franklin) for whom payments of less than one cent on the dollar are
11 proposed. Fulsome disclosure of the nature and basis for that liability must be provided.

12 SPOA Member Claims. The Plan provides for the allowance of alleged claims of members
13 of the SPOA relating to the City’s modification of the 2009 MOU in the amount of \$8.5 million.
14 The Disclosure Statement, however, indicates that “[t]he City disputes [those] Claims and contends
15 that the Claims would not be allowed in the chapter 9 case,” *id.* at 77, and it provides no explanation
16 whatsoever regarding either the basis for such claims or the reasons why the City has stipulated to
17 the allowance of claims that it believes are not allowable. Given that the City proposes to treat those
18 claims far more favorably than the claims of other creditors, such information is highly material and
19 must be provided.

20 Marina Towers. The Disclosure Statement indicates that “[f]ive . . . surplus properties,
21 valued collectively at \$973,500, were transferred as part of the City’s settlement with Marina
22 Towers, LLC, pursuant to which Marina Towers, LLC agreed to withdraw its proof of claim for
23 \$1,875,000. The settlement with Marina Towers, LLC puts these five properties back on the tax roll
24 in the hands of a capable developer. In addition, it resolves a legal issue of first impression
25 regarding the interplay between eminent domain and bankruptcy law.” *Id.* at 62. In other words, the
26 City already has consummated a settlement by which it satisfied a disputed claim at more than 52

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28 ³ See List of Creditors Holding 20 Largest Unsecured Claims [Docket No. 4].

1 cents on the dollar. Given the Court’s prior admonition that “the day of reckoning” with respect to
2 settlements consummated during a chapter 9 case “comes at the plan confirmation hearing,” *In re*
3 *City of Stockton, California*, 486 B.R. 194, 199 (Bankr. E.D. Cal. 2013), far more disclosure is
4 needed with respect to the Marina Towers claim and settlement. Disclosure must be provided with
5 respect to (a) the nature of the Marina Towers claim, (b) the City’s defenses to that claim, and (c) the
6 basis for the settlement providing Marina Towers a recovery of more than 52%.

7
8 **B. The Disclosure Statement Must Provide Clear, Understandable Information About The
Value Of The Distributions To Be Made Under The Plan.**

9 It is axiomatic that a disclosure statement must explain and value the recoveries to be
10 provided to creditors, and that failure to do so renders a disclosure statement inadequate. *See, e.g.,*
11 *In re Prudential Energy Co.*, 58 B.R. 857, 868 (Bankr. S.D.N.Y. 1986) (disclosure inadequate where
12 statement failed to identify “the value of the stock that is to be distributed”); *In re Ligon*, 50 B.R.
13 127, 130 (Bankr. M.D. Tenn. 1985) (“A description of available assets and their value is a vital
14 element of necessary disclosure.”); *In re Polytherm Indus., Inc.*, 33 B.R. 823, 830 (Bankr. W.D. Wis.
15 1983) (disclosure inadequate where statement failed to provide a “present value analyses of
16 proposed payments to creditors”). Here, the inadequate disclosure regarding the nature of the City’s
17 liabilities, as described above, is compounded by the fact that the Disclosure Statement also fails to
18 explain or value the property proposed to be distributed to various classes.

19 Ambac Fire/Police/Library Certificates. The Disclosure Statement indicates that Ambac’s
20 claim in respect of the Fire/Police/Library Certificates will be satisfied on the terms of the Ambac
21 Settlement Agreement, pursuant to which the City will pay Ambac’s attorneys’ fees and make
22 “certain General Fund Payments (as defined in the Ambac Settlement Agreement) towards the
23 principal of an interest on Certificates, the assignment to the 2003 Fire/Police/Library Certificates
24 Trustee of the City’s rights under the Certificates, the collateral assignment and pledge to the 2003
25 Fire/Police/Library Certificates Trustee of all of the City’s rights, title and interest under the 2003
26 Fire/Police/Library Certificates Reimbursement Agreement, including its right to the Housing Set-
27 Aside Amounts (the “2003 Housing Set-Aside Rights”), the further assignment of the 2003 Housing
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1 Set-Aside Rights by the 2003 Fire/Police/Library Certificates Trustee to Ambac if and when
2 required by the terms of the 2003 Fire/Police/Library Certificates Supplemental Trust Agreement (as
3 defined below), and the sale of certain City and Successor Agency properties for proceeds that will
4 be paid toward the principal of and interest on the Certificates.” Disclosure Statement at 39-40.

5 The Disclosure Statement, however, does not otherwise describe or include a copy of the
6 Ambac Settlement Agreement, which makes that verbiage meaningless. More importantly, nothing
7 in the Disclosure Statement or the Ambac Settlement Agreement provides any information regarding
8 the value of the consideration provided to Ambac. The City must explain, in plain and simple terms,
9 what percentage recovery on its claims Ambac will receive.

10 NPFG Arena Bonds. The Disclosure Statement indicates that NPFG’s claim in respect of the
11 Arena Bonds will be satisfied on the terms of the NPFG Arena Settlement, pursuant to which,
12 “subject to the modification of the payment terms of the Arena Lease Back in accordance with the
13 terms of the NPFG Arena Settlement, on the Effective Date, the City will assume the Arena Lease
14 Back (as modified), and as a result, the City will continue to remain in possession, custody, and
15 control of the Arena.” *Id.* at 43.

16 The City has included with the Plan a copy of a term sheet with NPFG.⁴ However, nothing
17 in the Disclosure Statement or that term sheet provides any information regarding the value of the
18 consideration provided to NPFG. The City must explain, in plain and simple terms, what percentage
19 recovery on its Arena Bond claims NPFG will receive.

20 NPFG Parking Bonds. The Disclosure Statement indicates that NPFG’s claim in respect of
21 the Parking Bonds will be satisfied on the terms of the NPFG Parking Settlement, pursuant to which
22 “the City will create a new parking authority for the City that will be comprised of the Parking
23 Structure Properties plus other downtown parking structures and lots, and downtown parking meters
24 and parking enforcement revenues; [] revenues from the newly created parking authority will be
25 pledged to the 2004 Parking Bond Trustee to make payments from the revenues of the parking

26 _____
27 ⁴ The Motion indicates that the definitive settlement agreement with NPFG will be included within
28 “a Plan supplement” that is to be part of the Solicitation Package. Motion at 3. This is necessary
disclosure that must be provided.

1 authority; and [] the City's General Fund will have no liability for the modified payment schedule."
2 *Id.* at 46.

3 Nothing in the Disclosure Statement or the NPMF Settlement Agreement, however, provides
4 any information regarding the value of the consideration provided to NPMF. In particular, the City
5 fails to disclose any information regarding the historical and projected future revenues received in
6 respect of the Parking Structure Properties or the "other downtown parking structures and lots, and
7 downtown parking meters and parking enforcement revenues" (the "New Parking Revenue") to be
8 pledged to the 2004 Parking Bonds Trustee. Information regarding the New Parking Revenue is
9 particularly relevant given that neither the 2004 Parking Bonds Trustee nor NPMF currently has any
10 rights to such additional revenue. And, as with its other claims, the City must explain, in plain and
11 simple terms, what percentage recovery on its Parking Bond claims NPMF will receive.

12 Assured Guaranty Office Building Bonds. The Disclosure Statement indicates that Assured
13 Guaranty's claim in respect of the Office Building Bonds will be satisfied on the terms of the
14 Assured Guaranty Settlement, pursuant to which, "[t]he City will transfer fee title in the 400 E. Main
15 Office Building Property to Assured Guaranty or its designee at Assured Guaranty's election, subject
16 to the New 400 E. Main Lease. Assured Guaranty may elect to keep the property or sell it at some
17 future date to another purchaser, subject to the New 400 E. Main Lease. Assured Guaranty shall be
18 entitled to all rent and profits of the property after the transfer, and to all of the sales proceeds of the
19 property should Assured Guaranty elect to sell the property." *Id.* at 53.

20 The City has included with the Plan a copy of a term sheet with Assured Guaranty.⁵
21 However, nothing in the Disclosure Statement or that term sheet provides any information regarding
22 the value of the consideration provided to Assured Guaranty. In particular, there is no information
23 about the appraised or historical value of the 400 E. Main Office Building Property, meaning that
24 creditors have no information with which to ascertain the extent of Assured Guaranty's recovery.
25 Indeed, if the value of the property exceeds the amount of the claim, Assured Guaranty will receive a

26 _____
27 ⁵ The Motion indicates that the definitive settlement agreement with Assured Guaranty will be
28 included within "a Plan supplement" that is to be part of the Solicitation Package. Motion at 3.
This also is necessary disclosure that must be provided.

1 recovery of more than 100% of its allowed claim. This obviously is highly material information that
2 must be disclosed.

3 Assured Guaranty Pension Obligation Bonds. The Disclosure Statement indicates that
4 Assured Guaranty's claim in respect of the Pension Obligation Bonds will be satisfied on the terms
5 of the Assured Guaranty Settlement, pursuant to which, (a) "[t]he City agrees to make non-
6 contingent payments on the Pension Obligation Bonds in each fiscal year equal to the sum of
7 the 2007 Lease Ask Payments, Special Fund Payments, and Supplemental Payments on the dates and
8 in the amounts set forth in the Assured Guaranty Term Sheet" (collectively, the "Guaranteed
9 Payments"); and (b) "Assured Guaranty shall also be entitled to Contingent Payments in accordance
10 with the City's Contingent Payment Model, a copy of which is attached to the Assured Guaranty
11 Term Sheet as Exhibit A. If the City does not exceed its baseline financial projections in the
12 upcoming years, Assured Guaranty would receive no Contingent Payments. However, if the City
13 were to exceed its financial projections over the years – which the City and Assured Guaranty
14 believe may be achievable – Assured Guaranty would receive Contingent Payments until Assured
15 Guaranty has received payment in full on the Pension Obligation Bond Class 6 Claims." *Id.* at 60.

16 Here again, nothing in the Disclosure Statement or the Assured Guaranty term sheet provides
17 any information regarding the value of the consideration provided to Assured Guaranty. In
18 particular, there is no information about the value of the Guaranteed Payments (which Franklin
19 estimates to have a present value of approximately 52% of the principal amount of the Pension
20 Obligation Bonds). Nor is there any information about why the City and Assured Guaranty believe
21 that the City may be able to "exceed its financial projections" or about the nature and extent of the
22 Contingent Payments in the event that the City in fact does perform better than projected. This
23 material information must be disclosed.

24 SPOA Member Claims. The Disclosure Statement indicates that each holder of a formerly-
25 disputed SPOA member claim will receive forty-four hours of paid leave. The Disclosure
26 Statement, however, again is silent as to the value of that consideration, meaning that creditors are
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1 unable to ascertain the extent of recovery on those claims. This material information must be
2 provided.

3 **C. The Disclosure Statement Must Include Accurate Projections.**

4 As the Disclosure Statement itself confirms, “[t]o satisfy the requirement set forth in
5 section 943(b)(7) that the Plan be feasible, the City must demonstrate the ability to make the
6 payments required under the Plan.” *Id.* at 87. The City has attempted to meet that hurdle through
7 the provision of information contained in the Long Range Financial Plan of City of Stockton
8 attached as Exhibit B to the Disclosure Statement (the “Projections”). But, as explained below, the
9 Projections are misleading, inaccurate, and do not adequately inform creditors of the City’s “ability
10 to make the payments required under the Plan.” *See, e.g., In re Ferguson*, 474 B.R. 466, 476 (Bankr.
11 D.S.C. 2012) (disclosure inadequate where it failed to “include any projections relating to the future
12 tax liability of either the Debtor or his business”); *In re Hirt*, 97 B.R. 981, 982 (Bankr. E.D.
13 Wis. 1989) (disclosure inadequate where there was “a lack of detail as to assets and liabilities”).

14 To start, the Projections apparently do not reflect the City’s actual obligations under the Plan.
15 Rather, the Projections appear to model the “savings proposed under the original AB 506 process,”
16 Projections at 1, which differ materially from the payments to be made by the City under the Plan.
17 The Projections also contradict themselves, as elsewhere they seem to indicate that the “debt
18 reduction” line item reflects the proposed treatment of creditors under the Plan. *Id.* at 14. To make
19 matters worse, the figures in Table 5 of the summary of the Projections, which purports to show
20 “total restructuring savings,” conflict with the actual projected “total restructuring” savings in the
21 Projections themselves. *Compare* Projections at 21 with Projections at 24, line 118.

22 The Projections also are presented in a misleading manner. In particular, the Projections first
23 present as ongoing expenses all of the City’s existing prepetition liabilities, including the City’s
24 general fund bond debt and payments in respect of retiree health benefits. Then, under the heading
25 “Restructuring”, the Projections set forth line items for “Debt Reductions” and “Retiree Medical
26 Reductions” that back out the portion of those expenses that the City proposes to discharge.
27 Confusingly, the “Restructuring” heading also lumps new revenue items (Measure A, fees, sales of
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1 surplus property) with various reductions in expenses included elsewhere as ongoing projected
2 liabilities of the City (bond debt, retiree medical, efficiencies, alternative service delivery, other). It
3 is simply impossible to determine from the Projections the nature and extent of the City's projected
4 post-confirmation expenses.

5 This is not adequate disclosure. What is needed is a straightforward projection of the City's
6 post-confirmation revenues compared against its post-confirmation expenses. *In re Malek*, 35 B.R.
7 443, 444 (Bankr. E.D. Mich. 1983) ("The Debtor should provide the projection of operations
8 subsequent to confirmation so that the Court may determine the feasibility of the plan. The Debtor is
9 required to make a full, clear, and complete disclosure of all underlying assumptions."). If the City
10 desires to demonstrate the savings it allegedly has achieved through the bankruptcy process, it
11 should do so elsewhere in the Disclosure Statement and not in Projections presented to establish the
12 feasibility of the Plan.

13 Relatedly, the City must include disclosure regarding the risk that the City has
14 underestimated the nature and extent of the liabilities it is assuming under the Plan. In particular, the
15 City must explain the risks associated with its wholesale assumption of its unfunded pension
16 liabilities and the CalPERS pension plan, which the Projections indicate will increase by 254% in
17 just nine years and ultimately rise to more than 329% of their current level, with a projected total of
18 more than \$1.09 billion in payments to CalPERS over the thirty-year period of the Projections.
19 There is no explanation of how the City calculated those expenses or any discussion of the risks
20 associated with those projected expenses, which historically have fluctuated substantially and not
21 been susceptible to accurate projection by the City. Given the mammoth size of the expenses, those
22 risks must be explained in the Disclosure Statement.

23 Finally, the Projections assume continued receipt of Measure A sales tax revenues
24 throughout the thirty-year projection period. In fact, the City candidly admits that, "[s]hould
25 Measure A fail, the projections attached to this Disclosure Statement, upon which the Plan is
26 premised, will not be achievable." Disclosure Statement at 13; *see id.* at 87-88 ("The Plan Financial
27 Projections . . . assume that Measure A will pass.") and at 88 ("In the event that Measure A does not
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1 pass, the Financial Plan will not be valid.”). However, the Disclosure Statement does not reveal that
2 Measure A automatically “sunset” (terminates) no later than ten years from the date of first
3 collection of taxes, if not sooner, unless the City Council affirmatively votes to extend the tax (after
4 at least two publicly-noticed meetings) upon specified required “findings based on evidence.” The
5 risk that a future City Council may choose not to (or may be unable to) extend the tax,
6 notwithstanding the projection of tax revenues in the Projections, clearly is material information that
7 bears directly upon the feasibility of the Plan, and fulsome disclosure must be made in this respect.
8 *See, e.g., In re Stanley Hotel, Inc.*, 13 B.R. 926, 929 (Bankr. D. Colo. 1981) (“the information to be
9 provided should be comprised of all those factors presently known to the plan proponent that bear
10 upon the success or failure of the proposals contained in the plan”).

11 **D. The Disclosure Regarding The 2009 Golf Course/Park Bonds Is Inadequate.**

12 As noted above, the Plan is premised on the rejection of the “Golf Course/Park Lease Out”
13 and “Golf Course/Park Lease Back” and the limitation of the Golf Course/Park Claims to a
14 maximum of three years of “rent” pursuant to section 502(b)(6) of the Bankruptcy Code, without
15 payment of any administrative rent. Disclosure Statement at 33, 57-58. Through the Adversary
16 Proceeding, Franklin has requested a declaration that the applicable agreements are not unexpired
17 leases of nonresidential real property within the meaning of sections 365 and 502(b)(6) of the
18 Bankruptcy Code, together with valuation of the collateral securing the Golf Course/Park Claims
19 and, alternatively, a claim for administrative rent.

20 Notably, the Plan does not account for the allowance of the Golf Course/Park Claims in the
21 full uncapped amount, the allowance of any secured portion of those claims, or the allowance and
22 payment of administrative rent. The Disclosure Statement should disclose the existence of the
23 Adversary Proceeding and address the impact of a judgment adverse to the City, resulting in some or
24 all of the relief sought by Franklin, on the confirmation and feasibility of the Plan.

25 In addition, the Disclosure Statement states, without further explanation, that “the City may
26 contest or attempt to impose conditions upon” continued possession of the Golf Course/Park
27 Properties by the 2009 Golf Course/Park Bond Trustee and Franklin. Disclosure Statement at 59.
28

1 To the extent that the City asserts that there exist conditions or limitations on such possession other
2 than as set forth in the documents governing the 2009 Golf Course/Park Bonds, the City should
3 specify those alleged conditions and limitations and the grounds for the City's assertion in this
4 regard. Otherwise, the City's statement that it may contest or attempt to impose limitations on
5 continued possession of the Golf Course/Park Properties is misleading, as it offers creditors and
6 other constituents false hope that Franklin and the 2009 Golf Course/Park Bond Trustee will be
7 unable to take possession or otherwise exercise their remedies under the operative documents.

8 **E. Issues Related To Certain Relief Requested In The Motion.**

9 Finally, two other deficiencies with respect to the relief requested in the Motion warrant the
10 Court's attention. First, the Motion seeks approval of various notice procedures related to the
11 Confirmation Hearing, including the approval of the form of Confirmation Notice and form of ballot.
12 Motion at 3, 5-6. The Motion, however, does not attach a form of Confirmation Notice, nor does it
13 indicate that a form of notice will be submitted or shared with parties in interest prior to the hearing
14 on the Solicitation Motion. Regarding the form of ballot, the City has "propose[d] to use Official
15 Form No. 14 as the ballot model for all creditors entitled to vote" and to "seek input from other
16 parties . . . regarding the proposed form of ballot before submitting it for the Court's approval," *id.*
17 at 7, but no form of ballot has been filed or shared with Franklin to date (despite a request made
18 more than two weeks ago). The Court should require the City to provide Franklin with the proposed
19 forms prior to the approval of same.

20 Second, the Motion assumes that the Disclosure Statement will be approved by the Court on
21 November 18 and seeks approval of a confirmation schedule based upon that date. Under the
22 proposed schedule, the City contemplates that objections to confirmation of the Plan would be due
23 on or around December 30, 2013, *id.* at 5-6, right between the Christmas and New Year holidays.
24 Given the holidays and contested nature of confirmation, this is not a reasonable deadline.

25 Franklin and the City are in the process of discussing an agreed-upon discovery and pre-trial
26 schedule, and Franklin hopes to reach agreement with the City regarding an appropriate schedule
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1 before the hearing on the Motion. Otherwise, Franklin will be prepared to discuss scheduling and
2 related matters at that hearing.

3
4 **RESERVATION OF RIGHTS**

5 Franklin reserves all rights to object to the Plan on any and all grounds, including, without
6 limitation, those not mentioned in this Objection.

7
8 **CONCLUSION**

9 For the reasons set forth above, the Disclosure Statement lacks adequate information.
10 Franklin therefore requests that the Court deny the approval of the Motion unless the modifications
11 to the Disclosure Statement and notice and objection procedures identified herein are corrected by
12 the City and grant such other and further relief as this Court may deem just, proper and equitable.

13
14 Dated: November 7, 2013

JONES DAY

15
16 By: /s/ James O. Johnston

James O. Johnston
Joshua D. Morse

17
18 *Attorneys for Franklin High Yield Tax-Free*
19 *Income Fund and Franklin California High*
20 *Yield Municipal Fund*