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 8 City of Stockton

9 UNITED STATES BANKRUPTCY COURT
 10 EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION
 12

13 In re:
 14 CITY OF STOCKTON, CALIFORNIA,
 15 Debtor.
 16

Case No. 2012-32118
 D.C. No. OHS-1
 Chapter 9

17 **OBJECTIONS TO DECLARATION**
 18 **AND EXPERT REPORT OF**
 19 **JOSEPH E. BRANN IN SUPPORT OF**
 20 **SUPPLEMENTAL OBJECTION OF**
 21 **ASSURED GUARANTY CORP. AND**
 22 **ASSURED GUARANTY MUNICIPAL**
 23 **CORP. TO DEBTOR'S CHAPTER 9**
 24 **PETITION AND STATEMENT OF**
 25 **QUALIFICATIONS**¹

Date: February 26, 2013
 Time: 1:30 p.m.
 Dept: C
 Judge: Christopher M. Klein

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 27 ¹ The City is not asking the Court for a ruling on the City's objections to evidence at the February 26, 2013 Status
 28 Conference. Rather, the City will seek direction from the Court at such hearing as to how it would like to proceed as
 to the City's objections.

1 The City of Stockton (the “City”) respectfully submits the following objections² to the
 2 Declaration and Expert Report of Joseph E. Brann In Support of Supplemental Objection of
 3 Assured Guaranty Corp. and Assured Guaranty Municipal Corp. to Debtor’s chapter 9 Petition
 4 and Statement of Qualifications. These Objections do not include objections based on the
 5 qualifications, helpfulness, or reliability of Joseph E. Brann (“Brann”) testimony as an expert,
 6 which are contained in the accompanying “Objections To Declaration And Expert Report Of
 7 Joseph E. Brann Pursuant To Federal Rule Of Evidence 702 And *Daubert V. Merrell Dow*
 8 *Pharmaceuticals, Inc.*”

9 **OBJECTIONS TO DECLARATION OF JOSEPH E. BRANN**

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
11 4. In my opinion as an expert on 12 policing and public safety issues, a 13 modest pension benefit reduction would 14 not lead to a “mass exodus” of police 15 officers or have any significant effect on 16 the crime rate, public safety, or the safety 17 of officers. I have prepared a report 18 setting forth my conclusions, which is 19 attached as <u>Exhibit B</u> (the “Report”) to 20 this Declaration and incorporated by 21 reference herein. For purposes of this Declaration, I briefly summarize the bases for my conclusions.	The City objects on the grounds that Brann’s conclusion that a “modest pension benefit reduction would not lead to a ‘mass exodus’ of police officers or have any significant effect on the crime rate, public safety or the safety of officers,” is vague, speculative, and assumes facts not in evidence. Brann’s conclusion is based on terms such as “modest” and “mass exodus” which are not clearly defined and which depend upon assumed values as interpreted by Brann. Moreover, Brann’s Declaration and Report offer no independent evidence or analysis regarding this conclusion. Finally, regardless of Brann’s ultimate conclusion, whether or not a modest pension benefit reduction would result in a “mass exodus” of officers is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.
22 5. As an initial matter, with respect to 23 the City’s crime situation, which Stockton 24 cites as its most important public safety 25 issue, there is no doubt that Stockton has 26 a high crime rate. Recognizing that no level of violent crime is acceptable, and that the absolute numbers of crimes have been on the increase, a review of Stockton’s crime rate over time shows	The City objects on the grounds that Brann’s statements as to the City’s “high crime rate” are vague. Moreover, Brann’s comparison of the City’s current crime rate with the crime rate twenty years ago is vague and assumes facts not in evidence. Finally, Brann’s analysis of the City’s crime rate is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.

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 28 ² The Federal Rules of Evidence are made applicable to cases under the Bankruptcy Code by Rule of Bankruptcy
 Procedure 9017.

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>that the crime rate today is lower than it was twenty years ago and has been declining for the past several years.</p>	
<p>6. The City claims that it has the lowest officer-per-thousand ratio for cities over 250,000, but it is not the lowest, and there are many cities in the state that have lower staffing ratios than Stockton. This metric is also of limited value unless considered in the context of other factors such as police officer utilization.</p>	<p>The City objects on the grounds that Brann’s statements as to the City’s officer-per-thousand ratio are vague, speculative, and assume facts not in evidence in that they depend upon Brann’s assumptions regarding what other cities the City should be compared to. Moreover, Brann’s testimony as to the value of this statistic is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>7. The City’s claim that officers will leave in a “mass exodus” if police pension benefits are reduced is not well founded. The City cites the recent lateral transfers of certain senior officers to other California police agencies as evidence that it will lose its senior officers if police pensions are reduced. Information on the lateral transfers cited by the City indicates that most departures involved lifestyle changes, moves by officers to jurisdictions out of the Central Valley to police agencies on the coast, near the Bay, or close to the mountains. Such lateral transfers involve a host of non-economic factors and are not simply related to wages or pensions.</p>	<p>The City objects on the grounds that Brann’s conclusion that the City’s concerns regarding the possible loss of experienced officers caused by pension benefit cuts “is not well founded” is vague, assumes facts not in evidence, and is highly speculative in that it depends upon numerous unsupported assumptions throughout Brann’s Report, including that Brann considers only the effects of a pension benefit cut in isolation (and not in the context of other cuts the City has already made), and assumes the meaning of terms such as “modest” and “mass exodus.” Moreover, Brann’s conclusion in this regard is vague in that he does not state what the chances are that officers will leave, but states only that the City’s concerns are “not well founded.” Finally, Brann’s conclusion as to the likelihood officers will leave in the face of new pension benefit cuts is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>8. In fact, a host of non-economic factors influence job decisions, including a number that would discourage lateral transfers even if there were to be a modest police pension reduction. For example, recent labor peace between the police and the City may reduce the uncertainty that may have caused prior departures. Seniority is a strong disincentive to leaving, as a transferring officer loses seniority at the new agency</p>	<p>The City objects on the grounds that Brann’s testimony that “a host of non-economic factors influence job decisions” is vague, speculative, and assumes facts not in evidence because Brann provides no independent analysis or evidence and makes no statement as to the amount of effect, if any, these other factors would have. Moreover, Brann’s conclusion that other factors, besides a pension cut, affect an officer’s decision to leave is also vague and speculative in that Brann implies, without support, that none of these factors would</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>and starts anew drawing undesirable assignments and shifts that rookie officers typically draw. And changes to pension benefits in other California jurisdictions may make a lateral transfer to such jurisdictions less attractive. The City’s lateral transfer rate is also consistent with data that has been gathered in the past on such transfers in California and elsewhere and is not indicative of a “mass exodus.”</p>	<p>work in conjunction with a pension cut to convince an officer to leave. Finally, Brann’s conclusions as to noneconomic factors is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>9. The City’s arguments about pension uncertainty affecting recruiting have no basis. The evidence shows that the City has hired more than 70 officers this year and had more than a thousand police academy graduate applications in 2011-12, signs that any uncertainty over pensions is not affecting recruitment.</p>	<p>The City objects on the grounds that Brann’s conclusion that the City’s arguments about pension uncertainty affecting recruitment “have no basis” is vague, speculative, and assumes facts not in evidence in that the fact the City has hired 70 officers gives no indication of whether these officers have equal qualifications as those hired if pension cuts were not a threat, and also gives no indication of the amount of effort required to recruit these officers as compared to a situation without the threat of a pension cut. Moreover, Brann’s conclusions regarding the City’s concerns about recruitment are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>10. Finally, I am not aware of any basis for a claim that a modest reduction in police pension benefits would lead to an inability to fill police positions, contribute to an increase in crime, or serve to increase the danger or injuries to police officers, particularly younger police officers.</p>	<p>The City objects on the grounds that the fact that Brann is “not aware of any basis” for the City’s concerns that cuts to police pension benefits will be detrimental to officer retention and recruitment and to public safety is vague, speculative, and assumes facts not in evidence in that Brann offers no independent analysis or evidence for this conclusion. Instead, Brann concludes only that the City’s evidence and concerns have not met a social sciences standard of certainty. Obviously, whether the City’s concerns rise to the level of a scientific certainty is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>

OBJECTIONS TO EXPERT REPORT OF JOSEPH E. BRANN

PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>I. The crime situation in Stockton is serious, but crime in Stockton has fluctuated over the past 25 years and has been higher than at present during that time, and the Part I crime rate has been falling for the past several years. (Brann Decl., Exh. B., p. 9)</p>	<p>The City objects on the grounds that Brann’s statements as to the City’s “crime situation” are vague, in that he states only that they have fluctuated over two and a half decades and were, at some point, higher during that time than at present. Moreover, Brann’s comparison of the City’s current crime rate with the crime rate over twenty years ago is vague and assumes facts not in evidence. Finally, Brann’s analysis of the City’s crime rate is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>II. Stockton does not have the lowest officer per thousand ratio among California cities, and this ratio, in any event, is a measure of limited use unless considered in the context of police officer utilization. (Brann Decl., Exh. B., p. 9)</p>	<p>The City objects on the grounds that Brann’s statements as to the City’s officer-per-thousand ratio are vague, speculative, and assume facts not in evidence in that they depend upon Brann’s assumptions regarding what other cities the City should be compared to. Moreover, Brann’s testimony as to the value of this statistic is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>III. Stockton’s claim that officers will leave in a “mass exodus” if police pension benefits are reduced is not well founded. (Brann Decl., Exh. B., p. 9)</p>	<p>The City objects on the grounds that Brann’s conclusion that the City’s concerns regarding the possible loss of experienced officers caused by pension benefit cuts “is not well founded” is vague, assumes facts not in evidence, and is highly speculative in that it depends upon numerous unsupported assumptions throughout Brann’s Report, including that Brann considers only the effects of a pension benefit cut in isolation (and not in the context of other cuts the City has already made), and assumes the meaning of terms such as “modest” and “mass exodus.” Moreover, Brann’s conclusion in this regard is vague in that he does not state what the chances are that officers will leave, but states only that the City’s concerns are “not well founded.” Finally, Brann’s conclusion as to the likelihood officers will leave in the face of new pension benefit cuts is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>IV. There is no basis for the claim by Stockton that a modest reduction in pension benefits would lead to increased crime, place the community at risk, or endanger police officers through greater risk of physical harm. (Brann Decl., Exh. B., p. 9)</p>	<p>The City objects on the grounds that the fact that Brann is “not aware of any basis” for the City’s concerns that cuts to police pension benefits will be detrimental to officer retention and recruitment and to public safety is vague, speculative, and assumes facts not in evidence in that Brann offers no independent analysis or evidence for this conclusion. Instead, Brann concludes only that the City’s evidence and concerns have not a social sciences standard of certainty. Obviously, whether the City’s concerns rise to the level of a scientific certainty is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>The City cites the crime situation as the most important public safety issue for the City. There is no doubt that Stockton has a high crime rate, but a review of Stockton’s crime rates over time indicates that the crime rate today is lower than it was twenty years ago. (Brann Decl., Exh. B., p. 12)</p>	<p>The City objects on the grounds that Brann’s statements as to the City’s “crime situation” are vague, in that he states only that crime rates were, in some respect, lower twenty years ago than at present. Moreover, Brann’s comparison of the City’s current crime rate with the crime rate over twenty years ago is vague and assumes facts not in evidence in that he offers no basis for using that time frame as a reference for comparison. Finally, Brann’s analysis of the City’s crime rate is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>One of the most frequently cited crime statistics, for example, relates to violent crimes such as murder. Although there is no acceptable level of murders in any community, or even a murder rate in relation to the population, it is of help when examining crime to provide a more complete context, such as when one looks at the frequency of crime in relation to the population. Using an overall indicator, such as the Part I crime rate per 1,000 population (or even a specific subcategory of Part I crimes, such as the murder rate per 1,000 population) is a more reliable indicator of crime trends than using absolute numbers alone. (Brann Decl., Exh. B., p. 12)</p>	<p>The City objects on the grounds that Brann’s comparison of the City’s current murder rate to the rate in 1990 and 1991 is vague, speculative, and assumes facts not in evidence in that he simply chooses one of the worst years for a given type of crime to compare with today’s crime rate. Moreover, Brann’s comparison of the City’s crime rate with crime rates roughly twenty years ago is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>

1 PARAGRAPH OBJECTED TO	1 GROUND FOR OBJECTION
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 “Crime Rate” helps to put this number into context by examining homicides in a growing city where the population size has also increased. Population density is a factor that affects the incidence of crime. (Brann Decl., Exh. B., p. 12)	The City objects on the grounds that Brann’s comparison of the City’s current crime rates with the crime rates twenty years ago is vague, speculative, and assumes facts not in evidence. Moreover, Brann’s comparison of the City’s crime rate with crime rates roughly twenty years ago is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.
By comparing murder rates (events per thousand residents) in Stockton since 1990, for example, we find the city’s murder rate has been the same or higher in prior years. In 1990, for example, with a population of 210,943, Stockton experienced 51 homicide events (rate of .24 per thousand). By 1991, the number of homicides increased from prior years to 55 events in a population size of 215,336 (a rate of .25 per thousand). Ten years later, in 2011, Stockton’s population had risen to 295,136, so the 58 homicide events can be expressed as homicide rate of .2 per thousand. (Brann Decl., Exh. B., p. 12)	The City objects on the grounds that Brann’s comparison of the City’s current murder rate to the rate in 1990 and 1991 is vague, speculative, and assumes facts not in evidence in that he simply chooses one of the worst years for a given type of crime to compare with today’s crime rate, rather than providing a more detailed analysis of the city’s crime rate over time or the context of the City’s current crime rate. Moreover, Brann’s comparison of the City’s crime rate with crime rates roughly twenty years ago is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.
Thus, while it is true the absolute number of homicides reached an “all-time record” in 2011, it is in fact the case that homicides are on a slight downward trend from their peak 20 years ago. ² (Brann Decl., Exh. B., p. 12)	The City objects on the grounds that Brann’s comparison of the City’s current murder rate to the rate in 1990 and 1991 is vague, speculative, and assumes facts not in evidence in that he simply chooses one of the worst years for a given type of crime to compare with today’s crime rate, rather than providing a more detailed analysis of the city’s crime rate over time or the context of the City’s current crime rate. Moreover, Brann’s comparison of the City’s crime rate with crime rates roughly twenty years ago is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.
An examination of violent crime rates in other categories leads to similar findings. (Brann Decl., Exh. B., p. 12)	The City objects on the grounds that Brann’s comparison of the City’s current crime rates with crime rates for various years roughly twenty years ago is vague, speculative, and assumes facts not in evidence in that Brann merely chooses one of the worst years for a given type of crime to compare with today’s crime rate, rather than providing a

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
	<p>more detailed analysis of the city’s crime rate over time or the context of the City’s current crime rate. Moreover, Brann’s comparison of the City’s crime rate with crime rates roughly twenty years ago is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>In 1990, for example, the city documented 168 forcible rapes (.8 per thousand). This number fell substantially to 90 events in 2011 (.3 per thousand), a decline of 46% in actual number and 63% in terms of the crime rate. (Brann Decl., Exh. B., p. 13)</p>	<p>The City objects on the grounds that Brann’s comparison of the City’s current crime rates with crime rates for various years roughly twenty years ago is vague, speculative, and assumes facts not in evidence in that Brann merely chooses one of the worst years for a given type of crime to compare with today’s crime rate, rather than providing a more detailed analysis of the city’s crime rate over time or the context of the City’s current crime rate. Moreover, Brann’s comparison of the City’s crime rate with crime rates roughly twenty years ago is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>The crime of robbery initially increased from 1990 (6.2 per thousand) to 1993 when the city experienced its highest robbery crime rate (a rate of 7 per thousand), then fell to its current level of 4.5 per thousand in 2011, with fluctuations in between. Accordingly:</p> <ul style="list-style-type: none"> • Robbery <i>crime rate</i> declined 22% from 1990 to 2011, even though the absolute number of reported robberies is essentially the same (1305 in 1990 and 1323 in 2011). • Robbery <i>crime rate</i> declined 36% from the peak year of 1993 to 2011 (1554 in 1993 and 1323 in 2011). • The actual number of robberies reported dropped 15% from years 1993 to 2011. Indeed, the more recent drop in actual robberies (from 1615 in 2007 to 1323 in 2011) amounts to an 18% reduction in this violent crime category during the same years Stockton claims to have 	<p>The City objects on the grounds that Brann’s comparison of the City’s current crime rates with crime rates for various years roughly twenty years ago is vague, speculative, and assumes facts not in evidence in that Brann merely chooses one of the worst years for a given type of crime to compare with today’s crime rate, rather than providing a more detailed analysis of the city’s crime rate over time or the context of the City’s current crime rate. Moreover, Brann’s comparison of the City’s crime rate with crime rates roughly twenty years ago is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>

1 PARAGRAPH OBJECTED TO	GROUND FOR OBJECTION
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 been adversely affected by lateral transfers to other agencies. (Brann Decl., Exh. B., p. 13)	
Aggravated assaults, on the other hand, show a <i>crime rate increase</i> of 75% (5.2 per thousand in 1990 to 9.1 per thousand in 2011), since 1990, but a <i>crime rate decrease</i> of 5% since the peak year of 2005 (9.6 per thousand). (Brann Decl., Exh. B., p. 13)	The City objects on the grounds that Brann's comparison of the City's current crime rates with crime rates for various years roughly twenty years ago is vague, speculative, and assumes facts not in evidence in that Brann merely chooses one of the worst years for a given type of crime to compare with today's crime rate, rather than providing a more detailed analysis of the city's crime rate over time or the context of the City's current crime rate. Moreover, Brann's comparison of the City's crime rate with crime rates roughly twenty years ago is irrelevant to the Court's determination of the City's eligibility for chapter 9. Fed. R. Evid. 401, 402.
An overall examination of Stockton's Part I crime rate reveals it was actually considerably higher in the early 1990's than it is today. In 1990, the Part 1 crime rate was 115 per thousand citizens, but it has since fallen to 66.5 per thousand in 2011, a drop of 42%. (Brann Decl., Exh. B., p. 13)	The City objects on the grounds that Brann's comparison of the City's current crime rates with crime rates for various years roughly twenty years ago is vague, speculative, and assumes facts not in evidence in that Brann merely chooses one of the worst years for a given type of crime to compare with today's crime rate, rather than providing a more detailed analysis of the city's crime rate over time or the context of the City's current crime rate. Moreover, Brann's comparison of the City's crime rate with crime rates roughly twenty years ago is irrelevant to the Court's determination of the City's eligibility for chapter 9. Fed. R. Evid. 401, 402.
In short, despite real and valid concerns about the amount of absolute crime in Stockton, the Part 1 crime rate has been <i>falling for the past several years</i> . ³ (Brann Decl., Exh. B., p. 13)	The City objects on the grounds that Brann's conclusion that the City's Part 1 crime rate has been falling, and the implication that the City's crime rate should not be a consideration in the City's desire to retain experienced officers, is vague, speculative, and assumes facts not in evidence. Moreover, Brann's statement that the City's Part 1 crime rate has been falling is irrelevant to the Court's determination of the City's eligibility for chapter 9. Fed. R. Evid. 401, 402.

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>Chief Jones has stated that Stockton’s officer per thousand ratio of 1.17 is the lowest in California for cities with populations above 250,000 and has further stated this ratio is much less than the “industry standard” of 2.7 per thousand for similarly-sized cities.⁴ (Brann Decl., Exh. B., p. 13)</p>	<p>The City objects on the grounds that Brann’s statements as to the City’s officer-per-thousand ratio are vague, speculative, and assume facts not in evidence in that they depend upon Brann’s assumptions regarding what other cities the City should be compared to. Moreover, Brann’s testimony as to the value of this statistic is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>In fact, Stockton’s ratio is not the lowest and there is no “industry standard,” for officer per thousand ratios. Indeed, as I discuss below, the officer per thousand ratio as a measure of staffing adequacy is subject to a number of significant limitations. (Brann Decl., Exh. B., p. 14)</p>	<p>The City objects on the grounds that Brann’s statements as to the City’s officer-per-thousand ratio are vague, speculative, and assume facts not in evidence in that they depend upon Brann’s assumptions regarding what other cities the City should be compared to. Moreover, Brann’s testimony as to the value of this statistic is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>Staffing levels vary dramatically across the country and even within a region. Officer per thousand ratios have traditionally been higher on the East Coast, in part as a result of differences in policing strategies, local funding decisions and even compensation packages. Every jurisdiction determines its staffing levels based on a variety of factors, and many of those factors are unique to that particular jurisdiction. Hence, it is neither practical nor reasonable to base staffing decisions on what other jurisdictions might be doing. (Brann Decl., Exh. B., p. 14)</p>	<p>The City objects on the grounds that Brann’s statements as to the officer-per-thousand ratios of other municipalities, and the implied applicability of this data to the City, are vague, speculative, and assume facts not in evidence in that they depend upon Brann’s assumptions regarding what other cities the City should be compared to. Moreover, Brann’s testimony as to the value of this statistic is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>Further, there is a clear difference in staffing levels as one examines police staffing, moving from the east coast to the west coast. Sworn officer staffing levels are highest on the east coast and lowest on the west coast, and this has been true for many decades. When looking specifically at California, Stockton’s officer per thousand ratio varies depending on the comparison cities used. For example,</p>	<p>The City objects on the grounds that Brann’s statements as to the City’s officer-per-thousand ratio are vague, speculative, and assume facts not in evidence in that they depend upon Brann’s assumptions regarding what other cities the City should be compared to. Moreover, Brann’s testimony as to the value of this statistic is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>

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<p>looking at all California cities with populations between 250,000 and 500,000, Stockton ranks seventh out of the nine cities in this population range. (Brann Decl., Exh. B., p. 14)</p>	
<p>(“All California Cities with Populations 250,000 to 500,000 – Brann Decl., Exh. B., p 14)</p>	<p>The City objects on the grounds that Brann’s statements as to the City’s officer-per-thousand ratio are vague, speculative, and assume facts not in evidence in that they depend upon Brann’s assumptions regarding what other cities the City should be compared to. Moreover, Brann’s testimony as to the value of this statistic is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>Examining those cities with populations of 200,000 to 400,000, Stockton’s ratio is third highest of nine California cities. (Brann Decl., Exh. B., p. 15)</p>	<p>The City objects on the grounds that Brann’s statements as to the City’s officer-per-thousand ratio are vague, speculative, and assume facts not in evidence in that they depend upon Brann’s assumptions regarding what other cities the City should be compared to. Moreover, Brann’s testimony as to the value of this statistic is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>(“Expanded Group of California Cities (200,000 to 400,000) – Brann Decl., Exh. B., p 15)</p>	<p>The City objects on the grounds that Brann’s statements as to the City’s officer-per-thousand ratio are vague, speculative, and assume facts not in evidence in that they depend upon Brann’s assumptions regarding what other cities the City should be compared to. Moreover, Brann’s testimony as to the value of this statistic is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>This data, contrary to the claims made by Chief Jones, reveals that even in relation to comparably sized cities in California, Stockton does not have the lowest officer per thousand ratio. In fact, there are many cities in the state that have much lower staffing levels than Stockton. (Brann Decl., Exh. B., p. 15)</p>	<p>The City objects on the grounds that Brann’s statements as to the City’s officer-per-thousand ratio are vague, speculative, and assume facts not in evidence in that they depend upon Brann’s assumptions regarding what other cities the City should be compared to. Moreover, Brann’s testimony as to the value of this statistic is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>The comparison above should not be used to argue that any city has “too many” or “too few” officers. The City of Irvine, for example, enjoys one of the lowest crime rates of any similarly sized city. Yet their officer-per-thousand ratio is remarkably low in comparison to other cities. At the same time, Santa Ana (a neighboring city of Irvine) long suffered from one of the highest crime rates in the state and the country in the 1960’s and 1970’s. However, despite a declining staffing level over the past three to four decades, that community has simultaneously experienced a significant reduction in their crime rate. This is an example of why it is a fallacy to attempt to establish a causal relationship between crime and police staffing levels. (Brann Decl., Exh. B., p. 15)</p>	<p>The City objects on the grounds that Brann’s statements as to the City’s officer-per-thousand ratio are vague, speculative, and assume facts not in evidence in that they depend upon Brann’s assumptions regarding what other cities the City should be compared to. The City also objects on the grounds that Brann’s conclusion that the experiences of other municipalities, including Irvine and Santa Ana, are applicable to the City is also vague, speculative, and assumes facts not in evidence. Moreover, Brann’s testimony as to the value of this statistic is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>Having looked at various police per thousand ratios in great detail during my career, I co-wrote an article in 2003 titled “Officer-per-Thousand Formulas and Other Policy Myths,”⁵ in which the title generally sets forth my view of the usefulness of the police per thousand metric. In that article my colleagues and I strongly argue that staffing ratios are not an appropriate way of determining actual staffing needs. There are many other variables that need to be examined and considered when determining an appropriate level of police officers in a community. Those include budgetary considerations, policing strategies, and alternative service delivery mechanisms. (Brann Decl., Exh. B., p. 16)</p>	<p>The City objects on the grounds that Brann’s statements as to the City’s officer-per-thousand ratio are vague, speculative, and assume facts not in evidence in that they depend upon Brann’s assumptions regarding what other cities the City should be compared to. Moreover, Brann’s testimony as to the value of this statistic is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>For example:</p> <ul style="list-style-type: none"> • The “civilianization” of the police force can have a significant effect on the number of sworn officers actually patrolling the streets while at the 	<p>The City objects on the grounds that Brann’s statements as to the City’s officer-per-thousand ratio are vague, speculative, and assume facts not in evidence in that they depend upon Brann’s assumptions regarding what other cities the City should be compared to. Moreover, Brann’s conclusions as to what factors might affect the</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>same time skewing the officer per thousand ratio.</p> <ul style="list-style-type: none"> In some jurisdictions, union contracts require that public works projects involving public roadways have a police officer present for traffic safety – a concept entirely unheard of in other parts of the country. These types of practices can lead to inefficient staffing and can influence the numbers of sworn officers within an agency. In some police departments, sworn officers are used in dispatch, records, evidence collection and other “non-enforcement” roles. <p>(Brann Decl., Exh. B., p. 16)</p>	<p>need for a certain police staffing level in the City are entirely speculative, as Brann did not undertake an independent analysis of these factors for the City. Finally, Brann’s testimony as to the value of this statistic is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>Certainly, “a cop on every corner” or even the substantial increase in officers suggested in the Braga report⁶ might influence the crime rate. But raw numbers tell nothing about the manner in which these officers are deployed. For example, the sworn officers used to staff jails, although useful and important, are not engaged in activities that affect the crime rate. (Brann Decl., Exh. B., p. 16)</p>	<p>The City objects on the grounds that Brann’s conclusion that “raw numbers tell nothing about the manner in which these officers are deployed” is vague, speculative, and assumes facts not in evidence in that Brann offers no analysis or evidence of these considerations for the City, and merely cites them as alternative factors to consider. Moreover, Brann’s conclusion as to the value of police staffing statistics is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>Even in Stockton, a historical review actually suggests an inverse relationship between sworn staffing levels and crime rate: (“Untitled table) (Brann Decl., Exh. B., pp. 16-17)</p>	<p>The City objects on the grounds that Brann’s conclusion that the City’s history suggests an inverse relationship between staffing levels and crime is vague, speculative, and assumes facts not in evidence (not least because it implies that the City should continue to cut officers in order to reduce crime). In any case, Brann’s conclusions as to the City’s past staffing levels and crime rate are irrelevant to the City’s current staffing needs, as well as to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>This issue of the officer-per-thousand ratio and crime rate has been studied and examined over the years and variously suggests there may or may not be correlations between the two factors depending on which agency is examined, the staffing practices of the agency, and the statistical methods used. (Brann Decl., Exh. B., p. 17)</p>	<p>The City objects on the grounds that Brann’s statements as to the City’s officer-per-thousand ratio are vague, speculative, and assume facts not in evidence in that they depend upon Brann’s assumptions regarding what other cities the City should be compared to. Moreover, Brann’s testimony as to the value of this statistic is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>The reason for the disparity in results is that many factors influence the overall effectiveness of the police. One very important variable, for example, is <u>how</u> resources are used, which is why the COPS Office considered how officers are utilized in all funding decisions. (Brann Decl., Exh. B., p. 17)</p>	<p>The City objects on the grounds that Brann’s conclusion that “how resources are used” is a “very important variable” is vague, speculative, and assumes facts not in evidence in that he does not provide independent analysis or evidence regarding the City’s own utilization or whether further reductions in the City’s police staffing would affect public and officer safety. Moreover, Brann’s testimony as to importance of utilization is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>In trying to understand why utilization is important, the ICMA report commissioned in 2010 by the City to review Stockton’s police operations may offer insight.⁷ The report suggests police resources in Stockton were scheduled and deployed with an over-emphasis on employee convenience and an under-emphasis on “fit” between resource needs and availability. Although I was not asked to conduct an evaluation of Stockton’s resource utilization for this report, it has been my personal observation and experience that this is an issue that may have a significant impact on organizational effectiveness. Moreover, agencies claiming to be “short-staffed” can often find the additional man-hours they need through better resource utilization and deployment models which focus on matching available resources with actual demands for service. (Brann Decl., Exh. B., p. 17)</p>	<p>The City objects on the grounds that Brann’s conclusion that “how resources are used” is a “very important variable” is vague, speculative, and assumes facts not in evidence in that he does not provide independent analysis or evidence regarding the City’s own utilization or whether further reductions in the City’s police staffing would affect public and officer safety. Moreover, Brann’s testimony as to importance of utilization is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>

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PARAGRAPH OBJECTED TO	GROUNDS FOR OBJECTION
<p>The City has made claims in correspondence and in this proceeding that reductions in police pension benefits could so adversely affect retention and recruitment of police officers as to lead to “municipal chaos.” In a memorandum to City Manager Deis, attached to a letter sent by City Manager Deis to Governor Brown, Chief Jones stated that twenty to forty officers could leave within the next year and that a “mass exodus” could occur if police pension benefits were cut:</p> <p>“If forced to by the capital markets creditors and the court to reject our CalPERS contract and reduce pensions for existing and/or future retirees, it is possible, perhaps even likely, that we may face an employee mass exodus, and a dramatic increase in the number of trainee officers. This would be extremely dangerous given our rising violence rates, including assaults on officers. In fact, we simply may not be able to fill our positions at all, given the potential handicap in the marketplace.”⁸ (Brann Decl., Exh. B., pp. 17-18)</p>	<p>The City objects on the grounds that Brann’s reliance on these statements is vague and speculative, in that the term “mass exodus” is not defined.</p>
<p>City Manager Deis has echoed the concern about a “mass exodus” of police officers if there were a ruling in the bankruptcy proceeding requiring the impairment of police pension benefits:</p> <p>“Stockton may have no other choice but to unilaterally reduce its financial support for existing and future retiree’s pensions, potentially sparking a mass exodus of experienced police officers in one of the state’s most violence prone cities.”⁹ (Brann Decl., Exh. B., p. 18)</p>	<p>The City objects on the grounds that Brann’s reliance on these statements is vague and speculative, in that the term “mass exodus” is not defined.</p>

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<p>The statement by Chief Jones that a “mass exodus” would occur upon any change in pension benefits is unsupported, as undoubtedly there is some level of pension reductions that could be undertaken that would not cause police officers to leave the Stockton Police Department. (Brann Decl., Exh. B., p. 18)</p>	<p>The City objects on the grounds that Brann’s reliance on these statements is vague and speculative, in that the term “mass exodus” is not defined. Moreover, Brann’s conclusion that Chief Jones’ concern that pension benefits could cause experienced officers to transfer out of the City is “unsupported” is also completely speculative, vague, and assumes facts not in evidence, because Brann offers no independent analysis of this possibility, and instead only states that the City’s evidence is insufficient. In any case, Brann’s conclusions as to the likelihood that officers would leave in the face of a pension benefit cut are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>Beyond that, for the reasons discussed below, a modest reduction in Stockton safety pension benefits would not lead to a “mass exodus” of officers. (Brann Decl., Exh. B., p. 18)</p>	<p>The City objects on the grounds that Brann’s conclusion that a “modest pension benefit reduction would not lead to a ‘mass exodus’ of police officers or have any significant effect on the crime rate, public safety or the safety of officers,” is vague, speculative, and assumes facts not in evidence. Brann’s conclusion is based on terms such as “modest” and “mass exodus” which are not clearly defined and which depend upon assumed values as interpreted by Brann. Moreover, Brann’s Declaration and Report offer no independent evidence or analysis regarding this conclusion. Finally, regardless of Brann’s ultimate conclusion, whether or not a modest pension benefit reduction would result in a “mass exodus” of officers is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>Chief Jones and City Manager Deis suggest, but do not squarely assert, that a reduction in police pensions could so adversely affect retention and recruitment of police officers as to cause violent crime to increase in the City of Stockton, placing police officers and community members at greater risk of physical harm. (Brann Decl., Exh. B., p. 18)</p>	<p>The City objects on the grounds that Brann’s belief that Chief Jones and City Manager Deis “[did] not squarely assert” that a reduction in police benefits could detrimentally affect retention, recruitment, and public safety is vague, and is completely irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>

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<p>1. I have never personally seen or been made aware of any causal relationship between police pension benefits and the crime rate.</p> <p>2. In addition, the claim of such a causal relationship is wholly unsupported by any contemporary, legitimate research or actual events in American policing.</p> <p>(Brann Decl., Exh. B., p. 18)</p>	<p>The City objects on the grounds that Brann’s statement that he “has never personally seen or been made aware of” a causal relationship between police pension benefits and the crime rate, and that such a causal relationship has not been supported by contemporary research are completely irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402. The City’s concerns regarding its public safety need not be based on Brann’s personal experience, and need not rise to a level of scientific certainty recognized by contemporary research.</p>
<p>Although clearly undesired by employees, reductions and/or changes in pension benefits have been taking place across the State of California and across the country. None have yet to trigger the catastrophic effects suggested above. In fact, in cities such as Berkeley, Palo Alto and Downey, police associations have negotiated benefit plan reductions in order to avoid layoffs that would otherwise result, while other communities have imposed or are in the process of imposing reduced pension benefits. (Brann Decl., Exh. B., p. 19)</p>	<p>The City objects on the grounds that the applicability of the experiences of other jurisdictions to the City’s specific circumstances is vague, speculative, and assumes facts not in evidence. Moreover, Brann’s statements regarding the fact that other jurisdictions have imposed pension benefit reductions are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>Chief Jones focused his attention on the loss of senior officers. Although the departure of 21 officers with 10+ years of experience to other agencies over a five year period is a source of concern, a considerably greater loss of senior officers during this period has occurred as a result of retirement (with 93 officers having retired, that number is almost four and a half times the number of officers with 10+ years of experience who transferred to other agencies during the same period). Even so, the police department has functioned competently, and the retiring employees have been replaced. Indeed, one of the reasons for the large number of new recruits is that thirty officers retired in 2011 and were replaced by younger officers. (Brann Decl., Exh. B., p. 20)</p>	<p>The City objects on the grounds that Brann’s implication that the number of senior officers lost to transfers and other departures is not a concern in light of the number of retirements is vague, speculative, and assumes facts not in evidence (in part, because the loss of numerous officers in addition to these retirements creates more, not less, concern for the City).</p>

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<p>During his deposition, Chief Jones also referred to conversations with the departing lateral transfers in which he stated they told him they were transferring because of the cuts in wages and benefits. Without being privy to those conversations or the recorded notes from any exit interviews, we do not know the reasons given by the transferring officers for their departure, but a review of the jurisdictions these officers departed for shows that many of the transferring officers were making a substantial lifestyle change by moving to agencies along California’s Pacific Coast, the vibrant Bay area, or near the mountains. (Brann Decl., Exh. B., p. 20)</p>	<p>The City objects on the grounds that Brann’s statements imply that the officers that transferred away from the City did so for “lifestyle” or other noneconomic reasons. They are therefore speculative and assume facts not in evidence. They are also vague to the extent they suggest that noneconomic factors may affect an officer’s decision to leave, but offer no specifics as to the what impact is had by what factors. Moreover, the fact that officers may transfer out of the City for both economic and noneconomic reasons is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402. The City is not required to show with certainty that officers might transfer only because of pension benefits. Rather, the City was concerned that a pension benefit reduction, in combination with other factors, might cause a substantial number of officers to seek a transfer.</p>
<p>Only 20% of the lateral transfers from Stockton remained in California’s depressed central valley, while the remainder transferred to agencies in areas where such a job switch would likely involve uprooting their families and moving to an entirely new area. This is very different from the pattern in which an officer leaves one agency and goes to work for a neighboring agency offering better pay and benefits without moving the family (e.g. Sunnyvale to Santa Clara or Anaheim to Orange). (Brann Decl., Exh. B., p. 20)</p>	<p>The City objects on the grounds that Brann’s statements imply that the officers that transferred away from the City did so for “lifestyle” or other noneconomic reasons. They are therefore speculative and assume facts not in evidence. They are also vague to the extent they suggest that noneconomic factors may affect an officer’s decision to leave, but offer no specifics as to the what impact is had by what factors. Moreover, the fact that officers may transfer out of the City for both economic and noneconomic reasons is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>These transfers to coastal communities, the Bay area or mountain locations undoubtedly represent an opportunity to change lifestyle as well as employer. (Brann Decl., Exh. B., p. 20)</p>	<p>The City objects on the grounds that Brann’s statements imply that the officers that transferred away from the City did so for “lifestyle” or other noneconomic reasons, and are speculative and assume facts not in evidence. They are also vague to the extent they offer no specifics as to the degree of impact attributable to these noneconomic factors. Moreover, the fact that officers may transfer out of the City for both economic and noneconomic reasons is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>

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<p>Indeed, as in any field of endeavor, police employees are influenced by a host of non-economic factors, including but not limited to:</p> <ul style="list-style-type: none"> • Employment processes and job satisfaction;¹⁴ • Organizational leadership, reputation, assignment variety and culture;¹⁵ • External factors such as housing market and location.¹⁶ <p>(Brann Decl., Exh. B., pp. 20-21)</p>	<p>The City objects on the grounds that Brann’s statements as to noneconomic factors affecting officers’ decisions to transfer are vague, speculative, and assume facts not in evidence in that Brann simply raises “possible” factors without providing any independent analysis or evidence showing which factors affect the City’s officers, or the degree of impact any given factor would have. Moreover, the fact that officers may transfer out of the City for both economic and noneconomic reasons is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>Given the changes involved to make a lateral move to such a new position, and the economic, geographic, and lifestyle changes associated with the moves, it cannot be said that the only issue motivating such changes was a reduction in wages and benefits, or possible pension changes, particularly as cities such as Brentwood (27 miles west of Stockton) have ongoing recruitment with better pay and benefits (\$6098 -- \$7413) than Oceanside (\$5,020 – \$7,141) or El Segundo (\$5,407.54 - \$6,572.90), and thus would not have required relocation.¹⁷</p> <p>(Brann Decl., Exh. B., p. 21)</p>	<p>The City objects on the grounds that Brann’s statements as to noneconomic factors affecting officers’ decision to transfer are vague, speculative, and assume facts not in evidence in that Brann simply raises “possible” factors without providing any independent analysis or evidence showing which factors affect the City’s officers, or the degree of impact any given factor would have. Moreover, the fact that officers may transfer out of the City for both economic and noneconomic reasons is irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>In short, the variables in such a decision are so complex, so interwoven and their meaning to each employee so unique, that any action is the result of and interplay among a variety of influences. (Brann Decl., Exh. B., p. 21)</p>	<p>The City objects on the grounds that Brann’s statements as to noneconomic factors affecting officers’ decisions to transfer are vague, speculative, and assume facts not in evidence in that Brann simply raises “possible” factors without providing any independent analysis or evidence showing which factors affect the City’s officers, or the degree of impact any given factor would have. In fact, Brann here acknowledges that he does not believe he can provide any dependable conclusions with regard to whether the City’s concerns were well-founded. In any</p>

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	<p>case, the fact that officers may transfer out of the City for both economic and noneconomic reasons is irrelevant to the Court’s determination of the City’s eligibility for chapter 9, because the City is not required to show that its concern that a pension benefit cut might cause a substantial number of officers to seek a transfer is based on a scientific certainty. Fed. R. Evid. 401, 402.</p>
<p>There are various non-economic factors that may have affected the number of lateral transfers in the past few years. For example:</p> <ul style="list-style-type: none"> • The relationship between the City and the police has been rancorous over the past few years. The City’s declaration of a State of Emergency, the imposition of contract terms on the police, the lawsuit filed by the Stockton Police Officers Association against the City, and the lack of an agreement between the City and the police union for an extended period are all indications that the relationship has been troubled. • According to news accounts, police officers have been leaving the force because of the high cost of health care insurance and were not able to take advantage of various health care options over the past several months due to the lack of a contract.¹⁸ • The SPD has had five Chiefs of Police in the past six years, and such turnover in leadership undoubtedly impacts the organization and its police officers.¹⁹ • The police union purchased the house next to the City Manager in an effort to “intimidate” him.²⁰ <p>(Brann Decl., Exh. B., p. 21)</p>	<p>The City objects on the grounds that Brann’s statements as to noneconomic factors affecting officers’ decisions to transfer are vague, speculative, and assume facts not in evidence in that Brann simply raises “possible” factors without providing any independent analysis or evidence showing which factors affect the City’s officers, or the degree of impact any given factor would have. In fact, Brann here acknowledges that he does not believe he can provide any dependable conclusions with regard to whether the City’s concerns were well-founded. In any case, the fact that officers may transfer out of the City for both economic and noneconomic reasons is irrelevant to the Court’s determination of the City’s eligibility for chapter 9, because the City is not required to show that its concern that a pension benefit cut might cause a substantial number of officers to seek a transfer is based on a scientific certainty. Fed. R. Evid. 401, 402.</p>

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<p>These events are all indicative of an unsettled environment, and such an environment could lead police officers – even senior officers -- to look elsewhere. (Brann Decl., Exh. B., p. 22)</p>	<p>The City objects on the grounds that Brann’s statements as to noneconomic factors affecting officers’ decisions to transfer are vague, speculative, and assume facts not in evidence in that Brann simply raises “possible” factors without providing any independent analysis or evidence showing which factors affect the City’s officers, or the degree of impact any given factor would have. In fact, Brann here acknowledges that he does not believe he can provide any dependable conclusions with regard to whether the City’s concerns were well-founded. In any case, the fact that officers may transfer out of the City for both economic and noneconomic reasons is irrelevant to the Court’s determination of the City’s eligibility for chapter 9, because the City is not required to show that its concern that a pension benefit cut might cause a substantial number of officers to seek a transfer is based on a scientific certainty. Fed. R. Evid. 401, 402.</p>
<p>I understand that the police union and City have recently reached a two-year agreement, which has been ratified by both the police union and the City Council. News reports state that the agreement may be a positive step that will bring a sense of stability and may help reduce the number of departures from the police force. One provision of the agreement reinstates certain longevity payment provisions for a select number of police officers who had previously been drawing such payments, and the inclusion of that provision may also encourage senior police officer retention.²¹ (Brann Decl., Exh. B., p. 22)</p>	<p>The City objects on the grounds that Brann’s statement that the City’s entry into a two-year agreement with its police union “may also encourage senior police officer retention” is, on its face, completely speculative, vague, and assumes facts not in evidence. Moreover, Brann’s conclusions as to the potential impact of this agreement on the City’s officer retention are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>

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<p>There are also factors indicating that Stockton’s rate of lateral transfers exiting the agency is likely to slow even in the face of a moderate pension reduction. (Brann Decl., Exh. B., p. 22)</p> <ul style="list-style-type: none"> • First, as noted above, the ratification of a two year agreement between the police and the City can contribute to a sense of stability in an environment in which there has been a great deal of uncertainty for the past few years. • Second, seniority is a strong disincentive for a senior officer to leave a police agency. Seniority within a police agency governs shift assignments, job preferences, weekend and holiday assignments, and other staffing and job responsibilities. An officer who leaves Stockton for another agency goes to the bottom of the seniority list at the new agency and will join the rookie officers in getting the worst shifts and assignments. Moreover, if layoffs begin at the new agency where the Stockton officer has transferred, that transferring officer (as one of the newest arrivals) would be one of the first to be laid off. • Third, many of those officers who would be inclined to leave Stockton may have already done so. • Fourth, reductions in the police workforce are occurring across the state of California. In a time of instability, a job “in hand” is something many are not willing to risk. (Brann Decl., Exh. B., p. 22) <p>“Reductions in Sworn Officers” (Brann Decl., Exh. B., pp. 22-23)</p>	<p>The City objects on the grounds that Brann’s conclusion that the listed factors may “slow” the City’s rate of lateral transfers is entirely speculative in that Brann merely lists factors he thinks may have an impact on the lateral transfer rate without providing any analysis, evidence, or conclusion as to the degree of impact any or all of these factors might have. Moreover, Brann’s conclusions that these factors might slow the City’s lateral transfer rate are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p> <p style="text-align: right;">OBJ. TO DECL. & EXPERT REPORT OF JOSEPH. BRANN ISO ASSURED OBJ.</p>

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<p>• Fifth, many California jurisdictions have already reduced their pension benefits obligations by adopting a lower tier of pension benefits for new police employees. Under the terms of the new Pension law enacted in August 2012, police officers transferring from one CalPERS plan agency to another CalPERS plan agency will receive the pension benefits that apply to new employees as of December 31, 2012. Thus, if the agency has adopted a lower pension tier that is in effect as of December 31, 2012, an officer who transfers after January 1, 2013 will receive that lower pension benefit, which is yet a further factor discouraging transfers to such jurisdictions.²²</p>	<p>(cont...)</p> <p>The City objects on the grounds that Brann’s conclusion that the listed factors may “slow” the City’s rate of lateral transfers is entirely speculative in that Brann merely lists factors he thinks may have an impact on the lateral transfer rate without providing any analysis, evidence, or conclusion as to the degree of impact any or all of these factors might have. Moreover, Brann’s conclusions that these factors might slow the City’s lateral transfer rate are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>These various factors make it less likely that any officer would leave as a result of a modest reduction in pension benefits. (Brann Decl., Exh. B., p. 23)</p>	<p>The City objects on the grounds that Brann’s conclusion that the listed factors may “slow” the City’s rate of lateral transfers is entirely speculative in that Brann merely lists factors he thinks may have an impact on the lateral transfer rate without providing any analysis, evidence, or conclusion as to the degree of impact any or all of these factors might have. Moreover, Brann’s conclusions that these factors might slow the City’s lateral transfer rate are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>For the five year period from 2008 to 2012 (through November 26, 2012), the 52 lateral transfers by Stockton police officers average 2.9% of the SPD work force (cumulatively) per year: (Brann Decl., Exh. B., p. 23)</p>	<p>The City objects on the grounds that Brann’s statements are vague, speculative and assume facts not in evidence to the extent they imply that the City’s current lateral transfer rates are acceptable and will not have detrimental effects on public safety in the City’s specific circumstances. Moreover, Brann’s conclusions as to the City’s lateral transfer rates are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>“Current Lateral Transfer Rates” (Brann Decl., Exh. B., pp. 23-24)</p>	<p>The City objects on the grounds that Brann’s statements are vague, speculative and assume facts not in evidence to the extent they imply that the City’s current lateral transfer rates are acceptable and will not have detrimental effects</p>

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2 3 4	on public safety in the City's specific circumstances. Moreover, Brann's conclusions as to the City's lateral transfer rates are irrelevant to the Court's determination of the City's eligibility for chapter 9. Fed. R. Evid. 401, 402.
5 6 7 8 9 10 In a 2006 publication by the California POST (Peace Officer Standards and Training) Commission, lateral transfers among California police officers averaged no less than 3.1% statewide since 1987 and was at a 4.7% level in 1997, with frequent fluctuations in between. ²³ The City's five year average is certainly consistent with the California POST data. (Brann Decl., Exh. B., p. 24)	The City objects on the grounds that Brann's statements are vague, speculative and assume facts not in evidence to the extent they imply that the City's current lateral transfer rates are acceptable and will not have detrimental effects on public safety in the City's specific circumstances. Moreover, Brann's conclusions as to the City's lateral transfer rates are irrelevant to the Court's determination of the City's eligibility for chapter 9. Fed. R. Evid. 401, 402.
11 12 13 14 15 16 17 18 An article in an International Association of Chiefs of Police publication on retention practices noted that "little has been done to establish an 'acceptable' benchmark or standard" on retention and then cited recent annual lateral transfer rates in Florida at 14% and 20%, Alaska at 35%, North Carolina at an average of 14% and Vermont municipalities at 8.25%. ²⁴ (Brann Decl., Exh. B., p. 24)	The City objects on the grounds that Brann's statements are vague, speculative and assume facts not in evidence to the extent they imply that the City's current lateral transfer rates are acceptable and will not have detrimental effects on public safety in the City's specific circumstances. Moreover, Brann's conclusions as to the City's lateral transfer rates are irrelevant to the Court's determination of the City's eligibility for chapter 9. Fed. R. Evid. 401, 402.
19 20 21 22 23 24 Even looking only at the 2012 data, the lateral departure rate of 8.1% is higher than the California POST data but lower than the rates in many of the IACP jurisdictions and hardly a sign of a "mass exodus." (Brann Decl., Exh. B., p. 24)	The City objects on the grounds that Brann's statements are vague, speculative and assume facts not in evidence to the extent they imply that the City's current lateral transfer rates are acceptable and will not have detrimental effects on public safety in the City's specific circumstances. Moreover, Brann's conclusions as to the City's lateral transfer rates are irrelevant to the Court's determination of the City's eligibility for chapter 9. Fed. R. Evid. 401, 402.
25 26 27 28 Chief Jones also expressed concern about Stockton's ability to recruit lateral candidates, stating in the August 14, 2012 memorandum that Stockton "has had difficulty attracting interested experienced police officers from other agencies, and in	The City objects on the grounds that Brann's conclusion that the City has not experienced difficulty recruiting officers is vague, speculative, and assumes facts not in evidence insofar as Brann offers no independent analysis or evidence of the City's ability to recruit new or experienced

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<p>fact, has not located a qualified experienced officer from another agency in the past several years.”²⁵ The Stockton recruiting data indicates otherwise. (Brann Decl., Exh. B., p. 24)</p>	<p>officers, and instead only states that the City’s own evidence is not convincing. Moreover, Brann’s conclusions as to the City’s ability to recruit new and experienced officers are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>The recruiting data provided by Stockton makes clear that at a minimum there are interested lateral candidates seeking employment with the SPD. In 2011, Stockton received 93 applications from lateral candidates, and in 2012, 71 lateral candidates applied.²⁶ It appears that the SPD did not elect to hire any of these lateral transfer candidates, but the submission of 164 applications at a minimum is an indication of interest by lateral candidates, and a sign that these candidates – particularly any 2012 applicants – believed the compensation offered was attractive notwithstanding the cuts to wages and benefits. (Brann Decl., Exh. B., p. 24)</p>	<p>The City objects on the grounds that Brann’s conclusion that the City has not experienced difficulty recruiting officers is vague, speculative, and assumes facts not in evidence insofar as Brann offers no independent analysis or evidence of the City’s ability to recruit new or experienced officers, and instead only states that the City’s own evidence is not convincing. Moreover, Brann’s conclusions as to the City’s ability to recruit new and experienced officers are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>In addition, in November 2012, the City Council passed Chief Jones’s Lateral Hiring Incentive Program to offer certain vacation and sick leave credits to lateral candidates as an inducement for even more experienced officers to apply and join the SPD.²⁷ Furthermore, a December 11, 2012 Staff Memorandum to the City Council expressed the City’s “hope[] that the new Lateral Hiring Incentive Program recently approved by Council will provide a means of achieving additional hires,” a clear indication that the City believed its pay and benefits were generous enough to attract the interest of lateral transfers.²⁸ (Brann Decl., Exh. B., pp. 24-25)</p>	<p>The City objects on the grounds that Brann’s conclusion that the City has not experienced difficulty recruiting officers is vague, speculative, and assumes facts not in evidence insofar as Brann offers no independent analysis or evidence of the City’s ability to recruit new or experienced officers, and instead only states that the City’s own evidence is not convincing. Moreover, Brann’s conclusions as to the City’s ability to recruit new and experienced officers are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>In the very same memorandum claiming to have problems with recruitment, Chief Jones stated that the SPD had hired 45 recruits in the past six months.³¹ The SPD’s records indicate that the SPD in</p>	<p>The City objects on the grounds that Brann’s conclusion that the City has not experienced difficulty recruiting officers is vague, speculative, and assumes facts not in evidence insofar as Brann offers no independent analysis or evidence</p>

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<p>fact has hired over 70 recruits and trainees in 2012.³² This is a sizable number of recruits and indicates that Stockton is capable of adding new officers to fill outstanding positions. The City’s December 11, 2012 Staff Memorandum reaffirmed that the SPD would reach its authorized level of 344 positions by the end of the year, which would reflect hiring of more than 70 officers during 2012, notwithstanding what Chief Jones deemed to be below market compensation and benefits.³³</p> <p>(Brann Decl., Exh. B., p. 25)</p>	<p>of the City’s ability to recruit new or experienced officers, and instead only states that the City’s own evidence is not convincing. Moreover, Brann’s conclusions as to the City’s ability to recruit new and experienced officers are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>Indeed, during his deposition, Chief Jones indicated the greatest limitations on hiring were the employment process and training resources.³⁴</p> <p>(Brann Decl., Exh. B., p. 25)</p>	<p>The City objects on the grounds that Brann’s conclusion that the City has not experienced difficulty recruiting officers is vague, speculative, and assumes facts not in evidence insofar as Brann offers no independent analysis or evidence of the City’s ability to recruit new or experienced officers, and instead only states that the City’s own evidence is not convincing. Moreover, Brann’s conclusions as to the City’s ability to recruit new and experienced officers are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>Another indicator of the City’s ability to recruit is the number of applications to become new police officers. The City’s data shows that academy graduate applications were over four times higher in 2012 than in 2008, which is evidence that any uncertainty over pensions was not affecting the applicants.³⁵ Indeed, the same data shows that in 2011 and 2012 over a thousand police academy certified graduates applied for positions in the SPD and another 1,700 without academy training had applied. News reports indicate that earlier this month over 1,000 applicants applied to become police officers.³⁶</p> <p>(Brann Decl., Exh. B., p. 26)</p>	<p>The City objects on the grounds that Brann’s conclusion that the City has not experienced difficulty recruiting officers is vague, speculative, and assumes facts not in evidence insofar as Brann offers no independent analysis or evidence of the City’s ability to recruit new or experienced officers, and instead only states that the City’s own evidence is not convincing. Moreover, Brann’s conclusion that the number of applications shoes that the City’s recruitment concerns are invalid is also vague, speculative, and assumes facts not in evidence in that Brann offers no analysis of whether the quality of these applications allows the City to recruit equally qualified officers as it had previously. Finally, Brann’s conclusions as to the City’s ability to recruit new and experienced officers are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>

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<p>In addition to the current ability of the SPD to add new recruits, recruitment beginning in 2013 should not be affected by any issues relating to pensions. Under the new Pension law passed this year, the pension benefits for new employees are set by state statute, and all new safety employees statewide will be receiving the same pension benefits. (Brann Decl., Exh. B., p. 26)</p>	<p>The City objects on the grounds that Brann’s conclusion as to the impact of new state pension statutes on recruitment is entirely speculative, vague, and assumes facts not in evidence. Moreover, Brann’s conclusions as to the City’s ability to recruit new and experienced officers are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>For this reason, Stockton will be able to recruit against other cities on a level playing field with respect to pension benefits. For these reasons, Chief Jones’s concern that Stockton will suffer a “potential handicap in the marketplace” is without foundation, and the SPD should be able to continue to recruit officers to fill vacancies. Thus, to the extent that lateral transfers continue, there is no reason to believe that the departing officers cannot be replaced, just as new officers replace retiring police officers in the ordinary course without any concern about “mass exodus” or inability to fill such positions. (Brann Decl., Exh. B., p. 26)</p>	<p>The City objects on the grounds that Brann’s conclusion that the City will be able to recruit against other cities “on a level playing field” is entirely speculative, vague, and assumes facts not in evidence. Moreover, Brann’s conclusions as to the City’s ability to recruit new and experienced officers are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>
<p>The statements by Chief Jones and City Manager Deis go beyond predicting a “mass exodus” of police officers and suggest the following scenario: A reduction in retirement benefits leads to disincentives to employment, resulting in unfilled (or insufficiently filled) police positions, an inability to control crime, and an “extremely dangerous” condition or “municipal chaos.” As noted above, however, the claim that transferring officers cannot be replaced is contradicted by the evidence that the SPD has hired roughly 70 officers and recruits in calendar year 2012. In addition, in his testimony, City Manager Deis was asked “whether or not there’s going to be a threat to safety depends on how much you</p>	<p>The City objects on the grounds that Brann mischaracterizes statements made by Jones and Deis. The City further objects on the grounds that Brann’s conclusion that departing officers could be replaced is vague, speculative, and assumes facts not in evidence in part because Brann offers no analysis accounting for whether the replacement officers would be equally qualified with, or as effective as, officers who had transferred. Moreover, Brann’s conclusions as to the City’s ability to recruit new and experienced officers are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>

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<p>vary from that median or the average,” and he responded “That would be one major factor, yes,” clearly conceding that there could be changes to pension benefits that would not threaten public safety.³⁷</p> <p>(Brann Decl., Exh. B., p. 26)</p>	
<p>The assertions made by Chief Jones and Mr. Deis also include a number of unsupported assumptions:</p> <ul style="list-style-type: none"> • One assumption is that less experienced officers are assaulted more frequently and/or more severely than officers with a greater level of experience. There is no industry recognized evidence to support such a correlation. <p>Although some research does indicate that younger officers account for a larger percentage of the injured-officer-population than older officers, there has been no examination of the variables that underlie such a finding, such as the extent to which the younger officers have more or less experience than their counterparts, the manner in which the injuries occurred, the types of injuries or the positions held by and the activities of those officers at the time of their injury.</p> <p>The difference in injury rate could be more readily explained, for example, by the fact that less experienced officers are more likely to be on patrol assignments while more experienced officers are likely to be detectives and in a wide range of other administrative and support roles. Therefore, the older officers would be less likely to be exposed to the same risks as their younger counterparts who are on patrol.³⁸</p> <ul style="list-style-type: none"> • It should also be noted that only a small fraction of officer injuries are the result of violent assaults. It has been my observation and experience that violent assaults on police officers – recognizing that no violent assault is tolerable – 	<p>The City objects on the grounds that Brann’s conclusion that assertions made by Jones and Deis rest on “unsupported assumptions” is speculative and assumes facts not in evidence. Brann performed no investigation or analysis of his own regarding these claims, and is thus not in a position to opine on whether Jones’s and Deis’s assumptions are “unsupported.” Moreover, to the extent that Brann’s statements go to his conclusion that the City has not shown that its concerns regarding the transfer of experienced officers in the face of a pension benefit cut to a scientific certainty, such statements are irrelevant to the Court’s determination of the City’s eligibility for chapter 9. Fed. R. Evid. 401, 402.</p>

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<p>account for fewer than 5% of officer injuries. Indeed, in-service training and automobile accidents result in approximately the same number of injuries as those attributable to arrest and control activities.³⁹</p> <ul style="list-style-type: none"> Chief Jones’s statement also makes the tacit assumption that less experienced officers are less effective in combating a rising violent crime rate than more experienced officers. In addition, Chief Jones also assumes that this reduced level of effectiveness leads to greater community risk.⁴⁰ <p>There is no evidence to support such a contention. It has been my observation and experience that there are innumerable variables that contribute to officer effectiveness and any conclusions based on any single variable such as experience are not supported.⁴¹</p> <ul style="list-style-type: none"> Once hired, it takes longer to train and prepare an academy level trainee than it does to train and ready a lateral applicant for patrol duty. Chief Jones’s comments suggest that this difference in the training time required could result in an increased level of violent crime.⁴² <p>It has been my observation and experience that this increased amount of requisite training time has no causal connection to the crime rate.</p> <p>(Brann Decl., Exh. B., pp.27-28)</p>	
<p>Although Chief Jones and City Manager Deis raise the specter of “municipal chaos” if pension benefits are reduced, it is my view there is no evidence that a modest pension benefit reduction would lead to a “mass exodus” or would have an effect on the crime rate, public safety, or the safety of the officers.</p>	<p>The City objects on the grounds that Brann’s conclusion that there is “no evidence” that a modest pension benefit reduction will lead to a “mass exodus” is vague, speculative, and assumes facts not in evidence, because it depends on numerous assumptions (including assumptions as to the meaning of the terms “modest” and “mass exodus”; the applicability of the experiences of other municipalities to the City’s specific situation; the impact, or lack thereof, of numerous noneconomic factors listed, but not analyzed, by</p>

