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

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

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

**OBJECTIONS TO DECLARATION  
 AND EXPERT REPORT OF JOSEPH  
 E. BRANN PURSUANT TO FEDERAL  
 RULE OF EVIDENCE 702 AND  
 DAUBERT V. MERRELL DOW  
 PHARMACEUTICALS, INC.<sup>1</sup>**

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

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28 <sup>1</sup> The City is not asking the Court for a ruling on the City’s objections to evidence at the February 26, 2013 Status 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.

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1 The City of Stockton (the “City”) hereby submits the following objections to the  
2 Declaration of Joseph E. Brann In Support of Supplemental Objection of Assured Guaranty Corp.  
3 and Assured Guaranty Municipal Corp. to Debtor’s Chapter 9 Petition and Statement of  
4 Qualifications filed June 28, 2012 (the “Brann Declaration” in support of the “Assured Obj.” to  
5 the City’s “Petition”) and the accompanying Expert Report of Joseph E. Brann (the “Brann  
6 Report”), pursuant to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharm, Inc.*,  
7 509 U.S. 579 (1993). These objections are made in addition to those objections raised in the  
8 City’s “Objections To Declaration And Expert Report Of Joseph E. Brann In Support Of  
9 Supplemental Objection Of Assured Guaranty Corp. And Assured Guaranty Municipal Corp. To  
10 Debtor’s Chapter 9 Petition And Statement Of Qualifications” and focus on the helpfulness,  
11 qualifications, and reliability of the expert opinions rendered by Joseph E. Brann (“Brann”) in the  
12 Brann Declaration and Brann Report.

13 **I. INTRODUCTION**

14 In *Daubert*, the Supreme Court recognized and reaffirmed that the Federal Rules of  
15 Evidence require courts to perform a “gatekeeping role” with regards to the admissibility of  
16 expert opinion testimony. 509 U.S. at 597; *see also Kumho Tire Co., Ltd. v. Carmichael*, 526  
17 U.S. 137, 149 (1999) (holding that the *Daubert* “gatekeeping” obligation applies to all expert  
18 testimony, not just “scientific” testimony); *General Elec. Co. v. Joiner*, 522 U.S. 136, 142 (1997).  
19 This gatekeeping obligation requires courts considering the admissibility of expert opinions based  
20 on scientific, technical, or otherwise specialized knowledge to ensure that the expert is properly  
21 qualified to render the proffered opinion, that the proffered opinion will be helpful to the trier of  
22 fact, and that the proffered opinion is based upon sufficiently reliable information, principles, and  
23 methodologies. *See* FRE 702. Put more simply, courts at the trial level “must ensure that any and  
24 all [expert opinion] admitted is not only relevant, but reliable.” *Daubert*, 509 U.S. at 589. The  
25 Brann Declaration and Brann Report fail these fundamental criteria.

26 As a preliminary matter, the entirety of both Brann’s Declaration and Report is  
27 inadmissible because neither offers any opinion testimony that would be relevant or helpful to the  
28 Court in deciding the questions that are actually before it. The City has presented evidence

1 showing that it meets the requirements for chapter 9 eligibility, including (1) that the City is a  
2 municipality; (2) that the City is authorized by California law to bring its Petition; (3) that the  
3 City is insolvent as defined under 11 U.S.C. § 109(c)(3); (4) that the City desires to effect a plan  
4 to adjust its debts; (5) that the City has met the negotiation requirement of § 109(c)(5)(B); and,  
5 finally (6) that the City has filed its Petition in good faith pursuant to § 921(c). *See generally* City  
6 Of Stockton’s Memorandum of Facts And Law In Support of Its Statement of Qualifications  
7 Under Section 109(c) Of The United States Bankruptcy Code (“Mem.”). The Assured Obj.,  
8 meanwhile, contends that the City is not in fact insolvent under section 109(c)(3), has not met the  
9 negotiation requirement of section 109(c)(5)(B), and did not file its Petition in good faith as  
10 required by section 921(c). Assured offers Brann’s Declaration and Report in support of its  
11 contentions that the City has not satisfied its negotiation requirement because it did not seek to  
12 reduce its CalPERS obligations, and that the City’s concerns that a reduction in pension benefits  
13 might cause the loss or transfer of a substantial number of its police officers are merely pretext.  
14 *See* Assured Obj., at 28-31.

15           However, Brann’s expert testimony does not directly address the City’s good faith belief  
16 that it could not seek pension benefit reductions without potentially adverse effects to public  
17 safety. Brann’s testimony focuses almost exclusively on Brann’s assertion that “a modest  
18 pension benefit reduction would not lead to a ‘mass exodus’ of police officers or have any  
19 significant effect on the crime rate, public safety, or the safety of officers.” Brann Decl., ¶ 4, 7;  
20 Brann Report, at 20.<sup>2</sup> In fact, however, Brann does not affirmatively conclude that a modest  
21 pension benefit reduction will not result in the lateral transfer of a substantial number of officers  
22 or a significant impact on public and officer safety, but states only that in his expert opinion the  
23 City has not provided sufficient evidence to prove this would be the case. Brann Report, at 1  
24 (“*there is no basis* for the claim by Stockton that a modest reduction in pension benefits would  
25 lead to increased crime, place the community at risk, or endanger police officers through greater  
26 risk of physical harm.”) (emphasis added); Transcript of Deposition of Joseph Brann, January 24,  
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28 <sup>2</sup> The Brann Report contains two sets of page numbers. References in this Objection are to the top number. Note that on what should be page “1” of the Brann Report, only the lower number (“9”) is shown.

1 2013 (“Brann Depo.”), at 78:22-79:3 (acknowledging that he cannot determine “with any degree  
 2 of certainty” what effect a reduction in pension benefits would have). This distinction is  
 3 important, as it shows that Brann has not rendered an affirmative opinion on whether a given  
 4 level of pension benefit cuts would lead to a significant increase in the lateral transfer of officers.  
 5 Instead, Brann has only opined that he finds the City’s evidence to that effect unconvincing.

6 The City is not required to show that its decision not to seek pension benefit cuts was  
 7 based on a scientific certainty. Rather, the City need only show that it had a reasonable, good  
 8 faith belief that its concerns were a possibility. See *In re Pierce Cnty. Hous. Auth.*, 414 B.R. 702,  
 9 711 (Bankr. W.D. Wash. 2009) (laying out the factors for determination of good faith under §  
 10 921(c)) (citing COLLIER ON BANKRUPTCY ¶ 921.04[2]). Brann’s opinion has no bearing on the  
 11 issue of good faith, and as such, Brann’s Declaration and Report are ultimately irrelevant to the  
 12 Court’s determination of the City’s eligibility for chapter 9.

13 Moreover, Brann is not sufficiently qualified to render the expert opinions in his  
 14 Declaration and Report. Brann testifies that the City’s concerns regarding the effect of a pension  
 15 benefit cut on lateral transfers is unfounded, but he admits to having no expertise in the areas of  
 16 statistical analysis, labor economics, pensions, or the Stockton Police Department. Moreover,  
 17 much of the Brann Report, as described in detail below, is also inadmissible because it is based on  
 18 incomplete information, unwarranted assumptions and speculation, and flawed methodologies.  
 19 As such, these opinions fail the basic requirement of reliability laid out in FRE 702 and *Daubert*,  
 20 and are inadmissible on that ground as well.

## 21 **II. OBJECTIONS**

### 22 **A. Legal Standard**

23 Federal Rule of Evidence 702<sup>3</sup> provides:

24 A witness who is qualified as an expert by knowledge, skill,  
 25 experience, training, or education may testify in the form of an  
 opinion or otherwise if:

26 (a) the expert's scientific, technical, or other specialized knowledge  
 27 will help the trier of fact to understand the evidence or to determine  
 a fact in issue;

28 <sup>3</sup> The Federal Rules of Evidence are made applicable to cases under the Bankruptcy Code by Rule of Bankruptcy  
 Procedure 9017.

1 (b) the testimony is based on sufficient facts or data;

2 (c) the testimony is the product of reliable principles and methods;  
3 and

4 (d) the expert has reliably applied the principles and methods to the  
5 facts of the case.

6 Fed. R. Evid. 702. Thus, in order for an expert's opinion to be admissible as evidence, the expert  
7 must be qualified to render such an opinion, the opinion must be helpful to the trier of fact, and  
8 the opinion must be reliable (based on sufficient facts, reliable principles, and reliable application  
9 of those principles).

10 Trial courts have broad discretion in deciding whether to admit or exclude expert  
11 testimony under FRE 702. *General Elec. Co.*, 522 U.S. at 141-42; see also *In re Cloobek*, BAP  
12 NV-06-1165-BSN, 2007 WL 7535051 (B.A.P. 9th Cir. May 2, 2007). However, a trial court  
13 must exercise its gatekeeping function for expert opinion evidence, and any determination of  
14 reliability should be made on the record. *See White v. Ford Motor Co.*, 312 F.3d 998, 1007 (9th  
15 Cir. 2002) *opinion amended on denial of reh'g*, 335 F.3d 833 (9th Cir. 2003) (holding that  
16 *Daubert* and *Kumho Tire* "require that the judge apply his gatekeeping role under *Daubert* to all  
17 forms of expert testimony"); *Elsayed Mukhtar v. California State Univ., Hayward*, 299 F.3d  
18 1053, 1066 (9th Cir. 2002) *amended sub nom. Mukhtar v. California State Univ., Hayward*, 319  
19 F.3d 1073 (9th Cir. 2003) ("Kumho and *Daubert* make it clear that the court must, on the record,  
20 make some kind of reliability determination.").

21 **B. Brann's Expert Opinion Is Not Helpful To The Court Because It Is Irrelevant  
22 To The Question Of The City's Good Faith Or Satisfaction Of The  
23 Negotiation Requirement.**

24 In order to be admissible, expert testimony must be helpful to the trier of fact. *Daubert*,  
25 509 U.S. at 591; *Stilwell v. Smith & Nephew, Inc.*, 482 F.3d 1187, 1192 (9th Cir. 2007); *Kumho*  
26 *Tire*, 526 U.S. at 156. Specifically, expert evidence or testimony must "assist the trier of fact to  
27 understand the evidence or to determine a fact in issue." *Daubert*, 509 U.S. at 591. Where expert  
28 testimony does not touch on the questions actually at issue in a case, such testimony is necessarily  
unhelpful to the Court. *Id.* ("Expert testimony which does not relate to any issue in the case is not  
relevant and, ergo, non-helpful.") (quoting 3 Weinstein & Berger ¶ 702[02], p. 702-18). Expert

1 opinion testimony which fails this basic test of relevance is inadmissible. *Id.*; *Stilwell*, 482 F.3d  
2 at 1192; *United States v. Redlightning*, 624 F.3d 1090, 1123 (9th Cir. 2010).

3 Brann's expert opinion testimony is not helpful to the Court because it is not relevant to  
4 the Court's determination of the City's good faith in filing its Petition under section 921(c) or the  
5 City's satisfaction of the negotiation requirement of section 109(c)(5)(B). Brann's opinion is  
6 essentially that the City cannot be sure that a reduction in pension benefits would result in a  
7 substantial number of current officers seeking to transfer out of the City's police department,  
8 which the Assured Obj. uses to support its contention that the City should have sought to reduce  
9 its pension obligations. *See* Brann Decl., ¶ 8; Assured Obj., at 26-31, 34-35. However, the City  
10 is not required to show that its concerns regarding the potential loss of experienced officers due to  
11 pension benefit cuts were as a scientific certainty. Rather, the City only has to show that it had a  
12 good faith belief that this concern was legitimate and that the City's actions were reasonable  
13 under the circumstances.

14 The Brann Report attempts to undercut the City's claim that a pension cut might cause  
15 officers to seek transfers by stating, without analysis or support, that many other non-economic  
16 factors may play a role in any individual officer's decision to leave any particular jurisdiction.  
17 *See* Brann Report, at 12-13. Nevertheless, Brann acknowledges that a reasonable police chief  
18 faced with a situation like Stockton's would have "*serious concerns* regarding the effect any  
19 further reduction in benefits could have on [his] ability to retain [] officers." Brann Depo.,  
20 123:20-124:22 (emphasis added). In fact, he goes so far as to say that a police chief would be  
21 "foolish" not to be concerned with officer retention under circumstances similar to the City's. *Id.*  
22 Thus, Brann admits that even given the level of uncertainty claimed in his Report, the City's  
23 concerns were reasonable.

24 Moreover, Brann's Report is entirely unhelpful on the issue of whether the City should  
25 have attempted to negotiate a pension reduction with CalPERS. For one, Brann concedes that he  
26 is not aware of any police department in the state of California that has imposed or is considering  
27 imposing significant cuts in its pension benefits. Brann Depo., at 101:11-25. Further, Brann  
28 cannot render an opinion on the legal necessity of the City negotiating with CalPERS, as this

1 would be an improper expert opinion as to a legal conclusion. *See Nationwide Transp. Fin. v.*  
2 *Cass Info. Sys., Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008) (expert witnesses may not give an  
3 opinion as to a legal conclusion).

4 Thus, the Brann Declaration and Report are irrelevant to the question of the City's good  
5 faith and negotiation decisions, and are thus unhelpful to the Court in its determination of the  
6 City's eligibility for chapter 9. As such, they fail the helpfulness requirement of FRE 702 and  
7 *Daubert*, and are inadmissible in their entirety.

8 **C. Brann Admits He Is Not An Expert In Statistics, Labor Economics, Pensions,**  
9 **Or As To Issues Related To The Stockton Police Department**

10 An expert must be sufficiently qualified to render the opinions contained in his testimony  
11 based on his knowledge, skill, training, experience, or education in the field in question. FRE  
12 702; *Primiano v. Cook*, 598 F.3d 558, 563 (9th Cir. 2010). However, Brann lacks expertise in the  
13 fields in which he is testifying. Brann opines that the City's concern that a reduction in pension  
14 benefits might lead experienced officers to transfer away from the City is unfounded, but he  
15 admits that he is not an expert in statistical analysis, labor economics, pensions, or any issue  
16 related to the Stockton Police Department specifically.

17 Brann does not have a degree related to statistics, nor does he have any formal training as  
18 a labor economist. Brann Depo., at 17:13-18, 42:19-20 ("I'm not an economist, nor will I pretend  
19 to be"). Brann also concedes that he is not an expert "in the area of police pensions" or with  
20 respect to any issues related to the Stockton Police Department specifically. Brann Depo., 44:9-  
21 16; 45:22-25. Meanwhile, though Brann states that he is an expert in the field of "police officer  
22 utilization," he concedes that he did not study police utilization in the City because he "was not  
23 asked to do that." Brann Depo., 46:2-4, 46:16-19.

24 Thus, based on Brann's own admissions, he is not sufficiently qualified to render the  
25 opinions he has been asked to provide. As such, the Brann Declaration and Report should be  
26 excluded in their entirety as inadmissible.

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1           **D.     The Brann Declaration And Report Are Based On Insufficient Facts And**  
2           **Data.**

3           The expert opinions offered in the Brann Declaration and Report as to the likelihood a  
4 pension cut will lead experienced officers to transfer from the City, and the potential effect on  
5 crime and public safety such transfers might have, lack the necessary factual basis. Expert  
6 opinion testimony must be based on “sufficient facts or data” to render the opinion reliable. FRE  
7 702(b); *United States v. Redlightning*, 624 F.3d 1090, 1111 (9th Cir. 2010). However, despite  
8 readily accusing the City of offering “no basis” for its concern that pension benefit cuts might  
9 cause some of the City’s officers to seek lateral transfers, the Brann Declaration and Report fail to  
10 consider or include important facts that would be critical to such a determination. For instance  
11 Brann did not conduct any studies or analyses with respect to police migration from one  
12 department to another, nor is he aware of any specific research in that area. Brann Depo., at  
13 45:15-21. Brann did not speak with any of the officers who have left the department in order to  
14 find out why it was they chose to leave, nor did he speak with any of the current officers with  
15 whom Chief Jones spoke regarding the possibility they might leave the department if further cuts  
16 were imposed. Brann Depo., at 131:18-132:3. Brann also has no familiarity with the labor  
17 negotiations that have been ongoing between the City and the Stockton Police Officers  
18 Association. Brann Depo., at 47:18-22. There are even numerous additional pieces of  
19 information that Brann himself has stated he would have liked to have access to, including the  
20 department’s history, past experiences, and resource utilization. Brann Depo., at 64:8-65:5,  
21 65:14-19.

22           Though Brann offers some minimal evidence, it is plainly insufficient where he omits or  
23 ignores facts which would be plainly material to his opinion. Instead Brann renders an opinion on  
24 the effect of pension cuts specific to the City while referencing only general statistics. This fails  
25 the sufficiency requirement of FRE 702, and Brann’s opinions are therefore inadmissible where  
26 based on insufficient facts.

27     ///

28     ///

1           **E.     The Brann Declaration And Report Are Purely Speculative And Based On**  
 2           **Faulty Principles And Methods, And Are Therefore Unreliable.**

3           In order to be deemed reliable, expert testimony must be the product of the reliable  
 4 application of reliable principles and methods. FRE 702(c), (d). Such testimony must be  
 5 “supported by appropriate validation – i.e, good grounds,” *Daubert*, 509 U.S. at 590. An expert  
 6 opinion must be more than a bald assertion without support, and expert opinions that lack a  
 7 factual basis and are based on speculation or conjecture are inadmissible. *Guidroz-Brault v.*  
 8 *Missouri Pac. R. Co.*, 254 F.3d 825, 829 (9th Cir. 2001) (expert testimony may not include  
 9 “unsupported speculation and subjective beliefs.”); *California ex rel. Brown v. Safeway, Inc.*, 615  
 10 F.3d 1171, 1181 (9th Cir. 2010) *on reh’g en banc sub nom. California ex rel. Harris v. Safeway,*  
 11 *Inc.*, 651 F.3d 1118 (9th Cir. 2011) (expert testimony inadmissible where expert testified a result  
 12 was “plausible” and “likely” but “admitted that he had done no analysis”).<sup>4</sup>

13           The Brann Report is replete with instances of dubious statistical analysis and speculative,  
 14 unsupported conclusions. For instance, Brann’s statistical analysis of the City’s crime rate (which  
 15 the City cites as a basis for its concern that pension cuts will lead to the loss of experienced  
 16 officers) attempts to disguise the bleak reality on the ground. The Brann Report acknowledges  
 17 that Stockton “has a high crime rate,” and that this crime rate is “serious,” but attempts to mitigate  
 18 this concern by claiming that the “crime rate today is lower than it was 20 years ago.” Brann  
 19 Report, at 1, 4. Brann offers no justification for comparing Stockton crime rates from the early  
 20 1990s to those in 2011 besides wanting “to have ample data points to establish a more reliable  
 21 and accurate trend line.” Brann Depo., 186:24-187:14. Essentially, Brann cherry picks his data,  
 22 and compares the City’s crime statistics for any given type of crime with the *worst year in the last*  
 23 *two-plus decades* for that crime. See Brann Report, at 5. Had Brann looked to more recent years  
 24 as a basis for comparison, his conclusion would be that crime has gone up, not down, in the City.  
 25 Moreover, this has occurred despite the fact, as Brann concedes, that crime rates have declined in  
 26 the United States “virtually every single year since 1994.” Brann Depo., 39:19-40:3. This is no

27 \_\_\_\_\_  
 28 <sup>4</sup> Expert testimony which is the product of speculation or unsupported assumptions is also inadmissible as unhelpful to the trier of fact. See *In re Air Disaster at Lockerbie Scotland on Dec. 21, 1988*, 37 F.3d 804 (2d Cir. 1994) (“Expert opinions are excluded as unhelpful if based on speculative assumptions or unsupported by the record.”).

1 more than statistical manipulation in an attempt to hide an obvious truth about the City's high  
2 crime rate.

3 Brann's analysis of the likelihood that a pension benefit cut might lead to the transfer of  
4 experienced officers is also unreliable. For one, Brann's opinion depends on a favorable  
5 assumption of what would constitute a "modest" pension benefit reduction, as he was asked to  
6 assume that this meant "something in the range of a 10 percent reduction." Brann Depo., at 74:6-  
7 8; 224:5-17. However, Brann had no understanding of how such a reduction might be  
8 implemented, or how it would specifically be applied to officers or retirees. Brann Depo.,  
9 224:21-15. Thus, Brann's ultimate conclusion – that a "modest" pension reduction would not  
10 lead to a "mass exodus" – depends on his own assumptions of what a "modest" reduction would  
11 look like.

12 Brann's analysis of the impact of a given reduction on officer retention is also unreliable.  
13 Essentially, Brann's opinion is that the City cannot say that past reductions in benefits caused  
14 officers to leave, or that future reductions would cause additional transfers, because there are  
15 many other factors that might also play a role in that decision. *See* Brann Report, at 12-13  
16 ("police employees are influenced by a host of non-economic factors . . . [T]he variables in such a  
17 decision are so complex, so interwoven and their meaning to each employee so unique, that any  
18 action is the result of and [sic] interplay among a variety of influences"). This, again, is not an  
19 affirmative conclusion, but merely an attempt to say that the City has not proven its concerns to a  
20 scientific certainty. Rather than offer a new and independent analysis, the Brann Report merely  
21 attempts to undercut the City's position by pointing to factors that *might* have been significant. It  
22 is pure speculation to state that other factors may have an impact on past or future transfers  
23 without providing some analysis on that point. Nevertheless, Brann admits there has been a  
24 "spike" in the number of experienced officers transferring to other agencies, Brann Depo., 139:3-  
25 12, and that compensation is an issue that is "important to every employee." Brann Depo., at  
26 95:9-22. Moreover, Brann did not factor into his opinion the fact that any pension reduction  
27 would necessarily take place in the context where there have already been wage and benefit  
28 reductions or the impact that such previous reductions might have on an officer's willingness to

1 stay if further reductions are imposed. Brann Depo., at 102:2-7. Finally, the Brann Report  
2 completely fails to consider the possibility that Stockton’s poor performance on some of the other  
3 factors he lists (such as organization and location, *see* Brann Report, at 12-13) might render  
4 compensation and benefits *more* important for Stockton than for other cities. The Brann Report  
5 notes several other factors which are indicative that the City is “an unsettled environment . . .  
6 [which] could lead police officers – even senior officers – to look elsewhere.” Brann Report, at  
7 14. Yet the Brann Report considers none of this, and instead merely speculates that pension cuts  
8 might not be significant in the face of other factors.

9 Brann’s claims as to the impact that a loss of experienced police might have on public  
10 safety are also faulty. Brann attempts to show that the loss of additional experienced officers will  
11 not cause additional crime or a drop in public or officer safety by questioning the causal  
12 relationship between police staffing levels and crime. *See* Brann Report, at 7. His ultimate  
13 opinion on this issue, however, is that it “variously suggests there may or may not be correlations  
14 between the two factors, depending on which agency is examined, the staffing practices of the  
15 agency, and the statistical methods used.”<sup>5</sup> Brann Report, at 9. Thus, the only way to determine  
16 whether a reduction in the number of officers would have adverse impacts on crime and public  
17 safety in the City would be to perform an analysis specific to the City, which Brann has not done.  
18 In addition to not actually speaking with any current or former officers of the City regarding  
19 potential reasons for seeking a transfer, Brann offers no new data or analysis regarding how the  
20 transfer of additional officers would impact the City specifically, particularly in light of the  
21 substantial benefit reductions and transfers that have already taken place. At a minimum,  
22 however, Brann acknowledges that if the Stockton Police Department’s lateral transfer rate were  
23 to continue at its 2012 pace “for a long period of time, there comes a point in time that  
24 organizational operations can be compromised” and public and officer safety impacted. Brann

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27 <sup>5</sup> In fact, at least one report cited by Brann has analyzed crime in the City and has concluded that the City needs more  
28 police and that the City should adopt certain policing strategies that require more manpower than the City currently  
has. *See* BRAGA, ANTHONY A., PREVENTING VIOLENT STREET CRIME IN STOCKTON, CALIFORNIA ( John F. Kennedy  
School of Government 2006), attached as Ex. 39 to the Declaration of Eric Jones (cited by the Brann Report, at 8,  
n. 6).

1 Depo., at 134:21-136:14. Thus, while Brann’s opinion on this issue provides no reliable  
2 conclusions, it cannot be said that the City’s concerns were not in good faith.

3 Even taking all of his own assumptions into account, Brann ultimately concedes that he  
4 cannot say with any certainty what effect a given pension benefit reduction will have. Brann  
5 acknowledges, for instance, that he could not say with “any degree of certainty” that at least a  
6 dozen officers would leave Stockton Police Department for other departments if a 10 percent  
7 reduction in pension benefits were imposed. Brann Depo., pp. 77:24-78:3. Given that Brann  
8 admits that he cannot offer an expert opinion with any degree of certainty, his testimony is clearly  
9 improper speculation, and is therefore inadmissible.

10 **F. Brann Struck Several Portions Of His Report, Which Assured May No**  
11 **Longer Rely Upon.**

12 At his deposition, Brann struck certain portions from page 16 of his Report. Specifically,  
13 Brann struck the words:

- 14 1. “and then cited recent annual lateral transfer rates in Florida at 14% and 20%,  
15 Alaska at 35%, North Carolina at an average of 14%, and Vermont municipalities  
16 at 8.25%.”; and  
17 2. “lower and the rates in many of the IACP jurisdictions and”

18 Brann Depo., at 226:20-25; 228:6-10; 228:18-229:5; 229:14-20. Brann’s reason for doing this  
19 was that his original statements “mix[ed] apples and oranges” by comparing lateral transfer rates  
20 to overall attrition rates and he “didn’t want [his statements] to be misleading.” Brann Depo., at  
21 228:20-229:5.

22 The Assured Obj. cites to the struck language at page 16, where it states: “These transfer  
23 rates are consistent with the transfer rates throughout California and elsewhere and do not support  
24 a concern of ‘mass exodus.’ Brann Report at 16 (discussing studies conducted in California and  
25 elsewhere and comparison to Stockton).” This statement is now wholly unsupported and  
26 demonstrably false, and should be stricken.

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