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1 MARC A. LEVINSON (STATE BAR NO. 57613)
 malevinson@orrick.com
 2 NORMAN C. HILE (STATE BAR NO. 57299)
 nhile@orrick.com
 3 JOHN W. KILLEEN (STATE BAR NO. 258395)
 jkilleen@orrick.com
 4 ORRICK, HERRINGTON & SUTCLIFFE LLP
 400 Capitol Mall, Suite 3000
 5 Sacramento, California 95814-4497
 Telephone: (916) 447-9200
 6 Facsimile: (916) 329-4900

7 Attorneys for Debtor
 City of Stockton

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UNITED STATES BANKRUPTCY COURT

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EASTERN DISTRICT OF CALIFORNIA

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SACRAMENTO DIVISION

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

Case No. 2012-32118

D.C. No. OHS-1

Chapter 9

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**CITY OF STOCKTON'S OPPOSITION
 TO NATIONAL PUBLIC FINANCE
 GUARANTEE'S MOTION *IN LIMINE*
 #2**

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Date: March 20, 2013

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Time: 9:30 a.m.

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Dept: C

Judge: Hon. Christopher M. Klein

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1 On March 13, National Public Finance Guarantee, on behalf of the Objectors,¹ filed a
2 motion in limine (“Mot.”) seeking to exclude “the introduction of any and all evidence of the
3 City’s postpetition actions, conduct, deliberations, or documents concerning the City’s rationale
4 for its prepetition decision not to negotiate with or seek to impair CalPERS as part of its
5 restructuring efforts.” Mot. 3 (Dkt. No. 764). According to the Objectors, such information is
6 “irrelevant.” Mot. 3 (citing Fed. R. Evid. 402).

7 In its opening papers filed in June 2012, the City submitted evidence of its
8 unwillingness—prepetition—to further reduce employee compensation and benefits (which
9 include pension benefits) because of its concern that, after years of cuts, further reductions might
10 spark departures of valuable employees, including police. *See* Declaration of Ann Goodrich
11 [Dkt. No. 20], ¶¶ 6-13; Declaration of Eric Jones [Dkt. No. 30], ¶¶ 6, 15. The Objectors
12 forcefully responded on December 14, arguing that the City was not negotiating in good faith
13 because it failed to “seek concessions” from CalPERS (and by extension, from its employees) in
14 the City’s Ask. *See, e.g.*, Assured Obj. 28 (“By failing to negotiate at all with CalPERS, the City
15 cannot claim to have negotiated in good faith for purposes of 11 U.S.C. § 109(c)(5)”; National
16 Obj. 8 (“[T]he City’s decision not to impair CalPERS was the fulcrum of the Ask and the AB 506
17 process”). In direct response, the City then filed additional, more specific reply evidence
18 concerning its “rationale for its prepetition decision not to negotiate with or seek to impair
19 CalPERS.” *See* Reply Declaration of Ann Goodrich [Dkt. No. 716], ¶¶ 4-11; Reply Declaration
20 of Eric Jones [Dkt. No. 710]; Declaration of Justin McCrary [Dkt. No. 709].

21 While the Objectors throw up a smokescreen about certain documents prepared by a City
22 consultant, their real objective in this motion in limine is to exclude reply evidence the City filed
23 on February 15, 2013. *See* Objections To Declarations Of Ann Goodrich [Dkt. No. 753] (seeking
24 to exclude paragraph 6 of Ann Goodrich’s supplemental declaration and paragraphs 2, 3, 7, 8, 9,
25 10, and 11 of Ann Goodrich’s reply declaration, based on this motion in limine); Objection To
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28 ¹ (1) Assured Guaranty Corp. and its affiliate Assured Guaranty Municipal Corp. (together, “Assured”); (2) National
Public Finance Guaranty Corporation (“National”); (3) Franklin Advisers, Inc. (“Franklin”); and (4) Wells Fargo
Bank, National Association, as indenture trustee (“Wells Fargo”).

1 Declarations Of Eric Jones [Dkt. No. 763] (seeking to exclude paragraphs 13, 14, and 15 of Chief
 2 Eric Jones’ reply declaration, based on this motion in limine).

3 The Objectors’ motion in limine conveniently ignores that the City’s reply evidence
 4 specifically addresses the bad faith arguments which the Objectors’ themselves raised. The
 5 City’s reply evidence is both closely related to its evidence of prepetition conduct and is directly
 6 relevant to refuting the Objectors’ opposition papers. As such, it should not be excluded. A
 7 point-by-point comparison of the City’s reply evidence and the Objectors’ pleadings makes this
 8 clear.

9 In the case of Ann Goodrich, all of the evidence that the Objectors misleadingly
 10 characterize as “postpetition” instead describes the results of the City’s prepetition negotiations
 11 with its labor groups, based on the City’s prepetition Ask. Specifically, Goodrich testified that
 12 the prepetition Ask and AB 506 negotiations yielded certain agreements that closely resembled
 13 those sought in the AB 506 process, and that brought City employees to at or below market
 14 wages. Such evidence demonstrates that the City’s Ask to its employees resulted in meaningful
 15 negotiations and achieved substantial savings for the City, facts directly probative of the City’s
 16 intent to negotiate in good faith prior to filing its chapter 9 petition. To illustrate, here are the
 17 paragraphs of Ann Goodrich evidence the Objectors seek to exclude based on their purported
 18 “postpetition” nature:

OBJECTORS’ ARGUMENTS	RESPONSIVE EVIDENCE FROM ANN GOODRICH DECLARATIONS THAT THE OBJECTORS SEEK TO EXCLUDE AS “IRRELEVANT”
Assured Obj. 32: “The City’s take-it-or-leave it approach does not satisfy the standard for good faith negotiation.”	Goodrich Supp. Decl., ¶ 6: “Attached hereto as Exhibit B is a chart that I compiled based on my personal knowledge and with the help of other members of the City’s team. It accurately reflects the status of negotiations between the City and each interested party as of both the petition date and as of today. Based on my involvement in the AB 506 process, it reflects that as of today, the City has reached tentative agreements on new collective bargaining agreements with six of its nine labor groups, each of which has ratified its tentative
National Prelim. Obj. 11: “In order to prove that its negotiations were in good faith, a debtor must actually engage in meaningful negotiations with its creditors.”	
Assured Prelim. Obj. 5: “The City targeted its bondholders and left CalPERS and serious labor concessions off the negotiating table.”	

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<p>National. Prelim. Obj. 18: “As previously discussed, the City has not presented evidence that it negotiated with its creditors equitably and thus, in good faith.”</p>	<p>agreement. The City Council will consider approval of the six agreements at a public session on July 24, 2012. City staff has recommended approval.”</p>
<p>Assured Obj. 32: “The City’s take-it-or-leave it approach does not satisfy the standard for good faith negotiation.”</p> <p>National Prelim. Obj. 11: “In order to prove that its negotiations were in good faith, a debtor must actually engage in meaningful negotiations with its creditors.”</p> <p>Assured Prelim. Obj. 5: “The City targeted its bondholders and left CalPERS and serious labor concessions off the negotiating table.”</p> <p>National. Prelim. Obj. 18: “As previously discussed, the City has not presented evidence that it negotiated with its creditors equitably and thus, in good faith.”</p>	<p>Goodrich Reply Decl., ¶ 2: “In the Supplemental Declaration, I described in detail the City’s negotiations with its nine employee groups during the AB 506 process. I reported that, as of July 20, 2012, the City had “reached tentative agreements on new collective bargaining agreements with six of its nine labor groups, each of which has ratified its tentative agreement. The City Council will consider approval of the six agreements at a public session on July 24, 2012. City staff has recommended approval.” On July 24, 2012, the City Council approved the six agreements referenced in the Supplemental Declaration.”</p>
<p>Assured Obj. 32: “The City’s take-it-or-leave it approach does not satisfy the standard for good faith negotiation.”</p> <p>National Prelim. Obj. 11: “In order to prove that its negotiations were in good faith, a debtor must actually engage in meaningful negotiations with its creditors.”</p> <p>Assured Prelim. Obj. 5: “Stockton has also failed to demonstrate that it has satisfied the “good faith” requirements of §§ 109(c)(5)(B) and 921(c).”</p> <p>National. Prelim. Obj. 18: “As previously discussed, the City has not presented evidence that it negotiated with its creditors equitably and thus, in good faith.”</p>	<p>Goodrich Reply Decl., ¶ 3: “Subsequently, the City reached agreements on new collective bargaining agreements with the remaining three labor groups: Stockton Fire Management Unit, International Association of Firefighters, Local 456, and Stockton Police Officers Association (“SPOA”). The last of these agreements, between the City and SPOA, was approved by the City Council on December 11, 2012 after having been ratified by the members of SPOA”</p>
<p>Assured Obj. 2: “The agenda is clear – the City hopes to use the Chapter 9 plan process to impose permanent impairment, and to cram down a non-consensual plan, on capital market creditors in order to free up cash to fund above-market labor and pension costs.”</p>	<p>Goodrich Reply Decl., ¶ 7: “Recently, Mr. Johnson completed a salary survey which evaluated where Stockton’s wages and benefits were relative to other jurisdictions, following the recent adoption of the nine labor agreements. Attached collectively as Exhibit A are true and correct copies of the salary surveys</p>

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	<p>Mr. Johnson prepared. Attached as Exhibit B is a true and correct copy of a memorandum Mr. Johnson prepared for the City in order to explain the rationale behind his decision to treat certain cities as “comparable” to Stockton.”</p>
<p>Assured Obj. 2: “The agenda is clear – the City hopes to use the Chapter 9 plan process to impose permanent impairment, and to cram down a non-consensual plan, on capital market creditors in order to free up cash to fund above-market labor and pension costs.”</p> <p>Assured Obj. 12: “Indeed, in a recent round of negotiations with labor, the City freely admits that it agreed to “things that are above the labor market average” in order to reach agreements.”</p>	<p>Goodrich Reply Decl., ¶ 8 [excerpted]: “Following years of reductions, it is no longer accurate to characterize Stockton’s employee wages and benefits as “above-market.” During the AB 506 process, one of the City’s goals in formulating the Labor Ask was to continue the work it had begun of bringing down its employee wages and benefits to rates similar to those in comparable cities. The City largely achieved this goal in the nine new agreements it signed during and after the AB 506 process. Each of the nine agreements resembled the deals that the City sought from each group in the Ask.”</p>
<p>Assured Obj. 2: “The agenda is clear – the City hopes to use the Chapter 9 plan process to impose permanent impairment, and to cram down a non-consensual plan, on capital market creditors in order to free up cash to fund above-market labor and pension costs.”</p> <p>Assured Obj. 12: “Indeed, in a recent round of negotiations with labor, the City freely admits that it agreed to “things that are above the labor market average” in order to reach agreements.”</p>	<p>Goodrich Reply Decl., ¶ 9 [excerpted]: “The recent Doug Johnson survey has confirmed that following the adoption of the City’s most recent labor agreements, the vast majority of City employees receive wages and benefits at or below the median of similarly situated positions in comparable cities”</p>
<p>Assured Obj. 2: “The agenda is clear – the City hopes to use the Chapter 9 plan process to impose permanent impairment, and to cram down a non-consensual plan, on capital market creditors in order to free up cash to fund above-market labor and pension costs.”</p> <p>Assured Obj. 12: “Indeed, in a recent round of negotiations with labor, the City freely admits that it agreed to “things that are above the labor market average” in order to reach agreements.”</p>	<p>Goodrich Reply Decl., ¶ 10: “In the June Declaration, I described the City’s drastic cuts to employee compensation and benefits since 2008, and attached as Exhibit A a chart summarizing many of the changes negotiated or imposed over the past four years for all of the City’s labor groups. Attached hereto as Exhibit C is a revised version of Exhibit A to the June Declaration, both in clean and blacklined format. This revised version shows additional reductions subsequent to June 29, 2012.”</p>
<p>Assured Obj. 2: “The agenda is clear – the City hopes to use the Chapter 9 plan process to impose permanent impairment, and to cram down a non-consensual plan, on capital market creditors in order to free up cash to fund above-market labor and pension costs.”</p>	<p>Goodrich Reply Decl., ¶ 11: “An example demonstrates starkly the reductions experienced by Stockton employees over the past four years. Attached hereto as Exhibit D is a document prepared under my supervision by the City’s Human Resources and Finance departments. The exhibit contains true and correct</p>

<p>1 Assured Obj. 12: “Indeed, in a recent round of 2 negotiations with labor, the City freely admits 3 that it agreed to “things that are above the labor 4 market average” in order to reach agreements.”</p>	<p>descriptions of the contents of actual paychecks of several individual City employees. Specifically, it compares the paycheck an employee received in October 2008 with a paycheck an employee received in 2012. As seen in Exhibit D, the paychecks of three sample employees were 20-24% lower in October 2012 than they were in October 2008, four years earlier”</p>
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7 Similarly, the Objectors suggest that Chief Jones thought about the danger of losing
 8 officers due to compensation reductions only on August 14, 2012. Mot. 6. In fact, Chief Jones
 9 expressed this concern in his initial June declaration. *See* Jones Decl., ¶ 6 (“difficulties in
 10 retention and recruitment”), ¶ 15 (“Reducing total compensation and benefits to below market
 11 rates has already resulted in and would continue to hasten the departure of employees to other
 12 police departments”). When the Objectors hurled two experts at him on December 14, he
 13 submitted additional evidence to buttress his prepetition evidence and to respond directly to the
 14 Objectors’ experts regarding the City’s recruiting and retention issues. This evidence was
 15 entirely consistent with his prepetition testimony and did not constitute an *ex post* justification for
 16 the City’s actions, as the Objectors claim. Indeed, here are the paragraphs of Chief Jones
 17 evidence the Objectors seek to exclude based on their purported “postpetition” nature”:

18 OBJECTORS’ ARGUMENT	19 EVIDENCE FROM ERIC JONES 20 DECLARATIONS THAT THE 21 OBJECTORS SEEK TO EXCLUDE AS 22 “IRRELEVANT”
<p>23 Assured Obj. 29: “Looking at the Stockton 24 data, the vast majority of lateral departures over 25 the past five years have been transfers away 26 from the economically-depressed Central 27 Valley. These are essentially lifestyle changes 28 and relocations to agencies in geographically advantageous locales, such as those along the Pacific coast, in the Bay Area, or the mountains. Brann Report at 12; Neumark Report at 8. Decisions to relocate to a different geographic area clearly were based on a number of factors, and such lifestyle transfers cannot be blamed on a concern with either past wage and benefit</p>	<p>Jones Reply Decl., ¶ 13: “Neumark and Brann argue that because Stockton police officers transferred to Departments located in cities like Oceanside, CA and Monterey, CA, they did not leave Stockton for monetary reasons, but because they wanted lifestyle changes. Neumark Report, at 8; Brann Report, at 13. I do not believe this is the case, and believe that monetary reasons are at least significant factors in why these officers left. As I stated in my deposition, I conducted exit interviews with the officers who transferred out of the Department in 2012 while I was Chief. Neumark and Brann did not take part in any of these</p>

<p>1 cuts or possible pension changes.”</p> <p>2 National Obj. 13: “The fact is that the City will</p> <p>3 remain a competitive employer even if</p> <p>4 CalPERS is moderately impaired.”</p>	<p>interviews. All of the officers told me that monetary issues were the primary reason they were leaving. Since fiscal year 2008, many of these officers experienced cuts in their pay and benefits as high as 20% and 30%. The Department had very few officers leaving to other departments before these cuts happened. Since my deposition, I was able to reflect on the exit interviews I conducted. I specifically recall 20 of these interviews. All 20 of the officers I interviewed told me they left for monetary reasons. Many had difficulty paying bills. Others worried about retirement. And even more just wanted financial stability, something they believed the Department could not offer them.”</p>
<p>10 Assured Obj. 29: “Decisions to relocate to a</p> <p>11 different geographic area clearly were based on</p> <p>12 a number of factors, and such lifestyle transfers</p> <p>13 cannot be blamed on a concern with either past</p> <p>14 wage and benefit cuts or possible pension</p> <p>15 changes.”</p> <p>National Obj. 13: “The fact is that the City will</p> <p>remain a competitive employer even if</p> <p>CalPERS is moderately impaired.”</p>	<p>Jones Reply Decl., ¶ 14: “On January 23, 2013, I attended a Stockton Police Department alumni dinner. At that dinner, I spoke with six former Stockton officers individually who transferred to different agencies in 2012. All six reiterated what they told me in their exit interviews: they left because of cuts in their pay and/or benefits”</p>
<p>16 Assured Obj. 29: “The City has provided no</p> <p>17 evidence that a modest reduction in pension</p> <p>18 benefits would cause senior police officers to</p> <p>leave.”</p> <p>19 National Obj. 13: “The fact is that the City will</p> <p>20 remain a competitive employer even if</p> <p>21 CalPERS is moderately impaired.”</p>	<p>Jones Reply Decl., ¶ 15: “15. As Chief of Police, it is my job to keep a pulse on department morale. I frequently communicate with my officers on many issues, including the City’s current financial situation and the bankruptcy case. One of the most frequently expressed concerns by my officers regards compensation and benefits, and how the City’s financial situation will affect them. During these conversations, many of my officers have said they will depart to another agency if the Department’s PERS contract is broken. Others have stated that they will leave the Department if any additional compensation or benefits cuts occur, no matter how slight.”</p>

26 In sum, the evidence the Objectors seek to exclude is relevant to the City’s prepetition

27 efforts to negotiate in good faith. When it filed its chapter 9 petition, the City was seeking

28 through the prepetition Ask to bring employee compensation to market, the subject of the Ann

