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1 JEFFREY SLOAN (SBN 78179)
2 ERICH SHINERS (SBN 244695)
3 IVAN DELVENTHAL (SBN 257886)
4 RENNE SLOAN HOLTZMAN SAKAI LLP
5 350 Sansome Street, Suite 300
6 San Francisco, CA 94104
7 Telephone: (415) 678-3800
8 Facsimile: (415) 678-3838

9 Attorneys for Defendant
10 CITY OF STOCKTON

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SAN JOAQUIN

13 RON HITTLE,
14 Plaintiff,
15 vs.
16 CITY OF STOCKTON; and DOES 1 through
17 10, inclusive,
18 Defendant(s).

19 Case No.: 39-2011-00262021-CU-OE-STK
20 EXEMPT FROM FEES (GOV. CODE §6103)

21 MEMORANDUM OF POINTS AND
22 AUTHORITIES IN SUPPORT OF
23 DEMURRER TO VERIFIED COMPLAINT
24 FOR DECLARATORY RELIEF

25 Hearing Date: June 22, 2011
26 Hearing Time: 9:00 a.m.
27 Department: 13
28 Judge: Hon. Lesley D. Holland
Complaint Filed: April 19, 2011

Reservation Number: 1567674

29 MEMORANDUM OF POINTS AND AUTHORITIES

BY FAX

30 I. INTRODUCTION

31 In his Complaint, Plaintiff RON HITTLE (Hittle or Plaintiff), the CITY OF STOCKTON (City)
32 Fire Chief, asks this Court to do what it cannot – to render an advisory opinion regarding the
33 applicability of the City Charter provisions defining his job, and to issue an opinion regarding the City’s
34 options in the event that at some speculative point in the future, the City were to decide to take some
35 form of adverse employment action against him. Neither request is properly before this Court, because
36 neither request presents an “actual controversy” as required for declaratory relief actions under Code of

RENNE SLOAN HOLTZMAN SAKAI LLP
Attorneys at Law

1 Civil Procedure section 1060. Worse, both requests are textbook examples of the kind of relief that is
2 improper under that section. On this ground alone, Plaintiff's action fails.

3 But even if this Court *could* consider Hittle's requests for advice and conjecture, his claims of
4 entitlement to relief fail as a matter of law. Hittle's claims are based on the proposition that the
5 provisions of the City Charter that define the terms of his position as Fire Chief do not apply to him
6 because those terms were amended after he was hired. Hittle claims that he has a vested right to the
7 continued viability of the terms of the City Charter as they existed at the time he was hired, and that
8 subsequent amendments by the voters to expressly change those very terms do not apply to him. Hittle's
9 proposition is in direct conflict with well-established California Supreme Court precedent holding that
10 the charter- or statutory-based terms of a public employee's job cannot "vest," because they are subject
11 to change at any time by the voters or by the relevant legislative bodies. Hittle's attempts to claim
12 otherwise relate to *contractual* terms of employment, not the *Charter-based* terms at issue here, and are
13 therefore irrelevant.

14 Because this action is not justiciable, and because even if it were, Hittle fails to state a claim
15 upon which relief may be granted, this Court should grant the City's Demurrer without leave to amend
16 and dismiss this action.

17 II. SUMMARY OF FACTS

18 The following core facts are drawn from the Complaint. The City is a charter city in the County
19 of San Joaquin. (Complaint, ¶ 2.) Plaintiff has served as City's Fire Chief since March 2006.
20 (Complaint, ¶ 5.) At the time Plaintiff was appointed Fire Chief, section 1602 of the City Charter
21 provided, in pertinent part, as follows:

22 "[The Fire Chief] shall hold the rank of Chief permanently, under civil
23 service rules and regulations, and shall be suspended, removed, or
24 discharged only in the same manner and for the same reasons as any other
25 member of the [Fire] Department, provided that the demotion of the Fire
26 Chief shall not accomplish his dismissal from the Department, but upon
27 such demotion he shall be restored to the same rank and grade as he held
28 prior to such appointment as Fire Chief.

1 (Complaint, ¶ 7, and Plaintiff's Exh. A.) At the November 2, 2010 election, City voters approved
2 Measure H, which amended sections of the Charter pertaining to the Fire Department, including section
3 1602. (See Complaint, ¶ 8, and Plaintiff's Exh. B.) As amended, the Charter currently provides that the
4 Fire Chief serves "at the pleasure of the City Manager," making the position of Fire Chief "at-will," and
5 no longer subject to civil service rules. (*Ibid.*)

6 Measure H, by its own terms, embodied an effort by the voters to "provide for a modernized
7 structure and administration of the Fire Department." (See Request for Judicial Notice, Exh. A.)
8 According to the City Attorney's Impartial Analysis of Measure H included in the Sample Ballot and
9 Voter Information Pamphlet, the measure was, among other things, to bring about changes to "the hiring
10 and terms and conditions of employment of the Fire Chief and Deputy Fire Chiefs." (Request for
11 Judicial Notice, Exh. A.) One integral part of the Charter amendment involved making the Fire Chief
12 and Deputy Fire Chief at-will employees. (Plaintiff's Exh. B; Request for Judicial Notice, Exh. A.)

13 On or about November 1, 2010, the City notified Hittle that it would be initiating a confidential
14 investigation. (Complaint, ¶ 10.) The investigation stemmed from allegations of "professional
15 misconduct or deficient performance." (Complaint, ¶ 16.) Thereafter, on or about March 30, 2011, the
16 City placed Hittle on administrative leave *with full pay and benefits* in connection with that
17 investigation. (See Complaint, ¶ 11, 12, 16.) On April 7, 2011, an investigator retained by the City
18 "interrogated"¹ Hittle, with Hittle's attorney present, as part of the investigation into the allegations of
19 misconduct or deficient performance. (Complaint, ¶¶ 12, 13.) Hittle admits that – other than placing
20 him on paid administrative leave – the City has taken no "action" with respect to his position as Fire
21 Chief, or against him as an employee. (Complaint, ¶ 11, p. 4.)

22 Notwithstanding the passage of Measure H at the polls in November 2010, Hittle claims that the
23 current Charter language defining the terms of the position he holds does not apply to him. He asserts
24 instead that the predecessor provisions of the Charter remain extant and still control, and that he is
25 therefore exempt from the newly enacted provisions making the Fire Chief an at-will employee.

26 _____
27 ¹ Under the Firefighters Procedural Bill of Rights Act (FBOR) (Gov. Code, § 3250 *et seq.*), firefighters, including fire chiefs,
28 enjoy enhanced employment rights not generally available to non-public safety public employees, including a panoply of
specific protections and rights applicable in the context of "interrogations." (Gov. Code, § 3253.) Notably, Plaintiff does not
allege any violation of FBOR.

1 (Complaint, ¶ 15.) He likewise suggests that the other amendments to the Charter provisions –
2 including deletion of the provision that previously restricted the City’s ability to demote the Fire Chief –
3 do not apply to him and that he retains the benefit of such protections. (See Complaint, p. 4.)

4 Hittle now asks the Court for: (1) a declaration “as to [Hittle’s] specific employment status as
5 Fire Chief,” that is, for an opinion from this Court as to whether Hittle is an at-will employee or
6 possesses for-cause rights; and (2) for a declaration that in the event the City – at some point in the
7 speculative future – takes an adverse employment action against him, “the only remedy is demotion to
8 the Deputy Fire Chief II position.” (Complaint, p. 4.)

9 **III. STANDARD OF REVIEW**

10 A demurrer tests the legal sufficiency of factual allegations in a complaint. (Code Civ. Proc.,
11 § 430.30; *Title Ins. Co. v. Comerica Bank-California* (1994) 27 Cal.App.4th 800, 807.) A demurrer may
12 be based on the grounds (among others) that the Court has no jurisdiction of the subject of the cause(s)
13 of action alleged in the complaint and/or that the pleading does not state facts sufficient to constitute a
14 cause of action. (Code Civ. Proc., §§ 430.10(a), (e).) While a court treats a demurrer as admitting the
15 truth of all material facts properly pleaded, the court will not assume the truth of contentions, deductions
16 or conclusions of law. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.) In ruling on a
17 demurrer, a court also may consider any matter subject to judicial notice. (Code Civ. Proc.,

18 § 430.30(a).)

19 A court may grant a demurrer in a declaratory relief action pursuant to Code of Civil Procedure
20 § 1060 “where the facts relied on by plaintiff do not support a declaration in his favor as a matter of
21 law.” (*State Farm Fire and Casualty Co. v. Superior Court* (1987) 191 Cal.App.3d 74, 76; *City of*
22 *Fresno v. California Highway Commission* (1981) 118 Cal.App.3d 687, 699; see *Farmers Ins. Exchange*
23 *v. Adams* (1985) 170 Cal.App.3d 712, 723 [noting that pursuant to Code of Civil Procedure § 1061, a
24 trial court may refuse to exercise its power to grant declaratory relief whenever such a declaration is
25 unnecessary or improper at the time, under all the circumstances and that “[t]he discretionary power of
26 the trial court to deny declaratory relief may be invoked by general demurrer”].)²

27 _____
28 ² In *Lockheed Corp. v. Continental Ins. Co* (2005) 134 Cal.App.4th 187, 221, the Sixth District Court of Appeal stated that
“strictly speaking, a demurrer is a procedurally inappropriate method for disposing of a complaint for declaratory relief.”

1 The Court should grant the City's Demurrer because Plaintiff has failed to state a cause of action
2 for declaratory relief sufficient to overcome these standards.

3 **IV. ARGUMENT**

4 **A. THIS MATTER IS NOT RIPE FOR ADJUDICATION, AND THUS DECLARATORY
5 RELIEF IS IMPROPER, BECAUSE NO 'ACTUAL CONTROVERSY' EXISTS**

6 In his Complaint, Hittle asks this Court to render an opinion as to the applicability of current City
7 Charter section 1602, and to opine on how he should be treated if at some undetermined point in the
8 future, the City should decide to subject him to an adverse employment action. Neither question is
9 justiciable.

10 Under Code of Civil Procedure section 1060, declaratory relief is available in cases "of actual
11 controversy relating to the legal rights and duties of the respective parties. . . ." Accordingly,
12 declaratory relief is *not* available unless there is a real dispute between parties, "involving justiciable
13 questions relating to their rights and obligations." (*Wilson v. Transit Authority of City of Sacramento*
14 (1962) 199 Cal.App.2d 716, 722; *Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, 831 ["The
15 fundamental basis of declaratory relief is an actual, present controversy."].)

16 An actual controversy is "one which admits of definitive and conclusive relief by judgment
17 within the field of judicial administration, as distinguished from an advisory opinion upon a particular or
18 hypothetical state of facts. The judgment must decree, not suggest, what the parties may or may not do."
19 (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 117.) As noted by the Court of
20 Appeal in *Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1582:

21 The 'actual controversy' language in Code of Civil Procedure section
22 1060 encompasses a probable future controversy relating to the legal
23 rights and duties of the parties. . . . It does not embrace controversies that
24 are conjectural, anticipated to occur in the future, or an attempt to obtain
25 an advisory opinion from the court. . . . Thus, while a party may seek
26 declaratory judgment before an actual invasion of rights has occurred, it

26 The court then quoted from 5 Witkin, Cal. Procedure, (4th ed. 1997) Pleading § 831, for the proposition that "the rule is now
27 established that the defendant cannot, on demurrer, attack the merits of the plaintiff's claim. The complaint is sufficient if it
28 shows an actual controversy; it need not show that plaintiff is in the right." (*Lockheed Corp., supra*, 134 Cal.App.4th at
p. 221.) The court did not address the contrary decisions from other courts of appeal cited above nor has any court of appeal
followed the Sixth District's ruling on this point in a published opinion. Accordingly, the weight of authority falls squarely
on the side of a demurrer being a proper means of disposing of a complaint for declaratory relief.

1 must still demonstrate that the controversy is justiciable. . . . And to be
2 justiciable, the controversy must be ripe.

3 (Internal quotations and citations omitted.) In determining whether a controversy is ripe, the courts
4 employ a two-part test that examines: “(1) whether the dispute is sufficiently concrete that declaratory
5 relief is appropriate; and (2) whether withholding judicial consideration will result in the parties
6 suffering hardship.” (*Stonehouse Homes v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 540.)

7 Plaintiff has not and cannot meet the justiciability requirement of section 1060 here. In his
8 Complaint, Plaintiff seeks precisely the kind of relief unavailable under that section: an advisory opinion
9 from this Court regarding his employment status and an opinion regarding the City’s options in the event
10 it were to elect to discipline him at some point in the future, based on his conjecture that the City may
11 opt to do so. And the Complaint itself not only fails to set forth facts showing the existence of an actual
12 – and present – controversy, but contains Plaintiff’s own admission that the City has taken no “action”
13 against him with respect to his employment (*see* Complaint, p. 4 [Plaintiff’s prayer for a declaration by
14 the Court that “[if] action is taken” against him by the City, the City’s “only remedy” is demotion to his
15 prior rank]), which brings to mind the maxim that “the court may not speculate on the future intention of
16 a public agency.” (*Viso v. State of California* (1979) 92 Cal.App.3d 15, 24.) Furthermore, Plaintiff has
17 not alleged any facts that show withholding judicial consideration of these issues until the City takes
18 action against him – if it ever does – will cause him to suffer hardship.

19 Because the Complaint fails to set forth facts establishing the existence of an actual controversy
20 – and because by Plaintiff’s own admission, no actual controversy *could* exist presently – this matter is
21 speculative and not ripe for adjudication.³ On this ground alone, this Court should grant the City’s
22 Demurrer without leave to amend.

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26 ³ To the extent Hittle argues that his placement on paid administrative leave creates an actual and justiciable controversy, his
27 claim is baseless, as his placement on leave with pay has caused him no legally cognizable injury. There has been no
28 detrimental change in the terms or conditions of Hittle’s employment, nor under these particular circumstances is there any
stigma associated with his placement on paid leave. (*Horsford v. Bd. of Trustees of Cal. St. Univ.* (2005) 132 Cal.App.4th
359, 374.)

1 **B. EVEN IF THIS ACTION WERE RIPE – AND IT IS NOT – THE ENTIRE COMPLAINT**
2 **FAILS TO STATE A VIABLE CAUSE OF ACTION AS A MATTER OF LAW**

3 In his Complaint, Hittle alleges that the provisions of the Charter relating to the position of Fire
4 Chief and to the Fire Department generally – as amended by the voters at the November 2010 general
5 election – do not apply to him because his employment pre-dates the Charter amendment. This
6 contention is untenable.

7 Public employment in California is statutory, not contractual. (*Miller v. State of California*
8 (1977) 18 Cal.3d 808, 813-814.) Because the statutory terms of public employment are subject to
9 change by voters or legislative bodies at any time, public employees have no vested right in those terms.
10 (*Hinchliffe v. City of San Diego* (1985) 165 Cal.App.3d 722.) Accordingly, employees of charter
11 governments work subject to the amendment, revision or repeal of charter provisions affecting their
12 employment. (*Id.*, citing Cal. Const., art. XI, §§ 3, 5; *Risley v. Bd. of Civil Service Commrs.* (1943) 60
13 Cal.App.2d 32, 37; *Cornell v. Harris* (1936) 15 Cal.App.2d 144, 146-147.) Indeed, the sovereign power
14 that creates a public office may abolish it or change the tenure of that office, even if that action affects
15 the tenure of an incumbent, unless restricted by the Constitution. (*Martello v. Superior Court in and for*
16 *Los Angeles County* (1927) 202 Cal. 400, 408.) If an office is a constitutional office, the constitutional
17 power that created it may likewise, in the exercise of sovereign power, abolish it.⁴ (*Ibid.*) Persons
18 accepting public office do so with this implied understanding. (*Ibid.*)

19 Several cases support the conclusion that in circumstances such as Hittle's, the employee cannot
20 claim a vested right in a charter- or statutory-based term of employment once the relevant charter or
21 statute has been amended to eliminate the alleged right. For instance, in *Hinchliffe, supra*, a
22 probationary police officer who was discharged without a hearing before the civil service commission
23 sought a writ of mandate on the ground that at the time of her hiring, the city charter granted a dismissal-
24 for-cause hearing. (*Hinchliffe, supra*, at p. 724) While the officer was still on probation, the electorate

25 ⁴ A charter is to a city what the California Constitution is to the state, i.e. a city charter represents the supreme law of the city,
26 subject only to conflicting provisions in the federal and state constitutions and to preemptive state law. (*City and County of*
27 *San Francisco v. Patterson* (1988) 202 Cal.App.3d 95, 102; *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161,
28 170; *see also* Cal. Const., art. XI, § 5 [stating that with respect to municipal affairs, city charters adopted pursuant to the state
Constitution shall supersede all laws inconsistent therewith; also granting plenary authority to cities to provide by charter or
by amendments thereto, "the manner in which, the method by which, the times at which, and the terms for which the several
municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their
removal, and for their compensation. . . ."])

1 amended the city charter to effectively eliminate the right of probationary employees to a hearing in the
2 event of discharge. (*Ibid.*) The former officer alleged that she had a vested right to the charter
3 protection that existed when she commenced her employment. (*Id.* at pp. 724-725.) The court of appeal
4 rejected the former officer’s arguments, explaining that employees of charter cities work subject to
5 amendment, revision or repeal of charter provisions affecting their employment. (*Id.* at p. 725.)

6 In *Risely, supra*, a group of civil service employees who had acquired seniority rights under
7 provisions of the city charter filed suit in an attempt to nullify a charter amendment that accorded certain
8 seniority rights to hundreds of new city employees, which had the effect of diluting plaintiffs’ own
9 seniority rights. In upholding the measure, the court rejected the plaintiffs’ “fallacious concept” that
10 they possessed “a vested, contractual, right to have the terms of their employment continue unaffected
11 by charter amendments.” (*Risely, supra*, at p. 37.) The court further noted that “[t]he rights to which
12 plaintiffs would cling are created by or under the provisions of the charter and are dependent upon those
13 provisions. They may all be lost by the repeal of the provisions or modified by an amendment to the
14 provisions, at the will of those who determine what the charter’s terms shall be.” (*Ibid.*)

15 In *Miller, supra*, a state employee filed suit after the state lowered the mandatory retirement age
16 from 70 to 67, claiming that he had a vested, contractual right to remain in public employment until he
17 had earned a larger pension at age 70 because that was the retirement age in effect when he was first
18 employed by the state. The Supreme Court, citing the maxim quoted above that public employment is a
19 creature of statute and not contract, rejected the argument, concluding that “insofar as the duration of
20 such employment is concerned, no employee has a vested contractual right to continue in employment
21 beyond the time or contrary to the terms and conditions fixed by law.” (*Miller, supra*, at p. 813.) It
22 made no difference, the Court held, that the employee occupied a civil service position, “since it is
23 equally well settled that the terms and conditions of civil service employment are fixed by statute and
24 not by contract.” (*Ibid.* (internal quotations and citations omitted.)) The Court held that the state could
25 lawfully place Plaintiff on retirement at age 67, even though the retirement age in effect when he
26 accepted employment was 70.⁵

27 _____
28 ⁵ Hittle, like the plaintiff in *Miller*, appears to suggest some form of detrimental reliance in support of his claim to a vested right to continued employment. In *Miller*, plaintiff alleged that he accepted employment with the state, remained in the state

1 As in *Hinchliffe, supra*, and *Risely, supra*, the provisions that Hittle claims entitle him to
2 continued treatment as a “for-cause” employee and prescribe a process for demotion are contained in a
3 prior version of the City Charter. Because Hittle has no vested rights in those earlier Charter-based terms
4 and conditions of his employment, the current provisions, as amended by the voters in November 2010,
5 apply to him.

6 Hittle’s attempt to analogize his situation to one involving pension rights does not alter this
7 conclusion. As Plaintiff points out, public employment may give rise to certain obligations that are
8 constitutionally protected. (*Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 852-853.) For example,
9 promised compensation creates a contractual right that, once vested, “cannot be eliminated without
10 unconstitutionally impairing the contract obligation.” (*Olson v. Cory* (1980) 27 Cal.3d 532, 538.)
11 California courts have recognized that a public employee’s pension rights are an integral element of
12 compensation and a vested contractual right that accrues upon acceptance of employment. (*Olson,*
13 *supra*, 27 Cal.3d 532, citing *Betts v. Board of Administration* (1978) 21 Cal.3d 859, 863; *Kern, supra*,
14 29 Cal.2d at pp. 852-853.)

15 But Plaintiff’s reliance on decisions concerning the pension rights of public employees is
16 misplaced because pension rights as a form of deferred compensation, involve obligations protected by
17 the contract clause of the Constitution. (*Kern, supra*, 29 Cal.2d at p. 853.) “[T]he courts of this state
18 have refused to hold, in the absence of special provision, that public employment establishes tenure
19 rights, but have uniformly held that pension laws . . . establish contractual rights.” (*Ibid.*) Recognizing
20 this distinction, the Supreme Court in *Miller* rejected a vested right argument based on *Kern, supra*, and
21 other pension rights cases that is virtually identical to the one Plaintiff makes here. (*Miller, supra*, at
22 p. 814.)

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25 service, and made “life plans” on the understanding that he would be able to work until age 70. (*Miller, supra*, at p. 813.)
26 Similarly, Hittle claims that he “relied on the civil service protection of the Fire Chief position when he accepted the
27 appointment of Fire Chief in 2006.” (Complaint, ¶ 9.) As *Miller* makes clear, an employee’s claim that he accepted public
28 employment in reliance upon a particular feature of his employment does not give him any stronger argument that he has a
vested right to that feature. Further, to the extent Plaintiff is making an estoppel argument, it bears noting that estoppel is
generally inapplicable against government bodies. (*Hilltop Properties, Inc. v. State* (1965) 233 Cal.App.3d 349, 364-365
[stating that “where justice and right require it promissory estoppel may be invoked against a governmental body where it
would not operate to defeat any strong public policy or result in the indirect enforcement of an illegal contract.”].)

1 California Supreme Court precedent demonstrates that Hittle has no vested right to the civil
2 service protections attached to the Fire Chief position at the time of his appointment to the position.⁶
3 Accordingly, Hittle's claims fail as a matter of law, and the City's Demurrer should be sustained without
4 leave to amend.

5 **V. CONCLUSION**

6 For all of the foregoing reasons, the City of Stockton respectfully requests that this Court sustain
7 the City's demurrer without leave to amend, and dismiss Plaintiff's action in its entirety.

8
9 Dated: May 20, 2011

RENNE SLOAN HOLTZMAN SAKAI LLP

10
11
12 By: 

13 Jeffrey Sloan
14 Erich Shiners
15 Ivan Delventhal
16 Attorneys for Defendant
17 CITY OF STOCKTON

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27 ⁶ Hittle's argument that Measure H only has prospective effect – which he attempts to support by citation to the pension cases
28 – misses the point. The question before this Court is not whether Measure H has retrospective or prospective effect but
whether Measure H applies to the person holding the position of Fire Chief on December 9, 2010, when the Charter
amendment took effect. *Hinchliffe, supra*, and the other authorities discussed above show that it does.

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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

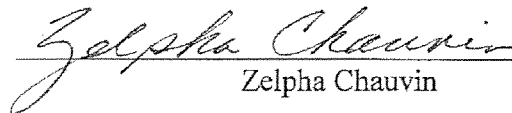
I, the undersigned, am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 350 Sansome Street, Suite 300, San Francisco, California, 94104. On May 20, 2011, I served the following document(s) by the method indicated below:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEMURRER TO VERIFIED COMPLAINT FOR DECLARATORY RELIEF**

- by placing the document(s) listed above in the sealed envelope(s) and by causing messenger delivery of the envelope(s) to the person(s) at the address(es) set forth below. I am readily familiar with the business practice of my place of employment with respect to the collection and processing of correspondence, pleadings and notices for hand delivery.
- by placing ALL document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope(s) with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited in the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- by transmitting via facsimile on this date from the fax number (415) 678-3838 the document(s) listed above to the fax number(s) set forth below. The transmission was reported complete and without error. The transmitting fax machine complies with Cal. R. Ct. 2003(3)

Randy E. Thomas, Esq.
P.O. Box 717
Woodbridge, California 95258-0717
Tel: (209) 369-9255
Fax: (209) 369-9288

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 20, 2011, at San Francisco, California.


Zelpha Chauvin

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21 **DECLARATION OF IVAN DELVENTHAL
22 IN SUPPORT OF DEMURRER TO
23 VERIFIED COMPLAINT FOR
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25 **Hearing Date: June 22, 2011**
26 **Hearing Time: 9:00 a.m.**
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28 **Judge: Hon. Lesley D. Holland**
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BY FAX

DECLARATION OF IVAN DELVENTHAL

I, IVAN DELVENTHAL, declare as follows:

1. I am an attorney with the law firm of Renne Sloan Holtzman Sakai LLP, which is counsel for Defendant, CITY OF STOCKTON (City) in the matter of *Hittle v. City of Stockton*, San Joaquin Superior Court Case No. 39-2011-00262021-CU-OE-STK. I am authorized to practice law in the State of California. I have personal knowledge of the facts set forth in this declaration and, if called upon as a witness, I could and would testify competently as to these facts.

