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11 RON HITTLE

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF SAN JOAQUIN

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

20 **Case No.: 39-2011-00262021-CU-OE-STK**

21 **PLAINTIFF'S MEMORANDUM OF**
22 **POINTS AND AUTHORITIES IN**
23 **OPPOSITION TO DEFENDANTS'**
24 **DEMURRER TO VERIFIED**
25 **COMPLAINT FOR DECLARATORY**
26 **RELIEF**

27 Hearing Date: June 22, 2011
28 Time: 9:00 a.m.
Dept.: 13
Judge: Hon. Lesley D. Holland

Plaintiff RON HITTLE submits the following points and authorities in opposition to Defendants' demurrer to Plaintiff's Verified Complaint for Declaratory Relief:

I.

IN RULING ON A DEMURRER THE COURT IS TO LOOK TO THE FACE OF THE PLEADINGS ONLY, WITH A VIEW TOWARD SUBSTANTIAL JUSTICE BETWEEN THE PARTIES

While California Code of Civil Procedure §430.10 provides that failure to "state facts sufficient to constitute a cause of action" in a pleading and an "uncertain" pleading are grounds for a demurrer, a complaint defeats a demurrer if it states any valid cause of action entitling plaintiff to relief. *Quelimane Co., Inc. v. Stewart Title Guar. Co.* (1998) 19 Cal. 4th 26. "Judges will not sustain a demurrer unless the objection is clearly well taken. The

FILED
SUPERIOR COURT

2011 JUN -2 PM 12:00

ROSA JUNQUEIRO, CLERK

BY *Stacy D. Holland*
DEPUTY

1 complaint will be construed 'liberally. . . with a view to substantial justice between the
2 parties.'" Weil & Brown, Jr., Cal. Practice Guide: Civil Procedure Before Trial (The Rutter
3 Group 2001) §7:124, citing C.C.P. §452; *Stevens v. Superior Court* (1999) 75 Cal.App.4th
4 594, 601. Furthermore, the judge must interpret the complaint reasonably, reading it as a
5 whole and considering all parts in their context. *See Courtesy Ambulance Serv. v. Superior*
6 *Court* (1992) 8 Cal.App.4th 1504, 1519.

7 A demurrer "tests the pleading alone, and not the evidence or other extrinsic matters,
8 it lies only where the defects appear on the face of the pleading." 5 Witkin, Cal. Procedure
9 (4th ed. 2006) Pleading, § 900. The Court must treat the demurrer as admitting all material
10 facts which are properly pled. *See Engstrom v. Kallins* (1996) 49 Cal.App.4th 773;
11 *Quelimane Co., Inc. v. Stewart Title, supra*, 19 Cal.4th at 28. Further, the issue on demurrer
12 is not whether plaintiff can ultimately prove all facts alleged, but whether, if the facts are
13 true, whether Plaintiff is entitled to relief. *See Southern California Thrift & Loan v. Sylvania*
14 *Elec. Products, Inc.* (1967) 248 Cal.App.2d 642, 649.

15 In summary, when grounds for objection to a complaint appear on the face of a
16 complaint, demurrer is the proper tool for objection. However, when objection to the
17 complaint appears other than on the face, demurrer is inappropriate. An issue of law arises
18 on a demurrer, which the Court is to rule upon by looking at the face of the pleadings, only,
19 with liberal construction to be granted in construing the complaint, with a view to substantial
20 justice between the parties.

21 Moreover, leave to amend must be granted if a complaint does not state an actionable
22 claim if there is a reasonable possibility that the defect can be cured by an amendment.
23 *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. As discussed herein below, Defendants'
24 Demurrer is deficient and Plaintiff's Complaint satisfies the pleading requirements under
25 California law. Therefore, Defendants' Demurrer should be overruled. Further, should the
26 Court sustain the Demurrer, Plaintiff should be given leave to amend.

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II.
THIS MATTER IS RIPE FOR ADJUDICATION

Defendants argue that this matter is not ripe for declaratory relief because there is no “actual controversy” regarding Plaintiff’s rights under the City’s Charter, and therefore Plaintiff’s complaint seeks an advisory opinion from the Court. Plaintiff will demonstrate below that there is an actual and presently existing controversy regarding Plaintiff’s employment status and the relief requested would result in a conclusive decision from the Court; therefore making this matter ripe for declaratory relief.

1. An actual and present controversy exists regarding Plaintiff’s employment rights under the amended charter.

Counsel for the CITY OF STOCKTON as well as the CITY MANAGER have orally declared to Plaintiff’s counsel, on multiple occasions that it is the position of the CITY OF STOCKTON and CITY MANAGER’S OFFICE that Plaintiff is an at-will employee as a result of the amended charter. The CITY OF STOCKTON also noted this position in a confidential memorandum to Plaintiff. (See City’s Notice of Placement on Administrative Leave page 2 attached hereto as **Attachment 1** and incorporated by reference herein)

Prior to Plaintiff being placed on administrative leave, Plaintiff asked the CITY MANAGER’S OFFICE to provide some law that substantiated their position that he was an at-will employee; the CITY did not provide any supporting law. (See Plaintiff’s email to City attached hereto as **Attachment 2** and incorporated by reference herein) Prior to filing the verified complaint for declaratory relief, Counsel for Plaintiff asked Defendant’s counsel to provide a case or statute to support their position that Plaintiff was an at-will employee; Defendant’s counsel provided no such law.

The CITY OF STOCKTON has made it their clear position that Plaintiff, RON HITTLE, is an at-will employee and that he is no longer protected by the civil service rules. Whereas, Plaintiff, RON HITTLE, believes that he remains a civil service employee under the original Charter, and therefore, he is not an at-will employee.

The CITY currently holds one position, and Plaintiff holds the opposite position-

1 herein lays an actual controversy. In *Gilb v. Chiang* (2010) 186 Cal.App.4th 444, 459 the
2 court held: “Action for declaratory relief lies when the parties are in fundamental
3 disagreement over the construction of particular legislation.” In the *Gilb* case, the director
4 of the Department of Personnel Administration (DPA) sought declaratory against the State
5 Controller regarding DPA's authority to direct the Controller to temporarily defer paying
6 State employee's salaries when appropriations were unavailable due to Legislature's failure to
7 timely enact budget; DPA was entitled to declaratory relief as a prophylactic measure. Here,
8 the parties are in fundamental disagreement over the construction of Measure H and
9 declaratory relief is an appropriate request as a prophylactic measure to define any additional
10 adverse actions the CITY may take against Plaintiff, i.e. whether Plaintiff is entitled to a civil
11 service commission review; and if Plaintiff is demoted, to what position he can be demoted
12 to.

13 The *Gilb* court further stated: “Unlike coercive relief, in which a party is ordered by
14 the court to do or refrain from doing something, a declaratory judgment merely declares the
15 legal relationship between the parties; declaratory judgment action may be brought to
16 establish rights once a conflict has arisen, or a party may request declaratory relief as a
17 prophylactic measure before a breach occurs.” (*Ibid.*) In the instant matter, Plaintiff is
18 asking the court to merely declare the legal relationship between the parties- is Plaintiff an
19 at-will employee or is Plaintiff a civil service employee?

20 The *Gilb* court concluded: “Like the doctrine of res judicata, declaratory relief
21 promotes judicial economy; declaratory judgment action provides parties with an efficient
22 means of adjudicating a disputed issue.” (*Ibid.*) Actual controversy over these questions has
23 arisen, as stated above and in the Attachments, and the demurrer must be overruled.

24 **2. The “actual controversy” requirement is one that will result in a definitive**
25 **and conclusive decision from the Court, not an advisory opinion.**

26 As the court stated in *Selby Realty Co. v. City of San Buenaventura* (1973)
27 10 Cal.3d 110, 117 “[t]he “actual controversy” required as a prerequisite to action for
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1 declaratory judgment is one which admits of definitive and conclusive relief by judgment
2 within the field of judicial administration, as distinguished from an advisory opinion on a
3 particular or hypothetical state of facts....Declaratory judgment must decree, not suggest,
4 what the parties may or may not do.”

5 Here, Plaintiff is requesting exactly what the case law and C.C.P. §1060 require- for a
6 definitive and conclusive decision as to his legal rights and employment status with the
7 CITY OF STOCKTON. The court can decide conclusively whether Plaintiff is an at-will
8 employee or whether he retains a civil service status under the original charter. Plaintiff is
9 not asking the court for an advisory opinion as Defendant’s demurrer suggests.

10 **3. A probable future controversy exists regarding Plaintiff’s legal rights under**
11 **the Charter.**

12 Should the Court determine that there is no actual controversy presently existing,
13 case law holds that the “actual controversy” requirement of Code of Civil Procedure section
14 1060 is satisfied if there is a probable future controversy relating to the legal rights of the
15 parties.

16 Defendant, CITY OF STOCKTON, quoted in its demurrer (5:19-24) from *Wilson v.*
17 *City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1582, stating that “[t]he ‘actual
18 controversy’ language in Code of Civil Procedure section 1060 encompasses a **probable**
19 **future controversy** relating to the legal rights and duties of the parties...” (emphasis added).

20 The issue of whether Plaintiff is an at-will employee or civil service employee must
21 be determined no matter what “action” is taken by the CITY OF STOCKTON. The CITY
22 has the following options: (1) Take Plaintiff off administrative leave and return Plaintiff to
23 the position of Fire Chief; (2) Demote Plaintiff from Fire Chief to a lower-level position, or
24 (3) Terminate Plaintiff’s employment. In each scenario, it is imperative that the parties
25 affirmatively know their legal rights and relationship. If Plaintiff is demoted or terminated,
26 he is entitled to an investigation by the Civil Service Commission as a civil service employee
27 under the original charter. If the court were to determine that Plaintiff is an at-will employee,
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1 he would not be entitled to the procedures of the Civil Service Commission.

2 The CITY cannot keep Plaintiff on administrative leave indefinitely; therefore a
3 probable future controversy naturally exists over Plaintiff's legal rights and relationship with
4 Defendant thereby satisfying the "actual controversy" requirement pursuant to *Wilson v. City*
5 *Council of Redwood City (Id.)*.

6 **III.**
7 **PLAINTIFF HAS PROPERLY PLED CAUSE OF ACTION FOR DECLARATORY**
8 **RELIEF**

9 In California, California Code of Civil Procedure section 1060 is broadly construed,
10 and a complaint is legally sufficient under the statute if it (1) alleges the existence of an
11 actual controversy related to the parties' legal rights and duties under a contract or statute,
12 and (2) requests the adjudication of the rights and duties by the court. (*AICCO, Inc. v.*
13 *Insurance Co. of North America (2001) 90 Cal.App.4th 579, 590; Cal. Code Civ. Proc., §*
14 *1060; Ludgate Ins. Co. v. Lockheed Martin Corp. (2000) 82 Cal.App.4th 592, 605-06.*)

15 **1. Plaintiff properly pled the elements for declaratory relief.**

16 Plaintiff's verified complaint meets each of these requirements on the face of the
17 complaint. As to the first element, Plaintiff's complaint alleges that an actual controversy
18 exists in ¶15: "An actual controversy has arisen and now exists between Plaintiff and
19 Defendants regarding Plaintiff's rights and employment status under the City's Charter..."

20 Plaintiff also properly plead the second element in ¶ 17 of the Verified Complaint by
21 requesting the adjudication of his rights by the court: "Plaintiff desires a judicial
22 determination of his current employment status as Fire Chief with the CITY OF
23 STOCKTON, i.e. whether the amendment to Section 1602 of the City's Charter has a
24 retroactive or prospective effect on the Fire Chief's civil service status."

25 Plaintiff has met the minimum requirements to properly plead a declaratory relief
26 cause of action. No evidence has been presented yet; we are at the pleading stage of
27 litigation, not the presentation of evidence stage. Whether Plaintiff is a civil service
28 employee or an at-will employee remains to be seen; however, that is an issue to be decided

1 after discovery and presentation of evidence, it is not an issue to be decided on a demurrer.

2 In the alternative, should the court find Plaintiff's complaint deficient; Plaintiff asks
3 that the court grant him leave to amend his complaint to cure any deficiencies.

4 **2. Plaintiff has vested contractual interests in promised compensation;**
5 **therefore he had a vested interest in the charter terms prior to Measure H's passage.**

6 Public employment may give rise to certain obligations which are constitutionally
7 protected. (*Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 852-853) For example,
8 promised compensation creates a contractual right which, once vested, "cannot be eliminated
9 without unconstitutionally impairing the contract obligation." (*Olson v. Cory* (1980) 27
10 Cal.3d 532, 538; *Sonoma County Organization of Public Employees v. County of Sonoma*
11 (1979) 23 Cal.3d 296, 314.)

12 Under the charter provisions, prior to the Measure H amendment, Plaintiff was
13 guaranteed to be demoted to his rank prior to taking the Fire Chief position; in this case that
14 would be Deputy Fire Chief II. (See Exhibit A to the Verified Complaint) The guarantee of
15 salary, pension benefits, health insurance, and vacation pay that are associated with the
16 Deputy Fire Chief II position, inherently assured Plaintiff, RON HITTLE, that the CITY OF
17 STOCKTON promised compensation and other contractual benefits at the time he was
18 promoted to Fire Chief. Therefore, Plaintiff was promised compensation under the original
19 charter provision, creating a vested contractual interest in the charter provisions prior to
20 Measure H's adoption.

21 **3. Plaintiff does not claim a vested right to the terms of his employment.**

22 Defendant primarily relies on *Hinchliffe v. City of San Diego* (1985) 165 Cal.App.3d
23 722, and the cases cited therein, for its position that Plaintiff, as an employee of a City
24 charter is subject to the electorate's amendments. *Hinchliffe* is distinguishable from the
25 present case because the employee there was a probationary employee of the city; as
26 compared to a permanent employee. The *Hinchliffe* court noted this distinction in its decision
27 on page 726. "The California statutory scheme regulating civil service employment confers
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1 on an individual who achieves the status of 'permanent employee' a property interest in the
2 continuation of his employment which is protected by due process." (*Skelly v. State*
3 *Personnel Bd.* (1975) 15 Cal.3d 194, 206. Here, Plaintiff, RON HITTLE, was not a
4 probationary employee when he was placed on leave; Plaintiff was in the permanent position
5 as Fire Chief for the CITY. Under the *Skelly* decision, Plaintiff would therefore have a
6 property interest in the continuation of his employment.

7 **4. A statute is presumed to act prospectively unless it expressly declares to**
8 **the contrary.**

9 Plaintiff's primary basis for believing that he retains his civil service status despite the
10 amendment to the charter is based on the well established rule of law that a statute is
11 presumed to act prospectively unless it expressly declares to the contrary. (See Code of Civil
12 Procedure, Civil Code and Penal Code §§3; *Murphy v. City of Alameda* (1992) 11
13 Cal.App.4th 906, 913; *Tevis v. City and County of San Francisco* (1954) 43 Cal.2d 190, 194-
14 195.) The amendment to Section 1602 did not expressly state that it would have any
15 retroactive effect, and therefore it must only have prospective application.

16 **5. Plaintiff would be prejudiced if the demurrer is sustained and leave to**
17 **amend is not given.**

18 Plaintiff relied on the civil service position of the Fire Chief when he accepted the
19 position in 2006. He also relied on the provision of Section 1602 which guaranteed his prior
20 rank and position as Deputy Fire Chief II should he be demoted from Fire Chief. Now the
21 City of Stockton is saying the Plaintiff should not have placed *any* reliance on the City's
22 charter provisions that promised such employment protections. The City's position creates a
23 fundamental unfairness and detrimental reliance to the highest degree for an employee who
24 has served the City and its constituents for 24 years.

25 The issue on demurrer is whether the complaint is properly pled. Here, Plaintiff's
26 verified complaint pled each necessary element for declaratory relief, and therefore,
27 Defendant's demurrer must be overruled.

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2 **IV.**
3 **SHOULD THE COURT FIND PLAINTIFF'S COMPLAINT DEFICIENT SUCH**
4 **THAT IT SUSTAINS DEFENDANT'S DEMURRER, PLAINTIFF SHOULD BE**
5 **GIVEN AN OPPORTUNITY TO AMEND HIS COMPLAINT**

6 “Liberality in permitting amendment is the rule, if a fair opportunity to correct any
7 defect has not been given.” *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.
8 When a judge sustains a demurrer, he may grant leave to amend on any just terms, at his
9 discretion. C.C.P. §472(a); See *CAMSI IV v. Hunter Technology Corp.* (1991) 230
10 Cal.App.3d 1525, 1538. “A judge must grant a plaintiff leave to amend if there is a
11 reasonable probability that the defect in the complaint can be cured by amendment or if the
12 complaint can be liberally construed to create a cause of action and the plaintiff has not been
13 afforded a previous opportunity to amend.” California Judges Benchbook, Civil Proceedings
14 Before Trial, supra, §12.44, citing *City of Chula Vista v. County of San Diego* (1994) 23
15 Cal.App.4th 1713, 1719. Further, “[w]hether a demurrer is sustained or a motion for
16 judgment on the pleadings is granted as to the original complaint, denial of leave to amend
17 constitutes an abuse of discretion if the pleading does not show on its face that it is incapable
18 of amendment.” *Virginia G. v. ABC Unified School District* (1993) 15 Cal.App.4th 1848,
19 1852.

20 Here, Plaintiff has properly pled the cause of action for declaratory relief and the
21 matter is ripe for adjudication; however, should the court find Plaintiff's complaint deficient;
22 Plaintiff asks that the court grant him leave to amend his complaint to cure any deficiencies.

23 **V.**
24 **CONCLUSION**

25 As show above, an “actual controversy” presently exists over Plaintiff's legal rights
26 under the City's charter, i.e. whether Plaintiff is an at-will employee or a civil service
27 employee of the CITY OF STOCKTON. This controversy is actual and present because the
28 CITY OF STOCKTON has taken an unambiguous position, on multiple occasions, that
Plaintiff is an at-will employee; and Plaintiff has taken the position that he remains a civil

1 service employee. This issue is ripe for declaratory relief.

2 An "actual controversy" also exists because the relief requested by Plaintiff is such
3 that the Court may render a conclusive decision on the issue of Plaintiff's employment
4 rights, i.e. the court may affirmatively decide whether Plaintiff is an at-will employee or not.

5 Furthermore, Plaintiff properly plead the cause of action for declaratory relief, in
6 paragraphs 15 and 17 of the verified complaint.

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8 DATED: June 2, 2011

LAW OFFICE OF RANDY E. THOMAS

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By: Jennifer D. Williams
JENNIFER D. WILLIAMS

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ATTACHMENT 1

Confidential Memo: Ron Hittle
Notice of Placement on Administrative Leave
March 30, 2011
Page 2

7. You are directed to contact me immediately if you have any questions about this notice.

This notice and the conduct of an investigation are without prejudice to the City's perspective that you are at will employee who serves at the pleasure of the City Manager as provided by Charter section 1602. Section 1602 provides that "the Fire Department shall be under the control, management, and direction of a Fire Chief. The Fire Chief shall be appointed by the City Manager and shall hold that position at the pleasure of the City Manager." This section was lawfully enacted by the electorate in the November 2010 election.

For your information, the enclosed advisement sets forth rights and processes under the Firefighters Procedural Bill of Rights ("FBOR," Government Code section 3250 et seq.) in connection with investigations. Please sign the following acknowledgement.



Laurie Montes
Deputy City Manager

Enclosure

I acknowledge receipt of this memo and its enclosure (FBOR Interrogation Provisions).



Ron Hittle

3/30/2011

Date

ATTACHMENT 2



Charter retro explanation

Sunday, February 27, 2011 12:24 AM

From: "Ron Hittle" <rhitt3@yahoo.com>

To: woodbridgelaw77@yahoo.com

I believe this is what we spoke about. If I missed anything please provide feedback. I plan to give to Laurie Montes on Monday afternoon at a scheduled meeting. Ron

February 28, 2011

To: Laurie Montes, Deputy City Manager

From: Ron Hittle, Fire Chief

Subject: Retroactivity of City Charter section 1602

In review of charter section 1602 , I have questioned the retroactivity of this newly adopted City Charter section language as it relates to language prior to Measure H. I believe this question is pertinent to my current position as Fire Chief. Please provide me with an explanation so we may continue with settlement discussions.

1 **PROOF OF SERVICE**

2 I am over the age of 18 years, and not a party to or interested in the within entitled cause.
3 I am an employee of THE LAW OFFICE OF RANDY E. THOMAS and my business address is
4 18826 North Lower Sacramento Road, Suite G, Woodbridge, California 95258. I am readily
familiar with the business practice for collection and processing of correspondence for mailing
with the United States Post Office.

5 On June 2, 2011, I caused to be served the following document:

6
7 **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION**
8 **TO DEFENDANTS' DEMURRER TO VERIFIED COMPLAINT FOR DECLARATORY**
9 **RELIEF**

10 **MANNER OF SERVICE**

11
12 **U.S. MAIL:** By causing a true copy thereof to be served on the parties in this enclosed
13 in a sealed envelope with first class postage thereon fully prepaid in the United States
Post Office at Woodbridge, California, addressed as set forth below.

14 **PERSONAL DELIVERY:** On the parties in this action by causing a copy thereof to be
15 personally delivered by hand to the addressee(s) listed below.

16 **OTHER:** On the parties in this action by causing a true copy thereof to be delivered by
and/or through the services of:

17 Federal Express UPS - Next Day Delivery Facsimile

18
19 **PARTIES SERVED AND ADDRESSES**

20
21 Jeffrey Sloan
22 RENNE SLOAN HOLTZMAN SAKAI LLP
23 350 Sansome Street, Suite 300
San Francisco, CA 94104

24 I declare under penalty of perjury under the laws of State of California that the foregoing
25 is true and correct and that this declaration was executed on June 2, 2011, at Woodbridge,
California.

26 
27 _____
28 MICHELLE FOWLER