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Filed ^{sc} FEB 01 2012, _____
RBSA JUNQUEIRO, CLERK

By Paneta DEPUTY Cox

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

10 RON HITTLE,) Case No.: 39-2011-00262021-CU-OE-STK
11 Plaintiff,)
12 v.) RULINGS ON DEFENDANT'S DEMURRER TO
13 CITY OF STOCKTON, et al.,) PLAINTIFF'S SECOND AMENDED
14 Defendants.) COMPLAINT;
15) RULING ON DEFENDANT'S MOTION TO
16) STRIKE
17)
18)
19)
20)
21)

22 On January 19, 2012, the following matters came on regularly for hearing before the Honorable Lesley
23 D. Holland, Judge of the Superior Court of California: (1) Defendant City of Stockton's demurrer to
24 Plaintiff's Second Amended Complaint, and (2) Defendant City of Stockton's motion to strike certain
25 allegations contained in Plaintiff's Second Amended Complaint.

26 The following appearances were noted: Law Office of Randy E. Thomas, by Randy E. Thomas,
27 appeared for Plaintiff Ron Hittle; and Renne Sloan Holtzman Sakai LLP, by Erich Shiners, appeared for
28 Defendant City of Stockton.

The court has read and considered the points and authorities, declarations, and other writings submitted in support of and in opposition to said motion, and has heard and considered the arguments of counsel.

1 Demurrer

2 Although a public employee's compensation rights (including pension rights) may vest, the same
3 cannot be said for other terms and conditions of public employment. *Miller v. State of California* (1977) 18
4 Cal.3d 808, 814, and *Hinchliffe v. City of San Diego* (1985) 165 Cal.App.3d 722, 725, are controlling. As a
5 matter of well-settled law, Hittle has no vested right to "permanent" public employment.
6

7 Hence, the Measure H amendments approved by the voters in 2010, and which changed significant
8 terms of employment of the Fire Chief, do apply to Hittle notwithstanding whatever terms existed at the time
9 he accepted the position. Stated differently, as a matter of law, Hittle became an "at will" employee of the
10 City of Stockton immediately upon measure H's passage.

11 Further, it appears that Charter section 2542 (contained in Article XXV) does not apply – rather, a Fire
12 Chief's return rights are governed by Article XVI of the City's Charter – and, therefore, that Hittle is not
13 entitled to return to his former position of Battalion Chief.

14 Plaintiff has not shown that he can cure the defects in his pleading or otherwise state a viable cause of
15 action. Therefore, **Defendant's demurrer is sustained without leave to amend.**
16

17
18 Motion to Strike

19 Defendant's motion to strike certain allegations (§15 of the Second Amended Complaint) is moot in
20 light of the ruling above and denied on that ground only.

21
22 Dated: February 1, 2012



23 Lesley D. Holland,
24 Judge of the Superior Court of California
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