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10 Attorneys for Ronald Hittle

11 **UNITED STATES BANKRUPTCY COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA**  
13 **SACRAMENTO DIVISION**

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

17 **Case No. 12-32118**  
18 **DCN: MH-001**  
19 **Chapter 9**

20 **EXHIBITS IN SUPPORT OF MOTION**  
21 **FOR RELIEF FROM THE**  
22 **AUTOMATIC STAY OF 11 U.S.C. §**  
23 **362(a) AS TO PENDING CIVIL**  
24 **RIGHTS ACTION.**

25 **Date: November 20, 2012**  
26 **Time: 9:30 a.m.**  
27 **Judge: Hon. Christopher M. Klein**  
28 **Location: 501 "I" Street, 6<sup>th</sup> Flr**  
**Courtroom No. 35**  
**Sacramento, CA**

29 **EXHIBITS IN SUPPORT OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY**  
30 **OF 11 U.S.C. § 362(a) AS TO PENDING CIVIL RIGHTS ACTION.**

31 In support of his Motion For Relief From Automatic Stay Of 11 U.S.C. § 362(a) As To  
32 Pending Civil Rights Action, RONALD HITTLE hereby submits the following exhibits:

<u>Exhibit</u>	<u>Document</u>	<u>Pages</u>
1	Complaint for Damages in the case of <u>Hittle V. City Of Stockton,</u> et al; Case No. 2:12-cv-00766-GEB-KJN, in the U.S. District Court for the Eastern District of California.	16

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2 Order of the district court in Hittle V. City Of Stockton, et al, Case 5  
No. 2:12-cv-00766-GEB-KJN applying bankruptcy stay to Non-  
Debtor Defendants.

Dated: October 23, 2012

LAW OFFICES OF MAYALL HURLEY, PC

By /s/ Mark S. Adams

MARK S. ADAMS  
Attorneys For Ronald Hittle

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# Exhibit 1

1 **MAYALL HURLEY**  
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3 **MARK S. ADAMS**  
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4 **WILLIAM G. GORHAM**  
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5 **JOHN P. BRISCOE**  
CA State Bar No. 273690

6 **Attorneys for Plaintiff, Ronald Hittle**

7  
8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

10 **RONALD HITTLE,**  
11 **Plaintiff,**

12 vs.

13  
14 **THE CITY OF STOCKTON,**  
15 **CALIFORNIA, a municipal corporation;**  
16 **ROBERT DEIS, in his official capacity and**  
17 **as an individual; LAURIE MONTES, in her**  
18 **official capacity and as an individual; and**  
19 **DOES 1-100 inclusive,**  
20 **Defendants.**

Case No.:

**COMPLAINT FOR DAMAGES FOR**

- 1. **RELIGION DISCRIMINATION (FEHA)**
- 2. **RELIGION DISCRIMINATION (TITLE VII)**
- 3. **ASSOCIATION DISCRIMINATION (FEHA)**
- 4. **ASSOCIATION DISCRIMINATION (TITLE VII)**
- 5. **RETALIATION (FEHA)**
- 6. **RETALIATION (TITLE VII)**
- 7. **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION (FEHA)**
- 8. **VIOLATION OF 42 USC § 1983**
- 9. **BREACH OF CONTRACT**

**JURY TRIAL DEMANDED**

21  
22 Plaintiff Ronald Hittle brings this action against the City of Stockton, and Does 1 through  
23 100, for general, compensatory, punitive, and statutory damages, costs and attorneys' fees,  
24 resulting from the Defendants' unlawful and tortious conduct, as grounds therefore alleges:

25 **PARTIES**

26 1. Plaintiff Ron Hittle ("Hittle") is an individual and is, and was at all times relevant  
27 herein, a resident of San Joaquin County, California. At all times relevant herein, Hittle was

1 employed in San Joaquin County, California, and an “employee” as defined by California  
2 Government Code § 12926 and 42 USC § 2000e-2(a). Hittle is and, at all times relevant was, a  
3 Christian.

4 2. Hittle is informed and believes and thereon alleges that the City of Stockton (“the  
5 City”) is a municipal corporation and an “employer” as defined by Gov. Code §§ 12926(d),  
6 12940(a), 12940(j)(4)(A), and 42 USC § 2000e(b).

7 3. Hittle is informed and believes and thereon alleges that Robert Deis was a  
8 supervisor as defined by Gov. Code § 12926(s), and an agent as defined by 42 USC § 2000e(b).  
9 At all times relevant, Deis was an individual and a resident of San Joaquin County. Hittle hereby  
10 sues Deis in his official capacity as City Manager for the City of Stockton, and in his individual  
11 capacity.

12 4. Hittle is informed and believes and thereon alleges that Laurie Montes was a  
13 supervisor as defined by Gov. Code § 12926(s), and an agent as defined by 42 USC § 2000e(b).  
14 At all times relevant, Montes was an individual and a resident of San Joaquin County. Hittle  
15 hereby sues Montes in her official capacity as Deputy City Manager for the City of Stockton, and  
16 in her individual capacity.

17 5. Hittle is not aware of the true names and capacities of the Defendants sued herein  
18 as Does 1 through 100, whether individual, corporate, associate, or otherwise, and therefore sues  
19 such Defendants by these fictitious names. Hittle will amend this Complaint to allege their true  
20 names and capacities when ascertained. Hittle is informed and believes, and on that basis  
21 alleges, that each of the fictitiously named Defendants is responsible in some manner for the  
22 occurrences herein alleged and that Hittle’s injuries and damages herein alleged were legally  
23 caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the  
24 course and scope of said agency and/or employment, with the knowledge and/or consent of said  
25 co-Defendant.

26 6. Hittle is informed and believes and thereupon alleges that at all times mentioned  
27 herein, each of the Defendants, including each Doe defendant, was acting as the agent, servant,

1 employee, partner and/or joint venturer of and was acting in concert with each of the remaining  
2 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times  
3 acting within the course and scope of such agency, service, employment partnership, joint  
4 venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting  
5 both individually and within the course and scope of such agency and/or employment, with the  
6 knowledge and/or consent of the remaining Defendants.

#### 7 VENUE AND JURY TRIAL DEMAND

8 7. Venue is proper under 28 USC § 1391(b)(2) because a substantial part of the  
9 events or omissions giving rise to Plaintiff's claim occurred in the subject judicial district. Hittle  
10 hereby demands a jury trial.

#### 11 SUBJECT MATTER JURISDICTION

12 8. This Court has subject matter jurisdiction over this action under 28 USC § 1331  
13 because it arises under the Constitution and laws of the United States (including 42 USC § 1983  
14 and Title VII of the 1967 Civil Rights Act) and because there is a substantial question of federal  
15 law involved.

#### 16 GENERAL ALLEGATIONS

17 9. In March of 1987, Hittle began working for the City of Stockton Fire Department  
18 as a firefighter. Over the years, he rose through the Department to attain the rank of Chief.

19 10. On or about July 9, 2010, Hittle had an introductory meeting with Bob Deis, the  
20 newly appointed City Manager for the City of Stockton. Deis asked Hittle for his personal  
21 background, whereupon Hittle remarked that he was a devout Christian and that his religion  
22 instilled in him strong values of honesty and integrity. Deis cut Hittle off and changed the  
23 subject.

24 11. In mid-2010, Laurie Montes, the Deputy City Manager for the City of Stockton,  
25 told Hittle that he and his staff members needed to improve their leadership skills, and that they  
26 should attend leadership training.

27 ///

1           12.     Heeding Montes' advice, on August 9 and 10, 2010, Hittle and three fellow  
2 Stockton Fire Department officers—Matt Duaine, Paul Willette, and Jonathan Smith—attended  
3 a Christian-affiliated leadership seminar in Livermore, California called the Willow Creek  
4 Global Leadership Summit. The men paid the attendance fee out of their own funds, and dressed  
5 in plain clothes when attending.

6           13.     In or about September of 2010, an anonymous letter was sent to City Hall, stating  
7 that Hittle held a property interest in a cabin retreat in along with other firefighters and Dave  
8 Macedo, President of the International Association of Firefighters Local 456. Soon thereafter, a  
9 highly negative article was printed in the Stockton Record, which claimed that Hittle was so  
10 close to the union as to cloud his professional judgment.

11           14.     In fact, Hittle and Macedo had kept property interests in a cabin in Dorrington,  
12 California for five years, along with Matt Duaine (Battalion Chief, Stockton F.D.), Al Anton  
13 (Captain, retired, Stockton F.D.), and the men's wives. At the time of purchase, Hittle held the  
14 title of Deputy Chief; and Macedo held the title of Captain and was not yet president of the  
15 firefighters' union. It was common practice among senior Fire Department officers to pool their  
16 resources to purchase real estate, boats, etc.

17           15.     In or about October of 2010, Montes told Hittle that she was aware that he had  
18 attended a Christian-affiliated seminar and that was unacceptable for him to have done so.  
19 Furthermore, Montes recited rumors that Hittle had organized a "Christian coalition" within the  
20 ranks of the Fire Department, and that this was also improper. Hittle protested this, saying that  
21 he attended a leadership seminar at Montes' behest, that it was highly beneficial for his  
22 professional development, and that it did not matter that the seminar was Christian in its  
23 character; the focus of the seminar was leadership development.

24           16.     Soon thereafter, on or about November 1, 2010, Hittle was summoned to the  
25 office of the City Manager, Robert Deis. With Montes also present, Deis presented Hittle with a  
26 list of approximately ten alleged violations of City policy, including Hittle's attendance at a  
27 religious-themed seminar, his permitting subordinates to attend the seminar with him, and his co-

1 ownership of the cabin retreat. Deis told Hittle that unless he accepted a demotion to Battalion  
2 Chief, he would be investigated for these purported violations. Deis even threatened Hittle,  
3 saying words to the effect of "I'll drag your name through the mud," "the investigation will be  
4 embarrassing for you and your family," and "you will probably win in a long, expensive legal  
5 battle, but your reputation will suffer irreparable harm." Further, Montes indicated that even if  
6 Hittle did accept the demotion, the alleged violations would remain in his file and so could be  
7 used against him later. Hittle protested this proposed action by Deis and refused to accept the  
8 lower position.

9 17. In or around March of 2011, another negative article appeared in the Stockton  
10 Record, this time criticizing Hittle for his attendance of the Willow Creek Summit.

11 18. On or about March 31, 2011, Hittle was placed on paid administrative leave while  
12 the allegations against him were, at the instigation of Deis and/or Montes, investigated.

13 19. Over the course of two days in April of 2011, Hittle was interviewed at great  
14 length by an investigator, acting on behalf of the City, by the name of Trudy Largent. Largent  
15 interrogated Hittle on the subjects of the seminar, his personal religious beliefs and those of the  
16 other firefighters who attended the seminar, his property interest in the Dorrington cabin, and his  
17 hiring of a consultant, George Liepart, with whom Hittle was engaged in a project to build a  
18 church school. Additionally, although Hittle, at Largent's request, provided names of persons  
19 who could substantiate his own testimony, none of those persons were ever contacted.

20 20. On or about August 24, 2011, Hittle received a letter, signed by Deis, titled  
21 "Notice of Intent to Remove From City Service." This letter cited him for attending the  
22 leadership seminar with his subordinates, his association with George Liepart, and for his  
23 property interest in the Dorrington cabin.

24 21. On or about October 3, 2011, Hittle's employment with the City was terminated.

25 22. By the end of his employment with the City, Hittle had accumulated  
26 approximately \$114,896.35 in unused sick leave. As set forth in the Memorandum of  
27 Understanding between the City of Stockton and its non-unionized, managing Fire Department

1 personnel, employees like Hittle accrue sick leave at the rate of fifteen hours for each month of  
2 service and, when separated with ten or more years of service, the employee is to be paid fifty  
3 percent of the total unused sick leave at its "current value." The total value of that sick leave has  
4 not been paid to Hittle. Instead, he was paid a lesser amount that was not at the "current value."

5 23. Following his termination, on December 20, 2011, the City of Stockton further  
6 retaliated against Hittle by commencing a new investigation, this time into unfounded allegations  
7 that, *inter alia*, Hittle had discriminated against employees on the basis of race.

8 24. On February 29, 2012, Hittle presented a claim with the City in compliance with  
9 the Government Claims Act. On information and belief, Hittle alleges that the claim has or will  
10 be rejected or deemed rejected by operation of law.

11 25. Accordingly, on or about February 29, 2012, Hittle filed a complaint with the  
12 Department of Fair Employment and Housing (DFEH) against the City of Stockton, alleging  
13 religion discrimination, association discrimination, harassment, retaliation, failure to prevent  
14 discrimination or retaliation, and termination. Hittle received a right to sue notice from the  
15 DFEH that same day and served it on the City Clerk by fax.

16 26. Additionally, on March 1, 2012, Hittle filed a complaint with the federal Equal  
17 Employment Opportunity Commission (EEOC), alleging the same violations as set forth in  
18 paragraph 25, above. The EEOC has represented to Hittle that a federal right-to-sue letter is  
19 forthcoming.

20 27. The list of misconduct by the City in the above allegations is a partial list only,  
21 and by way of example.

22 28. Since being fired from the City, Hittle has suffered economic damages, including  
23 loss of wages, loss of benefits, medical expenses and other past and future economic damages.  
24 Hittle has also suffered emotional distress and physical symptoms as a result of this prolonged  
25 harassment, retaliation and termination of employment. As a further result of the wrongful acts  
26 of Defendants, and each of them, Hittle has been forced to hire attorneys to prosecute his claims  
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28

1 herein, and has incurred and is expected to incur attorneys' fees and costs in connection  
2 therewith.

3  
4 **FIRST CAUSE OF ACTION**  
5 **VIOLATION OF CALIFORNIA GOVERNMENT CODE § 12940(a)**  
6 **(Religion Discrimination - FEHA)**  
7 **Against the City of Stockton and Does 1-100**

8 29. Hittle hereby realleges and incorporates by reference Paragraphs 1 through 28  
9 above as though fully set forth herein, except as said paragraphs are inconsistent with the  
10 allegations of this cause of action.

11 30. The Fair Employment and Housing Act (FEHA) explicitly prohibits an employer  
12 from refusing to hire or employ a person, discharging a person from employment, or  
13 discriminating against such person in compensation or in terms, conditions or privileges of  
14 employment on the basis of a religious creed, pursuant to Gov. Code § 12940(a).

15 31. The City at all times material herein was Hittle's employer pursuant to  
16 Government Code section 12926(d) and was therefore barred from discriminating in its  
17 employment decisions on the basis of a religious creed pursuant to Government Code section  
18 12940(a).

19 32. At all times herein mentioned, Hittle was qualified for his position with the City.

20 33. Nonetheless, as set forth above, the City discriminated against Hittle based upon  
21 his religious creed, in violation of Government Code section 12940(a).

22 34. As a direct and legal result of the defendants' discriminatory actions against him,  
23 Hittle has suffered emotional distress and physical symptoms, pain and suffering, has lost  
24 income and related benefits, past and future, and medical expenses.

25 35. Wherefore, Hittle has been damaged as set forth below and requests relief as  
26 hereafter provided.

27 **SECOND CAUSE OF ACTION**  
28 **VIOLATION OF 42 USC § 2000e-2(a)(1)**  
29 **(Religion Discrimination – Title VII)**  
30 **Against the City of Stockton and Does 1-100**

1 36. Hittle hereby realleges and incorporates by reference Paragraphs 1 through 35  
2 above as though fully set forth herein, except as said paragraphs are inconsistent with the  
3 allegations of this cause of action.

4 37. Title VII of the 1967 Civil Rights Act explicitly prohibits an employer from  
5 discharging or otherwise discriminating against any individual with respect to his or her  
6 compensation, terms, conditions, or privileges of employment on the basis of religion. 42 USC §  
7 2000e-2(a)(1).

8 38. The City was at all times material hereto Hittle's employer pursuant to 42 USC §  
9 2000e(b) and was therefore barred from discriminating in its employment decisions on the basis  
10 of religion, pursuant to 42 USC § 2000e-2(a)(1).

11 39. At all times herein mentioned, Hittle was qualified for his position with the City.

12 40. Nonetheless, as set forth above, the City terminated Hittle based upon his religion  
13 in violation of 42 USC § 2000e-2(a)(1).

14 41. As a direct and legal result of Defendants' conduct, Hittle has suffered emotional  
15 distress and physical symptoms, pain and suffering, has lost income and related benefits, past  
16 and future, and has incurred medical expenses.

17 42. Wherefore, Hittle has been damaged as set forth below and requests relief as  
18 hereafter provided.

19 **THIRD CAUSE OF ACTION**  
20 **VIOLATION OF GOVERNMENT CODE SECTION 12940(a)**  
21 **(Association Discrimination – FEHA)**  
22 **Against the City of Stockton and Does 1-100**

23 43. Hittle hereby realleges and incorporates by reference Paragraphs 1 through 42  
24 above as though fully set forth herein, except as said paragraphs are inconsistent with the  
25 allegations of this cause of action.

26 44. The FEHA explicitly prohibits an employer from refusing to hire or employ a  
27 person, discharging a person from employment, or discriminating against such person in  
28 compensation or in terms, conditions or privileges of employment on the basis of race, religious

1 creed, color, national origin, ancestry, physical disability, mental disability, medical condition,  
2 marital status, sex, age or sexual orientation. Gov. Code § 12940(a). "Race, religious creed,  
3 color, national origin, ancestry, physical disability, mental disability, medical condition, marital  
4 status, sex, age, or sexual orientation" includes a perception that the person has any of those  
5 characteristics or that the person is associated with a person who has, or is perceived to have, any  
6 of those characteristics. Gov. Code § 12926(m).

7 45. At all times herein mentioned, Hittle was qualified for the position he held for the  
8 City of Stockton.

9 46. The City of Stockton was at all times material herein Hittle's employer pursuant  
10 to Government Code section 12926(d) and was therefore barred from discriminating in its  
11 employment decisions in violation of Government Code section 12940(a).

12 47. Nevertheless, as set forth above, the City discriminated against Hittle in violation  
13 of Government Code section 12940(a).

14 48. As a direct and proximate result of Defendants' conduct, Hittle has suffered  
15 emotional distress and physical symptoms, pain and suffering, has lost income and related  
16 benefits, past and future, and medical expenses.

17 49. Wherefore, Hittle has been damaged as set forth below and requests relief as  
18 hereafter provided.

19 **FOURTH CAUSE OF ACTION**  
20 **VIOLATION OF 42 USC 2000e-2(a)(1)**  
21 **(Association Discrimination – Title VII)**  
22 **Against the City of Stockton and Does 1-100**

23 50. Hittle hereby realleges and incorporates by reference Paragraphs 1 through 49  
24 above as though fully set forth herein, except as said paragraphs are inconsistent with the  
25 allegations of this cause of action.

26 51. Title VII of the 1967 Civil Rights Act explicitly prohibits an employer from  
27 discharging or otherwise discriminating against any individual with respect to his or her  
28 compensation, terms, conditions, or privileges of employment on the basis of religion. 42 USC §

1 2000e-2(a)(1). "On the basis of religion" includes a perception that the person is associated with  
2 a religious person.

3 52. The City was at all times material hereto Hittle's employer pursuant to 42 USC  
4 section 2000e(b) and was therefore barred from discriminating in its employment decisions on  
5 the basis of religion, pursuant to 42 USC § 2000e-2(a)(1).

6 53. At all times herein mentioned, Hittle was qualified for his position with the City.

7 54. Nonetheless, as set forth above, the City terminated Hittle based upon his religion  
8 in violation of 42 USC § 2000e-2(a)(1).

9 55. As a direct and legal result of Defendants' conduct, Hittle has suffered emotional  
10 distress and physical symptoms, pain and suffering, has lost income and related benefits, past  
11 and future, and has incurred medical expenses.

12 56. Wherefore, Hittle has been damaged as set forth below and requests relief as  
13 hereafter provided.

14 **FIFTH CAUSE OF ACTION**  
15 **VIOLATION OF GOVERNMENT CODE SECTION 12945(h)**  
16 **(Retaliation - FEHA)**  
17 **Against the City of Stockton and Does 1-100**

18 57. Hittle hereby realleges and incorporates by reference Paragraphs 1 through 56  
19 above as though fully set forth herein, except as said paragraphs are inconsistent with the  
20 allegations of this cause of action.

21 58. The FEHA explicitly prohibits an employer or person from discharging,  
22 expelling, or otherwise discriminating against any person because the person has opposed any  
23 practices forbidden under the FEHA or because the person has filed a complaint, testified or  
24 assisted in any proceeding under the FEHA pursuant to Government Code section 12940(h).

25 59. The City was at all times relevant herein Hittle's employer pursuant to  
26 Government Code sections 12926(d) and 12940(j)(4) and was therefore barred from  
27 discriminating against its employees pursuant to Government Code sections 12940(h) and  
28

1 12945.2(l)(1). Nevertheless, the City retaliated against Hittle because he complained about the  
2 discrimination.

3 60. As a direct and legal result of Defendants' conduct, Hittle has suffered emotional  
4 distress and physical symptoms, pain and suffering, has lost income and related benefits, past  
5 and future, and has incurred medical expenses.

6 61. Wherefore, Hittle has been damaged as set forth below and requests relief as  
7 hereafter provided.

8 **SIXTH CAUSE OF ACTION**  
9 **VIOLATION OF GOVERNMENT CODE 42 USC SECTION 2000e-3(a)**  
10 **Against the City of Stockton and Does 1-100**  
11 **(Retaliation – Title VII)**

12 62. Hittle hereby realleges and incorporates by reference Paragraphs 1 through 61  
13 above as though fully set forth herein, except as said paragraphs are inconsistent with the  
14 allegations of this cause of action.

15 63. Title VII of the 1967 Civil Rights Act explicitly prohibits an employer from  
16 discriminating against an employee because that person has opposed practices prohibited by Title  
17 VII. 42 U.S.C. § 2000e-2(a)(1).

18 64. The City was at all times material hereto Hittle's employer pursuant to 42 USC §  
19 2000e(b) and was therefore barred from retaliating against him pursuant to 42 USC § 2000e-3(a).

20 65. Nonetheless, as set forth above, the City retaliated against Hittle in violation of  
21 42 USC section 2000e-2(a)(1).

22 66. As a direct and legal result of Defendants' conduct, Hittle has suffered emotional  
23 distress and physical symptoms, pain and suffering, has lost income and related benefits, past  
24 and future, and has incurred medical expenses.

25 67. Wherefore, Hittle has been damaged as set forth below and requests relief as  
26 hereafter provided.

27 **SEVENTH CAUSE OF ACTION**  
28 **VIOLATION OF GOVERNMENT CODE § 12940(k)**  
29 **(Failure to Prevent Discrimination and Retaliation - FEHA)**  
30 **Against the City of Stockton and Does 1-100**

1  
2 68. Hittle hereby realleges and incorporates by reference Paragraphs 1 through 67  
3 above as though fully set forth herein, except as said paragraphs are inconsistent with the  
4 allegations of this cause of action.

5 69. The FEHA requires an employer to "take all reasonable steps necessary to prevent  
6 discrimination and harassment from occurring." Gov. Code § 12940(k),

7 70. The City at all times material hereto was Hittle's employer pursuant to  
8 Government Code section 12926(d), and was therefore required to prevent discrimination and  
9 retaliation. Gov. Code § 12940(k).

10 71. The City knew or should have known of the discrimination on the part of its  
11 employees, supervisors, managers, and Does 1-100, inclusive.

12 72. Nevertheless, as set forth above, the City did nothing to rectify or prevent said  
13 discrimination and retaliation. Instead, the City consented to, encouraged, permitted, and/or  
14 acquiesced to the discrimination and retaliation, ultimately terminating Hittle.

15 73. As a direct and legal result of the defendants' discriminatory actions against him,  
16 Hittle has suffered emotional distress and physical symptoms, pain and suffering, has lost  
17 income and related benefits, past and future, and medical expenses.

18 74. Wherefore, Hittle has been damaged as set forth below and requests relief as  
19 hereafter provided.

20 **EIGHTH CAUSE OF ACTION**  
21 **VIOLATION OF 42 USC § 1983**  
**(Violation of Constitutional Rights)**  
22 **Against Deis, Montes, and Does 1-100**

23 75. Hittle hereby realleges and incorporates by reference Paragraphs 1 through 74  
24 above as though fully set forth herein, except as said paragraphs are inconsistent with the  
25 allegations of this cause of action.

26 76. 42 USC § 1983, part of the Civil Rights Act of 1871, prohibits the deprivation of  
27 any rights guaranteed under the Constitution and laws by any person acting under color of state  
or local law.

1           77.     The First Amendment to the United States Constitution provides that “Congress  
2 shall make no law respecting an establishment of religion, or prohibiting the free exercise  
3 thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably  
4 to assemble, and to petition the Government for a redress of grievances.” The freedom of  
5 association is a fundamental right protected by the First Amendment, and is guaranteed as  
6 against state and local governments by the Fourteenth Amendment.

7           78.     Nevertheless, as set forth above, Deis and Montes, under color of state or local  
8 law, deprived Hittle of his right to association as provided by the First Amendment to the United  
9 States Constitution, because motivating factors for the adverse employment actions taken against  
10 Hittle were his association with David Macedo through their joint ownership of real estate and  
11 his association with George Liepart through their religious activities.

12           79.     At all times relevant herein, Defendants Deis and Montes were implementing or  
13 executing, or purporting to implement or execute, a policy statement, ordinance, regulation,  
14 decision, or custom of the City of Stockton.

15           80.     The acts taken toward Hittle were carried out by and/or ratified by Deis and  
16 Montes and/or managing agents/employees of Deis and Montes acting in an oppressive,  
17 fraudulent and malicious manner in order to injure or damage Hittle, thereby justifying an award  
18 to him of punitive damages.

19           81.     As a direct and legal result of Defendants’ conduct, Hittle has suffered emotional  
20 distress and physical symptoms, pain and suffering, has lost income and related benefits, past  
21 and future, and has incurred medical expenses.

22           82.     Wherefore, Hittle has been damaged as set forth below and requests relief as  
23 hereafter provided.

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**NINTH CAUSE OF ACTION**  
**BREACH OF CONTRACT**  
**Against the City of Stockton and Does 1-100**

1  
2  
3 83. Hittle hereby realleges and incorporates by reference Paragraphs 1 through 82  
4 above as though fully set forth herein, except as said paragraphs are inconsistent with the  
5 allegations of this cause of action.

6 84. As set forth below, a contract existed between the City of Stockton and Hittle  
7 which provided that upon separation, Hittle would receive fifty percent of the value of his  
8 accrued sick leave at its "current value."

9 85. Hittle did, at all times relevant herein, perform according to the terms of the  
10 contract.

11 86. Though Hittle has separated from the City of Stockton, he has not been paid fifty  
12 percent of the value of his accrued sick leave at its "current value." Instead, he was paid a lesser  
13 amount that was not at the "current value."

14 87. Wherefore, Hittle has been damaged as set forth below and requests relief as  
15 hereafter provided.

**PRAYER FOR RELIEF**

16  
17 WHEREFORE, Hittle prays judgment against Defendants as follows:

18 **As to the First, Third, Fifth, and Seventh Causes of Action:**

- 19 1. For compensatory, special, and general damages, including lost wages and related  
20 benefits, medical expenses, and emotional distress in an amount according to  
21 proof, but in excess of the minimum jurisdictional limit of this Court;
- 22 2. For statutory attorneys' fees and costs, including those available under Gov. Code  
23 §12965(b) and Code of Civil Procedure § 1021.5;
- 24 3. For prejudgment and post-judgment interest according to any applicable provision  
25 of law or as otherwise permitted by law, including that available under Civ. Code  
26 § 3287, according to proof; and
- 27 4. For such other and further relief as the court deems proper.
- 28

1 **As to the Second, Fourth, and Sixth Causes of Action:**

- 2 1. For compensatory, special, and general damages, including lost wages and related  
3 benefits, medical expenses, and emotional distress in an amount according to  
4 proof, but in excess of the minimum jurisdictional limit of this Court;
- 5 2. For punitive and/or exemplary damages;
- 6 3. For statutory attorneys' fees and costs, including those available under 42 U.S.C.  
7 2000e-5(k) and FRCP 54(d)(1);
- 8 4. For post-judgment interest according to any applicable provision of law or as  
9 otherwise permitted by law; and
- 10 5. For such other and further relief as the court deems just and proper.

11 **As to the Eighth Cause of Action:**

- 12 1. For compensatory, special, and general damages, including lost wages and related  
13 benefits, medical expenses, and emotional distress in an amount according to  
14 proof, but in excess of the minimum jurisdictional limit of this Court;
- 15 2. For punitive and/or exemplary damages;
- 16 3. For statutory attorneys' fees and costs, including those available under Code of  
17 Civil Procedure § 1021.5;
- 18 4. For prejudgment and post-judgment interest according to any applicable provision  
19 of law or as otherwise permitted by law, including that available under Civil Code  
20 section 3287, according to proof; and
- 21 5. For such other and further relief as the Court deems proper.

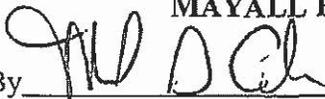
22 **As to the Ninth Cause of Action:**

- 23 1. Compensatory damages in an amount yet unknown, but in excess of the minimum  
24 jurisdictional limit of this Court;
- 25 2. For statutory attorneys' fees and costs, including those available under Code of  
26 Civil Procedure section 1021.5;
- 27
- 28

- 1           3.     For prejudgment and post-judgment interest according to any applicable provision  
2           of law or as otherwise permitted by law, including that available under Civil Code  
3           sections 3287(a) and 3289(b), according to proof; and  
4           4.     For such other and further relief as the court deems just and proper.

5 **DATED:** March 26, 2012

**MAYALL HURLEY P.C.**

6 By 

7 MARK S. ADAMS  
8 WILLIAM G. GORHAM  
9 JOHN P. BRISCOE  
10 Attorneys for Plaintiff  
11 RONALD HITTLE

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## Exhibit 2

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONALD HITTLE,	)	
	)	2:12-cv-00766-GEB-KJN
Plaintiff,	)	
	)	
v.	)	<u>ORDER</u>
	)	
THE CITY OF STOCKTON,	)	
CALIFORNIA, a municipal	)	
corporation; ROBERT DEIS, in his	)	
official capacity and as an	)	
individual; LAURIE MONTES, in	)	
her official capacity and as an	)	
individual,	)	
	)	
Defendants.	)	
	)	

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On May 29, 2012, Defendants Robert Deis and Laurie Montes ("Individual Defendants") and the City of Stockton ("the City," and collectively, "Defendants") each moved under Federal Rule of Civil Procedure 12(b)(6) for dismissal of Plaintiff's Complaint. Plaintiff's Complaint concerns events that occurred during his employment as Chief of the City of Stockton Fire Department and his termination from employment. On June 27, 2012, each Defendant's dismissal motion was submitted for decision without oral argument. However, after each motion was submitted, the City filed a Notice of Automatic Bankruptcy Stay under 11 U.S.C. § 362 ("§ 362"). Therefore, an order issued deeming the City's May 29, 2012 dismissal motion withdrawn and requiring the non-bankrupt parties to file briefs addressing the effect on them, if any,

1 of the City's bankruptcy stay. Each non-bankrupt party responded to the  
2 filing requirement.

3 "The automatic stay of 11 U.S.C. § 362(a)(1) prevents the  
4 'commencement or continuation . . . of a judicial . . . action or  
5 proceeding against the debtor that was . . . commenced before the  
6 commencement' of the bankruptcy case." Lewis v. Russell, No. CIV. S-03-  
7 2646, 2009 WL 1260290, at \*1 (E.D. Cal. May 7, 2009) (quoting Dean v.  
8 Trans World Airlines, Inc., 72 F.3d 754, 755 (9th Cir. 1995)). "By  
9 halting all collection efforts, the stay affords the debtor time to  
10 propose a reorganization plan, or simply to be relieved of the financial  
11 pressures that drove him into bankruptcy." In re Gruntz, 202 F.3d 1074,  
12 1081 (9th Cir. 2000) (internal quotation marks and citations omitted).  
13 "Because of the importance of the automatic stay, 'actions taken in  
14 violation of the automatic stay are void.'" Lewis, 2009 WL 1260290, at  
15 \*1 (quoting In re Gruntz, 202 F.3d at 1082). "[A] district court has  
16 jurisdiction to decide whether the automatic stay applies to a  
17 proceeding pending before it[.]" Lockyer v. Mirant Corp., 398 F.3d 1098,  
18 1107 (9th Cir. 2005).

19 "In the absence of special circumstances, stays pursuant to  
20 section 362(a) are limited to debtors and do not include [claims  
21 against] non-bankrupt co-defendants." Ingersoll-Rand Fin. Corp. v.  
22 Miller Mining Co., 817 F.2d 1424, 1427 (9th Cir. 1987). An "'identity of  
23 interests' [between the bankrupt defendant and non-bankrupt co-  
24 defendants] provides the special or 'unusual circumstances' which  
25 justify an order that stays proceedings against non-debtor parties." In  
26 re Family Health Servs., Inc., 105 B.R. 937, 942 (C.D. Cal. 1989). In  
27 addition, "the case law in this Circuit establishes that, following an  
28 automatic stay, a court may not rule on issues that require the court to

1 consider the possible liability of the debtor in the underlying case."  
2 Lewis, 2009 WL 1260290, at \*2 (citing Dean, 72 F.3d at 756-57); cf.  
3 Zimmer v. Nawabi, No. CIV. 07-00016, 2008 WL 618965, at \*1 (E.D. Cal.  
4 Mar. 4, 2008) ("The automatic stay precludes this court from taking any  
5 action that may detrimentally affect [the bankrupt defendant's]  
6 rights.").

7 Individual Defendants argue "the stay applies to [them.]"  
8 (Defs.' Br. 2:19-22.) Individual Defendants specifically argue, *inter*  
9 *alia*:

10 Because litigating the cause[s] of action against  
11 [them] could establish the City's liability toward  
12 Plaintiff, the City would have to actively  
13 participate in the litigation to protect its  
14 interests. Requiring the City to do so would "run  
15 afoul of one of the central purposes of the  
16 automatic stay—to relieve the debtor of the  
17 financial pressures that drove [it] into  
18 bankruptcy."

19 Id. at 4:24-5:1 (citing Lewis, 2009 WL 1260290, at \*4). Plaintiff  
20 counters that "[n]o 'identity of interest' has been demonstrated that  
21 would justify extending the stay to protect [Individual Defendants]."  
22 (Pl.'s Reply Br. 3:26-27.) Plaintiff argues:

23 [Plaintiff] has leveled a cause of action against  
24 these [Individual] Defendants, and them alone, in  
25 their official capacities and as individuals[,] for  
26 tortious and unconstitutional conduct . . . . The  
27 City is not being made to answer for Deis and  
28 Montes' wrongful conduct.

29 Id. at 3:27-4:3.

30 However, "'an official-capacity suit is, in all respects other  
31 than name, to be treated as a suit against the entity[, since] . . . a  
32 plaintiff seeking to recover . . . damages . . . in an official-capacity  
33 suit must look to the government entity itself.'" Cnty. House, Inc. v.

1 | City of Boise, Idaho, 623 F.3d 945, 966 (9th Cir. 2010) (quoting  
2 | Kentucky v. Graham, 473 U.S. 159, 165-66 (1985)).

3 | Further, Plaintiff alleges the same factual allegations  
4 | support his claims against both the City and Individual Defendants.  
5 | Specifically, Plaintiff alleges in his Complaint that Montes verbally  
6 | reprimanded him for "attend[ing] a Christian-affiliated [leadership]  
7 | seminar" and for allegedly "organiz[ing] a 'Christian coalition' within  
8 | the ranks of the Fire Department." (Compl. ¶ 15.) Plaintiff also alleges  
9 | Montes and Deis "presented [him] with a list of approximately ten  
10 | alleged violations of City policy, including [his] attendance at a  
11 | religious-themed seminar, his permitting subordinates to attend the  
12 | seminar with him, and his co-ownership [with other firefighters] of [a]  
13 | cabin retreat," and "told [him] that unless he accepted a demotion  
14 | . . . , he would be investigated for these purported violations." Id. ¶  
15 | 16. Plaintiff alleges he "refused to accept the lower position" and he  
16 | was investigated by the City. Id. ¶¶ 16 & 19. Plaintiff further alleges  
17 | he "received a letter, signed by Deis, titled 'Notice of Intent to  
18 | Remove From City Service[,]'. . . cit[ing Plaintiff] for attending the  
19 | leadership seminar with his subordinates, his association with [a  
20 | consultant he hired concerning a project to build a church school], and  
21 | for his property interest in the . . . cabin." Id. ¶¶ 19 & 20. Plaintiff  
22 | alleges his employment was terminated approximately one month later. Id.  
23 | ¶ 21.

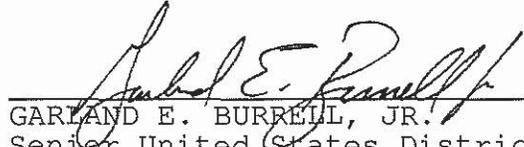
24 | Plaintiff alleges these allegations support his claims against  
25 | the City for religious and "associational" discrimination and  
26 | retaliation in violation of the California Fair Employment and Housing  
27 | Act ("FEHA") and Title VII of the Civil Rights Act ("Title VII");  
28 | failure to prevent discrimination and retaliation under FEHA; and breach

1 of employment contract. Id. ¶¶ 29-74 & 83-87. Plaintiff alleges the same  
2 facts support his 42 U.S.C. § 1983 claims against Individual Defendants  
3 which are based on alleged violations of his First Amendment right to  
4 association. Id. ¶¶ 75-82.

5 "Because of the nature of [Plaintiff's allegations and] claims  
6 . . . [,] it is not possible to draw a meaningful distinction between  
7 claims asserted against the [City] and [claims asserted against  
8 Individual Defendants]." Lewis, 2009 WL 1260290, at \*2. Ruling on issues  
9 concerning the liability of the Individual Defendants would "require the  
10 court to consider the possible liability of the [City]" in violation of  
11 bankruptcy stay. Id. Therefore, the "'identity of interests' [between  
12 the City and the Individual Defendants] provides the special or 'unusual  
13 circumstances' which justify an order that stays proceedings against"  
14 the Individual Defendants in this case. In re Family Health Servs.,  
15 Inc., 105 B.R. at 942.

16 Accordingly, the City's bankruptcy stay applies to Plaintiff's  
17 claims against Individual Defendants; and Individual Defendants'  
18 dismissal motions filed May 29, 2012 are deemed withdrawn. The parties  
19 shall file a status order within five (5) days of the lifting of the  
20 bankruptcy stay.

21 Dated: September 5, 2012

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23   
24 GARLAND E. BURRELL, JR.  
25 Senior United States District Judge  
26  
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