UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

| Case No. | SACV 09-00098-AG (MLGx) | Date | November 13, 2019 |
|---|---|---|---|
| Title | GAYLAN HARRIS, ET AL. v. COUNTY OF ORANGE | | |

| Present: The Honorable | ANDREW J. GUILFORD | |
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| Melissa Kunig | Not Present | |
| Deputy Clerk | Court Reporter / Recorder | Tape No. |
| Attorneys Present for Plaintiffs: | Attorneys Present for Defendants: | |

**[IN CHAMBERS] ORDER REGARDING MOTION FOR SUMMARY JUDGMENT (DKT. NO. 175)**

In this class action, Plaintiffs Gaylan Harris, Jerry Jahn, and James McConnell ("Plaintiffs") challenge certain changes that Defendant County of Orange ("County" or "Defendant") made to its retiree medical program. Plaintiffs' claims here closely mirror the claims brought in a related case formerly before this Court, *Retired Employees Ass'n of Orange County v. County of Orange* ("*REAOC*"), No. SACV 09-0098 AG (MLGx). Like in *REAOC*, Plaintiffs here seek to keep purported implied lifetime benefits that were previously provided by the County but that were never properly approved by the Orange County Board of Supervisors. Plaintiffs argue that by discontinuing these benefits, the County has breached its obligations to retirees, including Plaintiffs.

These two cases have a lengthy procedural history. The Court granted the County's motion for summary judgment in *REAOC* in 2009 and the plaintiffs appealed to the Ninth Circuit. *See Retired Emps. Ass'n of Orange Cnty. v. Cnty. of Orange* ("*REAOC I*"), 632 F. Supp. 2d 983 (C.D. Cal. 2009); *Retired Emps. Ass'n of Orange Cnty. v. Cnty. of Orange* ("*REAOC II*"), 610 F.3d 1099 (9th Cir. 2010). The Ninth Circuit then certified a question to the California Supreme Court. *See Retired Emps. Ass'n of Orange Cnty., Inc. v. Cnty. of Orange* ("*REAOC III*"), 52 Cal. 4th 1171 (2011). The question was answered, and the matter returned to the Ninth Circuit, which then sent the case back to this Court.

In the meantime, this Court granted the County's motion for judgment on the pleadings in this case, which was then reviewed by the Ninth Circuit, reversed, and remanded to this Court to allow Plaintiffs an opportunity to amend. (*See* Order Granting Motion for Judgment on the Pleadings ("*Harris I*"), Dkt. No. 60.) *See Harris v. Cnty. of Orange* ("*Harris II*"), 682 F.3d 1126

(9th Cir. 2012). Plaintiffs then brought a "Motion for Clarification" of the portion of the Ninth Circuit Opinion discussing matters related to the *REAOC* case. The Ninth Circuit denied the Motion for Clarification. Following the denial, this Court issued a comprehensive opinion in *REAOC*, incorporating the guidance from the Ninth Circuit and California Supreme Court and evaluating written and oral arguments by the parties. After this cautious analysis, the Court again granted the County's motion for summary judgment in *REAOC*, which was then affirmed by the Ninth Circuit. (*See Retired Emps. Ass'n of Orange Cnty., Inc. v. Cnty. of Orange* ("*REAOC IV*"), No. SACV 07-1301 AG (MLGx), Dkt. No. 246.)

Responding to the Ninth Circuit's remand in *Harris II*, Plaintiffs filed a Third Amended Complaint ("TAC"), its fourth complaint, and this Court dismissed that complaint without leave to amend. The Ninth Circuit affirmed that decision in part, reversed in part, and remanded. *Harris v. Cnty. of Orange ("Harris III")*, 902 F.3d 1061 (9th Cir. 2018). That same day this Court received the Ninth Circuit opinion remanding, this Court invited the parties to request a status conference at the earliest possible date. (Dkt. No. 153.) Defendant filed an answer to the TAC (Dkt. No. 170), and this Court advanced the deadline for hearing summary judgment motions on the issue of liability. (Dkt. No. 172.) Now, Defendant has moved for summary judgment on all remaining claims. (Dkt. No. 175.)

And again, this Court faces the difficult challenge of determining the present issues and arguments. Reminiscent of many earlier motions, the Court has received on the pending matter documents with titles like "Defendant's Opposition to Plaintiffs: (1) Motion to Strike Newly-Presented Evidence or for Leave to File Surreply; and (2) Objections to Newly-Presented Evidence (Dkt. No. 198); Opposition to Plaintiffs' Request to Supplement the Record in Opposition to County's Motion for Summary Judgment (Dkt. No. 197)." (Dkt. No. 199.) The Court was hopeful that a very extensive oral argument would help clarify and focus the issues, but is fearful the oral argument may have created more confusion. At this extremely late date on this fourth complaint in a long series of litigation, such squabbles are troubling. Here, Plaintiffs' Motion to Strike and Plaintiffs' Request for a Surreply are denied. (Dkt. No. 198.) And the Court again plows forward focusing as best it can on what issues may be pending.

The Court GRANTS Defendant's motion for summary judgment. (Dkt. No. 175.)

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## 1. BRIEF BACKGROUND

In this class action by former employees of the County, Plaintiffs challenge the County's "unilateral" change of one aspect of their retirement health benefits: the "Grant" benefit. Plaintiffs describe the Grant as "a monthly stipend that retirees receive to defray their health insurance premium expense." (Dkt. No. 98 ¶ 2.) Through late 1991 to early 1993, the County and its labor unions negotiated to re-create a retiree health plan ("1993 Plan"), which included the Grant. (Dkt. No. 185 at 3.)

The 1993 Plan included an explicit non-vesting provision, stating "this Plan does not create any vested right to the benefits provided hereunder on the part of any Employee, Retiree or any other person." (*Id.* at 4-5.) It also expressly reserved the County's right to amend or terminate the Plan "in its sole discretion" subject to the Memoranda of Understanding ("MOU") with employee organizations. (*Id.* at 5.) The MOU references an Additional Retiree Benefit Account ("ARBA") funded in part by excess investment earnings and set aside to fund a retiree medical grant that offset a portion of retiree's medical insurance premiums—the Grant. (Dkt No. 178 at 2-3.) ARBA is not mentioned in the TAC, the fourth complaint in this case.

From 1993 until 2008, the Grant was "calculated by multiplying (1) the years of service each employee had provided upon retirement by (2) a fixed dollar amount (the 'Grant Multiplier')." (Dkt. No. 98 ¶ 20.) The Grant Multiplier "increased every year by up to 5% to reflect . . . medical inflation." (*Id.*) Beginning in 2008, the County cut the total monthly grant by 50% for retirees once they reached age 65." (*Id.* ¶ 22.) The County also "cut the annual cap on Grant Multiplier increases from 5% to 3%." (*Id.*)

Plaintiffs assert that they had implied contractual rights to the Grant, as that benefit was defined in the collective bargaining agreements or MOU between the County and the unions. (*Id.* ¶ 2.) Thus, Plaintiffs allege the County improperly reduced Plaintiffs' work benefits.

## 2. LEGAL STANDARD

Summary judgment is appropriate where the record, read in the light most favorable to the non-moving party, shows that "there is no genuine issue as to any material fact and . . . the

moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Material facts are those necessary to the proof or defense of a claim, as determined by reference to substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual issue is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party" based on the issue. *Id.* In deciding a motion for summary judgment, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255. But if the evidence of the nonmoving party "is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249-50.

The burden is first on the moving party to show an absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. The moving party satisfies this burden either by showing an absence of evidence to support the nonmoving party's case when the nonmoving party bears the burden of proof at trial, or by introducing enough evidence to entitle the moving party to a directed verdict when the moving party bears the burden of proof at trial. *See Celotex*, 477 U.S. at 325; *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000). If the moving party satisfies this initial requirement, the burden then shifts to the nonmoving party to designate specific facts, supported by evidence, showing that there is a genuine issue for trial. *Celotex*, 477 U.S. at 324. If the nonmovant "fails to properly address another party's assertions of fact as required by Rule 56(c), the court may . . . consider the fact undisputed for the purposes of the motion [or] . . . grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it." Fed. R. Civ. P. 56(e).

## 3. PRELIMINARY MATTERS

### 3.1 Request for Judicial Notice

Defendant asks the Court to judicially notice several exhibits comprised of legislative history. (*See* Request for Judicial Notice, Dkt. No. 196.) It's appropriate to take judicial notice of legislative history, and receiving no objections from Plaintiffs, the Court does so here. *See Fed. R. Evid. 201(b); Anderson v. Holder, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012).* The Court has

considered documents properly subject to judicial notice and hasn't considered improper evidence in this Order.

### 3.2 Evidentiary Objections

Plaintiffs have lodged evidentiary objections to evidence purportedly relied on in Defendant's briefs. (*See* Plaintiffs' Evidentiary Objections, Dkt. Nos. 190, 198.) The objections in part reference objections in another case and "hereby incorporate their objections to the same." (Dkt. No. 190 at 2.) Plaintiffs also "object to the entirety of the Catanzariti Declaration." (*Id.*)

Where, as here, the parties file voluminous unspecified objections in a summary judgment motion, it's "often unnecessary and impractical for a court to methodically scrutinize each objection and give a full analysis of each argument raised." *See Doe v. Starbucks, Inc.*, No. SACV 08-00582 AG (CWx), 2009 WL 5183773, at *1 (C.D. Cal. Dec. 18, 2009). This is particularly so for unspecified objections. So instead, the Court notes the following. To the extent any of the objected-to evidence is relied on in this order, those objections are overruled. Any remaining objections are also overruled as moot. *See Burch v. Regents of Univ. of Cal.*, 433 F. Supp.2d 1110, 1118 (E.D. Cal. 2006). At oral argument, this Section 3.2 was not raised.

## 4. ANALYSIS

### 4.1 The Grant

The County argues that now with the benefit of a full evidentiary record, it's clear that Plaintiffs cannot meet their burden of showing there is a genuine issue of material fact that the County intended to create an implied, vested contract right in the 1993 Grant's terms lasting in perpetuity. The Court agrees.

In *Harris III*, the Ninth Circuit only reversed as to the Grant claims based on allegations at the pleading stage, without a developed evidentiary record. *See Harris III*, 902 F.3d at 1068-70. The Ninth Circuit stated, "We therefore reverse the district court's order insofar as it dismissed

Retirees' contract claims regarding the Grant Benefit." *Id.* at 1070. Now, the record is fully developed, and Plaintiffs are unable to meet their burden as a matter of law.

A plaintiff's burden to show a vested right rises considerably between the pleading stage and a motion for summary judgment. Courts often permit cases to proceed past the pleading stage, but also generally grant summary judgment because of a lack of evidence demonstrating "clear intent" on the part of a public agency to confer a vested right. *Compare Sonoma Cnty. Ass'n of Retired Emps. v. Sonoma Cnty.*, 708 F.3d 1109 (9th Cir. 2013); *Requa v. Regs. of Univ. of Cal.*, 213 Cal. App. 4th 213 (2012); *with REAOC V*, 742 F.3d 1137 (9th Cir. 2014); *City of San Diego v. Haas*, 207 Cal. App. 4th 472 (2012); *Sacramento Cnty. Retired Emps. Ass'n v. Cnty. of Sacramento*, 975 F. Supp. 2d 1150 (E.D. Cal. 2013). Plaintiffs face a "heavy burden . . . of establishing an implied right to vested benefits." *Harris III*, 902 F.3d at 1069 n.5. And when considering the existence of a vested right flowing from an implied obligation to "proceed cautiously," there must be a "clear showing" of an "unmistakable" intent by the governing body to be bound in perpetuity. *REAOC III*, 52 Cal. 4th at 1186-89.

This heavy burden and need to proceed cautiously in establishing an implied right here is appropriate. Such an implied right can require taxpayers to pay hundreds of millions of dollars. Taxpayers should have the ability to determine what elected official is responsible for such liability so that the taxpayer can respond accordingly. *See REAOC I*, 632 F. Supp. 2d at 984. Implied contracts threaten to destroy this ability.

Here, Plaintiffs cannot meet their burden of showing there is a genuine issue of material fact that the County intended to create an implied, vested contract right in the Grant's terms lasting in perpetuity. The 1993 Plan expressly precludes a vested rights claim, and the MOUs, which adopt the Plan and its Grant feature, all have expiration terms. (*See* Dkt. No. 183 at 3.) The 1993 Plan specifically stated, "This Plan does not create any vested right to the benefits provided hereunder on the part of any Employee, Retiree or any other person." (Dkt. No. 185 at 4-5.) It also expressly reserved the County's right to amend or terminate the Plan "in its sole discretion" subject to the MOU with employee organizations. (*Id.* at 5.) Plaintiffs' inferences don't provide "unmistakable" evidence of vesting, especially considering Board resolutions confirming the Board's intent that the Grant not vest. (*See* Dkt. No. 183 at 3.) It remains

undisputed that the 1993 Plan expressly reserved the County's right to make adjustment to the Plan, and it expressly states that nothing in the Plan creates a vested right of any kind.

At the pleading stage, the Ninth Circuit was required to accept Plaintiffs' pleadings that the 1993 Plan was secret and never shared with the labor unions. But now the record shows the 1993 Plan and labor agreements were: (1) properly passed in open session, (2) in the full light of public scrutiny, (3) at a duly agendized meeting, (4) by formal vote of a board of supervisors acting in a legislative capacity, and (5) at the same time labor contracts were adopted that implemented the Plan. (*See* Dkt. No. 185 3-6.) In the context of a Rule 56 motion, Plaintiffs cannot simply point to the Ninth Circuit's opinion in *Harris III* and argue the Ninth Circuit has already rejected the County's arguments. *See Peralta v. Dillard*, 774 F.3d 1076, 1088 (9th Cir. 2014) (noting the differences between the standards applicable at different stages of litigation and finding that pre-trial rulings "don't bind district judges for the remainder of the case"). *Harris III* was based on mere pleadings, and now, Plaintiffs fail to cite admissible evidence that is sufficient to overcome the express no vesting language and the presumption against the creation of an implied vested right to lifetime benefits that can never be altered.

Further, the Grant's funding structure and one percent employee contribution doesn't show an "unmistakable intent" that the Grant last indefinitely. The Ninth Circuit focused on two of Plaintiffs' allegations to conclude there was a "plausible inference" that plaintiffs could "possibly" overcome their burden and prove their case: (1) the contention that the County adopted a "long-term" funding mechanism for the 1993 Plan and (2) the fact that employees made a one percent contribution to the plan. *See Harris III*, 902 F.3d at 1069. But Plaintiffs' proffered evidence on these issues is insufficient to meet their burden at the summary judgment level.

The evidence in the record is insufficient to suggest that the County intended to commit itself to paying for lifetime medical retiree benefits that couldn't ever be adjusted. The evidence concerning the negotiations and funding of the 1993 Plan doesn't meet Plaintiffs' burden under *REAOC III* or make a triable issue of material fact. *See also REAOC V*, 742 F.3d at 1142-43 (finding that evidence of projections offered in negotiations failed to meet the plaintiffs' burden at summary judgment). Regarding the one percent contribution, the undisputed evidence shows that although it was framed as an employee contribution

(presumably to maximize the tax advantage to employees), it was the County—not the employees—that specifically made the contribution. (*See* Dkt. No. 193 at 10.) And Plaintiffs make no showing that the adjustment had the net effect of causing them to lose all or part of the value of their one percent contribution.

Lastly, Plaintiffs briefly argue at the end of their Opposition that "the County had an *implied* obligation to continue providing the Grant benefits as established in 1993, for as long as the original funding mechanism for that program reasonably lasted." (Dkt. No. 187 at 24.) (emphasis added.) Plaintiffs state "there is nothing in the original ARBA agreement that permitted the County to divert any ARBA funds for any purpose other than retiree health benefits." (*Id.* at 25.) But Plaintiffs make no mention of ARBA in the TAC, its fourth complaint in this case. And for reasons already stated, Plaintiffs' "fragments" of evidence are insufficient to meet the "unmistakable intent" standard necessary to create an "*implied*" agreement beyond the contract. *See REAOC V*, 742 F.3d at 1144.

**4.2 Other Remedies**

While the Court finds the County is not obligated to continue providing retirees with the benefits of the Grant under the 1993 Plan, the Court is sympathetic to the retirees' plight. As the *Ventura* court recognized, the spiraling cost of health care in America is "simply unconscionable," and often "results in disparate rates and medical coverage for those who can least afford it, including retirees." *Cnty. Retired Emps. Ass'n v. Cnty. of Ventura*, 228 Cal. App. 3d 1594, 1598 (1991).

But this sympathy cannot drive this Court's decision. "Were the recognition of constitutional contract rights to be based on the importance of benefits to individuals rather than on the legislative intent to create such rights, the scope of rights protected by the Contracts Clause would be expanded well beyond the sphere dictated by traditional constitutional jurisprudence." *Police v. San Diego Ret. Sys.*, 568 F.3d 725, 740 (9th Cir. 2009). Politicians who approve benefits must do so clearly enough to be held accountable whenever possible to the voters and taxpayers who ultimately pay for the benefits. *See REAOC I*, 632 F. Supp. 2d at 984. Implied rights are only proper when "neither the governing body nor the public will be blindsided by unexpected obligations." *REAOC III*, 52 Cal. 4th at 1189.

Importantly, this decision does not leave the retirees without a remedy. They may petition the Board of Supervisors to revisit their claim in the political arena, facing the scrutiny of taxpayers and voters. In the political arena, competing interests seek limited government funds in a zero-sum contest. If the Board of Supervisors finds that the retirees' claims are more just and worthwhile than competing claims, then the Board may clearly and publicly approve the necessary funding.

## 5. DISPOSITION

The County's summary judgment motion is GRANTED. (Dkt. No. 175.) The County shall submit a brief, concise proposed judgment to the Court within 14 days of this Order.

IT IS SO ORDERED.

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