UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 09-0098 AG (MLGx)	Date	January 30, 2013
Title	GAYLAN HARRIS, et al. v. COUNTY OF ORANGE		

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

Proceedings: **[IN CHAMBERS] ORDER GRANTING MOTION TO DISMISS**

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 recently before this Court, *Retired Employees Ass'n of Orange County v. County of Orange* ("*REOC*"), No. SACV 09-0098 AG (MLGx). Like in *REOC*, Plaintiffs here seek to retain certain 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 *REOC* in 2009 and the plaintiffs appealed to the Ninth Circuit. *See Retired Emps. Ass'n of Orange Cnty. v. Cnty. of Orange* ("*REOC I*"), 632 F. Supp. 2d 983 (C.D. Cal. 2009); *Retired Emps. Ass'n of Orange Cnty. v. Cnty. of Orange* ("*REOC 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* ("*REOC III*"), 52 Cal. 4th 1171 (2011). The question was answered and the

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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. (*See* Order Granting Motion for Judgment on the Pleadings ("*Harris I*"), Dkt. No. 60.) *See Harris v. County 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 *REOC* case. The Ninth Circuit denied the Motion for Clarification. Following the denial, this Court issued a comprehensive opinion in *REOC*, incorporating the guidance from the Ninth Circuit and California Supreme Count 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 *REOC*. (*See Retired Emps. Ass'n of Orange Cnty., Inc. v. Cnty. of Orange* ("*REOC IV*"), No. SACV 07-1301 AG (MLGx), Dkt. No. 246.)

Responding to the Ninth Circuit's remand in *Harris II*, Plaintiffs filed a Second Amended Complaint ("SAC"). Before the Court is the County's Motion to Dismiss the SAC ("Motion"). (*See* Defendant's Motion to Dismiss Second Amended Complaint, Dkt. No. 89.) For many of the same reasons stated by this Court when it granted summary judgment for the County in *REOC*, the Motion is GRANTED.

BACKGROUND

In this class action by former employees of the County, plaintiffs challenge the County's "unilateral" change of two aspects of their retirement health benefits: the "Grant" benefit and the "Subsidy." Plaintiffs describe the Grant as "a monthly stipend that retirees receive to defray their health insurance premium expense." (SAC ¶ 2.) 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')." (*Id.* ¶ 20.) The Grant Multiplier "increased every year by up to 5% to reflect . . . medical premium 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.*)

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Plaintiffs describe the Subsidy as "the benefit that retirees received by virtue of being permitted to participate in the same County-sponsored health plans as active employees, and pay the same premium rates as active employees." (*Id.* ¶ 4.) This benefit is known as "pooling." (*Id.*) Beginning in 2008, the County stopped pooling and segregated retirees into separate health plans to determine their health insurance premiums. (*Id.* ¶ 5.)

Plaintiffs allege that they had contractual rights to the Grant and the Subsidy, as that benefit was defined in the collective bargaining agreements, or Memoranda of Understanding ("MOU") between the County and the unions. (*Id.* ¶ 2.) Thus, Plaintiffs allege, the County improperly reduced Plaintiffs' work benefits. Plaintiffs also allege that the separating the "pooling" of retired and active employees was unlawful age discrimination.

LEGAL STANDARD

A court should dismiss a complaint when its allegations fail to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A complaint need only include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "'[D]etailed factual allegations' are not required." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007) (stating that "a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations")). The Court must accept as true all factual allegations in the complaint and must draw all reasonable inferences from those allegations, construing the complaint in the light most favorable to the plaintiff. *Pollard v. Geo Group, Inc.*, 607 F.3d 583, 585 n.3 (9th Cir. 2010).

But the complaint must allege "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). A court should not accept "threadbare recitals of a cause of action's elements, supported by mere conclusory statements," *id.*, or "allegations

that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "[A]nalyzing the sufficiency of a complaint's allegations is a 'context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Sheppard v. David Evans and Associates*, 694 F.3d 1045, 1051 (9th Cir. Sept. 12, 2012). The Ninth Circuit also addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202, 1204 (9th Cir. 2011). The *Starr* court held that allegations "must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively . . . [and] plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *Id.* at 1216.

If the Court decides to dismiss a complaint, it must also decide whether to grant leave to amend. "A district court may deny a plaintiff leave to amend if it determines that allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency . . . or if the plaintiff had several opportunities to amend its complaint and repeatedly failed to cure deficiencies." *Telesaurus VPC, LLC v. Power* , 623 F.3d 998, 1003 (9th Cir. 2010); *see also Steckman v. Hart Brewing* , 143 F.3d 1293, 1298 (9th Cir. 1998) (holding that pleadings may be dismissed without leave to amend if amendment "would be an exercise in futility").

PRELIMINARY MATTERS

Both parties filed requests for judicial notice. The County asks the Court to take judicial notice of Plaintiffs' Request for Judicial Notice ("Plaintiff's 9th Cir. RJN"), filed in the Ninth Circuit appeal of this Court's Order granting judgment on the pleadings. Plaintiff's 9th Cir. RJN included: (1) Resolution 93-834 by the Orange County Board of Supervisors and (2) excerpts of a 1993-1994 MOU between the County and the Orange County Employees Association for the County General Unit. Plaintiffs now ask this Court to take judicial notice of two documents on file in the Ninth Circuit appeal in this case: (1) Plaintiffs' Request for Clarification and (2) Defendant's Response to Plaintiffs' Request for Clarification. Neither party has opposed either request for judicial notice.

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Under Federal Rule of Evidence 201, "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201. Courts may take judicial notice of "*undisputed* matters of public record," but generally may not take judicial notice of "*disputed* facts stated in public records." *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (emphasis in original). Facts subject to judicial notice may be considered on a motion to dismiss. *Mullis v. U.S. Bankr. Ct.*, 828 F.2d 1385, 1388 (9th Cir. 1987). Here, the documents identified by the parties are appropriate for judicial notice because they are public records. The Court thus GRANTS both requests for judicial notice. The Court takes judicial notice of the existence of the documents and not the truth of the facts asserted within them.

ANALYSIS

In their SAC, Plaintiffs assert five claims numbered as follows: (1) Impairment of Contract – United States Constitution; (2) Impairment of Contract – California Constitution; (3) Breach of Contract; (4) Breach of Implied Covenant of Good Faith and Fair Dealing; and (5) Unlawful Age Discrimination. The first three claims involve both the Grant and the Subsidy. The Court GRANTS the County's Motion to Dismiss all five claims.

1. PLAINTIFFS' CLAIM FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

Plaintiffs consent to dismissing their fourth claim for breach of the implied covenant of good faith and fair dealing. The Court therefore GRANTS the County's Motion to

dismiss this claim.

2. PLAINTIFFS' SUBSIDY CLAIMS

Plaintiffs' Subsidy Claims in this case are effectively the same as the Subsidy Claims in *REOC*. As noted, this Court recently granted the County's motion for summary judgment on the *REOC* Subsidy Claims. Both parties ask that the Court "coordinate" the two cases by applying the reasoning in *REOC* to the Subsidy Claims in this case. The Court GRANTS the County's Motion to dismiss Plaintiffs' first three claims as they relate to the Subsidy for the same reasons the Court granted summary judgment on the *REOC* Subsidy Claims.

3. PLAINTIFFS' GRANT CLAIMS

The County argues Plaintiffs' Grant Claims should be dismissed because there is no explicit legislative or statutory authority requiring the County to provide the retirement benefits associated with the Grant. The Court agrees. In *Harris I*, the Court dismissed Plaintiffs' Grant Claims for this very reason and the Ninth Circuit reversed only because the Court should have given Plaintiffs leave to amend. Plaintiffs have now done so. But the minimal changes made in their SAC still fail to address the problems previously identified by this Court and the Ninth Circuit.

In *Harris II*, the Ninth Circuit found that "[i]n order to state a claim for a contractual right to the Grant, the Retirees must plead specific resolutions or ordinances establishing that right." *Id.* at 1135 (citing *Sonoma Cnty. Ass'n of Retired Emps. v. Sonoma Cnty.*, No. 09-04432, 2010 U.S. Dist. LEXIS 143345, at *9, 27 (N.D. Cal. Nov. 23, 2010) (dismissing case with prejudice, where none of the Board resolutions or Board-certified MOUs "explicitly provide[d] that Sonoma agreed to provide health insurance benefits to retirees in perpetuity, [and so] a contract to do so has not been formed.")). The *Harris II* Court reversed and remanded with instructions that Plaintiffs must identify specific "terms or provisions . . . guarantee[ing] the Grant will continue." *Id.* Plaintiffs here have

failed to do so. Instead, they pointed to documents already found insufficient by this Court and the Ninth Circuit to allege a term guaranteeing continuance of the grant—the 1993-1994 MOU and the Board resolution enacting it. (*Compare* SAC, Exh. A (Resolution 93-834 and 1993-1994 MOU) *to* Defendant's RJN, Exh. 1 (Plaintiffs' Ninth Circuit request for judicial notice, including Resolution 93-834 and 1993-1994 MOU).) Plaintiffs' "circumstantial evidence" of legislative intent does not salvage these claims.

Accordingly, the Court follows the same reasoning it applied in *REOC IV* and GRANTS the County's Motion to dismiss Plaintiffs' first three claims as they relate to the Grant.

4. PLAINTIFFS' AGE DISCRIMINATION CLAIM

Plaintiffs' fifth claim is an age discrimination claim under California's Fair Employment and Housing Act ("FEHA"). FEHA prohibits employers from "discriminat[ing] against [any] person in compensation or in terms, conditions, or privileges of employment" based on "age." Cal. Gov't Code § 12940(a). Plaintiffs claim that "splitting the pool" between active and retired employees violated FEHA because the split was motivated by "retirees' age (older) relative to active employees" and "stereotypes regarding the health care costs of older people." (SAC ¶ 40.) But Plaintiffs have provided no legal authority that FEHA prohibits this action, which is based on retirement status and is facially neutral to age.

Neither party has identified any cases analyzing whether such actions violate FEHA, so the Court relies on the statutory language and on age discrimination cases in analogous contexts. Other California statutes "permit[] local agencies to consider the differences between retired and active employees in providing health benefits." *Orange County Employees Ass'n v. County of Orange*, 234 Cal. App. 3d 833, 843 (1991) (interpreting Cal. Gov't Code § 53205.2 and accompanying statutory scheme as allowing agencies to distinguish between retired and active employees"); Cal. Ed. Code § 7000(b) (allowing school districts to require retired employees "to pay different rates as a class" than active employees). A recent clarification to FEHA also shows the legislature's willingness to make exceptions for retiree health benefits, although the exception does not apply to this

case. Cal. Gov't Code § 12940(a)(5)(B) (FEHA does not prohibit employer from "providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare benefits").

Case law applying the Age Discrimination in Employment Act ("ADEA"), the federal analog to FEHA, also supports the County's argument that it is not unlawful in circumstances such as these to distinguish between active and retired employees in health benefits. *See Doyle v. City of Medford*, No. 1:06-CV-03058-PA, 2011 WL 4894077, at *4 (Oct. 13, 2011) (holding that a city "may distinguish between retired and current employees without violating the ADEA" and noting that, even if plaintiffs could establish a prima facie case, defendants prevailed because their decision was "based on reasonable factors other than age"). Accordingly, the Court GRANTS the County's Motion to dismiss Plaintiffs' FEHA claim.

Although the Court grants the County's Motion to dismiss Plaintiffs' FEHA claim, the Court is hesitant to deny leave to amend under the circumstances of this case. As noted, no cases cited are directly on point, and the County's opening papers allotted fewer than three pages to the issue. Plaintiffs may amend their complaint within 30 days of this Order. If Plaintiffs choose to amend and the County again moves to dismiss this claim, the Court looks forward to thorough briefing from the parties in this somewhat murky area of law.

DISPOSITION

The Motion is GRANTED. The Court has considered Plaintiffs' other arguments and is not persuaded that they are sufficient to avoid dismissal. The Court need not consider other arguments by the County.

After considering the Motion pending before this Court, as well as the long background associated with this case, the Court concludes the deficiencies of Claims 1-4 can not be cured by amendment, so the Motion is granted without leave to amend for Claims 1-4. *Telesaurus VPC*, 623 F.3d at 1003. The Motion is granted with leave to amend for Claim

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5. Plaintiffs may filed an amended complaint within 30 days of this Order.

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