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

SONOMA COUNTY ASS'N OF RETIRED
EMPLOYEES,

Plaintiff,

v.

SONOMA COUNTY,

Defendant.

No. C 09-4432 CW

ORDER GRANTING IN
PART MOTION TO
DISMISS (Docket
No. 77)

Defendant Sonoma County moves to dismiss the second amended complaint (2AC) for lack of subject matter jurisdiction and failure to state a claim. Plaintiff Sonoma County Association of Retired Employees (SCARE) opposes the motion. After considering the parties' submissions and oral argument, the Court grants the motion in part and denies it in part.

BACKGROUND

The following facts are alleged in the 2AC.

SCARE is a nonprofit mutual benefit corporation that "promotes and protects the welfare and interests of the retired employees of Sonoma County." Docket No. 75, 2AC ¶ 11. Roughly fourteen hundred Sonoma County retirees currently claim membership in the organization. Id. ¶ 12.

The County has subsidized its retirees' healthcare benefits since at least 1964. Id. ¶ 14. In August 2008, the County's

1 Board of Supervisors enacted a resolution capping its healthcare
2 benefit contributions at the flat amount of \$500 per month for all
3 retirees as well as for certain active employees. Id. ¶ 32. The
4 County planned to phase in this new cap over a five-year period
5 beginning in June 2009. Id. To assist active employees adversely
6 affected by the new cap, the County enacted a resolution in
7 September 2008 providing active employees with an additional \$600
8 monthly cash allowance for healthcare costs. Id. ¶¶ 33-34.
9 Retirees were not provided the same benefit. Thus, at the
10 conclusion of the five-year phase-in period, active employees
11 would be receiving \$1,100 per month from the County in healthcare
12 benefits while retirees would be receiving only \$500 per month.

13 SCARE brought this action in September 2009, alleging that
14 the County's new cap on healthcare benefit contributions would
15 harm many retirees by forcing them to pay significantly higher
16 healthcare premiums while living on a fixed income. In its
17 complaint, SCARE asserted that the new cap constituted a breach of
18 the County's longstanding agreement to pay for its retirees'
19 healthcare benefits costs in perpetuity. SCARE offered two
20 alternative theories to explain how and when the County entered
21 into such an agreement. First, it alleged that the County made a
22 series of promises, dating back to at least 1964, to pay "all or
23 substantially all" of the costs of healthcare benefits for its
24 retirees and their dependents. Second, SCARE alleged that the
25 County entered into a "tie agreement" in 1985 under which it
26 promised to provide its retirees and their dependents with the
27 same level of healthcare benefits that it provided to active
28 management employees. The County denied that it had made a

1 binding promise to provide post-retirement healthcare benefits in
2 perpetuity under either theory of contract formation.

3 In May 2010, this Court granted, with leave to amend, the
4 County's motion to dismiss SCARE's complaint. Docket No. 34
5 (Sonoma I). The Court explained that, under California law,
6 municipal governments could only create express contracts for
7 public employment by means of an ordinance or resolution and SCARE
8 had failed to identify in its complaint any such ordinances or
9 resolutions promising healthcare benefits to retirees.

10 In July 2010, SCARE filed an amended complaint in which it
11 sought to cure this deficiency by adding new factual allegations
12 to support its claims. Docket No. 35. SCARE also attached sixty-
13 eight exhibits to its amended complaint which consisted of various
14 resolutions, ordinances, and memoranda of understanding (MOUs)
15 signed by County representatives. According to SCARE, these
16 documents, taken together, established a binding promise by the
17 County to provide healthcare benefits to all retirees in
18 perpetuity.

19 In November 2010, this Court once again dismissed SCARE's
20 complaint, this time without leave to amend. Docket No. 51
21 (Sonoma II). After reviewing the amended complaint, the Court
22 found that none of the new factual allegations or various
23 resolutions, ordinances, and MOUs attached to the complaint
24 supported SCARE's claim that the County entered into a binding
25 contract to provide post-retirement healthcare benefits in
26 perpetuity. The Court explained that, while the resolutions and
27 ordinances evidenced the County's longstanding practice of paying
28 all or substantially all of the costs of retirees' healthcare

1 benefits, they did not contain an express promise that the County
2 would continue to do so in perpetuity. Furthermore, the Court
3 noted, none of the attached resolutions or ordinances explicitly
4 adopted the alleged 1985 "tie agreement" and none of the MOUs
5 contained durational language suggesting that they were meant to
6 confer rights in perpetuity. Thus, because SCARE had failed to
7 identify a binding promise on which its contract claims were based
8 despite a second opportunity to do so, the Court dismissed its
9 complaint with prejudice. SCARE filed an appeal the following
10 month.

11 While that appeal was pending, the California Supreme Court
12 issued its opinion in Retired Employees Association of Orange
13 County, Inc. v. County of Orange, 52 Cal. 4th 1171 (2011) (REAOC
14 II).¹ That opinion addressed "[w]hether, as a matter of
15 California law, a California county and its employees can form an
16 implied contract that confers vested rights to health benefits on
17 retired county employees." Id. at 1176. The Ninth Circuit had
18 certified this question to the California Supreme Court in a case
19 where a county government sought to reduce its contributions to
20 its retired employees' healthcare benefit plans. See Retired
21 Emps. Ass'n of Orange Cnty. Inc. v. County of Orange, 610 F.3d
22 1099 (9th Cir. 2010) (REAOC I). In REAOC II, the California
23 Supreme Court answered the certified question by holding that "a
24 vested right to health benefits for retired county employees can
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27 ¹ This order refers to the opinions in both the REAOC and the
28 Sonoma lines of cases using the same case names employed by both the
parties and the Ninth Circuit in this action.

1 be implied under certain circumstances from a county ordinance or
2 resolution." 52 Cal. 4th at 1194.

3 In February 2013, the Ninth Circuit vacated this Court's
4 November 2010 order of dismissal. SCARE v. Sonoma County, 708
5 F.3d 1109, 1119 (9th Cir. 2013) (Sonoma III). Although the court
6 of appeals agreed that SCARE's first amended complaint failed to
7 state a claim, it held that SCARE should be granted leave to amend
8 in order to plead that, under REAOC II, the County made an implied
9 promise to provide post-retirement healthcare benefits. Id. The
10 Ninth Circuit explained, "The district court did not have the
11 benefit of REAOC II, but in light of its clarification that a
12 public entity in California can be bound by an implied term in a
13 written contract under specified circumstances, we cannot say that
14 the Association's amendment of its complaint a second time would
15 be futile." Id. It therefore remanded the action "for
16 proceedings consistent with REAOC II." Id.

17 SCARE filed its 2AC in May 2013. It attached twenty-six new
18 resolutions to the 2AC and asserted that these resolutions --
19 along with the sixty-eight resolutions, ordinances, and MOUs
20 attached to its previous complaint -- evinced the "County's clear
21 intent to bind itself to contracts with the Retirees to provide
22 post-retirement healthcare benefits." 2AC ¶ 19. Although SCARE
23 made a handful of minor changes to the text of its complaint, the
24 twenty-six newly added resolutions constituted the principal
25 substantive amendment to its earlier complaint.

26 In June 2013, the County filed the instant motion to dismiss.
27
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DISCUSSION

I. Subject Matter Jurisdiction

A. Legal Standard

Subject matter jurisdiction is a threshold issue which goes to the power of the court to hear the case. Federal subject matter jurisdiction must exist at the time the action is commenced. Morongo Band of Mission Indians v. Cal. State Bd. of Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988). A federal court is presumed to lack subject matter jurisdiction until the contrary affirmatively appears. Stock W., Inc. v. Confederated Tribes, 873 F.2d 1221, 1225 (9th Cir. 1989).

Dismissal is appropriate under Rule 12(b)(1) when the district court lacks subject matter jurisdiction over the claim. Fed. R. Civ. P. 12(b)(1). A Rule 12(b)(1) motion may either attack the sufficiency of the pleadings to establish federal jurisdiction, or allege an actual lack of jurisdiction which exists despite the formal sufficiency of the complaint. Thornhill Publ'g Co. v. Gen. Tel. & Elecs. Corp., 594 F.2d 730, 733 (9th Cir. 1979); Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987).

B. Associational Standing

The County contends that the Court lacks subject matter jurisdiction over this action because SCARE has failed to establish that it has standing to bring suit on behalf of its members.²

² Although the County failed to raise this issue previously, both in its prior motions and on appeal, this failure does not bar its standing argument here because a "litigant generally may raise a court's

1 The standing requirement derives from Article III, section 2
2 of the United States Constitution, which "confines the judicial
3 power of federal courts to deciding actual 'Cases' or
4 'Controversies.'" Hollingsworth v. Perry, 133 S. Ct. 2652, 2661
5 (2013) (quoting U.S. Const. art III, § 2). An organization
6 seeking to bring suit on behalf of its members must establish that
7 it has "associational standing" by showing that "(1) at least one
8 of its members would have standing to sue in his own right,
9 (2) the interests the suit seeks to vindicate are germane to the
10 organization's purpose, and (3) neither the claim asserted nor the
11 relief requested requires the participation of individual members
12 in the lawsuit." Fleck & Associates, Inc. v. City of Phoenix, 471
13 F.3d 1100, 1105-06 (9th Cir. 2006) (citing United Food &
14 Commercial Workers Union Local 751 v. Brown Group, Inc., 517 U.S.
15 544, 553 (1996)). While the first two prongs of this test arise
16 directly from Article III, "the third prong of the associational
17 standing test is best seen as focusing on [] matters of
18 administrative convenience and efficiency, not on elements of a
19 case or controversy within the meaning of the Constitution."
20 United Food, 517 U.S. at 557.

21 Here, the County contends that SCARE has failed to meet the
22 third prong of this test because it seeks monetary damages rather
23 than purely injunctive or declaratory relief. According to the
24 County, these damages claims will ultimately necessitate the
25 participation of SCARE's individual members in this lawsuit. For
26 support, the County cites a handful of cases where district courts
27
28 lack of subject-matter jurisdiction at any time." Kontrick v. Ryan, 540
U.S. 443, 455 (2004).

1 have refused to allow organizations to bring certain claims for
2 monetary relief on behalf of their individual members. See, e.g.,
3 SEIU, Local 721 v. County of Riverside, 2011 WL 1599610, at *11
4 (C.D. Cal.) ("Thus, because Plaintiff seeks damages here,
5 associational standing is precluded insofar as Plaintiff alleges
6 monetary damages."). It also points to cases where the Ninth
7 Circuit has recognized that organizations seeking only injunctive
8 or declaratory relief typically face a lower bar to associational
9 standing than organizations seeking damages. See, e.g.,
10 Associated Gen. Contractors of Am. v. Metro. Water Dist. of S.
11 Cal., 159 F.3d 1178, 1181 (9th Cir. 1998) ("[T]here can be little
12 doubt that the claims raised by [the plaintiff] do not require the
13 participation of individual members in this action.
14 Individualized proof from the members is not needed where, as
15 here, declaratory and injunctive relief is sought rather than
16 monetary damages.").

17 None of these cases establishes a rigid rule precluding
18 associational standing in all cases where organizations seek to
19 bring damages claims on behalf of their individual members.
20 Indeed, in United Food, the Supreme Court unanimously held that
21 the third prong of the associational standing test did not bar a
22 union from asserting damages claims on behalf of its members under
23 the Worker Adjustment and Retraining Notification Act. 517 U.S.
24 at 558. The Court specifically highlighted a "wide variety of
25 other contexts in which a statute, federal rule, or accepted
26 common-law practice permits one person to sue on behalf of
27 another, even where damages are sought." Id. at 557 (emphasis
28 added). The Court therefore concluded that the third prong of the

1 associational standing test does not create a strict
2 constitutional prohibition on claims for monetary relief but,
3 rather, addresses prudential concerns such as "administrative
4 convenience and efficiency." Id.

5 The County has not adequately explained how the participation
6 of SCARE's individual members in this suit would threaten
7 administrative convenience or efficiency here. To the extent that
8 any of SCARE's individual members would have to participate in
9 this litigation at all -- and it remains unclear whether they
10 would -- their participation would likely be quite limited given
11 that SCARE's claims are based almost entirely on local ordinances
12 and resolutions, each of which applies to a broad swath of
13 retirees. The potential limited participation by some members of
14 SCARE is not sufficient to defeat associational standing. See,
15 e.g., Alliance for Open Soc'y Int'l, Inc. v. U.S. Agency for Int'l
16 Dev., 651 F.3d 218, 230 (2d Cir. 2011) ("The fact that a limited
17 amount of individuated proof may be necessary does not in itself
18 preclude associational standing." (emphasis added; citations
19 omitted)), aff'd, 133 S. Ct. 2321 (2013); Pa. Psychiatric Soc. v.
20 Green Spring Health Servs., Inc., 280 F.3d 278, 286 (3d Cir. 2002)
21 ("If the Pennsylvania Psychiatric Society can establish these
22 claims with limited individual participation, it would satisfy the
23 requirements for associational standing." (emphasis added));
24 Retired Chicago Police Ass'n v. City of Chicago, 7 F.3d 584, 603
25 (7th Cir. 1993) (RCPA) ("We can discern no indication . . . that
26 the Supreme Court intended to limit representational standing to
27 cases in which it would not be necessary to take any evidence from
28 individual members of an association.").

1 In any event, the relief that SCARE seeks here is primarily
2 declarative and injunctive in nature. In its complaint, it asks
3 for a judicial declaration that the County owes its retirees
4 certain healthcare benefits and an injunction directing the County
5 to provide those benefits. While this relief would ultimately
6 result in monetary gains for SCARE's individual members, it is
7 still sufficient to support associational standing. Recently, in
8 a case similar to this one, another court in this district found
9 that an association of retired Contra Costa County employees had
10 associational standing to bring claims for breach of an implied
11 promise to pay healthcare benefits, reasoning that the relief the
12 organization sought was essentially declaratory and injunctive in
13 nature. Retiree Support Grp. of Contra Costa Cnty. v. Contra
14 Costa Cnty., 944 F. Supp. 2d 799, 805-06 (N.D. Cal. 2013)
15 (rejecting the defendant's argument that "the resolution of [the
16 association]'s claims requires individualized factual inquiries
17 and the participation of individual retirees"). There, the
18 retiree organization alleged that Contra Costa County had
19 "promised the retirees that they would receive retiree health care
20 benefits for themselves and their dependents if they met certain
21 criteria, and that the County would pay for 80% or more of the
22 costs of these benefits for at least one plan for the lifetime of
23 the retirees." Id. at 801. When the county sought to cap the
24 retirees' benefits at a flat dollar amount, the organization
25 brought suit seeking "injunctive and declaratory relief that would
26 require the County to fulfill its obligations under the 80%
27 promise." Id. at 802. The court found that this was sufficient
28 to satisfy the third prong of the associational standing test.

1 Id. at 806 ("Because RSG seeks declaratory and injunctive relief,
2 the third factor also is satisfied.").

3 The Seventh Circuit relied on similar reasoning in RCPA,
4 finding that an association of retired police officers who wanted
5 to prevent the City of Chicago from altering their health plan had
6 associational standing. 7 F.3d at 602-03. Even though the
7 retirees stood to benefit financially if the association prevailed
8 in the suit, the court nevertheless treated the association's
9 claims as claims for declaratory and injunctive relief. Id. at
10 603 ("Declaratory, injunctive, or other prospective relief will
11 usually inure to the benefit of the members actually injured and
12 thus individualized proof of damages is often unnecessary."). The
13 court expressly rejected the city's argument that the association
14 failed to meet the third prong of the associational standing test.
15 Id. ("Here, the issue is whether the City made certain binding
16 representations with respect to its health care funding
17 obligations. Recovery would not require that each and every
18 member of the [retired police officers' association] establish
19 that he was the recipient of a misrepresentation by the City or
20 the Police Fund."). Analogous logic governs here.

21 Accordingly, SCARE has plead sufficient facts to establish
22 that it has standing to sue on behalf of its individual members.
23 The County's motion to dismiss for lack of subject matter
24 jurisdiction must therefore be denied.

25 II. Failure to State a Claim

26 A. Legal Standard

27 A complaint must contain a "short and plain statement of the
28 claim showing that the pleader is entitled to relief." Fed. R.

1 Civ. P. 8(a). On a motion under Rule 12(b)(6) for failure to
2 state a claim, dismissal is appropriate only when the complaint
3 does not give the defendant fair notice of a legally cognizable
4 claim and the grounds on which it rests. Bell Atl. Corp. v.
5 Twombly, 550 U.S. 544, 555 (2007). In considering whether the
6 complaint is sufficient to state a claim, the court will take all
7 material allegations as true and construe them in the light most
8 favorable to the plaintiff. NL Indus., Inc. v. Kaplan, 792 F.2d
9 896, 898 (9th Cir. 1986). However, this principle is inapplicable
10 to legal conclusions; "threadbare recitals of the elements of a
11 cause of action, supported by mere conclusory statements," are not
12 taken as true. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
13 (citing Twombly, 550 U.S. at 555).

14 B. Sufficiency of New Board Resolutions

15 As noted above, SCARE has sought to cure its prior pleading
16 deficiencies by attaching twenty-six new resolutions to its 2AC.
17 The County contends that these resolutions do not plausibly
18 suggest that it entered into any binding contracts containing an
19 implied promise to provide its employees with post-retirement
20 healthcare benefits in perpetuity. It raises three arguments that
21 merit discussion here.

22 First, the County points to a 1992 ordinance requiring that
23 any promise of payment to a County employee be made with the
24 "express prior authorization" of the Board of Supervisors.
25 According to the County, this ordinance precludes SCARE from
26 asserting any contract claims based on the existence of an implied
27 promise in any resolutions or MOUs adopted after 1992. Second,
28 the County asserts that the newly added resolutions only govern

1 the rights of retirees who were represented by a union and,
2 therefore, do not provide any contractual rights to non-union
3 retirees. Third and finally, the County notes that the new
4 resolutions only date back as far as 1990. As such, the County
5 argues, they do not create a contractual right to healthcare
6 benefits for any retirees who were hired before that date. Each
7 of these arguments is addressed in turn.

8 1. 1992 Ordinance

9 In REAOC II, the California Supreme Court explained that "a
10 county may be bound by an implied contract under California law if
11 there is no legislative prohibition against such arrangements,
12 such as a statute or ordinance." 52 Cal. 4th at 1176 (emphasis
13 added). The County contends that Ordinance No. 4478, which was
14 enacted in January 1992, provides just such a prohibition on
15 implied contracts. It specifically cites section 2 of the
16 ordinance, which provides,

17 Any purportedly binding promise or
18 representation made by any officer, employee
19 or agent of the County of Sonoma, including
20 other public agencies governed in whole or in
21 part by the Board of Supervisors, that would
22 require the payment of money, performance of
23 service, transfer of any property, real or
24 personal, or the giving of any other thing of
25 value of the County of Sonoma, or other public
26 agencies governed in whole or in part by the
27 Board of Supervisors, where the making of the
28 promise or the representation did not have the
express authorization of the Board of
Supervisors is, unless otherwise provided by
law, unenforceable and void.

1 Docket No. 78, Def.'s Req. Judicial Notice (RJN), Ex. 1A, at 1
2 (emphasis added).³ The County argues that, under REAOC II, this
3 "express authorization" requirement precludes SCARE from asserting
4 any claims against it based on an implied contract term. This
5 interpretation of the ordinance is not persuasive.

6 Section 1 of Ordinance No. 4478 outlines the Board of
7 Supervisors' purpose in adopting the ordinance. According to that
8 section, the Board adopted the ordinance in furtherance of a
9 general policy "that the decision to obligate public funds and
10 property should be made openly and publicly in accordance with the
11 requirements of the Ralph M. Brown Act, unless otherwise
12 authorized by law." Def.'s RJN, Ex. 1A, at 1. This statement of
13 legislative intent suggests that the central purpose of the
14 "express authorization" requirement is to ensure that all of the
15 County's payment obligations are approved by the Board in an open
16 and public setting. Put differently, the ordinance is supposed to
17 prevent any "officer, employee or agent of the County" from
18 binding the County to any contract without the public's knowledge
19 and without the Board's approval.

20 Nothing in the ordinance, however, suggests that the Board
21 also intended to require that every "promise or representation"
22 made by the County be conveyed in "express" terms. Rather, the
23 text of the ordinance itself suggests that it is the Board's
24 authorization of County contracts that must be "express" -- not
25

26 ³ The County's request for judicial notice of the text of this
27 ordinance is granted. The ordinance is codified at section 1-11 of the
28 Sonoma County Code of Ordinances, which is available online at:
http://library.municode.com/HTML/16331/level1/CH1GEPR.html#CH1GEPR_S1-11OBPUFUPR (last visited Jan. 3, 2014).

1 the terms of every contract it approves. Indeed, if the Board
2 sought to preclude implied terms from being read into any contract
3 involving "the payment of money, performance of service, transfer
4 of any property, real or personal, or the giving of any other
5 thing of value of the County of Sonoma," it would raise the cost
6 of contracting with the County considerably. This was not likely
7 what the Board intended when it adopted Ordinance No. 4478.
8 Accordingly, the County's proposed construction of the ordinance
9 as a broad prohibition against implied contract terms is not
10 tenable. The ordinance does not bar SCARE from asserting contract
11 claims against the County based on implied promises or
12 representations, as long as those promises or representations were
13 approved by the Board in an open and public setting by means of an
14 ordinance or resolution.

15 2. Non-Union Retirees

16 In Sonoma III, the Ninth Circuit set forth a two-part test
17 that SCARE must satisfy here to state a valid claim for breach of
18 contract. It explained that, "in order to survive a motion to
19 dismiss, [SCARE]'s complaint must plausibly allege that the
20 County: (1) entered into a contract that included implied terms
21 providing healthcare benefits to retirees that vested for
22 perpetuity; and (2) created that contract by ordinance or
23 resolution." 708 F.3d at 1115 (citing REAOC II, 52 Cal. 4th at
24 1185-86). The court held that some of the MOUs attached to
25 SCARE's prior complaint -- specifically, those in which the County
26 agreed to "make contributions toward a health plan premium for
27 retirees hired after 1990" -- satisfied the first part of this
28 test because they plausibly contained an implied promise to

1 provide post-retirement healthcare benefits in perpetuity. Id. at
2 1116 ("The MOUs submitted with the amended complaint support the
3 Association's allegation that the MOUs promised healthcare
4 benefits."). However, the complaint failed to satisfy the second
5 part of the test because it did not identify any specific
6 ordinances or resolutions that plausibly ratified these MOUs.⁴
7 Id. at 1117 ("Given REAOC II's focus on the statutory requirement
8 that compensation of county employees must be addressed in an
9 ordinance or resolution, the complaint's passing references to
10 Board ratification are an insufficient basis for a court to infer
11 that the County enacted a resolution or ordinance that ratified
12 the relevant MOUs." (citations omitted)).

13 The twenty-six resolutions that SCARE has added to its 2AC
14 solve this problem because they contain language expressly
15 adopting the MOUs highlighted in the Ninth Circuit's opinion. See
16 2AC, Exs. 69-94. However, the MOUs themselves are limited in
17 scope because they only govern agreements between the County and
18 local unions; the MOUs do not promise any benefits to the County's
19 non-union employees. Although SCARE argues that the other
20 resolutions and ordinances attached to its 2AC show that the
21 County made similar promises to non-union employees, see Docket
22 No. 81, Pl.'s Opp. at 9-10, the Ninth Circuit's opinion in Sonoma
23 III precludes this argument. Citing the standard set forth in
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26 ⁴ This distinguishes the present case from Contra Costa, 944 F.
27 Supp. 2d at 804, which SCARE cites for support. In that case, the court
28 applied the two-part test set forth in Sonoma III and specifically
concluded that the plaintiff's complaint "meets both of these
requirements." Id.

1 REAOC II to satisfy the second part of the test outlined above,
2 the Sonoma III court explained that

3 the County's resolutions and ordinances may
4 create a contract if the text and the
5 circumstances of their passage "clearly
6 evince" an intent to grant vested benefits, or
7 if they "contain[] an unambiguous element of
8 exchange of consideration by a private party
9 for consideration offered by the state." In
10 the alternative, the County's intent to make a
11 contract by legislation "is clearly shown"
12 when a resolution or ordinance ratifies or
13 approves the contract.

14 But here the amended complaint does not
15 plausibly allege either alternative.

16 708 F.3d at 1117 (citing REAOC II, 52 Cal. 4th at 1186-87). The
17 court noted that SCARE's complaint was not "sufficient to
18 establish that the resolutions, ordinances, and MOUs were the
19 product of a bargained-for exchange of consideration." Id. In
20 addition, it found that SCARE "did not allege that the Board
21 ratified the MOUs by resolution or ordinance" and failed to
22 "submit copies of any such resolutions or ordinances with the
23 amended complaint." Id. Accordingly, it held that the "district
24 court did not err in concluding that the amended complaint failed
25 to state a cause of action on this issue." Id.

26 In light of the Ninth Circuit's conclusion that SCARE's
27 earlier complaint -- including the attachments thereto -- was not
28 sufficient to state a claim, SCARE cannot now rely on the
29 resolutions and ordinances attached to that complaint to establish
30 the contractual rights of non-union employees.⁵ Thus, while SCARE

31 ⁵At oral argument, SCARE emphasized that the Ninth Circuit's
32 opinion in this case "doesn't draw any distinctions between union and
33 nonunion employees." Docket No. 93, July 11, 2013 Hrg. Tr. 7:14-:16.
34 The Ninth Circuit, however, had no reason to draw such distinctions

1 may proceed on its claims based on the alleged contractual rights
2 of the union employees identified in the MOUs, it may not proceed
3 on any claims based on the alleged contractual rights of non-union
4 employees.

5 3. Retirees Hired Before 1990

6 The MOUs attached to SCARE's 2AC are not only limited insofar
7 as they only apply to union employees; they are also limited
8 insofar as they only apply to employees hired after 1990.

9 The MOUs adopted by the twenty-six newly added resolutions
10 date back to 1989, at the earliest, and govern the rights of
11 various union employees hired after 1990. See, e.g., 2AC, Ex. 38,
12 Aug. 1989 Agreement Between Service Employees International Union,
13 Local 707, and the County of Sonoma, at 64 ("For any employee who
14 is newly hired or rehired by the County or any other agency
15 covered by this Memorandum after January 1, 1990, [these
16 healthcare] benefit[s] shall only be available upon the employee's
17 retirement under the following circumstances. . . ." (emphasis
18 added)). In Sonoma III, the Ninth Circuit expressly recognized
19 that these were the only County retirees who plausibly have a
20 contractual right to the healthcare benefits at issue in this
21 suit. The court noted that the MOUs attached to SCARE's complaint
22 provide "that the County will make contributions toward a health
23 plan premium for retirees hired after 1990 who have worked for the

24 _____
25 because, as noted above, SCARE's complaint failed to meet the threshold
26 requirement of identifying a resolution or ordinance adopting the
27 relevant MOUs. In short, the court had no reason to delineate the
28 precise scope of the MOUs because SCARE did not adequately allege that
the Board actually adopted those MOUs. In any event, the Ninth
Circuit's failure to distinguish between union and non-union employees
does not provide grounds for ignoring the plain language of the MOUs,
which is directed unequivocally at union employees.

1 County for at least ten years, and have contributed to the
2 County's retirement system for the same length of time." 708 F.3d
3 at 1116 (emphasis added).

4 Given this time limitation in the MOUs, SCARE's complaint
5 does not plausibly allege that the County impliedly promised to
6 provide healthcare benefits in perpetuity to retirees who were
7 hired before 1990. Although SCARE contends that the other
8 resolutions and ordinances attached to its complaint show that the
9 County made implied promises to provide benefits to retirees hired
10 before 1990, SCARE cannot rely on these resolutions and ordinances
11 because the Ninth Circuit has already found them insufficient, as
12 explained above. Accordingly, just as SCARE cannot proceed on any
13 of its claims based on the alleged contractual rights of non-union
14 employees, it cannot proceed on any claims based on the alleged
15 contractual rights of retirees hired before 1990. The only
16 retirees who can plausibly claim an implied contractual right to
17 receive healthcare benefits in perpetuity under the 2AC are those
18 who were both hired after 1990 and members of the unions
19 identified in the MOUs adopted by the Board of Supervisors.

20 Because SCARE has not added any new resolutions to its 2AC
21 that were enacted before 1990, its theory of contract formation
22 based on the alleged 1985 "tie agreement" must be rejected.
23 Sonoma III made clear that, in order to state a valid claim based
24 on an implied contract to provide healthcare benefits, SCARE would
25 have to amend its complaint to identify a specific ordinance or
26 resolution creating that contract. 708 F.3d at 1115. It failed
27 to do so here with respect to the alleged "tie agreement."
28

1 4. The County's Remaining Arguments

2 The County's remaining arguments focus on SCARE's promissory
3 estoppel claims and are largely derivative of its assertion that
4 SCARE has failed to establish the existence of an enforceable
5 contract to provide post-retirement healthcare benefits. In
6 essence, the County contends that SCARE's failure to identify a
7 binding implied promise to provide healthcare benefits in
8 perpetuity dooms its promissory estoppel claims in addition to its
9 contract claims. Because the Court concludes, however, that SCARE
10 has adequately alleged the existence of such a promise with
11 respect to union retirees hired after 1990, the County's arguments
12 with respect to SCARE's promissory estoppel claims must be
13 rejected with respect to those retirees.

14 The County also contends that the anti-vesting language of
15 section 31692 of the California Government Code bars SCARE's
16 contract-based claims. That provision states that the "adoption
17 of an ordinance or resolution pursuant to Section 31691 shall give
18 no vested right to any member or retired member,⁶ and the board of
19 supervisors or the governing body of the district may amend or
20 repeal the ordinance or resolution at any time." Cal. Gov't Code.
21 § 31692. Section 31691 provides that a county board of
22 supervisors

23 may provide for the contribution by the county or
24 district from its funds and not from the
25 retirement fund, toward the payment of all or a
26 portion of the premiums on a policy or certificate
27 of life insurance or disability insurance issued
28 by an admitted insurer, or toward the payment of
 all or part of the consideration for any hospital

⁶ In this context, "member" means any county employee participating in an insurance plan.

1 service or medical service corporation . . .
2 contract, or for any combination thereof, for the
3 benefit of any member heretofore or hereafter
4 retired or his or her dependents.

5 Cal. Gov't Code § 31691(a). These provisions do not bar SCARE's
6 claims here because, as both REAOC II and Contra Costa explained,
7 "the 'precise relationship' between the services mentioned in
8 section 31691 and retiree health benefits is unclear." Contra
9 Costa, 944 F. Supp. 2d at 805 (citing REAOC II, 52 Cal. 4th at
10 1191). This is one of the main reasons why neither of these
11 courts considered section 31692 to be a bar to the retirees'
12 contract claims in those cases. Id.; REAOC II, 52 Cal. 4th at
13 1194 (concluding, after examining section 31692, that "a vested
14 right to health benefits for retired county employees can be
15 implied under certain circumstances from a county ordinance or
16 resolution"). The County does not attempt to distinguish either
17 of these cases in its briefs. Thus, "the County's argument that
18 [the association]'s claims are barred by Section 31692 is
19 unavailing." Contra Costa, 944 F. Supp. 2d at 805.

20 CONCLUSION

21 For the reasons set forth above, Defendant's motion to
22 dismiss (Docket No. 77) is GRANTED in part and DENIED in part.
23 Plaintiff may proceed on all of its claims based on promises that
24 are allegedly implied in the MOUs that the Board of Supervisors
25 ratified in the resolutions attached as Exhibits 69 through 94 of
26 the 2AC. Plaintiff may not, however, proceed on any claims based
27 on promises that were allegedly implied in the other resolutions
28 and ordinances attached to its 2AC. This includes any claims
based on the alleged 1985 "tie agreement."

1 Defendant's motion to file a statement of recent decision
2 (Docket No. 87) is GRANTED.

3 Defendant shall file its answer within fourteen days of this
4 order. Pursuant to the parties' stipulation, Docket No. 94,
5 Plaintiff shall file its dispositive motion 224 days after
6 Defendant files its answer. Defendant shall file its opposition
7 and any cross-motion, contained in a single twenty-five page
8 brief, twenty-eight days thereafter. Plaintiff shall file its
9 reply fourteen days after Defendant files its cross-motion and
10 opposition. Defendant shall file its reply to any cross-motion
11 fourteen days after Plaintiff files its reply.

12 IT IS SO ORDERED.

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14 Dated: 1/10/2014

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CLAUDIA WILKEN
United States District Judge

United States District Court
For the Northern District of California