



## Memorandum

**To:** Panel Members for Factfinding SF-IM-130-M:  
Carol Vendrillo  
Craig Whittom  
Mat Mustard

**From:** Jonathan Holtzman, Renne Sloan Holtzman Sakai  
Burke Dunphy, Renne Sloan Holtzman Sakai

**Date:** November 15, 2013

**Re:** Preliminary Analysis Regarding Vestedness of Retiree Health Benefit

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As discussed during the factfinding session held on November 14, 2013, below is the City of Vallejo's (the "City") preliminary analysis of the claim of the Vallejo Police Officers Association (the "VPOA") that current and former VPOA members hold a vested interest in retiree health benefit contributions from the City.

Whether a particular claimant holds a vested right depends on both the time period during which such claim arose and the type of claimant asserting the claim.

*i. No Vested Right to Claims Arising Under Pre-Bankruptcy Agreements*

Current and former VPOA members have no basis to assert a vested interest in any rights relating to retiree health benefits under its pre-bankruptcy contracts with the City. The clear and unambiguous terms of the amended collective bargaining agreement between the City and the VPOA dated as of January 27, 2009 (the "Amended VPOA CBA") and the confirmed *Amended Plan Of Adjustment Of Debts Of City Of Vallejo, California, Dated May 20, 2011* (the "Plan") evidence the City and the VPOA's intent that the rights and payments under the Amended VPOA CBA satisfy of any and all claims of the VPOA and its members arising under their prior agreement. Moreover, under the terms of section 944(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), which serves as the basis for the Plan's discharge provision, all claims against a debtor arising prior to confirmation of a plan of adjustment are discharged upon confirmation.

The Amended VPOA CBA explicitly provides that "the Contract Modification Claims<sup>1</sup> shall be satisfied in full by payment of the Required Payments . . . ." The Plan states that the City is

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<sup>1</sup> "Contract Modifications Claims" are defined in the Amended VPOA CBA as claims in the City's bankruptcy case on account of the City's imposition of the Pendency Plan, or the changes under this Agreement from the Pre-Existing Labor Agreement



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discharged from all debts arising prior to confirmation of the Plan except (i) those debts specifically excepted from discharge in the Plan and (ii) claims held by creditors who had neither notice nor actual knowledge of the City's chapter 9 case. (Plan [Docket No. 1113, Exh. 1], Art. X, §§ A-B). Under the Plan's discharge and injunction provisions, the City is discharged from debts arising prior to the date on which the Plan was confirmed (subject to limited exceptions) and creditors are enjoined from commencing or continuing any action or proceeding against the City on account of such claims.

The discharge provisions in the Plan are consistent with section 944 of the Bankruptcy Code and related case law, including prior decisions in the City's chapter 9 case. Each of these authorities provides that creditors who fail to assert pre-confirmation claims during the course of a bankruptcy case are enjoined from asserting those claims once a plan of adjustment has been confirmed. *See, e.g.*, 11 U.S.C. § 944(b); (*V.W. v. City of Vallejo*, Case No. Civ.S-12-1629, 2013 WL 3992403, \*2 (E.D. Cal. Aug. 2, 2013) (citing 11 U.S.C. § 944(b)(1) and stating that claims against the City arising before confirmation of the Plan are barred); *Wilson v. City of Vallejo*, Case No. 12-cv-00547, 2013 WL 4780742 (E.D. Cal. Sept. 5, 2013) (same)).

The exceptions to this general rule of discharge are for (i) claims that are explicitly carved out of the discharge provision or (ii) claims held by creditors who did not have either actual or constructive notice of the chapter 9 case. There is no evidence that VPOA retiree claims qualify for either of these exceptions. With respect to exception (i), there are no terms in the Plan that exclude claims of VPOA members or retirees from the discharge. Further, the bankruptcy court entered an order explicitly disallowing claims for retiree health benefits asserted by former VPOA members, supporting the City's position that retiree health benefits were subject to allowance or disallowance (and therefore subject to discharge) in its bankruptcy case (the "Disallowance Order"). In granting the Disallowance Order, the bankruptcy court found that "the [City] has rebutted the prima facie validity of the subject claims (to the extent they implicate lost health benefits) . . . ." [Civil Minutes of June 29, 2011 Hearing, Docket No. 1079]. Specifically, the bankruptcy court found that:

- (1) No express contract obligates the [City] to provide 100% of the retirees' health care benefits for life;
- (2) An oral promise, practice or course of dealing by the [City] does not create an enforceable contract with the retirees;
- (3) The claimant cannot recover on a theory of breach of covenant, promissory estoppel, or implied contract;
- (4) The [City] has not violated the contracts clause of the California or United States Constitutions;
- (5) The [City] has not violated the claimant's substantive due process rights under the United States Constitution;



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- (6) The [City]'s reduction of retiree health benefits during the bankruptcy case did not violate the claimant's procedural due process rights;
- (7) The [City] has not violated the claimant's due process rights under the California Constitution; and
- (8) The [City] did not breach a mandatory duty under Cal. Gov. Code § 20479.

(*Id.*)

With respect to exception (ii), VPOA members and retirees cannot assert a reasonable argument that they did not have notice of the City's chapter 9 case. The filing of the approximately 120 proofs of claim disallowed in the Disallowance Order (and listed in the exhibit thereto) constitutes solid proof that the claimants had knowledge of the case. Moreover, both VPOA and the statutory committee appointed to represent retirees were active participants in the City's chapter 9 case, and these groups were tasked with notifying their constituencies of developments in the case. Accordingly, it would be difficult for any retiree to sustain a claim that he or she lacked notice of the City's bankruptcy.

ii. Claims Arising Under Amended VPOA CBA

With respect to rights arising under the Amended VPOA CBA, to the extent current or former VPOA members hold a vested interest in retiree health benefits, the scope of this benefit is limited to "the same amount . . . as it contributes towards the PEMHCA medical premiums for current VPOA bargaining unit employees" and not to any particular contribution amount. This analysis is two-fold. First, the retirees would need to establish that they hold a vested interest in retiree health care. Second, the retirees would need to define the scope of that benefit.

a. Step 1: Do Retirees Hold a Vested Interest in Health Benefits?

California courts have consistently held that the right of public employees to receive compensation that has already been earned (in whole or part) is a contractual obligation, and is therefore a "vested" right that cannot be easily modified. (*See, e.g., Betts*, 21 Cal.3d at 863.) Published cases have thus found employees and retirees to have vested rights in several forms of deferred compensation earned during active employment, such as pensions, disability benefits, and vacation pay and post-retirement health benefits. (*See Frank v. Board of Administration* (1976) 56 Cal. App. 3d 236; *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal. 3d 774, 781; *Thorning v. Hollister School District* (1992) 11 Cal. Ap. 4th 1598, 1605 (*rev. den.* 1993).) Arguably, under this precedent retiree health care may constitute deferred compensation and therefore be *per se* vested.

If a particular benefit is not *per se* vested as deferred compensation, it may nevertheless be vested through express or implied legislative intent to make it so. (*California Teachers Ass'n. v. Cory* (1984) 155 Cal.App.3d 494, 505; *Retired Employees Ass'n of Orange County v. County of*



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*Orange* (2011) 52 Cal.4th 1171, 1182 (“*REAOC*”). Evidence of legislative intent must be “clear” and “unambiguous” in order to support a vested interest claim. (*Claypool v. Wilson* (1992) 4 Cal.App.4th 646, 670; *REAOC*, at 1188-89).

b. Step 2: What is the Scope of This Interest?

Whether a retiree holds a vested interest in some level of health benefits is not the end of the inquiry. Next, the scope of that vested interest must be defined. Simply because a right is vested does not mean that such right is necessarily absolute. The language of the promise giving rise to the right can be helpful in determining that right’s boundaries and limitations. While a vested right may result from a promise that a specific benefit will continue unchanged in perpetuity, it can also result from a promise that has some built-in flexibility. For example, as in the Amended VPOA CBA, it is relatively common for employees to be promised that after retirement they will be allowed to continue receiving or participating in a benefit on the same basis as active employees.

*Sappington v. Orange Unified Sch. Dist.* (2004) 119 Cal.App.4th 949 provides a prominent example of such a “flexible” vested benefit. In *Sappington*, a school district enacted a policy stating that it would “underwrite the cost of the District’s Medical and Hospital Insurance Program” for all eligible employees and, accordingly, offered at least one “free” HMO plan and one “free” PPO plan. (*Id.* at 951-952.) After offering such benefits for 20 years, the district discontinued offering the free PPO plan (leaving only the free HMO plan) and retirees sued claiming they had a vested right to the free PPO option. (*Id.*) The Court of Appeal upheld the trial court’s decision that even though the policy created a vested right to receive free post-retirement healthcare coverage, it did not create a vested right to a particular form of that coverage. (*Id.* at 954-955.) Here, the Amended VPOA CBA provides that “the City will contribute the same amount towards eligible retiree-annuitants’ PEMHCA medical premiums as it contributes towards the PEMHCA medical premiums for current VPOA bargaining unit employees.” Importantly, it does not guarantee to retirees any particular form of benefit or benefit level.

The City’s current proposal to the VPOA does not seek to alter this commitment to current employees or retirees. Rather, it seeks to decrease its contributions on behalf of current employees and alter retiree benefits for employees not yet hired. Under the precedent set forth in *Sappington*, the vested interest of the retirees is, at most, limited to the same PEMHCA contribution as the City makes on behalf of active VPOA members.