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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA *ex rel.* SAN JOSE POLICE OFFICERS' ASSOCIATION, *Plaintiff,* v. CITY OF SAN JOSE, and CITY COUNCIL OF SAN JOSE, *Defendants*.	Case No. 1-13-CV-245503 **JOINT OPPOSITION TO MOTION TO VACATE JUDGMENT AND FOR FURTHER TRIAL OR NEW TRIAL** Date: May 17, 2016 Time: 9:00 a.m. Dept.: 7 Judge: Hon. Beth McGowen

I. INTRODUCTION

In this action in *quo warranto*, the People of the State of California, through the San Jose Police Officers' Association (POA), claim that the City failed to satisfy the meet and confer requirements of the Meyers Milias Brown Act before placing Measure B on the ballot for voter approval. (See *People ex rel. Seal Beach Police Officers Assn v. City of Seal Beach* (1984) 36 Cal.3d 591.)

Despite Proposed Intervenors' continued protests, this case is not about the results of the June 5, 2012 vote on Measure B. Nor is it about the physical and monetary efforts Constant, Huag and SVTA allegedly expended in the campaign over Measure B.

This case involves a single issue: "Did the City of San Jose fulfill its statutory collective bargaining obligations before placing an initiative measure on the June 2012 ballot that, after its passage, amended the City Charter so as to increase city police officers' retirement contributions and reduce their retirement benefits?" (96 Ops.Cal.Atty.Gen. 1.) Constant, Huag and SVTA make no assertion that they have any specific knowledge or information to address the sole issue in this case. They are reduced to alleging conspiracy and besmirching the parties, the Court and its employees.

Proposed Intervenors have no interest in the negotiations between the parties, no basis for challenging the stipulated facts agreed by the parties, and thus there is no basis for their motion to vacate or their motion for a new trial.

Because they have no interest in the underlying issues in this case, both motions are meritless and should be denied. These motions are simply tactics of delay.

This Court properly denied Constant, Haug and SVTA's initial attempt to intervene in this action. (April 12 Order Denying Motion to Intervene.) They should not be allowed second bites at the apple. [1] Proposed Intervenors cannot succeed as a matter of law because motions to vacate

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[1] Although this Court denied statutory intervention, "A long line of cases has established a 'nonstatutory' form of intervention whereby one who is legally aggrieved by a judgment may become a party to the record and obtain a right to appeal by moving to vacate the judgment pursuant to Code of Civil Procedure section 663." (*Lippman v. City of L.A.* (1991) 234 Ca.App.3d 1630, 1633.) This case is nothing more than a second attempt at intervention.

and motions for a new trial under Code of Civil Procedure §§657 and 663 do not lie to attack a *stipulated* judgment. Even if the motions were procedurally proper, Proposed Intervenors are not sufficiently "aggrieved" and consequently lack standing.

Proposed Intervenors recycle their unsuccessful arguments in support of intervention—even less effectively here. This case is not about the merits of Measure B—it is a narrow *quo warranto* action about bargaining obligations. That fact alone distinguishes the instant matter from all the ballot measure cases relied on by Proposed Intervenors —*Perry v. Brown* (2011) 54 Cal.4th 1116; *Paulson v. Abdelnour* (2006) 145 Cal.App.4th 400 and *Simac Design, Inc. v. Alciati* (1979) 92 Cal. App. 3d 146—all of which concern the substance of the measure. Any rights Constant, Haug and SVTA seek to enforce never existed because Measure B was not properly on the ballot in the first place.

II. ARGUMENT

a. Motions to vacate judgment and for new trial cannot apply to a stipulated judgment.

Constant, Haug and SVTA assert standing as "aggrieved" parties within the meaning of Code. Civ. Proc. §§ 663 and 657. But the court need not reach this question because the statutory language and cases interpreting it establish conclusively that Code. Civ. Proc. § 663 and Code Civ. Proc. § 657 do not provide relief from stipulated judgments. (*Carney v. Simmonds* (1957) 49 Cal.2d. 84, 90; *Plaza Hollister Ltd. P'ship v. Cty. Of San Benito* (1999) 72 Cal.App.4th 1, 14.)

1. Code. Civ. Proc. §663 does not apply to vacate a stipulated judgment.

Code. Civ. Proc. § 663 only applies to "a decision by the court[] or the special verdict of a jury." Neither occurred in this case, so the motion should be denied.

"A motion to vacate under [Code of Civil Procedure] section 663 is a remedy to be used *when the trial court draws incorrect conclusions of law or renders an erroneous judgment on the basis of uncontroverted evidence*." (*Simac Design, Inc. v. Alciati* (1979) 92 Cal.App.3d 146, 153 [emphasis added].) It does not lie to set aside a stipulated judgment. (*Plaza Hollister, supra,* 72

Cal.App.4th at p. 14 ["A stipulated judgment does not rest upon facts established by evidence."].) As the *Plaza Hollister* Court held, "In the case of a stipulated judgment, it is impossible for the court to say that the judgment is not consistent with or not supported by the facts and it is impossible to substitute the correct judgment which is consistent with and supported by the facts." (*Id.*) "Since *Code of Civil Procedure section 663 has no logical application to stipulated judgments*, relief from such a judgment is not available either to parties of record or to legally aggrieved parties." (*Id.* at p. 15 [emphasis added].)

This Court made no findings of fact or conclusions of law that could be challenged. The Stipulated Judgment and Order was based on stipulated facts and stipulated proposed findings submitted by the Parties. (RJN in support of Joint Opposition to Application to Stay Enforcement of Judgment, Exh. 2.) Because the Stipulated Judgment does not rest upon facts established through an evidentiary proceeding, it would be "impossible to substitute the correct judgment which is consistent with and supported by the facts." (*Plaza Hollister, supra,* 72 Cal.App.4th at p. 14.)

On this basis alone, the motion to vacate should be denied.

2. Code. Civ. Proc. §657 does not apply to grant a new trial following a stipulated judgment.

Under Code. Civ. Proc. § 656, "a new trial is a re-examination of an *issue of fact* in the same court after *a trial and decision by a jury, court, or referee*." [Emphasis added.] Under Code. Civ. Proc. § 657, a motion for a new trial is proper procedure in cases where the judgment is based on law or fact. (*Carney v. Simmonds, supra,* 49 Cal.2d. at p. 90.) However, a motion for a new trial is not proper for "judgments by agreement or confession where there may be the question of the right of the moving party to make any objection to the judgment." (*Id.*) Much like a motion to vacate under Code Civ. Proc. § 663, a Code. Civ. Proc. § 657 motion for new trial is inapplicable in cases involving a stipulated judgment because there are no issues of law or fact to be re-examined in a new trial. (*Plaza Hollister, supra,* 72 Cal.App.4th at p. 14.)

b. Proposed Intervenors are not "aggrieved parties" because their interest is not "immediate, pecuniary, and substantial."

Even if motions to vacate and a new trial were viable in a situation involving a stipulated judgment, Proposed Intervenors would lack standing to bring either motion. Proposed Intervenors do not qualify as "aggrieved parties" under Code of Civil Procedure section 663 because they cannot assert an "immediate, pecuniary and substantial" right or interest that is injuriously affected by the judgment. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 736-737.) In *Carleson*, which is the primary authority Constant and SVTA rely on, the moving parties met this high threshold only because they suffered the immediate elimination of their welfare benefits as a direct result of the judgment. (*Id*. at p. 737.)

Here, Proposed Intervenors have no such immediate and substantial interest. Constant, Haug, and SVTA's interests are simply too speculative, indirect and generalized—the same infirmities that plagued their unsuccessful motion to intervene—to clear the higher standard necessary to qualify as an aggrieved party under Code of Civil Procedure section 663. Indeed, Haug and SVTA have demonstrated no interest distinct from that of every other taxpayer in San Jose. As with the motion to intervene, all of the alleged claims to reputation and "pecuniary interests" (Constant MPA at p. 7) are also too speculative and generalized to support intervention in this case.

Proposed Intervenors ignore the key distinction between this *procedural* quo warranto action, which concerns only bargaining rights and obligations, and cases like *Perry v. Brown* (2011) 54 Cal.4th 1116 and *Paulson v. Abdelnour* (2006) 145 Cal.App.4th 400, which involve the *substantive* legality of ballot provisions. This lawsuit is not the consolidated cases which were tried before Judge Lucas, which concerned the substance and constitutionality of Measure B. Proposed Intervenors' rights to intervene might have been better directed there, but for their delay. They cannot shoehorn those interests into this procedural case.

Constant, Huag and SVTA are more akin to moving party in *Lippman v. City of Los Angeles* (1991) 234 Cal. App. 3d 1630, a case they rely on. The judgment in *Lippman* ended an elected advisory committee in a redevelopment area. While acknowledging that the moving

parties' real estate interests created "some indirect interest" in the litigation, the court of appeal rejected their claim to have standing. (*Id.* at pp. 1634-1635.) This court should do the same.

III. CONCLUSION

For all the foregoing reasons, the Motions to Vacate and for Further Trial or New Trial should be denied.

Dated: May 2, 2016

MESSING ADAM & JASMINE LLP

By _____

Gregg McLean Adam
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Dated: May 2, 2016

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By _____

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PROOF OF SERVICE

I, the undersigned, am employed by Renne Sloan Holtzman Sakai LLP. My business address is 1220 Seventh Street, Suite 300, Berkeley, California 94710. I am readily familiar with the business practices of this office. I am over the age of 18 and not a party to this action.

On May 2, 2016, I served the following document(s):

JOINT OPPOSITION TO MOTION TO VACATE JUDGMENT AND FOR FURTHER TRIAL OR NEW TRIAL

by the following method(s):

☐ **United States Mail**. I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses on the attached Service List and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☑ **Overnight delivery**. I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses on the attached Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **Messenger service.** I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses on the attached Service List and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service*).

☐ **Personal service.** I personally delivered the document(s) to the persons at the addresses listed on the attached Service List. Delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening.

☐ **Facsimile transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the document(s) to the persons at the fax numbers listed on the attached Service List. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed, is attached.

☐ **Electronic Mail.** Based on an agreement of the parties to accept service by e-mail, copies of the above document(s) in PDF format were transmitted to the e-mail addresses of the parties on the attached Service List on at . No delivery errors were reported.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 2nd day of May 2016 at San Francisco, California.

Pauline Berkes

Pauline Berkes

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