Appeal No. 12-16366

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICK EATON,

Plaintiff - Appellant,

vs.

MARK SIEMENS, an individual and in his capacity as Chief of Police; CARLOS A. URRUTIA, an individual and in his capacity as City Manager; CITY OF ROCKLIN, a public municipality and public entity,

Defendants-Appellees.

Appeal From the United States District Court
for the Eastern District of California
Honorable Morrison C. England Jr., Judge Presiding
Case No. 2:07-CV-00315-MCE-CKD

BRIEF OF AMICUS CURIAE LEAGUE OF CALIFORNIA CITIES, supporting affirmance in favor of Defendants-Appellees

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for the Amicus Curiae League of California Cities certify that (1) the League of California Cities does not have any parent corporations, and (2) no publicly-held companies hold 10% or more of the stock or ownership interest in the League of California Cities.

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INTEREST OF AMICUS CURIAE

The League of California Cities ("League") is an association of 469 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee ("Committee"), comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

As discussed further below, the League files this *amicus curiae* brief to support the decision of the United States District Court, Eastern District of California, to grant the motion of Defendants-Appellees Mark Siemans, Carlos A. Urrutia and the City of Rocklin (collectively "Appellees") for judgment on the pleadings and to dismiss Plaintiff-Appellant Rick Eaton's ("Appellant's") action. The trial court so ruled, pursuant to this Court's opinion in *White v. City of Pasadena,* 671 F.3d 918 (9th Cir. 2012), that arbitration proceedings, conducted following the applicable memorandum of understanding, precluded further litigation based on the doctrine of *res judicata*. *White* and the trial court's decision are consistent with a long line of decisions in this Circuit affirming application of res judicata in employment-related disputes. Like *White*, this case is merely another variation on a consistent theme, but it presents an issue of exceptional

importance to the many cities in California that have adopted and use advisory arbitration procedures to resolve employee grievances.

Counsel for the parties have not authored this brief in whole or in part. Neither the parties nor their counsel have contributed money toward preparing or submitting this brief, nor has anyone other than the League or its counsel contributed money or pro bono service toward preparing or submitting the brief.

I. INTRODUCTION

Amicus Curiae the League of California Cities submits this brief in support of the decision of the United States District Court, Eastern District of California, to grant Appellees' motion for judgment on the pleadings and to dismiss Appellant's action. That court held that, pursuant to *White v. City of Pasadena*, the arbitration of Appellant's grievance, conducted in accordance with the applicable memorandum of understanding, precludes further litigation of Appellant's claims based on the doctrine of *res judicata*.

White reaffirmed the factual threshold standards to determine whether a final administrative disciplinary decision possesses adequate judicial character to bar successive litigation arising from the same primary right to employment. *White* is part of an established line of federal and state decisions that should not be disturbed. In this case, as in the administrative process in *White,* Appellant was entitled to and enjoyed a full evidentiary hearing before a neutral arbitrator under the terms of the applicable memorandum of understanding. Here, the City

Manager adopted the arbitrator's advisory decision to sustain Appellant's termination after a seven-day evidentiary hearing involving 18 witnesses and 100 exhibits. The district court properly held that, pursuant to *White,* the City of Rocklin's administrative decision possessed the requisite judicial character to preclude Appellant's duplicative litigation in federal court.

Many California cities and other government bodies have adopted similar advisory arbitration grievance procedures, including right to counsel in a full evidentiary hearing, right to elicit testimony under oath, traditional rules of evidence and submission of evidence before a neutral arbiter. Both cities and terminated/disciplined employees, whichever is successful, should be entitled to the preclusive effect upheld in *White.* In addition to federal and state constitutional safeguards of due process and fairness, these formal administrative procedures ensure certainty and judicial economy and prevent repetitive federal or state civil rights lawsuits in public employment termination cases. An aggrieved employee who does not agree with the arbitrator's decision may seek relief under post-termination administrative mandamus statutes in California. Cal. Code Civ. Proc. § 1094.5. There it should end.

Cities that have adopted formal administrative procedures have a paramount interest in the finality of their employment decisions. Absent finality, there is little benefit to adopting the procedures at all. Employees (and cities) should not be entitled to a "second bite at the apple" by relitigating the same issues and same

claims when the city has adopted and applied a formal process that is judicial in nature and consistent with due process. The arbitration requirement would be effectively nullified by creating an alternative or additional path for aggrieved employees to proceed to the courts. Furthermore, any decision to strip the administrative decision of probative weight and finality would unjustifiably impose an additional burden on those cities that have shouldered the financial burden of the arbitration proceeding and would also drain the resources of the judicial system.

Accordingly, *White* and the many cases leading up to *White*, establish clear precedent protecting cities that have adopted formal administrative procedures from successive, amorphous and open-ended duplicative litigation. Just like the City of Pasadena in *White,* the City of Rocklin ensured that Appellant received due process by providing the right to a full evidentiary hearing to review his termination. If this Court were to determine that the City of Rocklin's administrative hearing did not possess the requisite judicial character, the ruling would invalidate the factual threshold standard governing the judicial character established by this Court in *White* and the cases leading up to *White*. This Court should therefore affirm the district court's decision to dismiss Appellant's federal court action.

II. THE HOLDING IN *WHITE V. CITY OF PASADENA* THAT ADMINISTRATIVE DETERMINATIONS THAT ARE "JUDICIAL IN NATURE" ARE PRECLUSIVE SHOULD NOT BE DISTURBED

A. The Facts and Procedural History in *White* Are Closely Parallel to This Case

On January 27, 2012, in *White v. City of Pasadena*, 671 F.3d 918 (9th Cir. 2012), this Court unanimously held that plaintiff-appellant Karin White could not maintain her federal lawsuit based on California principles of issue preclusion from her earlier state action and administrative hearing. In 1996, defendant-appellee City of Pasadena hired White as a police officer. In 1998, White's physician diagnosed relapsing and remitting multiple sclerosis which would not limit her job performance. *Id.* at 922. In 2004, the city terminated her based on an alleged association with a notorious drug dealer about which she lied. After termination, White pursued her grievance rights under the applicable memorandum of understanding. White's grievance succeeded, and she returned to work as a police officer in July 2005. *Ibid.*

In December 2005, White filed her first lawsuit in state court alleging disability discrimination, disability harassment and violation of her state privacy rights. The trial court entered judgment denying White's discrimination and harassment claims but awarded damages based on her privacy claim. On appeal by both parties, the California Court of Appeal upheld the verdicts on the first two

claims and reversed as to the privacy claim on which the city was immune under Government Code section 821.6.

In June 2006, before the first trial in the action, White was shot in the face at her home in an apparent suicide attempt. *Id.* at 923. In August 2007, the city terminated White for false statements to the Sheriff's Department and police during investigation of her attempted suicide. In 2008, White filed a grievance asserting that the second termination and investigation related to her first lawsuit. *Ibid.*

After an administrative proceeding, the arbitrator recommended White's reinstatement. However, after independent review of the entire record from the administrative hearing, the City Manager rejected the recommendation and upheld the termination. *Id.* at 924. White petitioned for a writ of mandamus, which was denied. The California Court of Appeal upheld the City Manager's decision. White did not seek review in the California Supreme Court, and her termination became final on August 25, 2011. *Id.* at 924-25.

While the first lawsuit was on appeal and the administrative proceeding was pending, White filed a second lawsuit against the city for disability discrimination, disability harassment and retaliation claims, including a claim under the Civil Rights Act, 42 U.S.C. section 1983. *Id.* at 925. The second lawsuit was removed to federal court. In November 2008, the district court granted the city's motion to dismiss the action, holding that the pending state proceedings would likely have a

preclusive effect. On appeal, this Court upheld the dismissal, holding that the state judgment and administrative decision had the same preclusive effect in federal court that they would have been afforded under California law. *Id.* at 925-26.

B. Federal Courts Follow State Law on Issue and Claim Preclusion

The United States Supreme Court holds that the Full Faith and Credit Clause codified in 28 U.S.C. section 1738 requires state court judgments to be given both issue and claim preclusive effect in subsequent actions. *University of Tennessee v. Elliott,* 478 U.S. 788, 796-97 (1986) (purposes of the Full Faith and Credit Clause are "served by giving preclusive effect to state administrative fact-finding rather than leaving the courts of a second forum, state or federal, free to reach conflicting results"). A state court judgment has claim preclusive effect even if the federal issue is not raised in the state court. *Migra v. Warren City School District. Board of Education,* 465 U.S. 75, 83-84 (1984). In *Scoggin v. Schrunk,* 522 F.2d 436, 437 (9th Cir. 1975), *cert. denied,* 423 U.S. 1066 (1976), this Court rejected the assertion that a party should be allowed to split a claim arising from one injury into separate state and federal actions:

> It is now established that where the federal constitutional claim is based on the same asserted wrong as was the subject of a state action, and where the parties are the same, *res judicata* will bar the federal constitutional claim whether it was asserted in state court or not, for the reason that the state judgment on the merits serves not only to bar every claim that was raised in state court but also to preclude assertion of every legal theory or ground

> for recovery that might have been raised in support of the granting of the desired relief.

To determine the preclusive effect of a state administrative decision or state court judgment on a federal proceeding, the court must follow California law governing the rules of preclusion. *Kremer v. Chemical. Constr. Corp.*, 456 U.S. 461, 482 (1982). "Claim preclusion" provides that "a final judgment forecloses 'successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit.'" *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008), quoting *New Hampshire v. Maine*, 532 U.S. 742, 748 (2001). "Issue preclusion" bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment, even if the issue recurs in the context of a different claim. *Id.* at 748-49.

The essence of the defense of *res judicata* is that parties are not permitted to litigate a second suit on the same cause of action. A final judgment on the merits constitutes a complete bar of the same cause of action or defense between or among the same parties, in effect, merging the cause of action into the judgment and extinguishes the cause of action. *Slater v. Blackwood*, 15 Cal.3d 791, 795 (1975); *Flynn v. Flynn*, 42 Cal.2d 55, 58 (1954); *Johnson v. GlaxoSmithKline, Inc.*, 166 Cal.App.4th 1497, 1517 (2008).

The public policies underlying *res judicata* are encouragement of reasonably efficient and economic use of judicial resources and promotion of the litigants'

peace of mind and freedom from recurring litigation on the same issues. *Zimmerman v. Stotter,* 160 Cal.App.3d 1067, 1073 (1984). *Res judicata* limits litigation by preventing a party who has had one fair adversary hearing on an issue from again drawing the issue into controversy and subjecting the other party to further expense. *In re Crow*, 4 Cal.3d 613, 622-23 (1971).

With respect to administrative proceedings, courts have long favored the application of *res judicata* to administrative determinations that have attained finality. *United States v. Utah Construction & Mining Co.,* 384 U.S. 394, 422 (1966). "When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce repose." *Id., followed in Paulo v. Holder*, 669 F.3d 911, 917 (9th Cir. 2011), and *Murray v. Alaska Airlines, Inc.*, 522 F.3d 920, 923 (9th Cir. 2008).

This preclusive effect is justified on "the sound and obvious principle of judicial policy that a losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on an issue identical in substance to the one he subsequently seeks to raise." *Astoria Federal Savings & Loan Ass'n v. Solimino,* 501 U.S. 104, 107 (1991). To hold otherwise would, as a general matter, impose unjustifiably upon those who have already shouldered their burdens and drain the resources of an adjudicatory system with disputes resisting resolution. *Id.* This principle applies equally when the issues have been decided by an

administrative agency, whether state or federal, acting in a judicial capacity. *Id.*, *following University of Tennessee*, 478 U.S. 788, 798 (1986).

C. The Doctrine of *Res Judicata* Under California Law Strongly Supports Preclusion

In California, *res judicata* prevents a party from relitigating a cause of action that has been finally determined between those parties by a competent tribunal. *Mycogen Corp. v. Monsanto Co.*, 28 Cal.4th 888, 896 (2002); *Adams Bros. Framing, Inc. v. County of Santa Barbara*, 604 F.3d 1142, 1149 (9th Cir. 2010). The doctrine bars claims that could have been litigated as well as those actually litigated and applies to both actions and special proceedings. *Federation of Hillside & Canyon Ass'ns v. City of Los Angeles*, 126 Cal.App.4th 1180, 1202, 1205 (2004); *Palomar Mobilehome Park Ass'n v. City of San Marcos*, 989 F.2d 362, 364 (9th Cir. 1993).

The California Supreme Court established general rules for issue preclusion in *Lucido v. Superior Court*, 51 Cal.3d 335 (1990), cert. denied, 500 U.S. 920 (1991). The doctrine precludes relitigation when six criteria are satisfied: (1) the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding; (2) the issue to be precluded must have actually been litigated in the former proceeding; (3) the issue to be precluded must have been necessarily decided in the former proceeding; (4) the decision in the former proceeding must be final and on the merits; (5) the party to be precluded must be the same party as,

or in privity with, the party to the former proceeding; and (6) the application of issue preclusion must be consistent with the public policies of preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation. *Id.* at 341, 343, *followed in Hernandez v. City of Pomona,* 46 Cal.4th 501, 511-12 (2009).

For purposes of this brief, the League focuses on the "judicial in nature" requirement of the doctrine of *res judicata*. As prescribed by California law, a prior administrative proceeding, if upheld on review (or not reviewed at all), will be binding in later civil actions to the same extent as a state court decision if " 'the administrative proceeding possessed the requisite judicial character.'" *Runyon v. Board of Trustees*, 48 Cal.4th 760, 774 (2010), quoted in *White v. City of Pasadena*, 671 F.3d 918, 927 (9th Cir. 2012).

To possess the requisite judicial character, the administrative agency must "act[ ] in a judicial capacity and resolve[ ] disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate." *Murray v. Alaska Airlines, Inc.*, 50 Cal.4th 860, 869 (2010); *United States v. Utah Construction Co.*, 384 U.S. 394, 422 (1966). In that determination, California considers a number of non-dispositive factors, including (a) the administrative hearing was conducted in a judicial-like adversary proceeding; (b) witnesses had to testify under oath; (c) the determination involved the adjudicatory application of rules to a single set of facts; (d) the proceedings were conducted before an impartial hearing officer; (e) the

parties had the right to subpoena witnesses and present documentary evidence; and (f) the administrative agency maintained a verbatim record of the proceedings. *Imen v. Glassford*, 201 Cal.App.3d 898, 907 (1988), *followed in Jacobs v. CBS Broadcasting, Inc.*, 291 F.3d 1173, 1179 (9th Cir. 2002). Additionally, the court may consider whether the hearing officer's decision was adjudicatory and in writing with a statement of reasons, and whether that decision was adopted by the director of the agency with the potential for later judicial review. *Pacific Lumber Co. v. State Water Resources Control Board*, 37 Cal.4th 921, 944 (2006); *White v. City of Pasadena*, 671 F.3d 918, 928 (9th Cir. 2012). An administrative determination will possess adequate judicial character if the agency adheres to basic notions of due process and fairness to provide the employee an adequate opportunity to litigate. *Castillo v. City of Los Angeles*, 92 Cal.App.4th 477, 484-86 (2001); *Khaligh v. Hadaegh*, 338 B.R. 817, 828-30 (9th Cir. B.A.P. 2006), *aff'd*, 506 F.3d 956 (9th Cir. 2007); Restatement (Second) of Judgments § 83.

The law governing administrative adjudication in California is based on federal and state constitutions and statutes, court decisions, and the specific agency's own rules and decisions. The due process clause applies to state agency and city decision-making and is the foundational requirement of fair administrative adjudication. U.S. Const., amend. XIV, § 1; Cal. Const. Art. 1, §7(a); *Goldberg v. Kelly*, 397 U.S. 254, 265-70 (1970); *Kruger v. Wells Fargo Bank*, 11 Cal.3d 352, 365-71 (1974). To ensure due process, and to facilitate efficient and cost-effective

final resolutions, many cities have adopted formal hearing procedures for advisory arbitrations or negotiated them under applicable collective bargaining agreements.[1] Adjudicatory proceedings must adhere to a fundamental administrative adjudication bill of rights, including basic due process and fairness in accessible procedures, a public hearing, a neutral presiding officer, a prohibition of ex parte communications and a written decision based on the record. *See, e.g.*, Cal. Gov't Code §§ 11400-11470.50; 25 Cal. L. Revision Comm'n Reports 55 (1995).

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[1] *E.g.*, *Sabey v. City of Pomona*, 215 Cal.App.4th 489 (2013) (addressing Pomona's advisory arbitration procedures);
City of Chico (Section 2R.72.150 of Municipal Code, at http://www.chico.ca.us/government/municipal_code.asp);
City of Merced (Section 21.02 of Personnel Rules, available at http://www.cityofmerced.org/civicax/filebank/blobdload.aspx?BlobID=2417 and City Charter § 806, at http://library.municode.com/index.aspx?clientId=16096);
City of Galt (arbitration provision in Memorandums of Understanding available at http://www.ci.galt.ca.us/Modules/ShowDocument.aspx?documentid=507);
City of Burbank (advisory arbitration provisions in multiple MOUs, available at http://www.burbankusa.com/home/showdocument?id=15252, http://www.burbankusa.com/home/showdocument?id=15253, http://www.burbankusa.com/home/showdocument?id=15251, http://www.burbankusa.com/home/showdocument?id=20880);
City of San Luis Obispo (Section 2.36.340 of Personnel Rules, available at http://www.codepublishing.com/ca/sanluisobispo/, incorporated into MOUs). The League asks this Court to take judicial notice of the official documents on the websites and published decisions. *United States v. Basher*, 629 F.3d 1161, 1165 n.2 (9th Cir. 2011) (judicial notice of inmate information on Federal Bureau of Prisons website); *Daniels-Hall v. National Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010) (judicial notice of official government websites); *Cachil Dehe Band of Wintun Indians of Colusa Indian Community v. California*, 547 F.3d 962, 968-69 n.4 (9th Cir. 2008), *cert. denied*, 556 U.S. 1182 (2009) (judicial notice of gaming compacts on official California Gambling Control Commission website); *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006) (judicial notice of "public records" that "can be accessed at Santa Monica's official website").

As long as judicial power remains in the courts by way of judicial review of city or agency determinations, a city or agency may constitutionally hold hearings, determine facts, apply the law, and order relief when authorized by law and reasonably necessary to achieve the administrative agency's primary regulatory purposes. *McHugh v. Santa Monica Rent Control Board,* 49 Cal.3d 348, 359, 372 (1989); *McAllister v. County of Monterey*, 147 Cal.App.4th 253, 288 (2007).

California law also establishes that an unreviewed state or local administrative adjudication has preclusive effect in a subsequent federal court action. *Jamieson v. City Council*, 204 Cal.App.4th 755, 760-61 (2012); *Briggs v. City of Rolling Hills Estates*, 40 Cal.App.4th 637 (1995) (extended discussion); *Plaine v. McCabe*, 797 F.2d 713, 718-19 (9th Cir. 1986) (discharged police officer's civil rights claim was precluded, where he failed to seek administrative mandamus review), *quoted in Eilrich v. Remas*, 839 F.2d 630, 632 (9th Cir.), cert. denied, 488 U.S. 819 (1988) (Eilrich could not " 'obstruct the preclusive use of the state administrative decision simply by foregoing [the] right to appeal' "), followed in *Miller v. County of Santa Cruz*, 39 F.3d 1030, 1033 (9th Cir. 1994), cert. denied, 515 U.S. 1160 (1995) ("If *Plaine* left any doubt as to the preclusive effect we will give to unreviewed state agency determinations in cases such as Miller's, it was eliminated in *Eilrich v. Remas*"). In *White*, this Court expressly held: "Under California law, a prior administrative proceeding, if upheld on review (or not reviewed at all) will be binding in later civil actions to the same extent as a state

court decision if the 'administrative proceeding possessed the requisite judicial character." *White v. City of Pasadena,* 671 F.3d 918, 927 (9th Cir. 2012).

As *Plaine*, *Eilrich*, *Miller*, and other decisions cited in this brief reflect, *White* is the latest in a consistent line of decisions from the Supreme Court, Ninth Circuit, and California courts holding that administrative proceedings through an arbitration or similar process that is judicial in nature can properly result in final determinations worthy of *res judicata*.

As reflected in the decisions cited herein, many California cities have followed the constitutional safeguards that guarantee basic notions of due process and fairness in administrative proceedings and have specifically adopted formal procedures to ensure that administrative decision-making possesses the requisite judicial character to warrant application of the preclusive effect of *res judicata*. These formal procedures have been reviewed over the years as appropriate to the individual facts and arguments raised. With rare exceptions, the formal procedures adopted by California cities and agencies and the decisions of arbitrators under the procedures have been upheld and given *res judicata* effect.

D. This Court Properly Held That the Administrative Decision in *White* Possessed the Required "Judicial Character"

In *White,* as in earlier decisions, this Court held that the administrative determination precluded White from arguing that the city lacked adequate justification for her second termination or that the proffered explanation was a

pretext for retaliation based on her grievance to the first termination. *White v. City of Pasadena*, 671 F.3d 918, 929 (9th Cir. 2012). The city had adopted formal procedures pursuant to the Memorandum of Understanding ("MOU") between the city and the Pasadena Police Officer's Association that provided White an opportunity to adequately litigate her claims. *See id.* at 929-30.

Under the terms of the MOU, the parties agreed to the following procedures:

> If an employee cannot resolve a grievance with the employee's immediate supervisor or department head, the employee is entitled to advisory arbitration. The employee (and employer) may submit issues to an arbiter, who holds a hearing where parties can introduce witnesses and documents. Following the hearing, the arbiter will prepare a written advisory opinion "which shall not be binding on either party, and shall be limited to the issue, or issues, presented to the arbiter." That advisory opinion is sent to the City Manager, who makes the final decision as to what action, if any the City will take. The employee is entitled to representation throughout the grievance process.

Id. at 923. This description is essentially indistinguishable from the instant case.

White's grievance proceeding was conducted in a judicial-like adversarial hearing in front of an impartial arbiter. Both White and the city were able to call and subpoena witnesses and elicit their testimony under oath, and to present oral and written argument. A verbatim transcript was produced. The City Manager was bound to apply the MOU provisions to the facts developed at the proceeding, and then he issued a written decision with factual findings and reasoned explanations for his decision. The City Manager's decision was based upon the

record created in the proceedings and was constrained by the terms of the MOU and applicable state law. Additionally, judicial review was available under Code of Civil Procedure section 1094.5, and White pursued that review. *Id*. at 929. Again, this description applies equally to the facts in the instant case.

White held that the administrative determination had the same preclusive effect as a state court decision. *Id.* at 930. *White* ruled that the *Lucido* criteria were satisfied because the issues decided in the state administrative decision resolved the issues asserted in the federal action. *White* further held that public policy supports issue preclusion of issues already fully litigated and decided against White on the merits. *Id.* at 927-29, citing *Lucido v. Superior Court*, 51 Cal.3d 335 (1990), cert. denied, 500 U.S. 920 (1991).

E. A Finding That the Advisory Arbitration in this Case Was Not "Judicial in Nature" Would in Effect Invalidate This Court's Sound Reasoning in *White* and Its Predecessors

The facts in *White* are substantially similar to the facts in the present case. In fact, the district court expressly recognized that "the administrative process in *White* was almost identical to the proceeding in this case." Mem. & Order at 10:11-13. A decision that the advisory arbitration required by the MOU for Appellant's grievance lacked adequate judicial character would effectively invalidate *White* and its predecessors and progeny governing the factual threshold standard to apply the doctrine of *res judicata* relating to administrative decisions.

In this case, Appellant's grievance after his 2006 termination resulted in an evidentiary hearing summarized at Mem. & Order at 4:4-8 as follows:

> On January 9, 2006, following a seven-day evidentiary hearing, in which 18 witnesses testified and 100 exhibits were moved into evidence, arbitrator William Riker issued a 49-page advisory decision, denying plaintiff's grievance and sustaining each of the six charges against [P]laintiff contained in the Notice of Termination.

The City Manager accepted the arbitrator's advisory decision without modification and sustained Appellant's termination. Appellant filed a petition for writ of mandate under California Code of Civil Procedure section 1094.5 but voluntarily dismissed that proceeding and filed a second federal action. Mem. & Order at 4:1-11. Arbitration of Appellant's grievance was substantially similar, if not more judicial in nature, than the arbitration in *White.*

Under the MOU, the City of Rocklin shouldered the burden of a seven-day evidentiary hearing with 18 witnesses and 100 exhibits. Appellant was entitled to (but waived) administrative mandamus for judicial review of his termination, but he was not entitled file a second action based on identical primary rights. Appellant relies on private sector employee arbitration cases that are irrelevant because private sector employees lack pre- and post-termination constitutional due process rights or post-termination administrative mandamus rights.

So long as the aggrieved employee receives due process and an opportunity to be heard, public policy supports certainty and finality of public employment

decisions. Cities, other local government bodies, and state agencies and bodies[2] have invested significant resources to develop, negotiate and adopt procedures for formal administrative proceedings including the right to counsel, an evidentiary hearing and a trial-like process involving witness testimony under oath, following the rules of evidence. Employees of these bodies who file a grievance following an adverse employment action are entitled to a trial-like proceeding before a neutral arbiter. The administrative process provides an efficient vehicle for resolution as an alternative to protracted litigation in the courts. Cities and other government bodies should continue to enjoy the security of finality through the preclusive effect of these administrative decisions that are judicial in nature under the doctrine of *res judicata*.

III. STARE DECISIS CALLS FOR THIS COURT TO UPHOLD *WHITE*, ITS PREDECESSORS AND PROGENY

A. Appellate Decisions Followed by Many Should Be Respected

Stare decisis imposes the stability of *res judicata* onto the body of law as a whole. Principles of stare decisis hold that subsequent decisions must give

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[2]Not surprisingly, there are more examples of published decisions involving administrative proceedings before state agencies and departments. *E.g.*, *George Arakelian Farms v. ALRB*, 49 Cal.3d 1279, 1290-91 (1989) (ALRB); *California School Boards Ass'n v. State of California*, 171 Cal.App.4th 1183, 1201-12 (2009) (Commission on State Mandates); *Noble v. Draper*, 160 Cal.App.4th 1, 11-12 (2008) (Labor Commissioner); *Castillo v. City of Los Angeles*, 92 Cal.App.4th 477, 481-82 (2001) (Civil Service Commission); *Patrick Media Group, Inc. v. California Coastal Comm'n*, 9 Cal.App.4th 592, 616-18 (1992) (Coastal Commission).

deference to prior rulings absent a strong basis for a different ruling. Stare decisis creates and fosters predictability in the meaning and application of law. As the Supreme Court explains:

> Stare decisis is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process. Adhering to precedent "is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right."

Payne v. Tennessee, 501 U.S. 808, 827 (1991), quoting *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting). The California Supreme Court similarly recognizes that "individuals, institutions and society in general are entitled to expect that the law will be as predictable as possible." *Board of Supervisors v. Local Agency Formation Comm'n*, 3 Cal.4th 903, 921 (1992), *cert. denied*, 507 U.S. 988 (1993).

Judicially formulated rules of property and contract law enjoy special weight because of the reliance placed on them by the parties to transactions and the strong need for predictability. "Considerations in favor of stare decisis are at their acme in cases involving property and contract rights, where reliance interests are involved." *Payne v. Tennessee*, 501 U.S. 808, 828 (1991). Stare decisis also has special force when the Legislature is free to alter the court's decision but does not do so. In such a case, especially when the decision has stood for a period of time,

the Legislature's inaction may be viewed as acquiescence in the decision.

Patterson v. McLean Credit Union, 491 U.S. 164, 172–73 (1989), explains that

> the burden borne by the party advocating the abandonment of an established precedent is greater where the Court is asked to overrule a point of statutory construction. Considerations of stare decisis have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done.

The California Supreme Court adds that courts are "particularly reluctant to disturb any judicial construction of a statute which has been in existence for a significant period of time and upon which the Legislature may have relied in enacting and shaping other provisions." *People v. Martinez*, 11 Cal.4th 434, 447 (1995).

B. *White* and Its Predecessors Are Followed Widely in California

As reflected in numerous city ordinances and similar documents governing the relations of local government entities and their employees, *White* is the most recent culmination of a line of cases that has been accepted and embodied into employer-employee relationships throughout California. " 'Stare decisis has added force when the legislature, in the public sphere, and citizens, in the private realm, have acted in reliance on a previous decision, for in this instance overruling the decision would dislodge settled rights and expectations or require an extensive legislative response.'" *Bostick v. Flex Equip. Co.*, 147 Cal.App.4th 80, 126 (2007), quoting *People v. Latimer*, 5 Cal.4th 1203, 1213-14 (1993); accord, *Hilton v. South*

Carolina Public Railways Comm'n, 502 U.S. 197, 202 (1991).

As explained in *Trope v. Katz*, 11 Cal.4th 274, 288 (1995), "a party urging us to overrule a precedent faces a rightly onerous task, the difficulty of which is roughly proportional to a number of factors, including the age of the precedent, the nature and extent of public and private reliance on it, and its consistency or inconsistency with other related rules of law." Appellant faces a rightly onerous task in this appeal, one that the League submits cannot be fulfilled.

IV. CONCLUSION

This Court should affirm the district court's decision to dismiss Appellant's action and uphold the factual threshold standard adopted in *White* to preclude successive litigation of the same primary right following an administrative decision that was judicial in nature. That ruling would have a positive impact benefitting California cities and other government bodies as well as their employees and the taxpayers by reaffirming the use of arbitration and advisory arbitration in employment disputes and the resulting reduction in expense, delay and duplicative litigation burdening the parties and the courts.

Dated: July 3, 2013

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By: */s/Stacey N. Sheston*

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Certification of Compliance with Type-Volume Limitation, Typeface Requirements and Type Style Requirements

I certify that, pursuant to Federal Rules of Appellate Procedure, Rule 32(a)(7), the foregoing brief complies with the type-volume limitation of Rule 32(a)(7)(B) because this brief contains 5,435 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: July 3, 2013

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Statement of Related Cases Pursuant to Ninth Circuit Rule 28-2.6

Counsel for Amicus Curiae League of California Cities hereby certify that there are no cases related to this appeal known to be currently pending in this Court at this time.

Dated: July 3, 2013

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on July 3, 2013.

Participants in this case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: July 3, 2013

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