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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JACQUELINE ZHANG,  
Plaintiff,  
v.  
COUNTY OF MONTEREY, et al.,  
Defendants.

Case No. 17-CV-00007-LHK  
**ORDER ON REMEDIES FOR DUE  
PROCESS CLAIMS**  
Re: Dkt. No. 143

Before the Court are disputes raised by the parties in their Joint Statement Regarding Available Remedies, ECF No. 143 (“Joint Statement”). The parties dispute the remedies available if Plaintiff Jacqueline Zhang (“Zhang”) prevails on her two due process claims and writ of mandate claim. *Id.* Only the due process claims’ remedies are addressed in this Order.

As background, Zhang brings two procedural due process claims for deprivation of her alleged property interest in employment. The first claim, which is brought under 42 U.S.C. § 1983, is that Defendants (collectively, “the County”) violated the Fourteenth Amendment of the U.S. Constitution. The second claim is that the County violated Article I, § 7 of the California Constitution. The claims share the same elements. *See* Revised Joint Proposed Jury Instructions at 50–51, ECF No. 149 (agreeing on same essential elements); *Walls v. Cent. Contra Costa Transit Auth.*, 653 F.3d 963, 967–69 (9th Cir. 2011) (analyzing both claims together); *Skelly v. State Pers.*

1 *Bd.*, 539 P.2d 774, 789 (Cal. 1975) (same). Thus, Zhang will necessarily prevail or lose on both  
2 claims together. Accordingly, this Order analyzes the remedies that are simultaneously available to  
3 Zhang under both due process claims.

4 The Court strongly encourages the parties to be reasonable and to avoid unnecessary  
5 disputes going forward.

6 After reviewing the parties' briefing, the case law, the record in this case, the Court rules  
7 as follows on the parties' five disputes:

8 **1. Zhang would be only entitled to reinstatement for purposes of receiving the  
9 process that was due to her.**

10 Dispute: Although the parties superficially agree that Zhang would be entitled to  
11 "reinstatement," the parties disagree on the scope of reinstatement. Joint Statement at 2. Zhang  
12 demands "a return to [her] formerly held position" if she prevails at trial. *Id.* at 16, 18. By contrast,  
13 the County argues that a verdict for Zhang would simply entitle her to reinstatement for the  
14 limited purpose of receiving due process. *Id.* at 22. Specifically, the County argues that "if the jury  
15 finds that [Zhang] was a permanent employee at the time of her release, [Zhang] would only be  
16 entitled to reinstatement for purposes of receiving the due process rights afforded to permanent  
17 employees. [Zhang] would then receive those due process procedures and *would only be reinstated*  
18 *to her job if it were found that her release was unjustified.*" *Id.* (emphasis added).

19 Ruling: The Court agrees with the County. Neither of Zhang's due process claims entitles  
20 Zhang "a return to [her] formerly held position." *Id.* at 16. Rather, prevailing on both claims at  
21 trial would merely entitle Zhang to the process she was due. *See, e.g., Raditch v. United States*,  
22 929 F.2d 478, 481 (9th Cir. 1991) ("A violation of procedural rights requires only a procedural  
23 correction, not the reinstatement of a substantive right to which the claimant may not be entitled  
24 on the merits."); *Roe v. State Pers. Bd.*, 120 Cal. App. 4th 1029, 1042 (Ct. App. 2004), *as modified*  
25 *on denial of reh'g* (Aug. 20, 2004) (holding same under California Constitution).

26 If Zhang prevails at trial, her due process would be the disciplinary process that the County  
27 affords its permanent employees (hereinafter "the County's process"). *See* Joint Statement at 22

1 (County conceding same); *id.* at 33–37 (County resolution on disciplinary process). Zhang would  
2 only be reinstated to her former position if the County’s process finds that her prior firing was  
3 unwarranted. *Id.* at 35 (County resolution on dismissal).

4 **2. Zhang would be entitled to past lost wages and benefits from (i) the date of her**  
5 **termination to (ii) the date of any decision by the County’s process.**

6 Dispute: Zhang argues that if she prevails at trial, she is entitled to lost wages and benefits  
7 (together, “backpay”) starting “from the date of [her] termination to the date of any decision by  
8 [the County’s process].” Joint Statement at 8. Zhang maintains that she is entitled to backpay even  
9 if the County’s process rules against her on the merits. *Id.* By contrast, the County argues that  
10 Zhang is entitled to compensatory damages, including backpay, *only if* Zhang prevails in the  
11 County’s process. *Id.* at 22–23.

12 Ruling: The Court agrees with Zhang for two reasons. First, if Zhang prevails at trial, she  
13 will necessarily prevail on *both* her federal due process claim and California due process claim.  
14 The claims rise and fall together because they share the same elements. *See* Revised Joint  
15 Proposed Jury Instructions at 50–51 (agreeing on same essential elements); *Walls*, 653 F.3d at  
16 967–69 (analyzing both claims together); *Skelly*, 539 P.2d at 789 (same). Thus, if prevailing on  
17 *either* due process claim entitles Zhang to backpay, Zhang will receive backpay.

18 Second, Zhang’s California due process claim entitles Zhang to backpay if she prevails at  
19 trial. As the California Supreme Court has held—and a recent California Court of Appeal has  
20 confirmed—the time period “for measuring the amount of back pay due [] begins [1] at the time  
21 discipline is actually imposed and ends on [2] the date the [County] files its decision.” *Barber v.*  
22 *State Pers. Bd.*, 556 P.2d 306, 310 (Cal. 1976); *accord Roe v. State Pers. Bd.*, 120 Cal. App. 4th  
23 1029, 1042 (Ct. App. 2004), *as modified on denial of reh’g* (Aug. 20, 2004) (awarding backpay  
24 from (1) date of firing to (2) date that plaintiff received due process). Like the plaintiffs in *Barber*  
25 and other cases, Zhang is entitled to backpay even if her termination is *upheld*. *See Roe*, 120 Cal.  
26 App. 4th at 1042 (collecting cases). Thus, a trial verdict for Zhang would entitle her to backpay  
27 regardless of the later outcome of the County’s process.

1           The County responds with two counterarguments, but neither is persuasive. First, the  
2 County argues that Zhang’s federal due process claim merely entitles her to the County’s process.  
3 Joint Statement at 22. Then that process will determine whether Zhang should receive nominal  
4 damages (if Zhang’s termination is upheld) or compensatory damages (if her termination is  
5 reversed). *Id.*

6           The County has correctly stated the remedy for Zhang’s *federal* due process claim. As the  
7 Ninth Circuit has held, “in § 1983 cases, a plaintiff can recover compensatory damages for a  
8 proven due process violation only if the deprivation was unjustified on the merits. If, after  
9 postdeprivation procedure, it is determined that the deprivation was justified, a plaintiff can  
10 recover only nominal damages for the due process violation.” *Raditch*, 929 F.2d at 482. However,  
11 as explained above, a due process violation under Article I, § 7 of the California Constitution  
12 entitles plaintiff to backpay *even if* plaintiff’s firing was justified. *See Roe*, 120 Cal. App. 4th at  
13 1042 (collecting cases).

14           The County’s other counterargument disputes the remedy available for Zhang’s California  
15 due process claim. Specifically, the County asserts that the law is “not settled” on “whether a  
16 private individual may recover damages for a due process violation of a property right under  
17 Article I, [§] 7 of the California Constitution.” Joint Statement at 23 (quoting *Ramachandran v.*  
18 *City of Los Altos*, 359 F. Supp. 3d 801, 815 (N.D. Cal. 2019)). In the County’s view, the California  
19 Supreme Court cast doubt on the availability of damages in *Katzberg v. Regents of University of*  
20 *California*, 58 P.3d 339 (Cal. 2002). *Id.*

21           The County is incorrect. *Katzberg* did not disturb the California Supreme Court’s  
22 longstanding rule that Article I, § 7 of the California Constitution allows plaintiffs like Zhang to  
23 recover backpay. *See Barber*, 556 P.2d at 308, 310 (awarding backpay and retroactively extending  
24 rule from *Skelly v. State Personnel Bd.*, 539 P.2d 774 (1975)). Indeed, the California Supreme  
25 Court distinguished *Katzberg* from “cases arising in the employment context.” *Katzberg*, 29 Cal.  
26 4th at 314 n.13. Those employment cases—like Zhang’s case here—involved “a due process  
27 *property* interest.” *Id.* (emphasis in original). By contrast, the *Katzberg* plaintiff had “concede[d]

1 he had no due process property interest in his position.” *Id.*

2 Moreover, a California Court of Appeal decision two years after *Katzberg* confirms that  
3 *Katzberg* is inapposite. *See Walls v. Cent. Contra Costa Transit Auth.*, No. 08-CV-0224-PJH,  
4 2012 WL 581362, at \*3–4 (N.D. Cal. Feb. 22, 2012) (concluding same). In *Roe v. State Personnel*  
5 *Board*, the Court of Appeal awarded backpay to a plaintiff who had not received due process  
6 under the California Constitution. *Roe*, 120 Cal. App. 4th at 1042–43.<sup>1</sup> To reach this award, the  
7 Court of Appeal relied on the California Supreme Court’s decisions in *Skelley* and *Barber*, not  
8 *Katzberg*. *Id.* at 1039.

9 In sum, the Court agrees with Zhang that, if she prevails at trial, she is entitled to backpay  
10 “from the date of [her] termination to the date of any decision by [the County’s process].” Joint  
11 Statement at 8.

12 **3. Zhang would be entitled to compensation for her retirement losses from (i) the**  
13 **date of her termination to (ii) the date of any decision by the County’s process.**

14 Dispute: Zhang argues that, if she prevails at trial, she is entitled to “[r]etirement losses  
15 under the CalPERS system from the date of her termination.” Joint Statement at 2. The County  
16 responds that Zhang “is not entitled to past lost wages *or other accrued benefits*” unless Zhang  
17 meets two conditions: (1) Zhang prevails at trial; and (2) in the subsequent County process, Zhang  
18 prevails. *Id.* at 22 (emphasis added).

19 Ruling: The Court agrees with Zhang for the reasons stated in Section 2, *supra* (analyzing  
20 backpay). If Zhang prevails at trial, Zhang’s California due process claim automatically entitles  
21 her to backpay regardless of the outcome of the County’s process. *See Roe*, 120 Cal. App. 4th at

22 \_\_\_\_\_  
23 <sup>1</sup> The Court notes that in *Roe*, the Court of Appeal’s writ of mandate simply ordered defendant to  
24 take two actions. First, the writ “direct[ed] [defendant] to conduct proceedings to determine the  
25 amount of backpay due *Roe* for the *Skelly* violation for the period September 1, 1992 [*i.e.*, the date  
26 plaintiff Robert *Roe* was fired without due process], through May 5, 1999 [*i.e.*, the date *Roe*  
27 received due process], and to award it forthwith.” *Roe*, 120 Cal. App. 4th at 1043. Second, the writ  
28 “direct[ed] [defendant] to exercise its discretion and make a finding whether *Roe*’s dismissal was  
for good cause.” *Id.* The Court of Appeal’s writ neither ruled that *Roe*’s termination was invalid  
nor reinstated *Roe*. *Id.*

1 1042–43 (awarding backpay). Part of Zhang’s pay included contributions to California’s public  
2 pension fund, the California Public Employees’ Retirement System (“CalPERS”). Joint Statement  
3 at 2. Indeed, the County concedes that if Zhang is in fact entitled to backpay after trial, that  
4 backpay includes “unpaid past wages and *benefits*.” Joint Statement at 23 (emphasis added). The  
5 County could not argue otherwise, because “the Ninth Circuit and other courts have held that the  
6 deprivation of pension [] benefits amounts to the deprivation of constitutionally protected  
7 property.” *Portman v. Cty. of Santa Clara*, 995 F.2d 898, 906 (9th Cir. 1993) (original emphasis  
8 omitted).

9 Accordingly, as part of her backpay award, Zhang would be entitled to compensation for  
10 her retirement losses under CalPERS from (i) the date of her termination to (ii) the date of any  
11 decision by the County’s process.

12 **4. Zhang would not be entitled to “front pay,” which comprises future lost wages**  
13 **and benefits.**

14 Dispute: If the County does not reinstate Zhang after a trial verdict for Zhang, Zhang  
15 argues that she is entitled to “front pay,” which comprises “future lost wages and benefits.” Joint  
16 Statement at 21. The County responds that Zhang would be entitled to front pay only on two  
17 conditions. First, Zhang would need to “prevail[] at a due process hearing addressing the merits of  
18 her release [*i.e.*, the County’s process].” Joint Statement at 24. Second, despite the County’s ruling  
19 for Zhang, reinstating her must be “inappropriate due to excessive hostility or antagonism between  
20 the parties.” *Id.* (citing *Fadhl v. City & Cty. of San Francisco*, 741 F.2d 1163, 1167 (9th Cir.  
21 1984), *abrogated on other grounds by Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)).

22 Ruling: The Court agrees with the County for two reasons. First, Zhang agrees that “front  
23 pay is a damage awarded *in lieu of reinstatement*.” Joint Statement at 21 (emphasis added). Yet  
24 none of Zhang’s claims entitle her to reinstatement simply for prevailing at trial. *See* Section 1,  
25 *supra* (analyzing reinstatement); *Raditch*, 929 F.2d at 481 (“A violation of procedural rights  
26 requires only a procedural correction, not the reinstatement of a substantive right to which the  
27 claimant may not be entitled on the merits.”). Rather, as the County correctly asserts, Zhang would

1 also need to prevail in the County’s process to be eligible for reinstatement or its alternative: front  
2 pay.

3 Second, as the Ninth Circuit has held and Zhang does not dispute, “[a]n award of front pay  
4 is made in lieu of reinstatement when the antagonism between employer and employee is so great  
5 that reinstatement is not appropriate.” *Fadhl*, 741 F.2d at 1167; Joint Statement at 21 (“[Zhang]  
6 would not dispute this idea.”). Nothing indicates that the antagonism between the County and  
7 Zhang is so great that reinstatement is not appropriate. *Id.* To the contrary, the County has  
8 represented that Zhang would be “reinstated to her job if it were found that her release was  
9 unjustified.” Joint Statement at 22.

10 In sum, prevailing at trial would not entitle Zhang to front pay.

11 **5. Zhang would be entitled to prejudgment interest.**

12 Dispute: Zhang argues that “prejudgment interest is mandatory as to lost wages,” and  
13 discretionary as to other damages. Joint Statement at 16 (citing Cal. Civ. Code §§ 3287–88). In  
14 response, the County cursorily asserts in one sentence—without citation to any authority—that  
15 Zhang is not entitled to prejudgment interest unless she prevails in the County’s process. *Id.* at 25.

16 Ruling: The Court agrees with Zhang for two reasons. First, the County’s cursory one-  
17 sentence argument against prejudgment interest is inadequate. “[P]erfunctory and undeveloped  
18 arguments, and arguments that are unsupported by pertinent authority, are waived.” *E.g., Wells v.*  
19 *Unisource Worldwide, Inc.*, 289 F.3d 1001, 1008 (7th Cir. 2002).

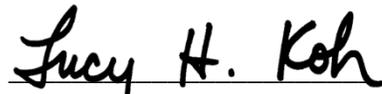
20 Second, the law supports an award of prejudgment interest. As Zhang notes, California  
21 Civil Code § 3287(a) entitles Zhang to prejudgment interest. Specifically, the statute provides that  
22 “[a] person who is entitled to recover damages certain, or capable of being made certain by  
23 calculation, and the right to recover which is vested in the person upon a particular day, *is entitled*  
24 *also to recover interest thereon from that day.*” *Id.* (emphasis added). Here, Zhang’s California  
25 due process claim entitles her to “damages certain”: backpay comprising lost wages and calculable  
26 retirement losses from (i) the date of her termination to (ii) the date of any decision by the  
27 County’s process. *See* Sections 2–3, *supra* (analyzing backpay); *Roe*, 120 Cal. App. 4th at 1042

1 (awarding backpay). Thus, under California Civil Code § 3287(a), Zhang is entitled to  
2 prejudgment interest starting from the day her “right to recover [] is vested.” Cal. Civ. Code  
3 § 3287(a).

4 To calculate when her “right to recover [] is vested” and other parameters of prejudgment  
5 interest, Zhang cites *Golden State Transit Corp. v. City of Los Angeles*, 773 F. Supp. 204 (C.D.  
6 Cal. 1991). In *Golden State*, the district court thoroughly analyzed the law of prejudgment interest  
7 and determined that prejudgment interest should start (1) the date after defendant was served with  
8 the complaint, and end on (2) the date judgment is entered on the jury verdict. *Id.* at 220. Given  
9 the County’s failure to propose any alternative, the Court follows *Golden State* here. If Zhang  
10 prevails at trial, she shall be entitled to prejudgment interest from (1) January 20, 2017, the date  
11 Zhang served her complaint, ECF No. 11 (proofs of service); until (2) the date judgment is entered  
12 on a verdict for Zhang.

13 **IT IS SO ORDERED.**

14  
15 Dated: June 5, 2021



16  
17 LUCY H. KOH  
18 United States District Judge

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