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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

Ruth Henricks, an individual,

Plaintiff,

v.

National Football League, an unincorporated association,
Arizona Cardinals Football Club LLC, a Delaware limited liability company,
Atlanta Falcons Football Club, LLC, a Georgia limited liability company,
Baltimore Ravens Limited Partnership, a limited partnership,
Buffalo Bills, LLC, a Delaware limited liability company,
Panthers Football, LLC, a North Carolina limited liability company,
The Chicago Bears Football Club, Inc., a Delaware corporation,
Cincinnati Bengals, Inc., an Ohio corporation,
Cleveland Browns Football Company LLC, a Delaware limited liability company,
Dallas Cowboys Football Club, Ltd., a Texas limited company,
PDB Sports, Ltd., a Colorado limited company,
The Detroit Lions, Inc., a Michigan corporation,
Green Bay Packers, Inc., a Wisconsin

Case No. 37-2022-00002964-CU-BC-CTL

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NFL DEFENDANTS' DEMURRER TO PLAINTIFF'S COMPLAINT

Date: July 1, 2022
Time: 10:30 a.m.
Dept.: 70
Judge: Hon. Carolyn M. Caietti

Date Action Filed: January 24, 2022

corporation,
Houston NFL Holdings, L.P., a limited partnership,
Indianapolis Colts, Inc., a Delaware corporation,
Jacksonville Jaguars, LLC, a Florida limited liability company,
Kansas City Chiefs Football Club, Inc., a Missouri corporation,
Miami Dolphins, Ltd., a Florida limited company,
Minnesota Vikings Football Club, LLC, a Delaware limited company,
New England Patriots, LLC, a Delaware limited liability company,
New Orleans Louisiana Saints LLC, a Delaware limited liability company,
New York Football Giants, Inc., a New York corporation,
New York Jets LLC, a New York limited liability company,
Raiders Football Club, LLC, a Nevada limited liability company,
Philadelphia Eagles, LLC, a Delaware limited liability company,
Pittsburgh Steelers, LLC, a New York corporation,
Chargers Football Company, LLC, a California limited liability company,
Forty Niners Football Company, LLC, a Delaware limited liability company,
Football Northwest, LLC, a Washington limited liability company,
The Rams Football Company, LLC, a Delaware limited liability company[1],
Buccaneers Football Corporation, a Delaware corporation,
Tennessee Football, Inc., a Delaware corporation,
Pro-Football, Inc., a Maryland corporation,
City of San Diego, a municipal corporation, and DOES 1 to 100,

Defendants.

[1] Defendant The Rams Football Company, LLC is not associated with the Rams professional football franchise and is therefore incorrectly named as a defendant to this action. Instead, the correct corporate entity for the Rams professional football franchise is The Los Angeles Rams, LLC, and this demurrer is filed on behalf of that entity.

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Defendants National Football League ("NFL") and its member clubs, including Chargers Football Company, LLC ("Chargers") (collectively, the "NFL Defendants") submit this memorandum in support of their demurrer.

I. INTRODUCTION AND SUMMARY OF ARGUMENT.

Plaintiff brings this action as a taxpayer seeking damages purportedly on behalf of the City of San Diego ("City") based on the relocation of the Chargers from San Diego to Los Angeles in 2017—more than *five years* before the filing of this Complaint. Each cause of action set forth in the Complaint fails as a matter of law and should be dismissed without leave to amend.

First, Plaintiff cannot pursue her claims under the taxpayer statute. The narrow circumstances in which California Code of Civil Procedure Section 526a permits suits by taxpayers are inapplicable here where Plaintiff seeks to pursue claims that the City, in a valid exercise of its discretion, declined to bring. California courts have uniformly dismissed suits such as this one, in which a private citizen seeks to usurp the role of elected officials in making discretionary decisions, recognizing the chaos that would ensue if such suits were allowed.

Second, the City unequivocally, and on multiple occasions, released and waived the very claims that Plaintiff seeks to assert. This is made clear by two stadium lease supplements that were agreed to by the City and which are expressly incorporated by reference in the Complaint. Pursuant to those agreements, the City received $12,575,000 as a negotiated termination fee paid by the Chargers and other significant financial relief. In exchange, the City twice released any claims against the NFL Defendants arising from the Chargers' relocation. The releases foreclose this action. While asserting the releases are "unconscionable," the Complaint alleges no facts to support such a claim. To the contrary, the second release was expressly approved as to its legality by Plaintiff's attorney himself when he was the City Attorney.

Third, the Complaint is untimely. It is barred on its face by the statute of limitations applicable to each claim. The Complaint acknowledges that in January 2016, the NFL member clubs granted the Chargers an option to relocate, and that in January 2017, the Chargers publicly announced that they would exercise that option and relocate to Los Angeles (after the City's voters rejected a new stadium project). Any breach of contract, unjust enrichment, or fraud claim based

on these long-ago public events expired well before Plaintiff filed suit. The Complaint attempts to plead delayed accrual of the fraud claims based on *Plaintiff's* review of a December 2021 newspaper article containing one line about the musings and suppositions of a former City appointee to a stadium task force, who speculated about what the Chargers' owner *may* have thought fifteen years prior. But a "discovery" necessary to toll the statutory period for a fraud claim must be based on discovery of *facts*, not ruminations by one person about what another person may have thought years prior. Moreover, even if this could be construed as "fact" (which it cannot), it is the *City's* knowledge, not Plaintiff's, that governs when the claims she seeks to pursue on behalf of the City accrued, and the Complaint admits the City was aware that the Chargers might relocate by no later than 2004 and then engaged in a public process on that issue for a decade.

Fourth, each of Plaintiff's substantive causes of action fails to state a claim. Plaintiff's breach of contract claim (First Cause of Action) is based on the assertion that the City is a third-party beneficiary of an internal NFL policy (the "Relocation Policy" or "Policy"), but that theory has already been rejected by California state and federal courts, based on the California Supreme Court's recent decision in *Goonewardene v. ADP, LLC*, 6 Cal. 5th 817 (2019). As the Superior Court of California recently held in sustaining without leave to amend a demurrer to an identical claim brought by the City of Oakland following the Raiders' relocation from Oakland to Las Vegas, the Policy (i) is clear on its face that former host cities like Oakland and San Diego are not third-party beneficiaries of it and, in any event, (ii) contains no sufficiently definite promises to be deemed an enforceable contract. Plaintiff's unjust enrichment claim (Second Cause of Action) fails because it is not a cognizable claim under California law and is unsupported by Plaintiff's factual allegations. Plaintiff's fraudulent misrepresentation and concealment claims (Third and Fourth Causes of Action) are defective because Plaintiff does not, and cannot, allege facts supporting the essential elements of such claims, including any actual or justifiable reliance by the City. To the contrary, the Complaint admits that in 2004 and 2006 the City was fully aware of the possibility that the Chargers might relocate and released the NFL Defendants from the very liability the Complaint seeks to impose in exchange for significant financial concessions. In those releases, the City acknowledged that the NFL was, even at that early point in time, exploring franchise relocation

to Los Angeles and agreed that the Chargers had the right to and could relocate from San Diego any time after the 2008 NFL season. These allegations nullify any claim by Plaintiff that the NFL or Chargers' plans for a possible relocation were somehow hidden or concealed from the City.

Finally, no amendment could possibly cure any of these fatal admissions and pleading defects. The NFL Defendants' demurrer should therefore be sustained without leave to amend.

II. STATEMENT OF THE ALLEGATIONS.

The Complaint cites and relies on various documents, including a 1995 Lease Agreement ("1995 Lease"), 2004 and 2006 Supplemental Agreements to the 1995 Lease (the "Supplements"), and the NFL Relocation Policy. (¶¶ 20, 58, 60.)[2] As discussed below and in the accompanying request for judicial notice, these documents may be judicially noticed for purposes of this demurrer, and their relevant content is therefore included in the facts below.

A. The Parties.

Plaintiff is a San Diego resident who paid taxes. (¶ 7.) She asserts that her status as a taxpayer supports standing under Section 526a. (¶ 1.) Plaintiff alleges that she demanded the City bring this suit, but the City did not do so. (¶ 8.)

The Chargers are an NFL club. (¶ 3.) The Chargers played football in San Diego through the 2016 NFL season. (¶ 6.) The NFL is an unincorporated association whose members are the Chargers and 31 other clubs, each of which is named as a defendant, though the Complaint contains no specific allegations against any of them. (¶ 9.) The City is also a named defendant. (¶ 11.)

B. The 1995 Lease.

In 1995, the Chargers entered into a new stadium lease with the City. (¶¶ 20–21.) With City Council approval, the City increased the stadium's seating capacity in 1997. (¶¶ 21–24, 29.) In 2003, Mayor Dick Murphy formed a "Citizens' Task Force on Chargers Issues" (the 2003 Task Force") that aimed "to determine whether the [Chargers] and the [NFL] are important assets to the life and economy of San Diego." (¶ 30.) The 2003 Task Force "held 13 meetings and heard more than 30 presentations" over a seven-month period. (¶ 31.) It recommended in 2003

[2] Unless otherwise noted, all paragraph citations are to Plaintiff's January 24, 2022 "Complaint to Recover Taxpayer Funds." All emphasis in quoted materials is added.

that the City lease the Chargers additional land on the stadium site to develop a new stadium. (¶ 32.) It also considered "things that could be done to keep the Chargers in San Diego in a fiscally responsible way that the public will support." (¶ 30.)

The Chargers did not commit to a new lease, but allegedly stated in 2003 that they "*might* be interested in exploring the lease option." (¶ 33 (emphasis added).) The Complaint describes Plaintiff's view of negotiations over the next dozen years. (¶¶ 34–47.)

C. The Supplements Waived and Released Any Relocation Claims.

As part of these negotiations, the City and the Chargers signed nine supplements to the 1995 Lease. (¶¶ 20, 40, 58 (referring to the 1995 Lease and 2004 and 2006 Supplements).) They executed the Eighth Supplement in July 2004 and the Ninth in May 2006. (These Supplements are Exhibits 1 and 2 to the Notice of Lodgment ("NOL").) In both, the City warranted and represented that it had "all necessary power and authority to enter into [the Supplements] and ha[d] taken all action necessary to consummate the transactions contemplated by [the Supplements] and to perform its obligations hereunder[.]" NOL Exs. 1 and 2, § 3.1, at 30 & 43, respectively.

In the Eighth and Ninth Supplements, the City granted the Chargers the unilateral right to terminate the 1995 Lease and relocate the team after the 2008 NFL season, subject to a Termination Fee, and released the Chargers, the NFL, and the other clubs from any liability in the event of such relocation. The Eighth Supplement, dated July 26, 2004, included the following provisions:

> On or after January 1, 2007, the Chargers shall have the right to negotiate and enter into an agreement with any third party for the Chargers' use of a stadium or facility not in the City for any Regular Football Season or portion thereof after the end of the 2008 Regular Football Season. (NOL Ex. 1, § 31(d), at 14.)
>
> The City hereby waives the right to assert against the Chargers or any such third party any claim for damage or liability (based on any theory of liability whatsoever, whether in tort or contract, by statutory liability or common law) or to seek injunctive relief, with respect to any such negotiations that occur, or agreement that is executed, between the Chargers and any third party on or after January 1, 2007; the absolute waiver of such claims is not limited in any manner by the failure to enumerate herein any claim or theory of liability. (*Id*. at 15.)
>
> The Chargers shall have the right to terminate this Agreement following the conclusion of the 2008 Regular Football Season as set forth in this Section 4(b). In any calendar year beginning in 2009 and thereafter through the term of this Agreement, the Chargers may

> terminate this Agreement by providing written notice ("Early Termination Notice") to the City. (*Id*., § 4(b), at 16.)
>
> Concurrent with the delivery of an Early Termination Notice, the Chargers shall tender to the City in cash or other immediately available funds the applicable Termination Fee (as defined in Section 4(c) below)[.] (*Id.*)

The Eighth Supplement includes a schedule for the Termination Fee depending on when an Early Termination Notice was submitted. If the Notice was given between February 1, 2017 and May 1, 2017, which it was, then the Termination Fee was $12,575,000. *Id.*, § 4.1(c), at 17. Plaintiff does not allege that the Chargers failed to pay this fee; it was paid. In addition to the termination fee, the Chargers also released the City from a "ticket guarantee" that had obligated the City to purchase unsold tickets to Chargers home games. *Id.* at 9 (deleting "Section 9 of the [1995 Lease] Agreement" concerning the ticket guarantee "in its entirety").

The City explicitly acknowledged that the NFL was assessing potential franchise relocation, including to Los Angeles. It also waived and released any claims against the NFL and clubs related to any dealings of the NFL with the Chargers, including with respect to a Chargers relocation:

> The City understands and acknowledges that the NFL, as part of its business, assesses potential NFL markets and otherwise generally engages in activities relating to team location, relocation and stadium construction and renovation on behalf of itself and its member clubs. The City further acknowledges that the NFL is currently assessing the Los Angeles, California market with the intent of relocating an existing but, as of the date hereof, undesignated NFL franchise to, or establishing a de novo expansion franchise in, that market. The City hereby agrees that the NFL shall not be liable to the City with respect to any such activities. Accordingly, the City hereby waives and shall not assert any claim (based on any theory of liability whatsoever, whether in tort or contract, by statutory liability or common law) against the NFL (including its member clubs other than the Chargers, any entity affiliated with the NFL, and any officer, director, shareholder, partner, owner, or employee of any of the foregoing) seeking legal or equitable relief as a result of any dealings of the NFL with the Chargers. The City also acknowledges and agrees that the NFL (including its member clubs other than the Chargers) is a third party beneficiary entitled to directly assert the protections and waivers afforded in this Section 31(c); the absolute waiver of such claims is not limited in any manner by the failure to enumerate herein any claim or theory of liability. (NOL Ex. 1, § 31(c), at 14.)[3]

[3] The Eighth Supplement provided that if "the City" nonetheless "s[ought] any legal or equitable relief against the NFL (including its member clubs other than the Chargers) based on or relating in any way to the dealings of the NFL (including its member clubs other than the Chargers) with the Chargers," then "such matter shall be subject to arbitration at the election of the NFL (including its member clubs other than the Chargers)." NOL Ex. 1, § 31(c), at 14. The Eighth Supplement also mandates arbitration of "[a]ny controversy or claim relating to or arising under this Agreement"

The Eighth Supplement also specified that neither the City nor the Chargers were obligated to enter into an agreement on a new stadium in San Diego and that any such agreement would require approval by the voting public:

> The Parties shall meet and confer on a mutually convenient basis to discuss the development of a proposal for the financing and development of a new stadium *to be voted on by the general public*. Neither Party is obligated to participate in the financing or development of a new stadium, and the Parties acknowledge that there is no assurance that (a) the Parties will arrive at a mutually satisfactory proposal, (b) such a proposal will be submitted to a public vote, or (c) if submitted, such proposal will be approved by the voting public. (NOL Ex. 1, ¶ 3.2, at 31 (emphasis added).)

The Eighth Supplement was approved as to its legality by Assistant City Attorney Leslie J. Girard on July 12, 2004. *Id*. at 32.

The Ninth Supplement, dated May 2006, includes identical provisions affirming the City's waiver and release of any claims against the NFL Defendants concerning the Chargers' relocation and arbitration of any disputes concerning the same. NOL Ex. 2, §§ 31(c), 31(d), at 41–42. The Ninth Supplement contains a verification approving its legality executed by "MICHAEL J. AGUIRRE, City Attorney." *Id.* at 44. Mr. Aguirre is Plaintiff's counsel here.

D. The Voters Reject a New Stadium.

As provided for in the Supplements, Mayor Kevin Faulconer appointed an advisory group in 2015 to explore options regarding potential stadium development (the "2015 Citizens Group"). (¶¶ 43–45.) The Chargers publicly voiced concern in June 2015 that they did not see a "legally stalwart method" to put a measure on the ballot necessary to move forward with a new stadium. (¶ 47.) It was not until November 2016 that the City sought voter approval of a proposal for financing the stadium. The voters rejected it. (¶¶ 52–53.)

E. The NFL Relocation Policy.

The NFL Constitution and Bylaws provide that an NFL club's relocation from one "home territory" to another requires an affirmative "vote of three-fourths of the existing member clubs."

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between the Chargers and the City. *Id.*, § 32(a), at 31. The NFL Defendants expressly reserve their right to move to compel arbitration if Plaintiff is permitted to pursue claims on behalf of the City.

NOL Ex. 3, Art. 4.3 at 48; Compl. ¶ 62, citing Art. 4.3 of NFL Constitution. The Policy sets forth the policy and procedures for League consideration of a proposed relocation. NOL Ex. 4.[4]

The Policy states that, in considering an application for franchise relocation, "the Member Clubs are making a business judgment concerning how best to advance their collective interests." NOL Ex. 4 at 51. The Policy further states that when "evaluating a proposed franchise relocation and making the business judgment inherent in such consideration, the membership is entitled to consider a wide range of appropriate factors. Each club should consider whether the League's collective interests ... would be advanced or harmed by allowing a club to leave its assigned home territory to assume a League-owned opportunity in another community." *Id.* at 50.

The Policy sets forth certain procedural steps the relocating club "must" take in connection with its internal League application, including providing written notice to the Commissioner and a "statement of reasons" to support its internal application. *Id.* at 50. The Policy also lists 12 permissive "[f]actors that" the voting clubs "*may*" "consider[] in evaluating the proposed transfer." *Id.* at 51 (emphasis added). The Policy stresses that "[t]he League has analyzed many factors in making prior business judgments concerning proposed franchise relocations. Such business judgments *may* be informed through consideration of the factors listed below, as well as other appropriate factors that are considered relevant by the Commissioner or the membership." *Id.* at 51 (emphasis added). The "degree to which the club has engaged in good faith negotiations ... concerning terms and conditions under which the club would remain in its current home territory" is one factor the membership "may" consider when exercising its "business judgment." *Id.* at 52.

F. Chargers' Relocation to Los Angeles.

On January 12, 2016, the membership of the League voted to approve the Rams' relocation from St. Louis to Los Angeles. (¶ 55.) At that time, the membership also voted to provide the

[4] Plaintiff alleges that the Policy was adopted in 1984 "[t]o avoid future antitrust liability" and "avoid … legislation that would have effectively taken the relocation decision away from the NFL." (¶¶ 61, 94.) The antitrust issue arose not because the League had *permitted* a relocation. It arose because the League had *restricted* the Raiders from moving from Oakland to Los Angeles in the early 1980s. Finding that restriction to be unlawful, the Ninth Circuit stated that the NFL would be "well advised" to spell out the factors that the League claimed were important "to serve the needs inherent in producing the NFL 'product' and competing with other forms of entertainment." *L.A. Mem'l Coliseum v. Nat'l Football League*, 726 F.2d 1381, 1397 (9th Cir. 1984).

Chargers an option to join the Rams in Los Angeles in 2017. (¶ 56.) The Complaint acknowledges that the membership approved the Chargers' move to Los Angeles in December 2016 and admits that the Chargers publicly announced their relocation on January 12, 2017. (¶¶ 6, 55.)

G. The Alleged Fraud and Plaintiff's Alleged Discovery of It.

In an attempt to plead around the statute of limitations barring Plaintiff's fraud claims, the Complaint makes the conclusory allegation that the Chargers and the NFL "actively concealed the facts upon which Plaintiff's claim rests," in particular that the Chargers' owner purportedly decided in 2006 to relocate. (¶¶ 49, 82, 125, 128, 129.) But the Complaint contains no facts to support this conclusory assertion. It does not identify any misrepresentation made *to the City* by the Chargers or the NFL—much less by whom, to whom, at what time, or in what setting—nor does it allege any statement that *the City* relied upon to its detriment.

The Complaint likewise does not allege, nor could it, that *the City* was unaware that the Chargers might relocate. To the exact opposite, it cites the 2004 and 2006 Supplements signed by the City and approved by its attorneys, including Mr. Aguirre, both of which expressly acknowledged and unequivocally put the City on notice that the Chargers could relocate from San Diego after the 2008 NFL season with the City's consent and release. (¶ 58.)

In an attempt to toll the statute of limitations for her fraud claims, the Complaint states that *Plaintiff* first suspected a possible fraud claim when she read a December 10, 2021 newspaper article that included a hearsay statement by a City appointee to the stadium task force speculating that the Chargers' owner had intended to relocate as early as 2006. (¶ 84; *see* NOL Ex. 5.) But because this is a proposed taxpayer case to pursue the City's alleged claims, it only matters when *the City* was on notice of a possible fraud claim, not when Plaintiff was. The cited statement, and the Complaint as a whole, make clear that the City knew the Chargers might decide to relocate by no later than the time of the Eighth Supplement in 2004, and certainly by January 12, 2017. (¶ 6.)

III. LEGAL STANDARD.

A defendant may object by demurrer if: (a) the court has no jurisdiction of the subject of the cause of action; (b) the person who filed the pleading does not have the legal capacity to sue; or (c) the pleading does not state facts sufficient to constitute a cause of action. Cal. Civ. Proc.

Code § 430.10. A defendant may demur when any ground for objection to a complaint appears on the face thereof, or from any matter of which the court is required to or may take judicial notice. *Id.* § 430.30(a).

In ruling on a demurrer, the court may take judicial notice of essential documents and facts from which the plaintiff's claims arise, including a written contract that forms the basis of the allegations in the complaint but which the plaintiff failed to attach to the complaint. *Ascherman v. Gen. Reinsurance Corp.*, 183 Cal. App. 3d 307, 310–11 (1986). Where judicial notice is requested of a "legally operative document—like a contract—the court may take notice not only of the fact of the document … but also facts that clearly derive from its legal effect." *Scott v. JPMorgan Chase Bank, N.A.*, 214 Cal. App. 4th 743, 754 (2013) (emphasis omitted). The court may also consider facts that may be implied or inferred from those expressly alleged. *C & H Foods Co. v. Hartford Ins. Co.*, 163 Cal. App. 3d 1055, 1062 (1984).

Allegations in the complaint are not accepted as true on demurrer if they contradict or are inconsistent with facts judicially noticed by the court. *Kalnoki v. First Am. Trustee Servicing Sol., LLC*, 8 Cal. App. 5th 23, 38–39 (2017); *Cansino v. Bank of Am.*, 224 Cal. App. 4th 1462, 1474 (2014). Likewise, in considering a demurrer, the court must not assume the truth of allegations of contentions, deductions, or conclusions of law. *Zelig v. Cty. of Los Angeles*, 27 Cal. 4th 1112, 1126 (2002); *Washington v. Cty. of Contra Costa*, 38 Cal. App. 4th 890, 895 (1995).

If the complaint fails as to any single essential element of a cause of action, the court should sustain the demurrer to that cause of action. *Consumer Cause, Inc. v. Arkopharma, Inc.*, 106 Cal. App. 4th 824, 827 (2003). Where a complaint fails to allege facts constituting a cause of action, the plaintiff has the burden of showing that his complaint can be amended to state a cause of action. *See Blank v. Kirwan*, 39 Cal. 3d 311, 318 (1985). A court should sustain a demurrer without leave to amend if there is no reasonable possibility that amendment could cure the defect. *See Banis Rest. Design, Inc. v. Serrano*, 134 Cal. App. 4th 1035, 1044 (2005).

IV. PLAINTIFF HAS NO TAXPAYER STANDING UNDER SECTION 526a.

The Complaint invokes Section 526a for standing to assert claims and seek damages purportedly on behalf of the City. (*See, e.g.*, ¶¶ 1, 2, 7, 18, 76, 86, 96, 110; Prayer (seeking damages

to the City under Section 526a).) But Plaintiff does not—and cannot—allege facts demonstrating that the limited circumstances in which a taxpayer may pursue an action under Section 526a are present here. Plaintiff alleges that the City refused demands to pursue this legal action. (¶ 8.) She does not, however, allege that the City had *any legal duty* to bring this action, instead merely setting forth her view that such claims *should have been* brought. But Section 526a does not permit a taxpayer to second-guess discretionary decisions of a public body.

Section 526a permits taxpayer suits only to restrain or prevent "any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a local agency." Cal. Civ. Proc. Code § 526a. As the California Supreme Court has held, "Section 526a does not allow the judiciary to exercise a veto over the legislative branch of government merely because the judge may believe that the expenditures are unwise, that the results are not worth the expenditure, or that the underlying theory of the Legislature involves bad judgment." *Sundance v. Mun. Court*, 42 Cal. 3d 1101, 1138 (1986) (citation omitted); *see also Weatherford v. City of San Rafael*, 2 Cal. 5th 1241, 1248 (2017) (standing must be "sensitiv[ely]" construed because of the critical "prudential and separation of powers considerations" in allowing a citizen to challenge governmental decisions); *Harman v. City & Cty. of San Francisco*, 7 Cal. 3d 150, 160–61 (1972) (taxpayer standing should be construed to ensure that California courts "do not trespass into the domain of legislative or executive discretion"). Grounded in these considerations, the Court of Appeal has summarized the key limitation on Section 526a standing as follows:

> [T]axpayer suits are authorized ***only if the government body has a duty to act and has refused to do so***. If it has discretion and chooses not to act, the courts may not interfere with that decision. … [B]ecause deciding whether to pursue a legal claim is generally an exercise of discretion, rather than a duty specifically enjoined, the common law too does not normally provide the taxpayer a cause of action to pursue a legal claim on behalf of the government entity.

San Bernardino Cty. v. Superior Court, 239 Cal. App. 4th 679, 686–87 (2015) (granting writ of mandate directing trial court to enter new order sustaining demurrer to taxpayer action without leave to amend) (internal citations and quotations omitted) (emphasis added). Similarly, in *Elliott v. Superior Court*, 180 Cal. App. 2d 894 (1960), the court rejected a taxpayer claim purportedly brought on behalf of public agencies that declined to join in the action. The court noted:

> If a taxpayer could sue on behalf of the state, or one of its agencies, for a cause of action which the state or the agency has refused to assert on a matter within its discretion, *the discretion to act would no longer reside in the executive or administrative official* but in the taxpayers. ***Such a result could lead to chaos***. … Governments cannot operate if every citizen who concludes that a public official has abused his discretion is granted the right to come into court and bring such official's public acts under judicial review.

Id. at 897 (citation omitted) (emphases added). "Where the thing in question is within the discretion" of the city, "the general rule" is that a private citizen cannot "question the action or nonaction of such body" nor "rightfully undertake to do that which he thinks such body ought to do." *Id*. (quoting *Dunn v. Long Beach Land & Water Co*., 114 Cal. 605, 609 (1896)).

Because of these important policy considerations, California law is unequivocal: Under Section 526a, "[a] taxpayer suit is authorized only if the governing body ***has a duty to act and has refused to do so***. If the governing body has discretion and decided not to act, then the court is prohibited from substituting its discretion for the discretion of the governing body." *Cal. Ass'n for Safety Educ. v. Brown*, 30 Cal. App. 4th 1264, 1281 (1994) (emphasis added); *see also, e.g.*, *Silver v. City of Los Angeles*, 57 Cal. 2d 39, 40, 42 (1961) (no taxpayer standing where municipality had not itself engaged in improper activity or failed to perform duty specifically enjoined); *Cty. of San Luis Obispo v. Abalone All.*, 178 Cal. App. 3d 848, 863 (1986) (affirming sustaining of demurrer without leave to amend because taxpayers failed to allege that government had duty to sue and refused to do so); *Silver v. Watson*, 26 Cal. App. 3d 905, 909–10 (1972) (affirming dismissal of taxpayer action because taxpayer failed to allege that governing body had duty to bring claim and had refused to do so). Consistent with these holdings, the cases that have found taxpayer standing to exist involve governmental action that is compelled by a defined legal duty. *See, e.g.*, *Harman*, 7 Cal. 3d at 155–56 (finding taxpayer standing when plaintiff alleged that city "violated a statutory duty" to obtain set percentage of market value of all public property offered for sale); *Cates v. Cal. Gambling Control Comm'n*, 154 Cal. App. 4th 1302, 1308 (2007) (taxpayer standing found where gambling commission had "mandatory duty" to collect funds, but did not); *Vasquez v. State of Cal*., 105 Cal. App. 4th 849, 851 (2003) (permitting taxpayer action "to compel the State to discharge its duty under Proposition 139, the Prison Inmate Labor Initiative of 1990").

This precedent requires dismissal of Plaintiff's claims. Plaintiff's theory of taxpayer standing is premised entirely on the notion that the City "fail[ed] to enforce its valid third-party beneficiary claim" against the NFL and Chargers. (¶ 1.) The Complaint does not allege, nor could it, that the City had a legal duty to pursue that claim or any other claim asserted. Far to the contrary, the Complaint is replete with allegations of discretionary acts taken by the City to negotiate new lease terms; to address whether public officials thought it prudent to continue to make investments necessary to have an NFL team; to release and waive, in exchange for significant financial and other consideration to the City, any claims in the event the Chargers did relocate; and to decline to take any legal action after the relocation occurred. (*See, e.g.*, ¶¶ 8, 20, 22, 30, 40, 54, 58.) There is absolutely nothing in the Complaint to suggest that the City's actions, including its decision to honor its agreement not to pursue legal claims in connection with the Chargers' relocation, were anything other than matters reserved to its discretion. *See Boyne v. Ryan*, 100 Cal. 265, 266–67 (1893) (declining to mandate district attorney to bring claims because he "is vested with a discretion which a court cannot control by *mandamus*"). Plaintiff has no right to "usurp" or "question" the City's discretion by bringing those claims herself. *Elliott*, 180 Cal. App. 2d at 897.

For these same reasons, the City's decision not to pursue claims relating to the Chargers' relocation cannot constitute "waste" sufficient to confer taxpayer standing upon Plaintiff under Section 526a.[5] As used in the statute, that term "means something more than an alleged mistake by public officials in matters involving the exercise of judgment or discretion." *Sagaser v. McCarthy*, 176 Cal. App. 3d 288, 310 (1986) (citing *City of Ceres v. City of Modesto*, 274 Cal. App. 2d 545, 555 (1969)). "To hold otherwise would invite constant harassment of city and county officers by disgruntled citizens and could seriously hamper our representative form of government at the local level." *Humane Soc'y*, 152 Cal. App. 4th at 356; *see also Chiatello v. City & Cty. of*

[5] Nor does the Complaint allege any illegal conduct by the City. *See Humane Soc'y of the U.S. v. State Bd. of Equalization*, 152 Cal. App. 4th 349, 361 (2007) ("section 526a action 'will not lie where the challenged governmental conduct is legal'" (citation omitted)). It is obviously not illegal for the City to decline to bring claims (i) which the City knowingly waived and released in 2004 and 2006; (ii) that the City released in exchange for valuable consideration, including elimination of the "ticket guarantee" and $12,575,000 paid by the Chargers in February 2017 as a termination fee; and (iii) which are all barred by the statutes of limitations.

San Francisco, 189 Cal. App. 4th 472, 482–83 (2010) ("[Waste] has been described as 'a useless expenditure ... of public funds' that is incapable of achieving the ostensible goal. … Waste does not encompass the great majority of governmental outlays of money or the time of salaried governmental employees, nor does it apply to the vast majority of discretionary decisions made by state and local units of government." (citation omitted)). Accordingly, "[i]t has long been held that a government entity's decision whether to pursue a legal claim involves the sort of discretion that falls outside the parameters of waste under section 526a and cannot be enjoined by mandate." *Daily Journal Corp. v. Cty. of Los Angeles*, 172 Cal. App. 4th 1550, 1558 (2009). *Daily Journal* is instructive. There, a newspaper company alleged that Los Angeles County had committed waste by "failing to seek reimbursement, presumably by way of litigation if necessary," from another company that had allegedly overcharged the county. *Id.* at 1559. The Court of Appeal held that the county's decision not to pursue claims or "seek reimbursement" was "purely a matter of the County's discretion" that did not give rise to an action for waste under Section 526a, and therefore affirmed the lower court's order sustaining a demurrer without leave to amend. *Id.* at 1557–60.

V. A TAXPAYER CANNOT PURSUE CLAIMS ON BEHALF OF THE CITY UNDER SECTION 526a WHERE THE CITY ITSELF RELEASED AND WAIVED THOSE CLAIMS.

The Supplements unequivocally bar Plaintiff's claims. The City agreed in the Supplements that the Chargers had the right to relocate from San Diego so long as (i) the relocation occurred after the 2008 NFL season and (ii) they paid the Termination Fee (which they did). NOL Ex. 1, § 31 at 9–10; Ex. 2, § 31 at 38. The Complaint admits that the Chargers announced their relocation on January 12, 2017, beginning with the 2017 NFL season. (¶ 6.) The Supplements twice released and waived any and all claims of whatever sort the City might otherwise have against any of the NFL Defendants arising out of this relocation. Because Plaintiff seeks to bring claims on behalf of the City, she self-evidently cannot maintain a taxpayer claim the City itself has waived.

The Complaint acknowledges the existence of these releases and waivers but attempts to avoid them by asserting (i) the behavior it challenges occurred *after* the Supplements were executed in May 2006; (ii) the Supplements do not purport to waive rights under the Relocation Policy; and (iii) it would be unconscionable to enforce the Supplements. (¶ 58.) Each argument is meritless.

First, Plaintiff's position that she can evade the releases and waivers because the conduct happened *after* execution of the Supplements is nonsensical. The very purpose of the Supplements was to address the parties' *future* behavior, particularly as it related to the Chargers' relocation. In exchange for valuable consideration from the Chargers, including a $12,575,000 Termination Fee, the City agreed to release any claims related to a possible *future* Chargers relocation and *future* actions related thereto. NOL Ex. 1, § 4.1(c).

Second, the assertion that the releases and waivers at issue do not reach claims based on the Relocation Policy is equally unavailing. The releases are exceedingly broad on their face, expressly waiving and releasing *any* claims based on *any* theory of liability whatsoever, which would naturally include Plaintiff's claims based on the Relocation Policy that Plaintiff herself alleges was adopted in 1984 (¶ 60)—two decades before the Eighth Supplement was executed. And the releases further provide that "the absolute waiver of such claims is not limited in any manner by the failure to enumerate herein any claim or theory of liability." NOL Ex. 1, §§ 31(c), 31(d) at 14; Ex. 2, §§ 31(c), 31(d) at 42. The terms extend beyond the Chargers, as the City also agreed that the NFL and the clubs "shall not be liable to the City" with respect to franchise relocation and made the NFL and the other clubs express third-party beneficiaries of the waivers and releases. *Id.*

Third, Plaintiff's conclusory assertion of "unconscionability" cannot save her Complaint. Plaintiff bears the burden of establishing unconscionability, which is measured as of the time the contract was made. *The McCaffrey Grp., Inc. v. Superior Court*, 224 Cal. App. 4th 1330, 1348, 1350 (2014). Whether a contract is unconscionable is a question of law (Cal. Civ. Code § 1670.5(a); *Flores v. Transamerica HomeFirst, Inc.*, 93 Cal. App. 4th 846, 851 (2001)), and both procedural *and* substantive unconscionability must be present in order to void a contract. *Pinnacle Museum Tower Ass'n v. Pinnacle Mkt. Dev. (US), LLC*, 55 Cal. 4th 223, 246 (2012).

Procedural unconscionability requires the existence of oppression or surprise due to unequal bargaining power in contract formation. *Pinnacle*, 55 Cal. 4th at 246. Oppression means inequality of bargaining power that results in the absence of meaningful choice, and surprise occurs where the supposedly agreed-upon terms are hidden in a prolix printed form drafted by the party seeking to enforce those terms. *Vance v. Villa Park Mobilehome Estates*, 36 Cal. App. 4th 698, 709 (1995);

Samura v. Kaiser Found. Health Plan, Inc., 17 Cal. App. 4th 1284, 1296 (1993). Substantive unconscionability refers to the unfairness of the contract's terms. *Pinnacle*, 55 Cal. 4th at 246. The terms must establish an allocation of risks or costs that is overly harsh or one-sided and not justified by the circumstances under which the contract was made. *Vance*, 36 Cal. App. 4th at 709; *Samura*, 17 Cal. App. 4th at 1296. A term is not unconscionable because it gives one side a greater benefit; the term must be so one-sided as to shock the conscience. *Pinnacle*, 55 Cal. 4th at 532.

Plaintiff comes nowhere close to pleading facts sufficient to meet the high burden of procedural or substantive unconscionability. The Complaint does not and cannot allege that the Supplements resulted from oppression or surprise. These were the eighth and ninth times the City and the Chargers amended their longstanding agreement reflected in the 1995 Lease. The City and the Chargers are sophisticated entities with equal bargaining power and were represented by competent counsel. Within these short Supplements (twenty-seven and eight pages, respectively), the key terms could not be more clear or prominent, and they are plainly an integral part of the contracts' purpose. The Supplements are plainly not one-sided. Both included limitations on the Chargers' rights, and financial consideration to the City including a multi-million dollar liquidated damages clause in favor of the City; the Eighth Supplement also included a $12,575,000 Termination Fee that the Chargers paid to the City when they decided to relocate.[6]

Moreover, it cannot be overlooked that Plaintiff's counsel, Mr. Aguirre, was the City Attorney in 2006 and expressly approved the legality of the Ninth Supplement. NOL Ex. 2 at 44. This fact not only undermines Plaintiff's conclusory assertion of unconscionability but renders disingenuous any attempt by Plaintiff and her counsel now to argue that the Supplements do not do precisely what they purport to do—release and waive any and all City claims against the NFL Defendants in connection with the Chargers' relocation, including those at issue here.

[6] Beyond the termination fee in the event of relocation, the Eighth Supplement was supported by other contemporaneous and valuable consideration, including the Chargers' agreement to do away with the "ticket guarantee" provided by the City. (¶¶ 22, 24; NOL Ex. 1 at 9.) Information concerning the "ticket guarantee" was reported in the same San Diego Union Tribune article cited by Plaintiff and on which Plaintiff's fraud claims purport to depend. (¶ 84; NOL Ex. 5.)

VI. ALL CLAIMS ARE UNTIMELY ON THEIR FACE.

In determining the applicable limitations periods for Plaintiff's taxpayer claims, the Court must consider the nature of the right sued upon or the principal purpose of the action. *Davies v. Krasna*, 14 Cal. 3d 502, 515 (1975); *see also Coachella Valley Water Dist. v. Superior Court*, 61 Cal. App. 5th 755, 770–73 (2021) (applying 60-day limitations period for underlying challenge in Section 526a case); *Silver v. Watson*, 26 Cal. App. 3d at 910–11 (applying three-year limitations period for underlying fraud claims in Section 526a case).

A. Plaintiff's Breach of Contract Claim Is Time-Barred.

The statute of limitations for a claim of breach of contract is four years after accrual. Cal. Civ. Proc. Code § 337(a). The claim accrues when the defendant defaults on its obligations. *See, e.g.*, *R.N.C. Inc. v. Tsegeletos*, 231 Cal. App. 3d 967, 971 (1991); *Brock v. W. Nat'l Indem. Co.*, 132 Cal. App. 2d 10, 16 (1955).

The face of the Complaint establishes the following:

- the relocation of the Chargers to Los Angeles, or the process by which the relocation occurred, constituted the alleged "breach" (¶¶ 79, 99–101, 103);
- the NFL approved the relocation in December 2016, and the Chargers announced on January 12, 2017 that the club would relocate to Los Angeles (¶¶ 6, 55); and
- this suit was not filed until January 24, 2022, more than ***five years later***.

The latest possible date on which any breach of contract claim accrued was January 12, 2017. (¶ 6.) The four-year limitations period thus expired over a year before Plaintiff filed her Complaint.

B. Plaintiff's Fraud Claims Are Time-Barred.

The statute of limitations for fraud is three years. Cal. Civ. Proc. Code § 338(d). The claim typically accrues when damages are suffered but is tolled until "the aggrieved party" discovers facts giving rise to her claim. *Id.*; *Doe v. Roman Catholic Bishop of Sacramento*, 189 Cal. App. 4th 1423, 1430 (2010). As such, the limitations period begins to run when the aggrieved party suspects or should suspect that its injury was caused by wrongdoing, *Jolly v. Eli Lilly & Co.*, 44 Cal. 3d

1103, 1110 (1988), or when the aggrieved party learns or is put on notice that a representation was false, *Britton v. Girardi*, 235 Cal. App. 4th 721, 734 (2015). The aggrieved party need not be aware of every fact necessary to establish a cause of action; rather, an aggrieved party with reason to suspect someone has done something "wrong" to it has an incentive to sue, which suffices to start the limitations period. *Jolly*, 44 Cal. 3d at 1111. This means the claim accrues on the date when an aggrieved party should have known that there was a chance, no matter how slight, that the defendant made a misrepresentation. *Hamilton Materials, Inc. v. Dow Chem. Corp*., 494 F.3d 1203, 1206–07 (9th Cir. 2007) (relevant inquiry is whether "a reasonable person … would have been on notice of a potential misrepresentation").

If the aggrieved party contends that its failure to discover the alleged fraud within three years should be excused, it has the burden to plead facts showing that it was not negligent in failing to make the discovery sooner, and that it had no actual or presumptive knowledge sufficient to put it on inquiry. *Cansino*, 224 Cal. App. 4th at 1472. This showing of excuse must be made in the complaint and must set forth specifically (i) the facts of the time and manner of discovery, and (ii) the inability to have made earlier discovery despite "reasonable diligence." *WA Sw. 2, LLC v. First Am. Title Ins. Co.*, 240 Cal. App. 4th 148, 157 (2015). An aggrieved party also has an obligation to plead facts demonstrating its reasonable diligence. *Id*. Averments or general conclusions that facts were not discovered until a stated date, and that the plaintiff could not reasonably have made an earlier discovery, are "useless." *Orange Cty. Rock Prods. Co. v. Cook Bros. Equip. Co*., 246 Cal. App. 2d 698, 703 (1966).

The Complaint's allegations establish on their face that the fraud claims asserted on behalf of the City are untimely. As an initial matter, Plaintiff's allegations make clear that the City is the "aggrieved party." (*See, e.g.*, ¶¶ 86, 103, 122, and Prayer (requesting damages be awarded to the City).) Accordingly, for purposes of assessing when the three-year limitations period began to run, it is the *City's* awareness of a cause of action that matters, not Plaintiff's. *See, e.g.*, *Schaefer v. Berinstein*, 140 Cal. App. 2d 278, 297 (1956) (pleading under Section 526a sufficiently alleged that the city learned nothing to arouse its suspicions at an earlier date); *Silver v. Watson*, 26 Cal. App. 3d at 910–11 ("notice to the county," as of the date of receipt, of alleged fraud was "sufficient to

start the statute running" in action where taxpayer sued on behalf of county).

Based on the theory alleged, there is no question here that the City knew of the facts giving rise to the purported "fraud" more than three years before the filing. The Complaint alleges that "in and after 2006" the Chargers made statements to the City that they were looking for a way to stay in San Diego, but then the Chargers publicly announced they were relocating to Los Angeles on January 12, 2017. (¶¶ 6, 125.) It further asserts that the Chargers and the NFL concealed the team's true intentions, by failing to disclose that Mr. Spanos purportedly decided in 2006 to relocate the Chargers. (¶¶ 49, 82, 125, 128, 129.) But this assertion is contradicted by the Complaint, which acknowledges that the supposed source of "knowledge" about Mr. Spanos's "secret intention" was himself appointed by the City to the stadium task force. (¶ 84.) Moreover, the 2004 and 2006 Supplements (each of which is publicly available) plainly show the City knew the Chargers might relocate (indeed, it absolved them of any liability for a relocation after the 2008 NFL season).

Even setting all of that aside, the Chargers' January 12, 2017 relocation announcement unquestionably put the City at least on inquiry notice that any prior representations to the contrary could be suspect. *See Dent v. Nat'l Football League*, No. C-14-02324 WHA, 2021 WL 5987260, at *4 (N.D. Cal. Dec. 17, 2021) ("[P]laintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation." (citing *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 806–08 (2005)). If there was reason to suspect that someone had done something "wrong," or that the Chargers had somehow concealed their true intentions or made purported misrepresentations about their intentions to stay prior to January 12, 2017, the City certainly would have been on notice of that once the Chargers publicly announced their relocation. *See Dent*, 2021 WL 5987260, at *11 (finding that "plaintiffs had inquiry notice of the NFL's conduct which forms the basis of their negligent voluntary undertaking claims during their careers and, therefore, they were required to conduct a reasonably diligent investigation when they were injured"). The Complaint was not filed until January 24, 2022, but the three-year period goes back only to January 24, 2020. The fraud claims are thus at a minimum at least two years late based on the face of the Complaint.

C. The Statutory Period Was Not Tolled Based on a City Appointee's Musings in a December 2021 Newspaper Article.

The Complaint alleges that Plaintiff did not *personally* know of the basis for her claims on behalf of the City until she read a December 10, 2021 news article quoting Jim Steeg, a City representative and member of the mayor-appointed 2015 Citizens Group, as saying: "I think (owner) Dean Spanos made up his mind to move in 2006 … It just took him 10 years to do it." (¶ 126; NOL Ex. 5 at 59.) This attempt to toll any claims on behalf of the City until December 2021 fails for multiple reasons.

First, under Code of Civil Procedure Section 338(d), an action for relief due to fraud or mistake accrues upon the discovery of the facts constituting the fraud or mistake "*by the aggrieved party*." Cal. Civ. Proc. Code § 338(d) (emphasis added). The allegedly aggrieved party is the City, not Plaintiff, so it is the *City's* knowledge that matters. But the Complaint does not allege, nor does it contain any facts that would support, any purported "delayed discovery" by the City.

Second, Section 338(d) tolls the statute until such time as the aggrieved party discovers the "facts" constituting the fraud or mistake. Mr. Steeg's one-line reported opinion that "*I think* (owner) Dean Spanos made up his mind to move in 2006" is obviously not a fact. (¶ 84 (emphasis added).) At most, the statement is the inadmissible hearsay opinion of a City appointee, about someone else's state of mind, made in hindsight fifteen years after the events took place and nearly five years after the Chargers publicly announced they were relocating.

Third, the history between the City and the Chargers makes irrefutable that the City knew or had reason to know that the Chargers were in fact contemplating relocation. The Eighth and Ninth Supplements in 2004 and 2006 plainly and openly acknowledged the potential that the Chargers would pursue relocation after the 2008 NFL season, set forth an agreed-upon path for the Chargers to do so, and waived and released the Chargers, the NFL, and the clubs from any claims should the Chargers relocate after that time. The Complaint thus alleges facts substantiating that the City knew by 2004 that the Chargers might leave San Diego, not that the Chargers promised to stay or concealed any intentions of possibly relocating.

Fourth, the Complaint admits that City voters rejected a new stadium proposal in 2016 and

that the Chargers announced on January 12, 2017 that they were relocating. (¶¶ 6, 53.) If the City had actually believed that the Chargers had previously represented they would not relocate, then the January 2017 announcement necessarily should have raised suspicion and triggered further investigation into when the Chargers made that decision and whether they had misrepresented their intentions. Under any measure, Plaintiff's fraud claims on behalf of the City are untimely.

D. Plaintiff's Unjust Enrichment Claim Is Time-Barred.

There is no cause of action for unjust enrichment in California, as explained below. But even if there were, the "gravamen" of this claim for restitution is no different than Plaintiff's baseless fraud claim, and thus the three-year limitations period applicable to that claim should apply here. *See Streamcast Networks, Inc. v. Skype Techs., S.A.*, No. CV 06-391 FMC(Ex), 2006 WL 5437322, at *8 (C.D. Cal. Sept. 14, 2006) (unjust enrichment claim time-barred under three-year limitations period). If the claim were viewed as one for quasi-contract, then it would be barred by the four-year limitations period applicable to claims for breach of contract. Either way, this claim is untimely on its face.

VII. NONE OF PLAINTIFF'S CAUSES OF ACTION STATES A CLAIM.

Beyond and apart from the multiple threshold defects identified above that compel dismissal of Plaintiff's claims, none of the causes of action states a cognizable legal claim.

A. Plaintiff Fails To State a Claim for Breach of Contract.[7]

The Complaint does not, and cannot, allege facts sufficient to constitute a claim for breach of contract. The alleged "contract" at issue, the NFL Relocation Policy, is an internal NFL policy setting forth policy and procedure for the member clubs' consideration of and vote on franchise relocation. As the Superior Court of California concluded when sustaining without leave to amend a demurrer to identical claims brought in connection with the Raiders' relocation from Oakland to Las Vegas, "there is simply no basis to conclude [San Diego] was a contemplated third party beneficiary of the Relocation Policy." *See* April 20, 2021 Ruling in *City of Oakland v. The Oakland Raiders*, Los Angeles Superior Court Case No. 20STCV20676 (NOL Ex. 6 at 68). Even if the City

[7] Plaintiff's First Cause of Action is asserted against only the Chargers and the NFL, and not the other 31 clubs. Any breach of contract claim should therefore be dismissed as to those clubs.

were a third-party beneficiary (which it is not), "the Relocation Policy does not contain a promise that Defendants will consider anything, and thus, a breach-of-contract action cannot be maintained." *Id.* at 67. Just as in the Oakland case, the Complaint lacks sufficient allegations that "the Relocation Policy was breached or that any damages flow from such a breach." *Id.* at 70. Plaintiff's claim therefore fails as a matter of law.

1. The City Is Not a Third-Party Beneficiary of the Policy.

Both the Superior Court of California and a California federal district court have dismissed on the pleadings the identical third-party beneficiary theory proffered here. *Id*. at 67–68; *see also City of Oakland v. Oakland Raiders*, No. 18-cv-07444 JCS, 2019 WL 3344624, at *14–16 (N.D. Cal. July 25, 2019). Both courts followed the California Supreme Court's recent holding in *Goonewardene v. ADP, LLC*, 6 Cal. 5th 817 (2019), which sustained a demurrer to claims premised on asserted third-party beneficiary status. The Court held there that "to permit [a] third party action to go forward," the plaintiff must establish, based on "the express provisions of the contract at issue, as well as the relevant circumstances under which the contract was agreed to," that (i) "a motivating purpose of the contracting parties was to provide a benefit to the third party" and (ii) "permitting a third party to bring its own breach of contract action against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties." 6 Cal. 5th at 830. Plaintiff fails on both points.

First, Plaintiff cannot show that benefitting host cities such as San Diego was a motivating purpose of the NFL and its clubs. To the contrary, the Relocation Policy's motivating purpose, as it expressly states, is to protect *the League's interests and those of its member clubs*. The Policy explicitly provides that "[i]n considering a proposed relocation, the Member Clubs are making a business judgment concerning how best to advance their *collective interests*." NOL Ex. 4 at 51 (emphasis added). The Policy uses the words "interests of the League," "the League's interests," and the "collective interests" of the clubs no fewer than eleven times in the six-page document. In contrast, the Policy says nothing about furthering the interests of cities in which clubs are located. Even the paragraph on which Plaintiff relies in support of her theory of third-party beneficiary standing (¶ 77) is framed in terms of the League's policy and interests: "*Because League policy*

favors stable team-community relations, clubs are obligated to work diligently and in good faith to obtain and to maintain suitable stadium facilities in their home territories, and to operate in a manner that maximizes fan support in their current home community." NOL Ex. 4 at 49 (emphasis added; italicized text omitted from Complaint). Thus, the express language of the Policy repeatedly reflects its motivating purpose: to advance "the League's collective interests." *Id.* at 50; *see also id*. (referring to the club's prospective new home territory as a "League-owned opportunity").

In rejecting identical allegations related to the Raiders' relocation, the Superior Court held that "there is simply no basis to conclude the City was a contemplated third party beneficiary of the Relocation Policy." NOL Ex. 6 at 68. The court recognized instead that "[t]he language of the Relocation Policy … expressly contradicts [plaintiff's] position," *id.*, making clear that the Policy is meant to "protect and benefit the NFL and the NFL clubs; there is simply no reading of the purported agreements which would allow the trier of fact to conclude that a motivating purpose of the NFL and its member clubs in entering into the Relocation Policy was to provide a benefit to host cities such as [San Diego]." *Id.* at 68–69. The federal court likewise stated that the Policy "repeatedly reinforces the conclusion that its overriding motivation is the NFL's business interests." *Oakland Raiders*, 2019 WL 3344624, at *14. This Court should reach the same conclusion here.[8]

Second, third-party enforcement of the Policy is fundamentally inconsistent with the NFL and clubs' reasonable goals and expectations. Plaintiff alleges that the NFL adopted the Policy "[t]o avoid future antitrust liability," avoid "legislation that would have effectively taken the relocation decision away from the NFL," and "retain . . . control over relocation decision-making." (¶¶ 61, 94.) As the Superior Court found in *Oakland*, these goals would be completely undermined by permitting city governments or taxpayers to sue under the Policy: "[I]t would be illogical for the NFL and its member clubs to implement a Relocation Policy 'to retain control over relocation

[8] The Relocation Policy, which lacks any provision designating the City of San Diego or "host cities" more generally as third-party beneficiaries, stands in stark contrast to the 2004 and 2006 Supplements, each of which expressly states that the "NFL (including its member clubs other than the Chargers) is a third party beneficiary entitled to directly assert the protections and waivers afforded" therein. *See, e.g.*, NOL Ex. 1, § 31(c). The City therefore understands the degree of specificity that is required to support third-party beneficiary rights under California law. There is no remotely comparable language in the Relocation Policy.

decisions and avoid government meddling in its billion-dollar business' while at the same time … permitting the very government intervention the Relocation Policy sought to avoid." NOL Ex. 6 at 69. Accordingly, the Superior Court held that "permitting the City to bring its own breach of contract action against the NFL and its member clubs would be inconsistent with the objectives of the Relocation Policy, the reasonable expectations of the NFL and its member clubs, and their desire to retain control over relocation decision making." *Id.* The federal court concluded the same, observing that the NFL's motivation "to enact its relocation policy to avoid antitrust scrutiny only reinforces the conclusion that it was intended solely to benefit the NFL and its member teams, not existing host cities." *Oakland Raiders*, 2019 WL 3344624, at *15.

These decisions are fully consistent with *Goonewardene*. There, the California Supreme Court ruled that permitting employees to enforce their employers' contract with a payroll company would be inconsistent with the employers' reasonable expectations because "such an interpretation would clearly impose substantial [litigation] costs … [from] defending the numerous wage and hour disputes that regularly arise between employees and employers." 6 Cal. 5th at 836. The same is true here. Permitting third parties to bring claims for alleged violations of the Policy would do the opposite of what the NFL and its clubs sought to accomplish—it would cede control over internal NFL decision-making on club relocation to third parties and the courts, and impose on the NFL and its clubs substantial litigation costs in connection with such claims. The NFL and its clubs' interests would be frustrated, not furthered, if relocations were subject to second-guessing by courts that might weigh the discretionary factors set forth in the Policy differently than each club voting in accordance with its own business judgment. That the Policy itself sets forth a clear process by which relocation decisions are to be made—a vote by the League's member clubs—further underscores that the NFL and its clubs could not reasonably have expected that any city within a home territory could use a lawsuit to second-guess their decision to approve a relocation. *See Martinez v. Socoma Cos.*, 11 Cal. 3d 394, 402 (1974) (contracts at issue established a specific administrative process through which alleged breaches of the contract could be raised and resolved, indicating "a governmental purpose to exclude the direct rights" against defendants).

2. The Relocation Policy Does Not Constitute a Contract.

Even if the City were a third-party beneficiary, Plaintiff would have no breach of contract claim because the alleged promises it attempts to invoke are non-existent and/or not enforceable.

The primary premise of Plaintiff's breach of contract claim is that the NFL clubs failed to consider the factors listed in the Policy and would have denied the Chargers permission to relocate had they done so. (¶ 101.) But as the *Oakland* court found in rejecting that very argument in connection with the Raiders' relocation, "[s]imply put, the Relocation Policy does not contain a promise that Defendants will consider anything, and thus, a breach of contract action cannot be maintained." NOL Ex. 6 at 67. Specifically, "neither the NFL Constitution nor the Relocation Policy provide an affirmative promise to host cities that all identified factors will be considered. Rather, the factors are said to simply inform the NFL clubs' judgment in evaluating a proposed relocation." *Id.*; *accord id.* ("there is no affirmative promise or duty to consider those factors"). The Policy states only that the listed factors "*may* be considered in evaluating the proposed transfer." NOL Ex. 4 at 51 (emphasis added). It says "may," not "must."

The Policy also expressly states that the League "has analyzed many factors in making prior business judgments concerning proposed franchise relocations," and that "other appropriate factors," apart from those expressly listed, may be "considered relevant by the Commissioner or the membership." *Id.* Far from requiring each club to consider each of the factors listed, the Policy states that the factors are merely "useful ways to organize data and to inform [each club's] business judgment." *Id.* "They are intended to assist the clubs in making a decision based on their judgment and experience, and taking into account those factors deemed relevant to and appropriate with regard to each proposed move." *Id.*

But "[e]ven if the Relocation Policy did contain an express promise to consider the identified factors, any such promise would be unenforceable under [*Ladas v. Cal. State Auto. Ass'n*, 19 Cal. App. 4th 761 (1993)]." NOL Ex. 6 at 67. *Ladas* invoked the commonsense rule that "[t]o be enforceable, a promise must be definite enough that a court can determine the scope of the duty and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages." 19 Cal. App. 4th at 770. Applying that rule, *Ladas* held that "[a]n

amorphous promise to 'consider' what employees at other companies are earning [in determining plaintiffs' compensation] cannot rise to the level of a contractual duty." *Id.* at 771. *Ladas* therefore stands for the general principle that a promise to "consider" something is too vague to be enforceable. That principle applies with equal force here. No jury or court could determine whether a breach had occurred because an alleged promise to consider *each* of twelve relocation factors provides no standard for determining how much consideration of each factor by each club would be enough. As the Superior Court recognized, "the purported promise to consider certain factors prior to relocation lacks specific terms that would allow the trier of fact to evaluate whether a promise under the contract was broken." NOL Ex. 6 at 67.

Insofar as Plaintiff alleges the NFL and member clubs promised to negotiate in good faith with the City with respect to the Chargers' stadium (¶ 90), that too is "belied by the language of the Relocation Policy." NOL Ex. 6 at 68. Though the Relocation Policy states in section A.1 that "clubs are obligated to work diligently and in good faith to obtain and to maintain suitable stadium facilities in their home territories, and to operate in a manner that maximizes fan support in their current home community" (NOL Ex. 4 at 49), it also states that the degree to which the team has engaged in good-faith negotiations to remain in the current home territory is but one factor the NFL clubs may consider in voting on a proposed relocation (*id.* at 52). As such, "the obligation to negotiate in good faith is, again, not a promise, even if the Relocation Policy makes use of the word 'obligated.' Rather, it is merely conduct which may inform a relocation vote." NOL Ex. 6 at 68. The sentence on which Plaintiff repeatedly focuses (¶¶ 66, 67, 90) does not say that a club's failure to "work diligently and in good faith" bars the NFL's member clubs from permitting it to relocate. If that had been the League's intent, the Policy certainly could have used language that would make this clear—as it did, for example, in barring relocation where the move would breach a stadium lease. NOL Ex. 4 at 53. The Policy instead states that "[t]he degree to which the club has engaged in good faith negotiations … with appropriate persons concerning the terms under which the club would remain in its current home territory and afforded that community a reasonable amount of time to address pertinent proposals" is one factor that NFL clubs *may*—but need not—consider in voting on a proposed relocation. *Id.* at 52. As the Superior Court concluded, good-faith

engagement thus is not a "promise" enforceable by cities and communities in a club's home territory; rather, it is a matter that may be considered (according to each club's assessment of "degree") in deciding whether relocation is appropriate.

3. Plaintiff Has Not Alleged That the Policy Was Breached.

A necessary element of any contract claim is an alleged breach of the contract. *Wall St. Network, Ltd. v. N.Y. Times Co.*, 164 Cal. App. 4th 1171, 1178 (2008). While the Complaint contains a litany of conclusory allegations that "Defendants" supposedly "breached" the Policy, it nowhere alleges any facts that amount to an actual breach of the Policy.

First, the Complaint contains numerous allegations suggesting that mere approval of the Chargers' relocation was a breach. (*See, e.g.*, ¶ 2.) But nothing in the Policy precludes clubs from relocating or from approving another club's relocation proposal; as its name implies, the "Policy and Procedures for Proposed Franchise Relocations" provides guidance to the NFL and its clubs in exercising their business judgment in making such decisions. "[S]imply relocating cannot constitute a breach, as [Plaintiff] identifies no promise from the [Chargers], the NFL, or its member clubs that the [Chargers] would stay in [San Diego]." NOL Ex. 6 at 70.[9]

Second, Plaintiff asserts that Defendants breached the Policy because they failed to consider the factors identified therein. (*See, e.g.*, ¶ 101.) But the Policy does not require consideration of the listed factors, nor is a "promise to consider" even enforceable. The alleged failure to consider one or more of the discretionary factors is therefore not a breach. NOL Ex. 6 at 70.

Third, Plaintiff alleges that Defendants breached the Policy by failing to negotiate in good faith with the City. (*See, e.g.*, ¶¶ 77, 79, 99, 100.) For starters, the Policy does not condition relocation on good-faith negotiation. Even if it did, the Complaint alleges nothing to show that the Chargers, NFL, or other clubs did not meet this purported requirement. Plaintiff offers only the bald assertion that "there were no good faith negotiations from the Chargers or the NFL" (¶ 100), which is contradicted by the Complaint's own recounting of the substantial negotiations between the Chargers and the City spanning more than a decade and culminating in the voters rejecting the

[9] The City was fully aware prior to the Chargers' 2017 relocation to Los Angeles that the club could relocate including based on the clear language of the 2004 and 2006 Supplements.

new stadium proposal that resulted from those negotiations.

At bottom, Plaintiff accuses the Chargers of negotiating in bad faith simply because the club accepted a better offer to relocate to Los Angeles. But "[a]cting in one's financial self-interest, for example, in response to market changes, does not constitute bad faith." *L–7 Designs, Inc. v. Old Navy, LLC*, 964 F. Supp. 2d 299, 307 (S.D.N.Y. 2013); *accord Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 96 F. 3d 275, 279 (7th Cir. 1996) ("Self-interest is not bad faith").

4. Plaintiff Does Not Allege Recoverable Damages.

Even if the Policy was a contract, the City was a third-party beneficiary, and Plaintiff could establish that Defendants breached the Policy by refusing to negotiate in good faith or failing to consider the factors identified in the Policy, Plaintiff still would have no claim for breach because alleged expectation damages and lost profits are not recoverable damages under either such theory.

California law strictly limits the damages available for breach of an obligation to engage in good-faith negotiations. The general rule is that "damages for breach of a contract to negotiate an agreement are measured by the injury the plaintiff suffered in relying on the defendant to negotiate in good faith." *Copeland v. Baskin Robbins U.S.A.*, 96 Cal. App. 4th 1251, 1262–63 (2002). "This measure encompasses the plaintiff's out-of-pocket costs in conducting the negotiations and may or may not include lost opportunity costs." *Id.* at 1263. However, the "plaintiff cannot recover for lost expectations (profits) because there is no way of knowing what the ultimate terms of the agreement would have been or even if there would have been an ultimate agreement." *Id.*

This limitation is fatal. While Plaintiff purports to assert a claim for out-of-pocket, reliance damages, she makes only a single conclusory allegation that *the City* suffered "increased costs and other damages." (¶ 102.) Her damages claim is premised predominately on the assumption that good-faith negotiations and the membership's consideration of each of the relocation factors would have resulted in the Chargers remaining in San Diego—an assumption that *Copeland* held was without basis under California law. (*See, e.g.*, ¶¶ 103, 104.) Damages in the form of "deprivation of a professional football franchise and all its concomitant benefits, including lost investment value, lost income, lost tax revenues, and devaluation of the [club's] former stadium," all "constitute lost profits, which are not recoverable as there is no way to determine what the terms of an agreement

would have been to inform such an award of damages." NOL Ex. 6 at 70.

B. Plaintiff's Unjust Enrichment Claim Fails as a Matter of Law.

There is no independent cause of action for unjust enrichment under California law. *See Abuelhawa v. Santa Clara Univ.*, 529 F. Supp. 3d 1059, 1070–72 (N.D. Cal. 2021) ("California does not recognize a separate cause of action for unjust enrichment." (citation omitted)); *Hooked Media Grp., Inc. v. Apple Inc.*, 55 Cal. App. 5th 323, 336 (2020) ("California does not recognize a cause of action for unjust enrichment."); *Levine v. Blue Shield of Cal.*, 189 Cal. App. 4th 1117, 1138 (2010) ("[t]here is no cause of action in California for unjust enrichment" (citation omitted)); NOL Ex. 6 at 72 ("[u]njust enrichment is not a cause of action").[10]

In any event, Plaintiff's "allegations do not support a claim for unjust enrichment." *Id.* As the *Oakland* court observed, the doctrine of unjust enrichment could only apply where a plaintiff "while having no enforceable contract, nonetheless [has] conferred a benefit on defendant which defendant has knowingly accepted under circumstances that make it inequitable for the defendant to retain the benefit without paying for its value." *Id.* (citation omitted). The City of Oakland sought restitution for the increased value of the Raiders as a result of the relocation and the relocation fee awarded to the NFL member clubs. The court rejected Oakland's claim, finding that "[t]he resulting value increase and relocation fee were not the result of a benefit conferred upon Defendants by Plaintiff; they were the result of the Raiders' relocation to Las Vegas." *Id.*

The same is true here. On her unjust enrichment claim, Plaintiff also seeks restitution of "the relocation fee" paid by the Chargers and the "increase in team value resulting from the move to Los Angeles." (¶ 122.) But, as in *Oakland*, San Diego played no role in conferring these benefits on Defendants. Instead, these benefits resulted from the opportunities available to the NFL and member clubs in the Los Angeles market. The City therefore has no underlying legal or equitable claim to the increase in enterprise value resulting from the Chargers' move or to the relocation fee. *See Lucky Auto Supply v. Turner*, 244 Cal. App. 2d 872, 885–86 (1966) (plaintiff not entitled to

[10] Plaintiff's unjust enrichment claim also fails because this dispute is covered by an enforceable contract, namely the 1995 Lease and Supplements thereto. Unjust enrichment is an action in quasi-contract, which does not lie when an enforceable, binding agreement exists defining the rights of the parties. *Paracor Fin., Inc. v. Gen. Elec. Capital Corp.*, 96 F. 3d 1151, 1167 (9th Cir. 1996).

share of proceeds from building constructed on defendant's property where plaintiff "had no right in the corpus which produced the rentals").

C. Plaintiff's Fraud Claim Against the Chargers Fails as a Matter of Law.

Fraud must be pleaded with specificity; general and conclusory allegations do not suffice. *Lazar v. Superior Court*, 12 Cal. 4th 631, 645 (1996). "Each element in a cause of action for fraud … must be factually and specifically alleged." *Perlas v. GMAC Mortg., LLC*, 187 Cal. App. 4th 429, 434 (2010) (citations omitted). To state a claim, the plaintiff must allege that:

> (1) [T]he defendant represented to the plaintiff that an important fact was true; (2) that representation was false; (3) the defendant knew that the representation was false when the defendant made it, or the defendant made the representation recklessly without regard for its truth; (4) the defendant intended that the plaintiff rely on the representation; (5) the plaintiff reasonably relied on the representation; (6) the plaintiff was harmed; and (7) the plaintiffs' reliance on the defendant's representation was a substantial factor in causing that harm to the plaintiff ….

Perlas, 187 Cal. App. 4th at 434 (internal quotations, citations, and emphasis omitted). To allege fraud against a corporation, "a plaintiff must allege the names of the persons who made the misrepresentations, their authority to speak for the corporation, to whom they spoke, what they said or wrote, and when it was said or written." *Id.* The heightened pleading requirement serves two purposes: (1) it notifies the defendant of the charges to be met, and (2) it assists courts in "weed[ing] out nonmeritorious actions on the basis of the pleadings." *Citizens of Humanity, LLC v. Costco Wholesale Corp*., 171 Cal. App. 4th 1, 20 (2009).

The Complaint here falls woefully short of pleading fraud with the required particularity. Plaintiff alleges that Dean Spanos made up his mind to move the team in 2006 and that the Chargers announced they were moving on January 12, 2017. (¶¶ 6, 84.) Therefore, the only possible actionable misrepresentations had to be made between 2006 and January 2017. During that period, the Complaint alleges only that (i) the Chargers made a first step proposal in August 2013 to build a stadium in Mission Valley which had many contingencies (¶¶ 35–36); (ii) the Chargers concluded in 2015 that it would not be possible to put a proposal before the voters at that time (¶ 49); (iii) the Chargers said in 2015 that they preferred to stay in San Diego, but not as a part of a "half-baked" legal strategy (¶ 51); (iv) the Chargers proposed a $1.8 billion stadium in July 2016 (¶ 26); and

(v) in November 2016, the stadium and convention plan was placed on the ballot and lost (¶ 28).

These allegations do not amount to any actionable misrepresentation of fact. It is impossible to tell whether the Complaint is attempting to allege (i) that Chargers owner Dean Spanos or "the Chargers" promised anything in particular that they would or would not do that in fact they did not do or intend to do at the time, or (ii) that the Chargers failed to inform the City that they intended to leave at some point earlier than when they announced their departure (assuming *arguendo* that the Chargers made such a decision earlier and would have had any obligation to inform the City at that time). These are precisely the sort of vague and conclusory allegations that the particularity requirement is intended to guard against. *See Stansfield v. Starkey*, 220 Cal. App. 3d 59, 72–73 (1990) ("[T]he facts constituting the fraud must be alleged with sufficient specificity to allow defendant to understand fully the nature of the charge made." (citation omitted)).

There is more. The Complaint also does not allege any *fact* that shows the falsity of any representation that was made. The Complaint inalterably hinges the fraud claim on the December 2021 newspaper article reporting that "Jim Steeg," a representative of the City, said "I think (owner) Dean Spanos made up his mind in 2006" to relocate. (¶¶ 126–27.) The fraud count states that "Chargers Football owner had made up its mind in 2006 to move the team" and those "plans [in his mind] to relocate rendered the prior statements misleading." (¶¶ 128–29.) But the sole source for those allegations is the newspaper article. Mr. Steeg's supposed 2021 thoughts about Mr. Spanos's 2006 mindset are non-fact opinions (if even that), are attributable to the City (given his role as a City appointee), and cannot provide a factual basis to support a fraud claim. The Complaint does not specify any other basis to support Plaintiff's assertion that a misrepresentation was made.

Nor does the Complaint plead facts showing actual reliance by the City. To allege fraud, Plaintiff must show that its "reliance on the defendant's representation was a substantial factor in causing that harm to the plaintiff." *Perlas*, 187 Cal. App. 4th at 434. But the Complaint acknowledges that the City was *not* relying on any statement that the Chargers would stay. To the contrary, the Complaint admits that the City executed the two Supplements in 2004 and 2006 expressly (i) acknowledging the Chargers might relocate; (ii) allowing the Chargers to negotiate and move the team after the 2008 NFL season, and negotiating an agreed termination fee in the

event the Chargers did so; (iii) granting the Chargers the right to terminate the 1995 Lease after 2008; (iv) confirming through various waivers and releases that the City would not have any right to prevent such a move or seek damages resulting from a relocation; (v) warranting that the City had authority to enter into those arrangements; and (vi) confirming, through the City Attorney, that the Supplements were legal.

The Complaint also admits that Mayor Faulconer responded to the Chargers' 2015 statements by saying "[i]f San Diego is their first choice, we need them to reengage" and "[i]t's time for Chargers ownership to show San Diego they want to stay in their hometown." (¶ 50.) Thus, the Complaint itself pleads not only that in 2004 and 2006 the City agreed the Chargers could relocate after the 2008 NFL season, but also that in 2015 the mayor was under no false impression that the Chargers would necessarily remain in San Diego. These admissions defeat any conclusory assertion to the contrary.

D. The Fraud Claim Against the NFL Likewise Has No Merit.[11]

As with her claim of fraud against the Chargers[12], Plaintiff's claim for fraud against the NFL lacks any particularized allegations of falsity, intent, reliance, or causation, and therefore fails as a matter of law. Plaintiff characterizes as misrepresentations a handful of statements by NFL Commissioner Roger Goodell and former Executive Vice President Eric Grubman in 2015 concerning the relocation process. Plaintiff alleges that Mr. Grubman stated two years prior to the Chargers' relocation that (a) the Relocation Policy "puts obligations on the club and … on the league"; (b) a club must receive 24 votes in order to relocate; (c) in order "to get 24 votes, the owners would have to reach the conclusion that the club met the NFL guidelines"; and (d) "the NFL has an 'obligation, which we take very seriously' to do whatever it takes to keep NFL teams strong in their existing markets." Plaintiff alleges that Commissioner Goodell stated that the NFL "want[s] all of our franchises to stay in their current markets." (¶¶ 136–37.) None of these

[11] Plaintiff's Fourth Cause of Action is pled against only the NFL, and the Complaint lacks any allegations of fraud, much less particularized allegations, against the other 31 clubs. Any fraud claim should therefore be dismissed as to those clubs.

[12] The NFL incorporates by reference all arguments raised by the Chargers in connection with the fraud claim against the Chargers as equally applicable to the instant claim against the NFL.

statements supports a cognizable claim of fraud.[13]

1. Plaintiff Cannot Establish Reliance as a Matter of Law.

Plaintiff fails to plead that the City relied on any alleged misrepresentations by the NFL. *See Mirkin v. Wasserman*, 5 Cal. 4th 1082, 1092 (1993) (requiring plaintiff to plead and prove actual reliance). "Actual reliance occurs when the defendant's misrepresentation is an immediate cause of the plaintiff's conduct, altering his legal relations, and when, absent such representation, the plaintiff would not, in all reasonable probability, have entered into the transaction." *Cadlo v. Owens-Illinois*, 125 Cal. App. 4th 513, 519 (2004). Here, Plaintiff offers only boilerplate allegations that the "City relied on the false representations" and "ha[d] a right to rely on the NFL's representations," and makes other vague assertions that San Diego "in fact, spent considerable time, effort, and funds to work on plans to meet the Chargers' demands for additional public taxpayer subsidies." (¶¶ 142–43.) But the Complaint does not plead facts showing that any such actions were taken *in response to or in reliance on* the NFL's alleged misstatements. And the Complaint does not allege whether and how the City would have acted differently had the alleged statements not been made. These defects are fatal to Plaintiff's claim. *See Cadlo*, 125 Cal. App. 4th at 520 (demurrer sustained when plaintiffs failed to allege that they were "actually aware of, or w[ere] reassured by and relied on" misrepresentation regarding safety of defendant's product); *see also Glaski v. Bank of Am*., 218 Cal. App. 4th 1079, 1091 (2013) (demurrer sustained when plaintiff "d[id] not identify the particular acts [he] took because of … alleged forgeries" and "d[id] not identify any acts that [he] did not take because of his reliance on the alleged forgeries").

Furthermore, even if Plaintiff had successfully alleged actual reliance, that reliance still would not have been justifiable as a matter of law. The alleged statements, such as "the NFL 'want[s] all of our franchises to stay in their current markets'" and "the NFL has an 'obligation, which we take very seriously' to do whatever it takes to keep NFL teams strong in their existing markets," are vague, aspirational statements, not representations of facts that can be shown to be

[13] Aside from the fatal defects set forth in this demurrer, these statements are, at most, non-actionable statements of opinion or statements regarding future events, which cannot be the basis for a fraud claim against the NFL. *See Graham v. Bank of Am., N.A*., 226 Cal. App. 4th 594, 606 (2014) ("Representations of opinion … are ordinarily not actionable representations of fact.").

true or false. Moreover, the statements in no way guarantee that the NFL would prohibit the Chargers from relocating—the only outcome contemplated by Plaintiff's Complaint. To the contrary, Article 4.3 of the NFL Constitution and Bylaws and the Relocation Policy expressly reserve decision-making on franchise relocation to the business judgment of the membership of the NFL, who are entitled to vote on whether they believe a proposed relocation is in their collective interests. As such, the City could not have justifiably relied on these statements. *See, e.g.*, *Reeder v. Specialized Loan Servicing LLC*, 52 Cal. App. 5th 795, 803–04 (2020) (finding it "patently unreasonable" for a plaintiff to rely on a promise of future financing "with no indication of what any of the terms of such refinancing might be").

Moreover, in considering whether reliance is "justifiable," courts look to whether the "circumstances were such to make it reasonable for plaintiff to accept defendant's statements without an independent inquiry or investigation." *Wilhelm v. Pray, Price, Williams & Russell*, 186 Cal. App. 3d 1324, 1332 (1986). Here, the City would need to look no farther than its own contract with the Chargers: Both Supplements reflect the City's (and indeed Plaintiff's counsel's own) contemporaneous acknowledgment and understanding that (1) the NFL was exploring potential franchise relocation, including relocation of a franchise to Los Angeles in particular and (2) the Chargers had the right to and could relocate at any time after the 2008 NFL season. NOL Ex. 1; NOL Ex. 2. In light of these explicit contract terms, along with the public's opposition to and rejection of a proposed stadium plan, the City could not have justifiably relied on alleged statements by the NFL expressing a general desire for teams to remain in their existing markets to believe that the Chargers would never relocate. *See Wilhelm*, 186 Cal. App. 3d at 1332 (1986) (no justifiable reliance where individual "must have consulted" with law firm before law firm prepared and filed a dismissal); 37 C.J.S. Fraud § 47 ("redress for a fraud will be denied where before acting on the false representations the representee has learned the real facts," because if the allegedly defrauded party "knew the truth, it is obvious that he or she was neither deceived nor defrauded, and that any loss that he or she may sustain is not traceable to the representation but is in effect self-inflicted").

2. Plaintiff Has Not Pleaded With Particularity Facts Showing Knowledge of Falsity.

Plaintiff has also not alleged the required element of scienter. Nothing in the Complaint indicates that Commissioner Goodell or Mr. Grubman made the alleged statements knowing them to be false at the time. Plaintiff offers only the most conclusory assertions that "Mr. Goodell on behalf of the NFL knew those statements were false," and that "the NFL was in fact aware that the Chargers were attempting to race to Los Angeles." (¶¶ 138–39.) But the Complaint sets forth no facts in support of these bare allegations, much less explains how, even if true, they would render any of the NFL's alleged statements false or misleading, particularly in light of the Supplements' acknowledgment of a possible relocation to Los Angeles. Plaintiff's conclusory allegations are insufficient. *See Wilhelm*, 186 Cal. App. 3d at 1331 (affirming decision to sustain demurrer when fraud claim failed to "plead with specificity a factual basis for how [defendant] knew the representations she communicated … were false").

3. Plaintiff Has Not Pleaded With Particularity Facts Showing the Intent To Induce Reliance.

Plaintiff also has not adequately pleaded that the NFL intended to induce the City's reliance. *See Cansino*, 224 Cal. App. 4th at 1469. Aside from the conclusory assertion that the "NFL intended for the City to act on the Chargers' false representations" (¶ 141), the Complaint is devoid of any facts suggesting that Messrs. Goodell and Grubman intended to induce San Diego's reliance on the challenged statements. Plaintiff has not alleged to whom the alleged statements were made, let alone whether they were made to the City in particular, as opposed to the public at large. *See Cansino*, 224 Cal. App. 4th at 1469 (noting particularity requirement demands that plaintiff plead facts that show "to whom, and by what means the representations were tendered" (citation omitted)); *Stansfield*, 220 Cal. App. 3d at 75 (affirming decision to sustain demurrer where the allegation of intent to defraud was "general and imprecise").

4. Plaintiff Has Not Pleaded Damages With Particularity.

Plaintiff likewise has not pleaded facts, much less particularized facts, demonstrating "detriment proximately caused" by the NFL's alleged misrepresentations. *See Serv. by Medallion, Inc. v. Clorox Co.*, 44 Cal. App. 4th 1807, 1818 (1996). "Whatever form it takes, the injury or

damage must not only be distinctly alleged but its causal connection with the reliance on the representation must be shown." *Id.* (citation omitted). Plaintiff alleges that the City "paid to expand the stadium and to pay for all unsold tickets up to 60,000," "created and appointed members to the Task Force on Chargers Issues that recommended a way to enhance Chargers Football's revenue," "retained a stadium rehabilitation contractor who prepared an $80 million restoration plan," "created and appointed another advisory group under Mayor Faulconer that proposed a new stadium," and "endorsed Chargers Football's $1.8 billion East Village joint stadium and convention center proposal." (¶ 82.) Only two of these alleged actions—the second advisory group and the endorsement of the Chargers' stadium proposal—took place after the NFL's alleged misrepresentations in 2015. Plaintiff's earlier "injuries" by definition could not have been proximately caused by statements that were made after those alleged injuries occurred. And regardless, Plaintiff fails to allege that the City took any of these actions *because of* the alleged misrepresentations by the NFL. *See Serv. by Medallion, Inc.*, 44 Cal. App. 4th at 1818–19 (no causation where termination of a contract, rather than a misrepresentation that induced entry into the contract, resulted in the alleged harm); *Graham*, 226 Cal. App. 4th at 608–09 (affirming sustaining demurrer without leave to amend when plaintiff had failed to allege "a sufficient nexus between the alleged misrepresentations or concealment and his alleged economic harm").

VIII. THE DEMURRER SHOULD BE SUSTAINED WITHOUT LEAVE TO AMEND.

No additional or amended allegations can change the fundamental deficiencies underlying the Complaint, including Plaintiff's inability to demonstrate taxpayer standing, overcome the City's express waiver and release of the instant claims, or circumvent the applicable statutes of limitations. Nor could any additional facts change the plain language of the Relocation Policy or give rise to a claim for fraud based on the Chargers' relocation. Since permitting Plaintiff to amend would do nothing but postpone the inevitable, the Complaint should be dismissed without leave to amend.

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