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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

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

NFL DEFENDANTS' REPLY IN SUPPORT OF 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

limited company,
PDB Sports, Ltd., a Colorado limited company,
The Detroit Lions, Inc., a Michigan corporation,
Green Bay Packers, Inc., a Wisconsin 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. Instead, the correct corporate entity for the Rams professional football franchise is The Los Angeles Rams, LLC.

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I. INTRODUCTION.

Plaintiff's Opposition does not meaningfully respond to the numerous legal deficiencies identified in the demurrer. Rather than address the dispositive California authority cited by the NFL Defendants compelling dismissal of this lawsuit, Plaintiff asks this Court to allow her case to proceed based largely on generalized statements of law untethered to the allegations in her Complaint and the settlement of an out-of-state lawsuit involving different facts, law, and parties. But these diversions do not answer any of the four independent grounds for dismissal identified in the demurrer: (i) Plaintiff lacks standing to assert claims that the City, in a lawful exercise of its discretion, declined to bring; (ii) even if Plaintiff had standing, the claims she purports to bring were released in their entirety by the City in exchange for substantial consideration paid by the Chargers; (iii) even if the claims had not been released, Plaintiff's assertion of them is untimely and Plaintiff's sole reliance on a single hearsay statement by a City representative speculating about the supposed intentions of another person many years ago provides no basis on which to resuscitate expired claims, particularly where the City itself was long ago well aware of the possibility the Chargers would relocate; and (iv) Plaintiff has not alleged, and cannot allege, facts sufficient to state a viable cause of action. The demurrer should be sustained without leave to amend.

II. PLAINTIFF LACKS TAXPAYER STANDING.

Plaintiff's theory of taxpayer standing is premised on the assertion that the City "wasted" a breach of contract claim against the NFL by declining to sue over the Chargers' relocation. *See* Opp. at 7 ("This CCP 526a taxpayer action was filed to obtain a judgment preventing the waste of the City of San Diego['s] breach of contract claim against the NFL."); *see also id.* at 13 (same). But as set forth in the demurrer, Plaintiff does not—and cannot—allege that the City had a legal duty to pursue any such claim. The City's decision thus cannot constitute "waste" sufficient to confer taxpayer standing under Section 526a. Plaintiff cites no authority to the contrary.

Daily Journal Corp. v. County of Los Angeles, 172 Cal. App. 4th 1550 (2009), is controlling. There, the Court of Appeal affirmed the trial court's order sustaining a demurrer without leave to amend where the plaintiff challenged Los Angeles County's decision not to pursue claims against

a company that had allegedly overcharged the county as government "waste." *Id.* at 1559. The court rejected the plaintiff's argument, holding that "this was purely a matter of the County's discretion and is therefore not subject to a claim for waste or an action in mandate." *Id.*; *see also id.* at 1557–58 ("If [the government body] has discretion and chooses not to act, the courts may not interfere with that decision.").

Notably, the *Daily Journal* decision—cited prominently in the NFL Defendants' demurrer—is not even mentioned in Plaintiff's Opposition. Nor does Plaintiff seriously address the remainder of the NFL Defendants' cited authority that demonstrates Plaintiff's lack of standing. Instead, Plaintiff simply refuses to acknowledge the obvious implications of her stated theory. Plaintiff insists, for example, that "this case does not ask the court to exercise a veto over the San Diego City Council." Opp. at 14. But that is precisely what Plaintiff asks this Court to do by allowing her to pursue claims on behalf of the City that the City elected not to pursue. As the controlling authority cited by the NFL Defendants makes clear, Section 526a does not empower a taxpayer to usurp the government's discretion not to bring claims. *See Elliot v. Superior Court*, 180 Cal. App. 2d 894, 898 (1960) (no taxpayer standing based on allegations that "governmental agencies had a cause of action against the defendants and that they refused to prosecute it").

Plaintiff likewise proclaims that "this case raises no separation of powers issues" and "in no way invites the court to trespass into the domain of legislative or executive discretion." Opp. at 14. But again, California law is clear that seeking to challenge the City's discretion over whether and what legal claims to pursue is, by definition, an invitation to do just that. The handful of cases cited by Plaintiff do not hold otherwise. For example, in *Hansen v. Carr*, 73 Cal. App. 511 (1925), the court *sustained* a demurrer to a taxpayer complaint alleging that the district attorney had refused to institute an action for "the recovery of the moneys alleged to have been illegally expended and for the prevention of further illegal expenditures." *Id.* at 514. Here, it was squarely within the City's discretion to negotiate business agreements with the Chargers that included how a future Chargers relocation would be dealt with, and, after the Chargers relocated, to elect not to challenge the relocation in court in accordance with its agreements. Plaintiff does not allege that the City's decision-making was illegal and, accordingly, has no standing to usurp the City's discretion.

III. THE CITY RELEASED AND WAIVED THE CLAIMS THAT PLAINTIFF PURPORTS TO BRING ON ITS BEHALF.

A. California Civil Code Section 1542 Does Not Apply to the Releases.

Plaintiff concedes that California law permits the release and waiver of legal claims. *See* Opp. at 15 (citing Cal. Civ. Code § 1541). Plaintiff, however, argues that the releases contained in the 2004 and 2006 Supplements are "general releases" that, under Civil Code Section 1542, do not extend to "claims not known or suspected to exist" at the time of contracting, which, in Plaintiff's view, describes the claims at issue here. *Id.* at 16. Plaintiff is wrong in all respects.

First, there is nothing "general" about the releases in the 2004 and 2006 Supplements, which were the product of an extensive negotiation process among sophisticated parties and specifically targeted only to claims arising out of a Chargers' relocation—the precise event that is the subject of this litigation. All of the claims lodged by Plaintiff are barred by these releases because they are brought on behalf of the City and are directed to that very subject matter.

Second, the Supplements themselves (and the extensive negotiations that preceded them) are express acknowledgments by the City that it was aware as early as 2004 that the NFL was interested in relocating a franchise to Los Angeles and that the Chargers could relocate after the 2008 NFL season—in fact, the very contingency that was being discussed and negotiated. *See* MPA at 4–6. These contemporaneous acknowledgments foreclose Plaintiff's groundless assertion that "the Chargers' relocation to Los Angeles was not known or suspected by the City when the waivers in the Supplements were agreed to." Opp. at 16.

Further, the Supplements show that the City—in exchange for valuable consideration—agreed to waive any claims that might be asserted against the NFL Defendants relating to a Chargers' relocation, to wit: (i) the waiver of any claim against the Chargers "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," including, as applicable here, agreements related to the Chargers' 2017 relocation to Los Angeles (MPA at 4); (ii) "the NFL shall not be liable to the City with respect to any such activities" concerning the NFL's investigation of the Los Angeles market and potential franchise relocation to Los Angeles (*id.* at 5); and (iii) the waiver of any claims against the NFL

and clubs "as a result of any dealings of the NFL with the Chargers," including those related to the Chargers' potential relocation (*id.*).[2] Plaintiff's own counsel, Mr. Aguirre, approved the legality of these releases as City Attorney, a fact that Plaintiff conveniently chooses to ignore in her Opposition. *Id.* at 6.

The fact that these releases do not recite and describe the particulars of each and every cause of action in the instant Complaint does not make them "general releases" within the meaning of Civil Code Section 1542. It is well-settled under California law that "[a] release that is general only in that it waives all future and unknown claims as to a specific issue is a specific release not subject to § 1542." *Kim Laube & Co. v. Wahl Clipper Corp.*, 2013 WL 12084741, at *10 (C.D. Cal. Mar. 8, 2013); *see also Brae Transp., Inc. v. Coopers & Lybrand*, 790 F.2d 1439, 1444 (9th Cir. 1986) ("The Release is specific in that it stemmed from a specific section of the Stock Purchase Agreement and was written to cover the claims arising from that section (on representations as to net worth). The Release is general only in the sense that it waived all future (and hence unknown) claims as to the specific issue of net worth."); *Leadership Studies Inc. v. Blanchard Training & Dev.*, 2017 WL 6025285, at *6 (S.D. Cal. Dec. 1, 2017) ("[T]he Covenant Not to Sue was specific in that it was written to cover claims arising from a specific source of [plaintiff's] rights.").

Here, the waivers in the Supplements are not "general releases" that purport to encompass limitless claims with no defined issue or subject matter. To the contrary, the Supplements expressly release claims related only to the potential relocation of the Chargers—a possibility that the City specifically acknowledged in the documents. For that reason, Section 1542 does not apply. The releases should be enforced as written.[3]

[2] That "more than twelve and thirteen years" elapsed between the time of the Supplements and the Chargers' relocation in 2017, Opp. at 16, is immaterial. The very purpose of the Supplements was to address the parties' *future* behavior, particularly as it related to the Chargers' *future* relocation.

[3] Plaintiff argues that determining whether the City released the NFL Defendants from the claims Plaintiff seeks to assert would involve a question of fact. But questions of fact are implicated only when assessing whether a general release encompasses unknown claims and only in the personal injury, not commercial, context. *See Kim Laube*, 2013 WL 12084741, at *10 n.4 ("There is no requirement that there be a finding of fact as to subjective intent for releases in a commercial rather than personal injury context."); *Commercial Ins. Co. of Newark, N.J. v. Copeland*, 248 Cal. App. 2d 561, 565 (1967) ("*Under this statute* whether an intent existed to release unknown claims is a question of fact which may be decided upon evidence apart from the words of the release." (emphasis added)). Since the releases in the Supplements are not general releases, the Court must

B. The Releases Do Not Violate Public Policy.

As Plaintiff's own authority, *Madison v. Superior Court*, 203 Cal. App. 3d 589 (1988), recognizes, Civil Code Section 1668 "does not apply to every contract. It will be applied only to contracts that involve 'the public interest.'" *Id.* at 598 (citations omitted). While the relocation of the Chargers certainly had an impact on the public in San Diego, that impact is not the type sufficient to bring the Supplements within the scope of Section 1668. In *Tunkl v. Regents of University of California*, 60 Cal. 2d 92 (1963), the California Supreme Court set out factors to be considered in determining whether a contract affects the public interest, which include whether the business at issue is of a "type generally thought suitable for public regulation" and whether "[t]he party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public." *Id.* at 98–101.

Under these factors, the Supplements plainly do not involve the "public interest." As the *Tunkl* court observed, "agreements affecting the public interest" concern "institution[s] suitable for, and a subject of, public regulation," including a "hospital-patient contract." *Id.* at 101. Commercial contracts concerning NFL football obviously fall outside that category. The Supplements are private, voluntary transactions in which the City, for substantial consideration, agreed to release any claims against the NFL Defendants that might arise out of a future Chargers' relocation. "[N]o public policy opposes private, voluntary transactions in which one party, for a consideration, agrees to shoulder a risk which the law would otherwise have placed upon the other party." *Id.*

C. The Releases Are Not Unconscionable.

Plaintiff's final argument—that the releases are void on grounds of unconscionability—is similarly unavailing. With respect to procedural unconscionability, Plaintiff offers only rhetoric—complaining of supposed "unequal bargaining power between the City of San Diego and the

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instead interpret them as a matter of law. *See Brown v. El Dorado Union High Sch. Dist.*, 76 Cal. App. 5th 1003, 1023 (2022) ("[C]ontract principles apply when interpreting a release, and ... normally the meaning of contract language, including a release, is a legal question, not a factual question." (citation omitted)). The releases, though limited to the subject of the Chargers' relocation, broadly waive and release any relocation-related claims based on any theory of liability whatsoever, which would naturally include Plaintiff's claims based on the NFL's internal policies and procedures, including the Relocation Policy that Plaintiff alleges was adopted in 1984—two decades before the Eighth Supplement was executed.

Chargers and the powerful, well-funded NFL." Opp. at 18. The Complaint pleads no facts to support "unequal bargaining power" amounting to unconscionability, nor could it. San Diego is one of the largest cities in the country; it was represented by sophisticated legal counsel, including Plaintiff's own counsel here, Mr. Aguirre (MPA at 6), who approved the legality of the Supplements; and the City secured substantial concessions—including a large termination fee in the event of the Chargers' relocation and elimination of the minimum "ticket guarantee" provided by the City (*id.* at 5, 15 n.6)—that are completely at odds with Plaintiff's meritless assertion that the bargaining process was so unequal and unfair as to be unconscionable. With respect to substantive unconscionability, Plaintiff argues that allowing the NFL Defendants to rely on the releases "would be an overly harsh and one-sided result." Opp. at 18. But this assertion is likewise conclusory and baseless. Unconscionability is "measured as of the time the contract was entered," not when a dispute arises. *The McCaffrey Grp., Inc. v. Superior Court*, 224 Cal. App. 4th 1330, 1350 (2014). Furthermore, the releases are not "so one-sided as to 'shock the conscience,'" *Pinnacle Museum Tower Ass'n v. Pinnacle Mkt. Dev. (US), LLC*, 55 Cal. 4th 223, 246 (2012) (citation omitted)—particularly in light of the fact that the City received millions of dollars of value as consideration for the bargained-for releases.

IV. PLAINTIFF'S CLAIMS ARE TIME-BARRED.

A. The Contract Claims Are Time-Barred.

Plaintiff admits that her breach of contract claim is subject to the four-year limitations period in Code of Civil Procedure Section 337. *See* Opp. at 19. Plaintiff herself claims that "the contract breach arose in and after January 2017, when the team moved from San Diego to Los Angeles." *Id.* at 16. Thus, under Plaintiff's own theory of the case, the statute of limitations on her claim for breach of contract ran by January 2021, over a year before Plaintiff brought this suit.[4]

As Plaintiff points out, the four-year limitations period for contract claims may be tolled where the party seeks rescission of a contract due to fraud or mistake. *See id.* at 19; Cal. Code Civ. Proc. § 337(c) (setting forth limitations period for "[a]n action based upon the rescission of a

[4] For the reasons stated in the NFL Defendants' opening brief, Plaintiff's claim for unjust enrichment is likewise time-barred. *See* MPA at 20.

contract in writing”). But Plaintiff does not seek to rescind any contract. Instead, she seeks to obtain damages for alleged breach of contract and thus subsection (c) simply does not apply here.

B. The Fraud Claims Are Time-Barred.

While acknowledging that her fraud claims are subject to the three-year limitations period in Code of Civil Procedure Section 338, *see* Opp. at 19, Plaintiff argues that the determination of whether her fraud claims were timely brought is “a question of fact for the jury.” *Id.* Under Plaintiff’s logic, a fraud claim as to which a plaintiff alleges the statute of limitations should be tolled could never be dismissed on the pleadings as untimely. Of course, demurrers to fraud claims asserting delayed discovery are regularly sustained as a matter of law where, as here, there is no valid basis to toll the limitations period. *See, e.g.*, *Britton v. Girardi*, 235 Cal. App. 4th 721, 737 (2015) (sustaining demurrer to fraud claim without leave to amend when claim was time-barred); *Vaca v. Wachovia Mortg. Corp.*, 198 Cal. App. 4th 737, 744 (2011) (sustaining demurrer to fraud claim without leave to amend on statute of limitations grounds).

Plaintiff’s fraud claims (and her tolling argument) are based on the theory that the Chargers failed to disclose their true intent to relocate from San Diego, which Plaintiff alleges having first learned of in December 2021. But any supposedly secret intent to relocate would have been fully revealed much earlier—when the Chargers publicly announced their relocation in January 2017. In fact, Plaintiff herself alleges that Dean Spanos “broke his word”—*i.e.*, contradicted any alleged representation that the Chargers would not relocate—on January 12, 2017, with a public announcement that the team would relocate to Los Angeles. Compl. ¶ 6.[5] Based on Plaintiff’s own admission, there is no factual dispute; the limitations period for her fraud claims began to run by no later than January 2017, when any supposedly private intent to relocate was made public by the Chargers, and thus expired by January 2020, two years before the instant action was filed.

C. The Statutory Period Was Not Equitably Tolled.

In her Opposition, Plaintiff raises for the first time equitable tolling as a purported basis to

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[5] The admission of fact in a pleading is a “judicial admission,” *Valerio v. Andrew Youngquist Constr.*, 103 Cal. App. 4th 1264, 1271 (2002), which is “conclusive against the pleader and precludes the consideration of contrary evidence,” *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal. App. 4th 1112, 1158 (2012).

overcome the statutes of limitations applicable here. But she does not plead facts to satisfy the high burden for invoking equitable tolling. *See Saint Francis Mem. Hosp. v. State Dep't of Pub. Health*, 9 Cal. 5th 710, 724 (2020) ("[E]quitable tolling is a narrow remedy that applies to toll statutes of limitations only 'occasionally and in special situations.'" (citation omitted)).

Most fundamentally, Plaintiff's equitable tolling argument is based on her assertion that *she* did not discover all the elements of the City's claims until December 2021. Opp. at 20. But as Plaintiff repeatedly concedes, the City is the "real party in interest in the lawsuit." *See, e.g.*, *id.* at 14. The real party in interest is the person "possessing the right sued upon." *Personnel Comm'n v. Barstow Unified Sch. Dist.*, 43 Cal. App. 4th 871, 877 (1996). Accordingly, it is the *City's* knowledge that matters for purposes of the statutes of limitations. And there can be no doubt (and Plaintiff does not dispute) that the City was on notice of any purported fraud about the Chargers' intentions by no later than January 2017. *See* MPA at 16–20.

In any event, Plaintiff meets none of the elements that must be satisfied for equitable tolling: (1) timely notice, (2) lack of prejudice to the defendant, and (3) reasonable and good faith conduct on the part of the plaintiff. *Ventura Coastal, LLC v. Occupational Safety & Health Appeals Bd.*, 58 Cal. App. 5th 1, 31 (2020). When considering the first element of timely notice, courts focus on whether the plaintiff's actions caused the defendant to be fully notified, within the limitations period, of plaintiff's claims and its intent to litigate. *Saint Francis*, 9 Cal. 5th at 726. This timely notice requirement is interpreted "literally." *Id.* at 727. Plaintiff "literally" cannot satisfy this element because there was absolutely no such timely notice here. The first notice the NFL Defendants had of Plaintiff's claims was the filing of her lawsuit in January 2022.

Plaintiff cannot satisfy the remaining elements either. Plaintiff plainly cannot establish lack of prejudice to the NFL Defendants should they be required to defend against untimely claims. And nothing in Plaintiff's Complaint or her Opposition suggests that her failure to timely assert the fraud claims was objectively reasonable (*i.e.*, fair, proper, and sensible in light of the circumstances) or subjectively in good faith and the result of an honest mistake. *Id.* at 729. Given the significant publicity and media attention surrounding the Chargers' relocation, and her attorney's role in negotiations with the Chargers as a former City Attorney, Plaintiff's assertion that her five-year

delay in bringing claims should be excused because she only discovered purported fraud in December 2021, based on a single rumination by a City representative in an article about the supposed intent of Chargers' owner Dean Spanos many years ago, is neither plausible nor a valid basis for tolling. Nor is anything else cited in Plaintiff's Opposition.

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

A. Plaintiff's Breach of Contract Claim Fails as a Matter of Law.[6]

Plaintiff's breach of contract claim is identical to that rejected by the Superior Court in *City of Oakland v. The Oakland Raiders*. *See* NOL Ex. 6. That case involved the exact same NFL policy, arguments, and controlling California law. While not binding on this Court, the *Oakland* decision is thorough, well-reasoned, and persuasive. It is telling that Plaintiff does not mention the *Oakland* decision once, let alone try to explain why its reasoning is flawed.

1. The City Is Not a Third-Party Beneficiary of the NFL's Relocation Policy.

Plaintiff acknowledges that the standard for determining whether a third-party beneficiary claim may proceed is set forth in the California Supreme Court's recent decision in *Goonewardene v. ADP, LLC*, 6 Cal. 5th 817 (2019). Plaintiff asserts that it is "well established" under California law that "a third party may bring an action for breach of contract based upon an alleged breach of a contract entered into by other parties." Opp. at 22 (quoting *Goonewardene*, 6 Cal. 5th at 826–27). Plaintiff, however, omits critical language from that same sentence of the California Supreme Court's decision, which explains that third-party beneficiary standing is appropriate only "under *some* circumstances" where the factors identified by the Supreme Court have been met. *Goonewardene*, 6 Cal. 5th at 826 (emphasis added). And Plaintiff ignores the fact that the Superior Court in *Oakland* (as well as a California federal district court in the same dispute) determined that the *Goonewardene* factors compelled the dismissal of Oakland's virtually identical third-party

[6] Plaintiff claims that "[t]he First Cause of Action alleges breach of contract against all Defendants, specifically breach of the NFL Policy." Opp. at 22. Not so. Plaintiff's First Cause of Action is asserted against only "Defendant Chargers Football" and "NFL," not the other 31 clubs. Compl. at 26; *see also id.* at 34 ("Plaintiff respectfully requests that the Court find in Plaintiff's favor and *against the Chargers*." (emphasis added)). Any breach of contract claim should therefore be dismissed as to those clubs.

1 beneficiary claim concerning the Raiders' relocation. *See* MPA at 21.

2 Regarding the first of the two key *Goonewardene* factors, Plaintiff offers no plausible
3 explanation as to how the language of this internal NFL guidance document can be read to show a
4 "motivating purpose" to benefit former host cities such as San Diego, as opposed to being
5 exclusively focused on the interests of the NFL and its clubs. The standard is demanding: "[A]n
6 intent to make the obligation inure to the benefit of the third party must have been clearly
7 manifested by the contracting parties." *Levy v. Only Cremations for Pets, Inc.*, 57 Cal. App. 5th
8 203, 212 (2020) (citation omitted). Likewise, Civil Code Section 1559, which applies to contracts
9 "made expressly for the benefit of a third person," requires that the intent to benefit be made "in an
10 express manner; in direct or unmistakable terms; explicitly; definitely; directly." *Smith v.*
11 *Microskills San Diego L.P.*, 153 Cal. App. 4th 892, 898 (2007) (citation omitted); *see also Wexler*
12 *v. Cal. Fair Plan Ass'n*, 63 Cal. App. 5th 55, 65–66 (2021) ("Knowing a benefit may flow to [third
13 parties] is not enough."). Plaintiff has not met this high standard.

14 Even the snippet of the Relocation Policy's text that Plaintiff quotes to try to support her
15 argument that the Policy addresses the place where a club plays its home games is framed in terms
16 of the League's interest—"that each club's *primary obligation to the League and to all other*
17 *member clubs* is to advance *the interests of the League* in its home territory." Opp. at 23 (emphases
18 added). The language "in its home territory"[7] merely describes the geographical area in which the
19 club is to serve the interests of the League. Nothing in that sentence indicates a motivating purpose
20 to serve the interests of the home territories themselves, let alone individual cities within those
21 territories, which are not even mentioned in the Policy.

22 Plaintiff's reliance on *Service Employees International Union, Local 99 v. Options*, 200
23 Cal. App. 4th 869 (2011), is misplaced. There, a government contractor agreed under the terms of
24 its contracts to comply with open meeting laws in meetings involving publicly funded programs.
25 The court held that members of the "general public" were the intended beneficiaries of such
26 contractual provisions and could enforce those provisions as third-party beneficiaries. *Id.* at 880.

27
28 [7] "Home territory" is defined as the geographic area including both the city where a team plays its home games and the 75 miles within the surrounding territory. *See* NFL Constitution, Art. 4.1.

Unlike those contractual provisions fostering open access, the Relocation Policy—the purported contract here—is not meant to "ensure openness in decisionmaking by public agencies and facilitate public participation in the decisionmaking process" so as to benefit members of the public, *id.* at 882; rather, as the language of the Policy makes clear and as the court in *Oakland* correctly recognized, the Policy is meant to do the opposite: to protect the League's private business interests and maintain League control over club relocation decisions. *See* MPA at 21–22.

As for the second of the two key *Goonewardene* factors, Plaintiff essentially admits that third-party enforcement of the Policy would be fundamentally inconsistent with the NFL and clubs' reasonable goals and expectations. *See* MPA at 22–23. Plaintiff's Opposition states that "permitting Host Cities to bring suit to enforce the Relocation Policies would permit the very government intervention the Relocation Policies sought to avoid and their desire to retain control over relocation decision making." Opp. at 24. That is entirely consistent with the holding in *Oakland* and leaves no doubt that third-party enforcement of the Policy would undermine the clear objective of the Policy to vest decision-making in the League. *See* NOL Ex. 6 at 69.

2. The Relocation Policy Does Not Constitute a Contract.

As the court held in *Oakland*, even if the City were a third-party beneficiary of the Relocation Policy, Plaintiff would still have no breach of contract claim because the alleged "promises" that Plaintiff attempts to enforce are non-existent and/or not enforceable. *See* MPA at 24–26. Plaintiff's Opposition does not respond at all to these arguments, offering only quotes from the Policy and generalized principles of contract law with no application to the language at issue. For example, Plaintiff points to text in the Policy regarding "the obligation each club has to the league and other clubs … to advance the interests of the league in its home territory," Opp. at 25, but Plaintiff does not explain how that language could possibly support a claim of breach or how the City (or Plaintiff) would be entitled to enforce an obligation purportedly flowing "to the league and other clubs" regarding the "interests of the league." *Id.*

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

Even assuming that the Policy contained enforceable contractual obligations, Plaintiff offers only conclusory allegations of breach and fails to allege any facts that amount to an actual breach

of any such obligations. *See* MPA at 26–27. Plaintiff does not claim otherwise in her Opposition. Instead, Plaintiff points to an increase in the Chargers' value over its tenure in San Diego and claims the NFL itself "disfavors" relocation "simply to pursue enhanced revenues." *See* Opp. at 25. But while the Policy does state that "no club has an '*entitlement*' to relocate simply because it perceives an opportunity for enhanced club revenues in another location," NOL Ex. 4 at 49 (emphasis added), clubs are in no way barred from considering a variety of factors, including the prospect of greater financial success in a new market, in evaluating whether, in their business judgment, a relocation would advance the interests of the League.[8] As such, to the extent the Chargers' relocation was financially motivated, that does not amount to a breach of anything in the Policy.

4. Plaintiff Does Not Allege Recoverable Damages.

Plaintiff has failed to allege recoverable damages under her theory of breach of contract. *See* MPA at 27–28. The alleged contract damages cited in Plaintiff's Opposition are all impermissible lost profit damages. Plaintiff claims that "[t]he Complaint sets forth the City spending millions on false representations to keep the Chargers in San Diego, when the Chargers intended to leave." Opp. at 26. But these so-called reliance damages are based on Plaintiff's contention that the Chargers would have remained in San Diego had they negotiated in good faith with the City and the NFL had complied with the Relocation Policy. They are not the type of damages (*e.g.*, attorneys' fees for preparing draft contracts) that flow directly from and are recoverable for breach of a covenant to negotiate in good faith. *See Copeland v. Baskin Robbins U.S.A.*, 96 Cal. App. 4th 1251, 1262–63 (2002). The remaining damages referenced in the Opposition—$645 million "paid to the NFL teams for them approving the Chargers' relocation from San Diego to Los Angeles" and "benefits conferred upon Defendants and unjustly retained"—are purported damages for Plaintiff's unjust enrichment claim, not the breach of contract claim. Opp. at 26 (citing Compl. ¶ 106 and p. 34).

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[8] Indeed, the Policy specifically permits clubs to consider "the League's interest in having financially viable franchises" in evaluating a proposed franchise relocation. NOL Ex. 4 at 50. The Policy also permits clubs to consider several factors relating to "the club's financial success," Opp. at 25, including "[t]he club's financial performance … as well as the club's financial prospects in its current community." NOL Ex. 4 at 52.

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

There is no standalone cause of action for "unjust enrichment" in California. *See* MPA at 28. But even if there were, Plaintiff's allegations do not support a claim of unjust enrichment because the supposed gains that the NFL Defendants received as a result of the Chargers' relocation "were not the result of a benefit conferred upon Defendants *by Plaintiff*." *See id.* (citing NOL Ex. 6 at 72) (emphasis added). In her Opposition, Plaintiff asserts that "[a] claim for unjust enrichment does not require a benefit to be conferred *by* the plaintiff; the benefit must be conferred 'at the expense of' the plaintiff." Opp. at 26. Plaintiff is mistaken. A claim for unjust enrichment may lie only "where plaintiffs … have conferred a benefit on defendant" and it would be inequitable to allow the defendant to retain that benefit rather than return it to the plaintiff. *Hernandez v. Lopez*, 180 Cal. App. 4th 932, 938 (2009); *Cruz v. United States*, 219 F. Supp. 2d 1027, 1041 (N.D. Cal. 2002) ("unjust enrichment involves a benefit conferred on defendant by plaintiff"). For example, in *Professional Tax Appeal v. Kennedy-Wilson Holdings, Inc.*, 29 Cal. App. 5th 230 (2018), the plaintiff successfully prosecuted a property tax appeal for a property owner; the property went into foreclosure; and the foreclosure purchaser obtained the benefit of the reduced tax assessment obtained by the plaintiff but refused to pay the plaintiff its share of the saved expense. The court allowed the plaintiff's claim for unjust enrichment to proceed because the "complaint allege[d] sufficient facts showing a benefit conferred upon defendants by plaintiff." *Id.* at 238.[9]

Plaintiff contends that the NFL Defendants were unjustly enriched by the increase in the Chargers' enterprise value when the club moved to Los Angeles and by the Chargers' payment of the relocation fee to the other clubs as a condition of the move. But the City played no role in securing these benefits for the NFL Defendants. Instead, these benefits were the direct result of the opportunity available in the larger Los Angeles market. Accepting Plaintiff's allegations as true, far from conferring or assisting in conferring these benefits, the City did everything it could to

[9] *See also, e.g.*, *Lopez v. Bank of Am., N.A.*, 505 F. Supp. 3d 961, 974 (N.D. Cal. 2020) (dismissing unjust enrichment claim when plaintiff failed to show that it conferred benefit on defendant); *Mandani v. Volkswagen Grp. of Am., Inc.*, 2019 WL 652867, at *9 (N.D. Cal. Feb. 15, 2019) ("[B]ecause no amendment can change that Plaintiffs DeVico and Walley did not confer a benefit on Defendants, their unjust enrichment claims are dismissed without leave to amend.").

prevent the Chargers from moving.

C. Plaintiff's Fraud Claim Against the Chargers Is Not Sufficiently Pled.

The Opposition ignores the fraud allegations set forth in the Complaint. 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. Compl. ¶¶ 6, 84. Therefore, the only possible actionable misrepresentations had to be made between 2006 and January 2017. But the Opposition focuses on statements attributed to the Chargers in 1997 and 2002. *See, e.g.*, Opp. at 28–29; Pl. Exs. 6, 7. The Complaint contains no allegations of any fraudulent statements or concealment between the time Mr. Spanos supposedly made up his mind to relocate the Chargers and the time the Chargers announced the relocation. Plaintiff also does not address the fact that she has failed to allege reasonable reliance by the City on any expectation that the Chargers would remain in San Diego. Far from it, the Complaint admits that the City was under no false impression that the Chargers would necessarily stay in San Diego after the 2008 NFL season, as acknowledged in the Supplements.

D. Plaintiff's Fraud Claim Against the NFL Should Be Dismissed.

In her Opposition, Plaintiff does not even mention any of the NFL's allegedly fraudulent statements, focusing exclusively on alleged misstatements by the Chargers. *See* Opp. at 27–29. Plaintiff has effectively conceded that her fraud claim against the NFL should be dismissed.

Rather than pursue a fraud claim directly against the NFL, Plaintiff seeks to impute a separate (and legally deficient) claim of fraud against the Chargers onto "[t]he NFL and its teams." *See id.* at 29. Plaintiff argues that the "fraudulent statements" of the Chargers are "attributable" to "the NFL and other Defendants" "because they [were] in furtherance of the joint venture and the Chargers were an authorized agent of the NFL," *id.* at 29–30, even though those clubs are not named as defendants to any fraud claim and there are no allegations of allegedly fraudulent conduct by the clubs, much less particularized allegations. "The fact that Plaintiff is proceeding under an agency theory does not absolve" her of the requirement to explain each defendant's "role in the false statements." *See RPost Holdings, Inc. v. Trustifi Corp.*, 2011 WL 4802372, at *4 (C.D. Cal. Oct. 11, 2011) (dismissing fraud claim against alleged principal when plaintiff failed to plead

necessary facts with particularity, including "facts explaining [defendant's] role as a principal in the deception").[10] Plaintiff must plead with particularity facts that, if proven, would establish *each defendant's* "actual or constructive knowledge" of the alleged fraud. *See Jeffrey Res. 1973 Expl. Program v. Monitor Res. Corp.*, 84 F.R.D. 609, 611 (S.D.N.Y. 1979) (dismissing fraud claim because "[t]he pleadings d[id] not include any particulars as to [defendants'] actual or constructive knowledge of the misrepresentations"). In other words, Plaintiff must allege with particularity that each club, at the time it voted on the Chargers' relocation, knew of the Chargers and NFL's alleged misstatements; knew such statements were false; and knew that the Chargers and NFL intended for the City to rely on the statements. Plaintiff does not do so. This failure is independently fatal to her claim.

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

Plaintiff fails to articulate how any additional or amended factual allegations could possibly change the fatal legal flaws underlying the Complaint. *See Shaeffer v. Califia Farms, LLC*, 44 Cal. App. 5th 1125, 1145 (2020) (leave to amend denied when plaintiff "proffered no specific amendments to the trial court"). No amendment can change the fact that Plaintiff lacks standing as a matter of law to assert claims on behalf of the City that the City declined to bring in the exercise of its discretion. No amendment can change the fact that the City expressly waived and released the very claims that Plaintiff now seeks to assert. No amendment can change the fact that Plaintiff's claims are all barred by the statutes of limitations. And no amendment can change the plain language of the Relocation Policy; give rise to a claim for unjust enrichment; or support a claim of fraud based on the alleged misstatements identified by Plaintiff.

[10] *See also, e.g.*, *Swartz v. KPMG LLP*, 476 F.3d 756, 765 (9th Cir. 2007) (conclusory allegations that other defendants knew of false statements or acted as agents of other defendants are insufficient as a matter of law); *Marroquin v. Pfizer, Inc.*, 367 F. Supp. 3d 1152, 1166 (E.D. Cal. 2019) (plaintiff must "differentiate … allegations when suing more than one defendant and inform each defendant separately of the allegations surrounding his alleged participation in the fraud"); *Mars v. Wedbush Morgan Sec., Inc.*, 231 Cal. App. 3d 1608, 1616 (1991) ("Generally, an agent is not held liable for the fraud of a principal, unless the agent knows of or participates in the fraudulent act.").

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