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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

Caitlin Y, *et al.*

Plaintiffs,

vs.

The National Football League, *et al.*,

Defendants

CASE NO.: RG14727746

PLAINTIFFS' OPPOSITION TO DEFENDANT THE NATIONAL FOOTBALL LEAGUE'S DEMURRER

DATE: **August 13, 2014**
TIME: **10:00 a.m.**
DEPT: **15**
JUDGE: **Hon. Ioana Petrou**

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INTRODUCTION

The instant demurrer filed by Defendant the National Football League should be properly overruled, as it misconstrues applicable law and seeks to force Plaintiffs to prove their case at the pleadings stage. Furthermore, the demurrer improperly seeks to have the court construe Plaintiffs' Complaint solely through the lens of Defendant's interpretation of the NFL Constitution and Bylaws as opposed to admitting the facts as pled. Defendant's demurrer should be overruled. In the alternative, Plaintiffs should be given leave to file a First Amended Complaint.

STATEMENT OF FACTS

Plaintiffs Caitlin Y and Jenny C (collectively "Plaintiffs") filed their Complaint for Damages and Injunctive Relief ("Complaint") on behalf of themselves and all similarly situated non-player employee cheerleaders known as "Raiderettes" on June 4, 2014. On or around July 3, 2014, Defendant the National Football League ("NFL") filed the instant demurrer.

Plaintiffs' Complaint satisfactorily alleges the first element of its claim under the Cartwright Act, formation and operation of a combination or conspiracy. *See* Complaint, filed June 4, 2014, ¶¶ 29-30, 75-81. Plaintiffs' allegations include the fact that the NFL "requires all NFL teams, including the Raiders, to file all written employment contracts with all non-player employees with the NFL League Office." *Id.* at ¶ 29. Further, the Complaint alleges that "the NFL Constitution and Bylaws regulate specific terms and conditions which must be present in all employment contracts between individual teams, including the Raiders, and their non-player employees." *Id.* The Complaint alleges that the NFL "directed and regulated the Raiderette Agreements." *Id.*

Plaintiffs' Complaint states that "[t]he Raiders, the NFL and other NFL clubs have continuously and repeatedly conspired to depress the wages and internal mobility of female athletes." *See* Complaint ¶ 77. The Raiderettes, "and other similar NFL female athletes are forced to sign . . . illegal provisions which depress wages below legal levels, illegally restrict employees from discussing compensation or benefits, and prevent female athletes from being hired by any other member NFL club." *Id.* at ¶ 78. These actions "depress[ed] the wages of the Raiderettes . . . decreas[ed] the likelihood that the Raiderettes would learn about other Raiderettes or NFL female athletes' working conditions;

prevent[ed] the Raiderettes and other NFL female athletes from seeking employment with competing NFL clubs during the season; [and] limit[ed] affected employees' ability to secure employment, as well as better compensation, benefits, and working conditions." *Id.* at ¶ 80.

Plaintiffs' complaint sufficiently alleges the damage resulting from Defendants' unlawful acts. The damage caused by such acts is specifically alleged under each of Plaintiffs' fifteen causes of action and includes, *inter alia*, unpaid minimum and overtime wages, meal and rest break premiums, unreimbursed business expenses and unlawful deductions from their wages. *See* Complaint at ¶¶ 75-166.

Plaintiffs' Complaint properly alleges that Defendant NFL requires all member clubs to file all written employment contracts with all Raiderettes with the NFL league office. *See* Complaint at ¶ 29. Plaintiffs allege that the NFL Constitution and Bylaws regulate specific terms and conditions which must be present in the Raiderette agreements. *Id.* Plaintiffs allege that the NFL knew the contents of the Raiderette agreements. *Id.* Plaintiffs allege that the NFL directed and regulated the Raiderette agreements. *Id.* Plaintiffs allege that the NFL exercised control over the wages, hours, and working conditions of the Raiderettes. *Id.* Plaintiffs allege that the NFL suffered and/or permitted the Raiderettes to work. *Id.* Plaintiffs alleged that the NFL became a party to the Raiderette agreements, and an agency relationship between the NFL and the Raiders was created. *Id.*

Plaintiffs' Complaint alleges that the employment relationship between Plaintiffs and the NFL is governed in some part by the NFL Constitution and Bylaws. *See* Complaint at ¶ 29; Defendants' Request for Judicial Notice at Exs. A & B. Section 9.3(A)(2) of the NFL Constitution and Bylaws states in pertinent part:

> "Every contract with any employee of the League or of a club therein *shall* contain a clause wherein the employee agrees to abide and be legally bound by the Constitution and Bylaws and the Rules and Regulations of the League, as well as by the decisions of the Commissioner, which decisions shall be final, conclusive, and unappealable... Every written employment contract with any non-player employee of a club *shall be filed in the League office promptly following its execution* and shall provide" that such contract sets forth the entire agreement between the parties; that no oral agreements, and no other written agreements, except as are attached to the contract or specifically incorporated by reference therein, exist between them; that such written contract... sets forth the entire agreement with respect to the employee's services for the club..."

(Emphasis added).

In addition, in 2002 Resolution G-6 of the NFL Constitution and Bylaws, the NFL asserts direct control over the working conduct and on-field performance of all cheerleaders, such as the Raiderettes. The NFL expressly prevents cheerleaders such as the Raiderettes from engaging in certain on-field conduct, such as cheering during play, use of noisemakers, and attempts to start "the wave".

ARGUMENT

A. PLAINTIFFS' COMPLAINT ALLEGES FACTS SUFFICIENT TO WITHSTAND DEMURRER.

Defendant's Demurrer should be overruled because Plaintiffs have alleged facts sufficient to survive a general demurrer.

When considering a demurrer, it "is wholly beyond the scope of the inquiry to ascertain whether the facts stated are true or untrue." *Garton v. Title Ins. & Trust Co.* (1980) 106 Cal. App. 3d 365, 375. For the purposes of the demurrer, the defendant admits "all material, issuable facts properly pleaded in the complaint, however improbable they may be." *Id.* (citation omitted); *see also Gould v. Maryland Sound Industries, Inc.* (Cal. Ct. App. 1995) 31 Cal. App. 4th 1137, 1144 ["[D]efendants cannot set forth allegations of fact in their demurrers which, if true, would defeat plaintiff's complaint."]; *Fuhrman v. California Satellite Systems* (1986) 179 Cal. App. 3d 408, 422-23.

A defendant may demur to a complaint on the ground that the pleading does not state facts sufficient to constitute the cause of action alleged. Cal. Code Proc. §§ 430.10(e). In order to survive a demurrer on either of these grounds, "[a] complaint must allege the ultimate facts necessary to the statement of an actionable claim." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal. App. 3d 1371, 1390. California courts have become increasingly liberal when it comes to what level of specificity is required: Allegations in a pleading *must* be liberally construed (Cal. Code Proc. § 452), and in light of the extent to which modern discovery is used to draw out the details during litigation, courts generally require only "that the complaint as a whole contain sufficient facts to apprise the defendant of the basis upon which the plaintiff is seeking relief." *Perkins v. Superior Court*, (1981) 117 Cal.App.3d 1, 6. Thus, even conclusory allegations may suffice when read in context with facts alleged as to the defendant's wrongful conduct. *Perkins, supra*, 117 Cal.App.3d at 6-7; *Clauson v. Superior Court*, (1998) 67 Cal App.4th 1253, 1255.

Furthermore, in ruling on a demurrer, the trial court must "give the complaint a reasonable interpretation, reading it as a whole and its parts in context." *Blank v. Kirwan*, (1985) 39 Cal.3d 311, 318. The trial court also must "assume the truth of the complaint's properly pleaded or implied factual allegations." (*Banis Restaurant Design, Inc. v. Serrano*, (2005) 134 Cal. App. 4th 1035, 1038.)

1. Plaintiffs' Complaint Specifically Alleges The Requisite Facts Necessary to Support Plaintiffs' Cause of Action for Violations of the Cartwright Act.

The allegations in Plaintiffs' complaint, which must be accepted as true for the purposes of this demurrer, sufficiently allege a combination or conspiracy in restraint of trade pursuant to the Cartwright Act. Bus. & Prof. Code § 16700 *et seq.* "In order to maintain a cause of action for such combination in restraint of trade, the complaint must allege: the formation and operation of the conspiracy; the illegal acts done pursuant thereto; a purpose to restrain trade; and the damage caused by such acts." *Jones v. H.F. Ahmanson Co.* (1969) 1 Cal.3d 93, 119.

a. Plaintiffs' Set Forth Specific Facts Alleging a Trust, Combination or Conspiracy on the Part of Defendants.

A statement of specific facts constituting the conspiracy and explaining its objectives and impact in restraint of trade will suffice. *G.H.I.I. v. MTS, Inc.* (1983) 147 Cal. App. 3d 256, 265. A conspiracy is a joint undertaking having an unlawful purpose and arising out of an agreement. *Standard Oil Co. v. Moore* (9th Cir. 1957) 251 F.2d 188. General allegations of an agreement may be sufficient if the unlawful acts are otherwise sufficiently alleged. *Truta v. Avis Rent A Car Sys.* (1987) 193 Cal. App. 3d 802, *superseded by statute on other grounds*. Here, Plaintiffs' complaint satisfactorily alleges the first element of its claim under the Cartwright Act, formation and operation of a combination or conspiracy. *See* Complaint at ¶¶ 29-30, 75-81. Plaintiffs' allegations include the fact that the NFL "requires all NFL teams, including the Raiders, to file all written employment contracts with all non-player employees with the NFL League Office." *Id.* at ¶ 29. Further, the complaint alleges that "the NFL Constitution and Bylaws regulate specific terms and conditions which must be present in all employment contracts between individual teams, including the Raiders, and their non-player employees." *Id.* Finally, the complaint alleges that the NFL "directed and regulated the Raiderette Agreements." *Id.* Unlike the plaintiffs in *G.H.I.I. v. MTS, Inc.*, who merely alleged unilateral action by

defendants and did not specifically allege any concerted actions, Plaintiffs specifically allege an agreement (whether oral or implied) by both Defendants to depress the wages and control the actions of these female athletes. *See G.H.I.I., supra*, 147 Cal. App. 3d at 267-69. Accordingly, Plaintiffs adequately allege in their complaint the necessary elements of a combination or conspiracy. *See Standard Oil, supra*, 251 F.2d at 196.

b. Plaintiffs' Complaint Sufficiently Alleges Facts Illustrating Defendants' Unlawful Purpose and Defendants' Intent to Restrain Trade.

Plaintiffs also allege specific facts demonstrating the second and third prongs of their Cartwright Act claims, an unlawful purpose and the intent to restrain trade by Defendants. Plaintiffs' complaint states that "[t]he Raiders, the NFL and other NFL clubs have continuously and repeatedly conspired to depress the wages and internal mobility of female athletes." *See* Complaint at ¶ 77. The Raiderettes, "and other similar NFL female athletes are forced to sign . . . illegal provisions which depress wages below legal levels, illegally restrict employees from discussing compensation or benefits, and prevent female athletes from being hired by any other member NFL club." *Id.* at ¶ 78. These actions "depress[ed] the wages of the Raiderettes . . . decreas[ed] the likelihood that the Raiderettes would learn about other Raiderettes or NFL female athletes' working conditions; prevent[ed] the Raiderettes and other NFL female athletes from seeking employment with competing NFL clubs during the season; [and] limit[ed] affected employees' ability to secure employment, as well as better compensation, benefits, and working conditions." *Id.* at ¶ 80. As such, Plaintiffs state specific facts, rather than conclusory allegations, which set forth the unlawful purpose and the restraint on trade pursued by Defendants in concert.

c. Plaintiffs Allege Facts Setting Forth the Damage Resulting From Defendants' Unlawful Restraint of Trade.

Finally, Plaintiffs' complaint sufficiently alleges the damage resulting from Defendants' unlawful acts. The damage caused by such acts is specifically alleged under each of Plaintiffs' fifteen causes of action and includes, *inter alia*, unpaid minimum and overtime wages, meal and rest break premiums, unreimbursed business expenses and unlawful deductions from their wages. *See* Complaint at ¶¶ 75-166.

Plaintiffs have sufficiently and specifically alleged adequate facts necessary to their cause of action under the Cartwright Act. The standard on demurrer requires only that Plaintiffs allege adequate ultimate facts supporting the cause of action—not all relevant facts. *See C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872 (holding that "the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged."). Accordingly, Defendant's demurrer should be overruled because Plaintiffs' complaint sets forth sufficient specific factual allegations to support Plaintiffs' Cartwright Act claims.

d. Even if this Court Finds that Plaintiffs' Complaint Requires Further Factual Allegations, Which it Should Not, Plaintiffs Can Amend to Cure Any Alleged Defects.

Defendant alleges, without any evidence, that Plaintiffs "do not and cannot" allege the requisite facts underlying their cause of action for violations of the Cartwright Act. *See* Defendant's Demurrer, at 4:10, 5:7. Defendant is wrong. Defendant cites *G.H.I.I. v. MTS, Inc.* and *Chicago Title Ins. Co. v. Great Western Fin. Corp.* for the proposition that Plaintiffs' alleged failure to state specific facts means that Defendant's demurrer should be sustained without leave to amend. However, these cases are factually distinguishable in that plaintiffs in both cases conceded after several demurrers and several amendments that "no further allegations could be added to the complaint." *G.H.I.I.*, *supra*, 147 Cal. App. 3d at 264; *see also Chicago Title Ins. Co. v. Great Western Fin. Corp.* (1968) 69 Cal.2d 305, 310 (counsel for plaintiffs represented that they could add nothing to the fourth amended complaint; thus, the demurrers were sustained without leave to amend). Here, Plaintiffs sufficiently allege specific facts that support their cause of action for violations of the Cartwright Act. However, if this Court does not so hold, Plaintiffs can and should be permitted leave to amend the complaint to correct any alleged defects.

2. The Holding in *Partee v. San Diego Chargers* is Inapplicable to Non-Player Employee Actions.

The NFL's second argument is that even if they are employers of the Raiderettes, they are exempt from the provisions of the Cartwright Act and California Labor Code pursuant to the holding of *Partee*

v. San Diego Chargers Football Co. (1983) 34 Cal.3d 378. This argument has absolutely no merit. *Partee* involved an action by a former NFL player who sought to impose antitrust liability on the NFL and the Chargers for their labor practices as they pertained to the players. *Id.* at 384 ("The necessity of a nationwide league structure for the benefit of both teams *and players* for effective competition is evident as is the need for a nationally uniform set of rules governing the league structure." (emphasis added)). The holding in *Partee* was based wholly on the need to maintain *on-field* competitiveness between the teams. Indeed, all of the cases upon which the *Partee* Court relied concerned either players in professional leagues or movement of the teams themselves, not non-player team employees.[1] To the extent that *Partee* has any relevance to the current matter, its application is expressly limited to the antitrust context involving current or former football players. *Id.* at 385. Nowhere in the holding did the Court consider anything with respect to the California Labor Code for non-player employees such as the Raiderettes. In fact, the Court expressly neglected to consider whether federal labor policy has any application. *Id.* To hold that *Partee* applies not only antitrust violations, but also to provisions of the Labor Code for non-player employees is wholly unwarranted given the case and its progeny.

While it may make competitive sense to decline to apply antitrust laws to current or former players who are represented by powerful unions and have collective bargaining agreements to protect them, there is no competitive justification for declining to apply either antitrust laws or the California Labor Code to non-player employees. The Raiders' on-field performance is not helped or hurt by what the Raiders and the NFL choose to pay the beer vendor, ticket taker, or cheerleader. Nothing in *Partee* or its progeny suggests otherwise[2]. To carry the NFL's position to its logical extreme, if the Defendants

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[1] *See Flood v. Kuhn* (S.D.N.Y 1970) 316 F. Supp. 271 (professional baseball players); *State of Wisconsin v. Milwaukee Braves, Inc.* (1966) 31 Wis. 2d 699 (movement of the Braves from Milwaukee to Atlanta); *Robertson v. National Basketball Association* (S.D.N.Y. 1975) 389 F. Supp. 867, 881 (professional basketball players); *HMC Management v. New Orleans Basketball Club* (La. App. 1979) 375 So.2d 700 (suit for alleged antitrust violations against the former New Orleans Jazz prior to their move to Utah); *Matuszak v. Houston Oilers, Inc.* (Tex.Civ.App. 1974) 515 S.W.2d 725 (professional football players); *Hebert v. Los Angeles Raiders, Ltd.* (1991) 23 Cal. App. 4th 414 (professional football players).

[2] The NFL also cites to two unrelated cases which cite to *Partee* in *dicta* and have no application here. The first is *Valley Bank of Nevada v. Plus System, Inc.* (1990) 914 F.2d 1186, which involved the application of a Nevada statute to ATM fees. It simply mentioned that sports cases such as *Partee* involve "challenges under antitrust laws and the commerce clause to professional sports league rules." *Id.* at 1192. It did not hold that individual NFL teams are exempt from the provisions of the Labor Code as it pertains to non-player employees. The same is true of *Turner v. American Association of Medical Colleges* (2004) 2004 WL 5258113, which concerned only the administration of the MCAT, not non-player employees of sports leagues.

were exempt from the provisions of the Cartwright Act and the Labor Code, they could feel free to engage in patently illegal activities, such as hiring 10 year olds in sweatshops to manufacture apparel, or paying ushers a dollar a day. It is plainly not the case that non-player employees of NFL teams are exempt from the protections of the Labor Code[3]. The NFL's argument must be rejected[4], and its Demurrer overruled.

3. Plaintiffs' Allegations Of Employee-Employer Relationship Are Well-Founded And Must Be Accepted As True.

Defendant's argument with regard to Plaintiffs' allegation that an employee-employer relationship exists between Plaintiffs and the NFL is wholly circular and must be rejected. The NFL does not claim that Plaintiffs have failed to plead any particular element of any particular wage-and-hour claim. Rather, Defendant simply denies the truth of all of Plaintiffs' well-pled allegations. Defendants' denials are meaningless at the pleadings stage and the NFL's demurrer must be overruled.

Defendant premises its argument first on the holding of *Martinez v. Combs* (2010) 49 Cal.4th 35. *Martinez* holds only that the applicable test for the employee-employer relationship remains governed by the IWC Wage Order definitions. It does not dispose of Plaintiffs' allegation that the NFL is a joint employer, as the NFL claims. The other primary case relied upon by the NFL, *Futrell v. Payday California, Inc.* (2010) 190 Cal. App. 4th 1419, is factually distinct and inapplicable. *Futrell* involved an employee suing an unrelated payroll company which prepared his paychecks but exerted no control over the plaintiff's working conditions whatsoever. Moreover, *Futrell* reviewed a summary judgment order after the parties had full opportunity to conduct discovery and submit evidence for and against, and is thus inapplicable at the initial pleading stages of a case, such as this.

The NFL seeks by way of its demurrer to limit all inquiry as to the precise level of interconnectivity between the NFL and the Raiders to the four corners of the NFL Constitution and Bylaws. However, at the pleading stage the only document which truly matters is Plaintiffs' Complaint. Plaintiffs' Complaint

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[3] Nor was it the case in at least two other recently filed employment cases against Defendant Raiders which proceeded in the Alameda County Superior Court. *See* Streeter v. The Oakland Raiders, RG08388412, filed 5/20/08; *and* Kebric v. The Oakland Raiders, RG13682518, filed 6/6/13.

[4] Notably, Defendant Raiders do not yet claim that the Raiders are not bound by the provisions of the California Labor Code as to their non-player employees.

properly alleges that Defendant NFL requires all member clubs to file all written employment contracts with all Raiderettes with the NFL league office. *See* Complaint at ¶ 29. Plaintiffs allege that the NFL Constitution and Bylaws regulate specific terms and conditions which must be present in the Raiderette agreements. *Id.* Plaintiffs allege that the NFL knew the contents of the Raiderette agreements. *Id.* Plaintiffs allege that the NFL directed and regulated the Raiderette agreements. *Id.* Plaintiffs allege that the NFL exercised control over the wages, hours, and working conditions of the Raiderettes. *Id.* Plaintiffs allege that the NFL suffered and/or permitted the Raiderettes to work. *Id.* Plaintiffs alleged that the NFL became a party to the Raiderette agreements, and an agency relationship between the NFL and the Raiders was created. *Id.* All of these allegations must be accepted as true for the purposes of this demurrer. *Garton*, 106 Cal. App. 3d at 375. Moreover, none of Plaintiffs' allegations are necessarily bound solely by the provisions of the NFL Constitution and Bylaws. Rather, the only proper inquiry is the sufficiency of the allegations in Plaintiffs' Complaint. As Defendant identifies no missing element in any of Plaintiffs' wage-and-hour causes of action, Defendant's demurrer must be overruled.

Furthermore, Plaintiffs' complaint easily survives demurrer even if the Complaint were premised solely on the NFL's Constitution and Bylaws, which provide ample supporting evidence for Plaintiffs' allegations. Section 9.3(A)(2) of the NFL Constitution states in pertinent part:

> "Every contract with any employee of the League or of a club therein *shall* contain a clause wherein the employee agrees to abide and be legally bound by the Constitution and Bylaws and the Rules and Regulations of the League, as well as by the decisions of the Commissioner, which decisions shall be final, conclusive, and unappealable... Every written employment contract with any non-player employee of a club *shall be filed in the League office promptly following its execution* and shall provide" that such contract sets forth the entire agreement between the parties; that no oral agreements, and no other written agreements, except as are attached to the contract or specifically incorporated by reference therein, exist between them; that such written contract... sets forth the entire agreement with respect to the employee's services for the club..."

(Emphasis added).

Thus, per the NFL Constitution, *all* Raiderette Agreements are mandated to be filed with the league, and contain certain provisions. In doing so, the NFL exercised direct and expansive control over the employment conditions under which the Raiderettes performed. At bare minimum, it is a reasonable inference to assert that the NFL reviewed and approved the contents of the illegal contracts at issue in the instant litigation. As such, Defendants' denials are immaterial and their demurrer must be overruled.

Furthermore, the idea that the NFL exerts no influence on the Raiderettes' on-field performance is once again contradicted by provisions in the NFL Constitution and Bylaws. By way of example, in 2002 Resolution G-6, the NFL asserts direct control over the working conduct and on-field performance of all cheerleaders, such as the Raiderettes. The NFL expressly prevents cheerleaders such as the Raiderettes from engaging in certain on-field conduct, such as cheering during play, use of noisemakers, and attempts to start "the wave". The two cited provisions above, taken together, clearly defeat the NFL's claim that they have no ability to terminate or discipline the Raiderettes. If a Raiderette were to violate the provisions of 2002 Resolution G-6, the express provisions of the NFL Constitution would purport to subject her to discipline meted out solely and exclusively by the NFL Commissioner. It is axiomatic that NFL Commissioner's powers include the power to terminate employment contracts with individual employees, as evidenced by the NFL Commissioner's unilateral termination of the employment contract of former Atlanta Falcon and current Philadelphia Eagle Michael Vick[5]. At bare minimum, at the pleading stage the court must assume the truth of Plaintiffs' allegations that an employee-employer relationship exists between the Raiderettes and the NFL by virtue of the NFL's ability to terminate or discipline a Raiderette for her on-field performance. *Martinez*, 49 Cal.4th at 70 (holding that the "suffer or permit" test includes the power to fire workers.)

The NFL's argument that the allegation that the NFL did not control the wages, hours, and working conditions, suffer or permit work, or engage work pursuant to the NFL Constitution and Bylaws is baffling given the above provisions. Furthermore, the NFL points to no provision within the Constitution and Bylaws which expressly or impliedly *contradicts* these relevant allegations in Plaintiffs' Complaint. It is not Plaintiffs' duty or obligation to prove the allegations in their Complaint at the pleadings stage. Rather, it is Defendants' obligation on demurrer to show that Plaintiffs *cannot* prevail. Defendant's demurrer fails to carry that burden, and it must be overruled accordingly.

4. Plaintiffs' Cause Of Action For Unfair Business Practices Easily Survives Demurrer.

Defendant's demurrer to Plaintiffs' Seventh cause of action for Unfair Business Practices must be

[5] *See* "Vick suspended indefinitely by NFL", August 24, 2007, ESPN.com at *http://sports.espn.go.com/nfl/news/story?id=299015.*

denied. The California Supreme Court has explained that "[a] business practice is unlawful if it is forbidden by ***any*** law..." *Olszewski v. Scripps Health* (2003) 30 Cal.4th 198 (emphasis added.) California case law has interpreted the "unlawful" prong of Section 17200 to hold illegal a business practice that violates *any other law*, treating it as "unlawful" and making it independently actionable. *Cel-Tech Communications & Cel-Communications. Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180. As the California Supreme Court explained in *Farmers Ins. Exchange v. Superior Court*, (1992) 2 Cal.4th 377, 383, that the UCL "borrows violations of other laws and treats these violations, when committed pursuant to business activity, as unlawful practices independently actionable under Section 17200."

Defendant's argument regarding Plaintiffs' unlawful business practices cause of action again rests entirely on the argument that the cause of action is precluded by the holding in *Partee*. As described *supra*, the holding is inapplicable to a non-player employment action such as this. Furthermore, there is no support in the text of the holding or its progeny for an extension of the holding in *Partee* to suits such as this. Defendants' demurrer should be overruled.

5. Defendant's Demurrer on Plaintiffs' Breach of Contract Cause of Action Should Be Overruled.

Defendant's demurrer as to Plaintiffs' claims for breach of contract should be overruled because the NFL Constitution makes plain that the NFL has, at bare minimum, assumed obligations of the Raiderette contract. *See, e.g.,* Section 9.3(A)(2), 2002 Resolution G-6. Accordingly, a demurrer will not lie when allegations show that the Defendant has assumed the obligations of the contract. *Gold v. Gibbons* (1960) 178 Cal. App. 2d 517, 519. Accordingly, Defendant's demurrer on Plaintiffs' cause of action for breach of contract must be overruled.

B. IN THE ALTERNATIVE, PLAINTIFF REQUESTS LEAVE TO AMEND PURSUANT TO CODE OF CIVIL PROCEDURE § 472.

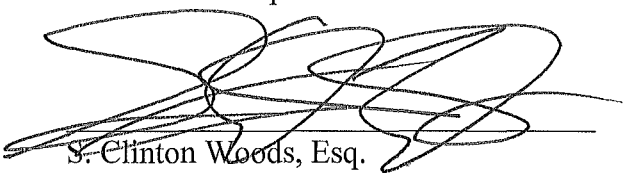
Pursuant to CCP § 472a(c), when a demurrer is sustained, "the court may grant leave to amend the pleading upon any terms as may be just . . . ." Cal. Code Civ. Proc. § 472a(c). Further, it is an abuse of discretion to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action. *Goodman v. Kennedy* (1976) 18 Cal. 3d 335, 349. In the instant case, Plaintiff

has, at a minimum, demonstrated for each alleged deficiency in the Complaint, that there is a reasonable possibility that it can state a good cause of action upon amending the Complaint. Accordingly, should this Court find that Defendant's Demurrer has any merit, Plaintiffs request leave to amend their Complaint, as explained above.

CONCLUSION

Based on the foregoing facts and law, Plaintiffs request that Defendant's Demurrer be overruled. In the Alternative, Plaintiffs request leave to file a First Amended Complaint.

Dated: July 25, 2014



S. Clinton Woods, Esq.

PROOF OF SERVICE

The undersigned certifies and declares as follows: I am over the age of 18 years and am not party to the within action. I am employed in the County of San Francisco, California. My business address is One Sansome, 34th Floor San Francisco, CA 94104. On the date shown below, I served the following document:

PLAINTIFFS' OPPOSITION TO DEFENDANT THE NATIONAL FOOTBALL LEAGUE'S DEMURRER

in the manner described below to the interested parties herein and addressee:

Arnold & Porter LLP
David J. Reis
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____ **MAIL:** I placed a true and correct copy thereof in a sealed envelope and caused such envelope to be deposited in the mail at my business address, with postage thereon fully prepaid, addressed to the addressee(s) designated. I am readily familiar with the business' practice of collecting and processing correspondence to be deposited with the United States Postal Service on that same day in the ordinary course of business.

__X__ **ELECTRONIC MAIL:** I caused such documents to be electronically mailed to the addresses above.

_X_ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 28, 2014 at San Francisco, California.

Jessilyn James