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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 PASADENA TOURNAMENT OF
15 ROSES ASSOCIATION,

16 Plaintiff,

17 v.
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19 CITY OF PASADENA,

20 Defendant.
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Case No.: 2:21-cv-01051

**PLAINTIFF PASADENA
TOURNAMENT OF ROSES
ASSOCIATION'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS**

Hon. André Birotte, Jr.
Date: May 14, 2021
Time: 10:00 am
Courtroom: 7B

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INTRODUCTION

1
2 Plaintiff Pasadena Tournament of Roses Association (Tournament) hoped it
3 never would need to bring this (or any) lawsuit against Defendant City of Pasadena
4 (City). The Tournament and the City have worked together over many years, as
5 the Tournament produces the annual Rose Bowl Game, one of the most storied
6 traditions in all of athletics. Regrettably, however, the City left the Tournament no
7 choice, as its conduct not only encroaches on the Tournament’s intellectual
8 property but also interferes with the Tournament’s business operations.

9 As the First Amended Complaint (FAC) alleges, in recent months the City
10 has engaged in both publicly disseminating false information and privately strong-
11 arming the Tournament, all to further the City’s naked power grab to exert control
12 over the Tournament’s rights in the Rose Bowl Game. The FAC takes aim at two
13 prongs of the City’s wrongful interference with the Tournament’s rights.

14 First, the Tournament seeks a declaration that the City is powerless to stop
15 the Tournament from hosting the Rose Bowl Game elsewhere in the event of a
16 qualifying force majeure event under the parties’ Master License Agreement
17 (MLA). In December 2020, near the height of the COVID-19 pandemic in the Los
18 Angeles region, the City repeatedly insisted that under the MLA it could veto any
19 plans to relocate the Rose Bowl Game due to extraordinary health concerns. And
20 while the parties ultimately executed an amendment to the MLA to resolve that
21 particular dispute, mere days later the City threatened the Tournament with legal
22 action for breach of contract. Despite the Tournament’s efforts to come to an out-
23 of-court understanding that the MLA provides the City no such rights, the City cut
24 off that dialogue.

25 Second, the FAC calls the City to account for its unauthorized and infringing
26 uses of the Tournament’s intellectual property, in breach of the MLA. While the
27 City’s motion resorts to hand-waving away its misconduct, this Court should not
28 follow along. The Tournament owns the marks at issue and nothing in the MLA

1 gives the City permission to use the marks as alleged in the FAC. As explained
2 below, the FAC highlights only examples of the City’s conduct, which is but a
3 piece of its public campaign to sow confusion as to the Tournament’s sole
4 ownership of the Rose Bowl Game and related intellectual property.

5 The FAC contains sufficient factual allegations supporting all of its claims,
6 and the motion to dismiss does not meaningfully disagree. Instead, the City hopes
7 the Court will punt on resolving a clearly defined controversy—one that has
8 percolated for months if not years between the parties. As the City has claimed the
9 Tournament breached the MLA and explicitly has contemplated legal action, the
10 City’s misguided interpretation of the MLA hangs over the Tournament as an
11 unresolvable threat and impairment of the Tournament’s business dealings. And
12 the City’s assertion of highly fact-specific defenses, such as expressive and
13 nominative fair use, ignore the well-established pleading standards. The FAC’s
14 factual allegations, accepted as true, detail the City’s infringing conduct in
15 sufficient manner so as to preclude dismissal on the pleadings.

16 While this lawsuit was never the Tournament’s desire, it is clear such action
17 is necessary to put a stop to the City’s campaign of wrongfully claiming and
18 representing and using the Tournament’s property as its own. The motion to
19 dismiss should be denied in its entirety.

20 **BACKGROUND**

21 As a motion to dismiss merely tests the sufficiency of the pleading—and all
22 the factual allegations of the FAC must be accepted as true—the Tournament
23 forgoes a lengthy recitation of the facts here, but incorporates by reference those
24 factual allegations and exhibits into this opposition.

ARGUMENT

I. This Court Has Subject Matter Jurisdiction Over This Active and Concrete Controversy.

To begin with, this Court has subject matter over this entire litigation. The FAC’s Counts 3 through 6 state claims under the Lanham Act sufficient to confer federal question jurisdiction under 28 U.S.C. § 1331. The remainder of the claims all arise under the Declaratory Judgment Act (28 U.S.C. § 2201) and California law, and all are so related to the federal claims as to “form part of the same case or controversy.” 28 U.S.C. § 1367(a). Thus, the Court has supplemental jurisdiction over all remaining claims.

The City takes particular exception to Counts 1 and 2, which seek declarations confirming that the City lacks control over the Tournament’s use of its intellectual property and that the Tournament has complete authority to relocate the Rose Bowl Game outside of the Rose Bowl Stadium in the event of a force majeure. The City would have this Court to believe that no “substantial controversy” exists because the City no longer “dispute[s] Plaintiff’s ownership of its marks” and there is no present assertion of a force majeure event. Mot. at 20. But the City ignores both the alleged facts and governing law.

As alleged in the FAC, the City has publicly and privately taken the position that it has the right to restrain the Tournament from using the ROSE BOWL GAME and ROSE BOWL marks in hosting the Rose Bowl Game outside of Pasadena’s Rose Bowl Stadium in the event of a force majeure. *See* FAC ¶¶ 7–10, 74–83, 92–98. In connection with the January 1, 2021 Rose Bowl Game, the parties were able to resolve the dispute by executing an amendment to the MLA. *See* FAC ¶ 51. But only a week later, the City’s counsel sent the Tournament a letter falsely contending that the Tournament breached the MLA in connection with the very same conduct. While the City is sorely mistaken—particularly given

1 the executed amendment—the Tournament sought to confer with the City about
2 the City’s erroneous reading of the MLA to ensure that in the future the parties
3 understood their respective rights and obligations. Resolution of this dispute is
4 essential now for multiple reasons: The COVID-19 pandemic remains ongoing
5 and, apart from the pandemic, *force majeure* events are almost by definition
6 sudden, unpredictable, and extreme. In light of the City’s threats that the
7 Tournament breached and would continue to breach the MLA based on the
8 Tournament’s handling of the most recent game, it is imperative for the
9 Tournament to obtain certain clarity over its rights. The City has persisted in a
10 course of conduct—including threatened legal action—that not only misreads the
11 MLA but amounts to an announced and planned “invasion of [the Tournament’s]
12 rights.” *Amaral v. Wachovia Mortg. Corp.*, 692 F. Supp. 2d 1226, 1235 (E.D. Cal.
13 2010) (internal quotation marks omitted).

14 Resolution of this active and ongoing controversy should not be delayed.
15 The Declaratory Judgment Act is meant to “bring[] to the present a litigable
16 controversy, which otherwise might only be tried in the future.” *Societe de*
17 *Conditionnement en Aluminium v. Hunter Eng’g Co.*, 655 F.2d 938, 943 (9th Cir.
18 1981). It is precisely out of concern for the potential ““Damoclean threat of
19 impending litigation”” that federal courts enter declaratory judgments ““once the
20 adverse positions have crystallized and the conflict of interests is real and
21 immediate.”” *Id.* (quoting *Japan Gas Lighter Assoc. v. Ronson Corp.*, 257 F. Supp.
22 219, 237 (D.N.J. 1966)). The Tournament needs and has properly invoked this
23 Court’s intervention to “liquidate doubts with respect to uncertainties or
24 controversies” concerning the Tournament’s rights to exploit its intellectual
25 property free from the City’s interference, so as to avoid “subsequent litigation.”
26 *Amaral*, 692 F. Supp. 2d at 1235 (internal quotation marks omitted).

27 To be clear, the Tournament seeks declaratory relief not simply to resolve
28 past disputes (such as those concerning the January 1, 2021 college football

1 semifinal game) but to provide “a guide for [the Tournament’s] future conduct in
2 order to preserve [its] legal rights.” *Amaral*, 692 F. Supp. 2d at 1235 (internal
3 quotation marks omitted).

4 The City contends that this Court lacks jurisdiction because there is no
5 *present* force majeure event. (Mot. 20.). But that distorts the very purpose of
6 declaratory judgment to resolve clear disputes that might (or might not) arise in
7 future litigation. *See Societe de Conditionnement en Aluminium*, 655 F.2d at 943.
8 The City’s own pre-suit correspondence undermines its contention that there is no
9 active and real controversy. *After* the parties executed an amendment to the MLA
10 to resolve the parties’ disagreements concerning the most recent game, the City’s
11 counsel sent the Tournament a 12-page letter contending not only that no force
12 majeure event took place with respect to that game, but also that the Tournament
13 breached the MLA regardless. FAC, Exhibit 9, at 9 (“By moving the Rose Bowl
14 Game to another stadium, therefore, [the Tournament] breached the MLA.”); *id.* at
15 12 (threatening to sue for breach “[i]f the parties continue to disagree” on “the
16 meaning of the language in the MLA.”). That is to say, that *after* the parties
17 executed the amendment resolving the issues for the January 2021 Rose Bowl
18 Game, the City, through litigation counsel, threatened to sue the Tournament for
19 breach of contract as a result of the very same actions which were resolved in that
20 amendment. The Tournament’s attempts to meet and discuss the disagreement fell
21 on deaf ears. FAC ¶ 95. In the last pre-filing correspondence, the City decided to
22 cut off further discussion and advised that it would be “considering next steps”—
23 *i.e.*, contemplating litigation for breach of contract as threatened in the prior letter.
24 FAC ¶¶ 96–97 & Exhibit 11.

25 The City unsuccessfully attempts to deflect the Court’s attention from this
26 ongoing dispute that will affect the Tournament’s legal rights into the future. It is
27 irrelevant that no specific *force majeure* event is presently asserted. The
28 Tournament is not asking this Court to gaze into a crystal ball and determine if any

1 particular incident triggers the MLA’s provisions. Rather, Counts 1 & 2 seek
 2 clarity as to the legal ramifications—the Tournament’s rights and obligations—in
 3 the face of a *force majeure* event under the MLA. That uncertainty is both
 4 concrete and ready for adjudication; all the facts are readily available and
 5 knowable for this Court to provide “an immediate and definitive determination of
 6 the legal rights of the parties.” *Medtronic, Inc. v. Mirowski Family Ventures,*
 7 *LLC*, 571 U.S. 191, 200 (2014) (quoting *Aetna Life Ins. v. Haworth*, 300 U.S. 227,
 8 241 (1937)).

9 Instead, the City misreads the “immediacy” requirement for declaratory
 10 relief. As the Supreme Court explained in *MedImmune, Inc. v. Genentech, Inc.*,
 11 549 U.S. 118, 127 & n.7 (2007), the immediacy component drives at ensuring that
 12 the parties’ controversy has crystallized in a way so that the court’s declaration
 13 could “finally and conclusively resolve” the dispute. By granting the Tournament
 14 the relief it seeks—confirming that under the MLA the Tournament has the right to
 15 host its Rose Bowl Game anywhere in the event of a qualifying force majeure—
 16 this Court can put to rest the ongoing controversy and stave off future litigation.

17 **II. The Tournament’s Trademark, False Advertising, and Contract Claims**
 18 **Are Sufficiently Pleaded.**

19 **A. The Tournament Sufficiently Pleads Claims for Trademark**
 20 **Infringement, Unfair Competition, False Association, False**
 21 **Endorsement, and False Designation of Origin in Counts 3-5, 7,**
 22 **and 8 of the FAC.**

23 In Counts 3 through 5 of the FAC, the Tournament asserts claims for
 24 trademark infringement, unfair competition, false association, false endorsement,
 25 and false designation of origin, respectively, under Sections 32 and 43(a)(1)(A) of
 26 the Lanham Act. *See generally* FAC at ¶¶ 109–141. In Count 7, the Tournament
 27 asserts a claim for unfair competition under Cal. Bus. & Prof. Code § 17200. *See*
 28 *id.* at ¶¶ 154-8. In Count 8, the Tournament asserts a claim for trademark
 infringement under California common law. *See id.* at ¶¶ 159-163.

1 The same standard governs all of these claims, namely: (1) plaintiff's
2 ownership of a valid mark; (2) "the defendant used the mark in commerce [;] and
3 (3) the defendant's use of the mark is likely to cause confusion." *Tiermy v.*
4 *Moschino S.p.A.*, 15-cv-05900, 2016 WL 4942033, at *5 (C.D. Cal. Jan. 13, 2016)
5 (denying motion to dismiss trademark infringement and unfair competition claims
6 under federal and California law based on, *inter alia*, defendant's assertion of
7 nominative fair use, and artistic relevance under *Rodgers v. Grimaldi*, 875 F.2d
8 994 (2d Cir. 1989)).

9 The City does not challenge the sufficiency of the Tournament's allegations
10 in the FAC with respect to the first and second elements. *See generally* Motion.
11 Nor could the City credibly do so. The Tournament alleged ownership of
12 numerous federal trademark registrations for its family of ROSE-formative
13 marks—including "ROSE BOWL" for use in connection with hosting the
14 Tournament's Rose Bowl Game—expressly incorporated those registrations by
15 reference in, and attached them as Exhibits to, the FAC, *and* showed an example of
16 the City's use of the Tournament's ROSE BOWL mark in commerce (*i.e.*, the
17 City's January 14, 2021, Instagram post (the "Post")) and in statements to the
18 media asserting ownership interests in the Rose Bowl Game. *See* FAC at ¶¶ 67-73,
19 84; *see also id.* at Exs. 1-8; *Spy Optic, Inc. v. Alibaba.com, Inc.*, 163 F. Supp. 3d
20 755, 765 (C.D. Cal. 2015) ("Here, Plaintiff attaches as Exhibits to the FAC
21 multiple federally registered trademarks in SPY, SPYOPTIC, and the cross logo.
22 Defendant does not contest the validity of the trademarks. Plaintiff therefore
23 sufficiently alleges that it owns valid trademarks") (internal citations omitted).

24 The third element—likelihood of confusion—is the "central inquiry of the
25 trademark infringement claim" and assesses "whether [Defendant's] use of
26 [Plaintiff's valid trademarks] creates a likelihood that the consuming public will be
27 confused as to who makes what product." *Spy Optic, Inc.*, 163 F. Supp. 3d at 765
28 (citation omitted).

1 To assess likelihood of confusion, courts in this Circuit “typically apply the
2 eight factors set out in *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341 (9th Cir.
3 1979).” *Kythera Biopharmaceuticals, Inc. v. Lithera, Inc.*, 998 F. Supp. 2d 890,
4 901 (C.D. Cal. 2014) (denying motion to dismiss). The eight *Sleekcraft* “factors
5 are: (1) the strength of the mark; (2) the proximity of the goods; (3) the similarity
6 of the marks; (4) evidence of actual confusion; (5) marketing channels used;
7 (6) type of goods and degree of care likely to be exercised by the purchaser;
8 (7) defendant’s intent in selecting its mark; and (8) likelihood of expansion into
9 other markets.” *Id.*

10 Here, the Tournament alleges in the FAC that, based on its longstanding,
11 continuous use of its ROSE BOWL mark in connection with hosting, advertising,
12 and promoting its world-famous Rose Bowl Game, consumers associate the ROSE
13 BOWL mark uniquely with the Tournament when used in connection with the
14 Tournament’s Rose Bowl Game. *See* FAC at ¶¶ 61-73. The Tournament also
15 alleges—and shows—in the FAC an example of the City’s infringing conduct,
16 namely: in the Post, the City reproduced the entirety of the Tournament’s ROSE
17 BOWL mark on the Rose Bowl Stadium’s official Instagram account, together
18 with an image of the official program from the 1956 iteration of the Tournament’s
19 Rose Bowl Game, which also prominently features the Tournament’s ROSE
20 BOWL mark. *See id.* at ¶ 84. The City (in the Post) also: (i) reproduced the
21 entirety of the Tournament’s ROSE BOWL mark in the same channel of trade—
22 social media—that consumers are accustomed to encountering the Tournament’s
23 use of the Tournament’s ROSE BOWL mark, and (ii) directed its use of the
24 Tournament’s ROSE BOWL mark in the Post to fans of the Tournament’s Rose
25 Bowl Game.

26 Taken together, the Tournament’s factual allegations, and image, in the FAC
27 are more than sufficient to render it plausible that, based on the overall context of
28 the Post, consumers are likely to be misled about, *inter alia*, whether the City is the

1 source or sponsor of the Tournament’s Rose Bowl Game. *See, e.g., Kythera*
2 *Biopharmaceuticals, Inc.*, 998 F. Supp. 2d at 901 (denying motion to dismiss as
3 Plaintiff plausibly alleged likelihood of confusion based on, *inter alia*, similarity of
4 marks, same channels of trade, and same customers); *but see Jackson v. Netflix,*
5 *Inc.*, No. 20-CV-06354, 2020 WL 8028615, at *4 (C.D. Cal. Dec. 9, 2020) (a case
6 on which the City relies; the plaintiff’s allegations of confusion rested merely “on
7 unsupported legal conclusions”).

8 Nonetheless, the City takes issue with the Tournament alleging only one
9 example of the City’s infringing conduct in the FAC. Leaving aside, for the
10 moment, that one instance of infringement is sufficient to establish liability under
11 the Lanham Act, the City conveniently ignores that Federal Rule of Civil
12 Procedure 8’s notice-pleading standard does not require the Tournament to allege
13 the entire universe of the City’s infringing conduct or otherwise “prove the
14 likelihood of confusion at the pleading stage.” *Solofill, LLC, v. Rivera*, No. CV
15 17-02956, 2017 WL 5953105, at *2 (C.D. Cal. Oct. 16, 2017). Rather, at the
16 pleadings stage, Rule 8 requires only that the Tournament provide the City with “a
17 short and plain statement showing that the pleader is entitled to relief.” Fed. R.
18 Civ. P. 8(a)(2). And, as discussed, *supra*, the Tournament does just that in the
19 FAC.

20 Based on the foregoing, this Court should deny the City’s Motion to Dismiss
21 Counts 3–5, 7, and 8, of the FAC.

22 **1. The City’s Arguments About Trademark Nominative Fair**
23 **Use are Premature and Ignore The City’s Use of the**
24 **Tournament’s ROSE BOWL Mark to Create Consumer**
25 **Confusion.**

26 The City argues that this Court should evaluate whether its conduct creates a
27 likelihood of confusion based on the three-factor, doctrine of trademark nominative
28 fair use, not the *Sleekcraft* factors. No, this Court should not.

1 “The nominative fair use defense is applicable ‘where the use of the
2 trademark does not attempt to capitalize on consumer confusion or to appropriate
3 the cachet of one product for a different one.’” *Yeager v. Cingular Wireless LLC*,
4 627 F. Supp. 2d 1170, 1178 (E.D. Cal. 2008) (quoting *New Kids on the Block v.*
5 *News America Pub., Inc.*, 971 F.2d 302, 307 (9th Cir. 1992) (denying motion to
6 dismiss). For “example, a car repair shop can advertise that it fixes Volkswagen
7 cars, even though ‘Volkswagen’ is a registered trademark.” *powerlineman.com,*
8 *LLC v. Kackson*, No. CIV. S-07-879, 2007 WL 3479562, at *4 (E.D. Cal. Nov. 15,
9 2007) (denying motion to dismiss). As this example illustrates, a trademark is used
10 in a nominative sense when it is used “to refer to a particular product for purposes
11 of comparison, criticism, point of reference or any other such purpose.” *New Kids*
12 *on the Block*, 971 F.2d at 306 (a case on which the City relies; the Court evaluated
13 nominative fair use at the summary-judgment stage).

14 When evaluating trademark nominative fair use, courts in this Circuit
15 consider three factors—all of which “must be met for the defense to apply.”
16 *Yeager*, 627 F. Supp. 2d at 1178, n. 9. “First, the product or service in question
17 must be one not readily identifiable without use of the trademark; second, only so
18 much of the mark or marks may be used as is reasonably necessary to identify the
19 product or service; and third, the user must do nothing that would, in conjunction
20 with the mark, suggest sponsorship or endorsement by the trademark holder.” *New*
21 *Kids on the Block*, 971 F.2d at 308.

22 Here, the City’s reliance on nominative fair use is misplaced.

23 As a preliminary matter, the City raises nominative fair use prematurely. To
24 be sure, this case is at the motion-to-dismiss stage. “[A]t the motion to dismiss
25 stage, the Court is not tasked with determining the viability of Defendant’s legal
26 defenses. Rather, the Court must determine whether Plaintiff’s allegations, taken
27 as true, sufficiently state a claim for Plaintiff’s various causes of action.” *Spy*
28 *Optic, Inc.*, 163 F. Supp. 3d at 765 (denying motion to dismiss); *see also Tiermy*,

1 2016 WL 4942033 at *5 (denying motion to dismiss; “Although Defendants raise
2 ... nominative fair use, the Court finds that a determination of th[is] fact-intensive
3 inquir[y] would be better suited in a motion for summary judgment”); *accord*
4 *Rolex Watch U.S.A., Inc. v. Agarwal*, No. 12-06400, 2012 WL 12886444, at *6
5 (C.D. Cal. Dec. 17, 2012), and *powerlineman.com*, 2007 WL 3479562 at *4
6 (denying motion to dismiss; holding that “analysis of [trademark nominative fair
7 use] is premature on a motion to dismiss, particularly given [its] factual nature”).
8 As discussed, *supra*, the Tournament’s claims in the FAC are plausible.

9 Moreover, even if it was appropriate to consider the City’s arguments about
10 nominative fair use at the motion-to-dismiss stage, the FAC shows that the City did
11 not use the Tournament’s ROSE BOWL mark in a nominative sense. Instead, the
12 City used the entirety of the Tournament’s ROSE BOWL mark to create confusion
13 about the source and sponsorship of the City’s Post, and the Tournament’s Rose
14 Bowl Game. *See discussion infra*.

15 **a. The City Refers to the Tournament’s Rose Bowl**
16 **Game Without Using the Tournament’s ROSE**
17 **BOWL Mark.**

18 The City claims in *ipse dixit* fashion that it cannot “readily identify the Rose
19 Bowl Game or its Stadium without using the term ‘Rose Bowl.’” Motion at 23.
20 The City is hoisted by its own petard. As shown in the FAC, the City can—and
21 does—reference the Tournament’s Rose Bowl Game on social media without
22 using the Tournament’s ROSE BOWL mark. For example, in two posts on The
23 Rose Bowl Stadium’s official Instagram account made shortly before the Post, the
24 City referred to the Tournament’s Rose Bowl Game as: (i) “arguably one of the
25 best college football games in history,” and (ii) “game.” *See* FAC at ¶¶ 87-90.

26 The City’s established ability to refer to, and describe, the Tournament’s
27 Rose Bowl Game without using the Tournament’s ROSE BOWL mark is in stark
28 contrast to the cases on which the City relies. *See Playboy Enterprises, Inc. v.*

1 *Welles*, 279 F.3d 796, 802 (9th Cir. 2002) (there must be “no descriptive substitute
2 for the trademark” and holding that, unlike this case, the defendant could “only
3 identify herself clearly by using [Playboy Enterprises, Inc.’s] trademarked title”);
4 *Clark v. America Online Inc.*, No. CV-98-5650, 2000 WL 33535712, at *5 (C.D.
5 Cal. Nov. 30, 2000) (it would be difficult for the defendant to refer to Dick Clark
6 without using Dick Clark’s name); *Basil v. New Razor & Tie Enters., LLC*, No.
7 17-8728, 2018 WL 3869480, at *4 (C.D. Cal. Feb. 14, 2018) (the plaintiff’s name
8 and song title were the only ways for the defendant “to describe her and the song”);
9 *Capcom Co., Ltd. v. MKR Grp., Inc.*, No. 08-0904, 2008 WL 4661479, at *13
10 (N.D. Cal. Oct. 20, 2008) (“[T]here is no other way to refer to the movie than by
11 its title”); and *1800 Get Thin, LLC v. Hiltzik*, No. CV11-00505, 2011 WL 3206486,
12 at *3 (C.D. Cal. July 25, 2011) (“Defendants could not have referred to Plaintiff’s
13 marketing service without invoking the ‘1800 GET THIN’ trademark, as Plaintiff’s
14 marketing service is not readily identifiable without reference to the trademark”).

15 **b. It Was Not Necessary for the City to Use the**
16 **Tournament’s ROSE BOWL Mark at All in the**
17 **Post—Let Alone Twice.**

18 Not only did the City use the entirety of the Tournament’s ROSE BOWL
19 mark in the text of the Post, but also the City reproduced—as the centerpiece of its
20 Post—the ROSE-BOWL-mark adorned Official Program from the 1956 iteration
21 of the Tournament’s Rose Bowl Game. *See* FAC at ¶ 84. The City offers no
22 explanation for why it allegedly needed to reproduce the entirety of the
23 Tournament’s ROSE BOWL mark—twice—in the Post. This is not surprising.
24 Indeed, as shown in the FAC, the City refers to prior iterations of the
25 Tournament’s Rose Bowl Game without using the Tournament’s ROSE BOWL
26 mark at all, let alone twice. *See* FAC at ¶¶ 87-90.

1 **c. Based on the Overall Context of the City’s Post,**
2 **Consumers Could Mistakenly Believe that the**
3 **Tournament Sponsors or Approves of the Post.**

4 The City’s Post is not a case “where simply looking at the work itself, and
5 the context in which it appears, demonstrates how implausible it is that a viewer
6 will be confused into believing that the plaintiff endorsed the defendant’s work.”
7 *Rolex Watch U.S.A. Inc.*, 2012 WL 12886444, at *7 (denying motion to dismiss).

8 On the contrary, the ROSE-BOWL-mark adorned Official Program from the
9 1956 iteration of the Tournament’s Rose Bowl Game is the centerpiece of the
10 City’s Post. *See* FAC at ¶ 84. And, as discussed *passim*, the City reproduced the
11 entirety of the Tournament’s ROSE BOWL mark in the text of the Post. These
12 facts render it plausible that consumers could mistakenly believe that the City is
13 the source or sponsor of the Tournament’s Rose Bowl Game, and that the
14 Tournament sponsored or approved the City’s Post. These facts also render
15 inapposite the City’s case law, which, unlike this case, involved scenarios where
16 the defendants used the plaintiff’s trademarks for purposes of criticism and/or used
17 disclaimers that ameliorated any potential confusion about sponsorship or
18 approval. *See Stevo Design, Inc. v. SBR Marketing Ltd.*, 968 F. Supp. 2d 1082,
19 1089 (D. Nev. 2013) (criticism, and “when a website includes comments critical of
20 the mark owner, confusion as to the mark owner’s authorization or sponsorship is
21 ‘incredible’”); *Applied Underwriters, Inc. v. Lichtenegger*, 913 F.3d 884, 897 (9th
22 Cir. 2019) (defendant was criticizing the plaintiff’s service, used a disclaimer, and
23 used the defendant’s own trademark to advertise the defendant’s seminar at issue);
24 *Architectural Mailboxes, LLC v. Epoch Design, LLC*, No. 10-974, 2011 WL
25 1630809, at *3-4 (S.D. Cal. April 28, 2011) (defendant was “drawing a clear
26 distinction between its products and those of Plaintiff” by identifying the plaintiff
27 as the source of plaintiff’s products on a website that featured criticism of the
28 plaintiff’s product); and *Adaptive Mktg. LLC v. Girard Gibbs LLP*, No. 09-04739,

1 2009 WL 8464168, at *3 (C.D. Cal. Oct. 9, 2009) (defendant used the plaintiffs’
2 mark in a banner advertisement “intended to attract putative complainants who
3 have received unauthorized credit card charges from Plaintiffs”).

4 Based on the foregoing, this Court should deny the City’s Motion to Dismiss
5 Counts 3-5, 7, and 8 of the FAC, respectively, based on the doctrine of trademark
6 nominative fair use. *See Yeager*, 627 F. Supp. 2d at 1178 (plaintiff alleged
7 plausible allegations of confusion; “defendant’s assertion that the nominative fair
8 use defense applies is premature,” and denied the defendant’s motion to dismiss),
9 and *Rearden LLC v. Walt Disney Co.*, 293 F. Supp. 3d 963, 976-9 (N.D. Cal. 2018)
10 (denying motion to dismiss on grounds of nominative fair use where plaintiff’s
11 allegations of confusion were not implausible).

12 **2. The City’s Arguments About the Artistic-Relevance**
13 **Doctrine are Premature, Ignore that the City’s Post Is Not**
14 **an “Expressive Work,” and Ignore that the City’s Post Was**
15 **Explicitly Misleading as to Source.**

16 The City argues the Court should assess the Tournament’s allegations of
17 confusion under the artistic-relevance doctrine’s heightened pleading standard,
18 namely: “explicitly misleading” (as opposed to likelihood of confusion under the
19 *Sleekcraft* factors). No, this Court should not.

20 The artistic-relevance doctrine (originally set forth by the Second Circuit in
21 *Rogers v. Grimaldi*) seeks to “strike an appropriate balance between First
22 Amendment interests in protecting artistic expression and the Lanham Act’s
23 purposes to secure trademark rights.” *Gordon v. Drape Creative, Inc.*, 909 F.3d
24 257, 264 (9th Cir. 2018). Under the artistic-relevance doctrine, the Lanham Act
25 applies “to an expressive work only if the defendant’s use of the mark (1) is not
26 artistically relevant to the work or (2) explicitly misleads consumers as to the
27 source or the content of the work.” *Id.*

28 The City’s reliance on the artistic-relevance doctrine—like the doctrine of
trademark nominative fair use—is misplaced.

1 As a threshold matter, the City raises the artistic-relevance doctrine
2 prematurely. *See Tiermy*, 2016 WL 4942033 at *5 (denying motion to dismiss;
3 “Although Defendants raise affirmative defenses under *Rogers v. Grimaldi*, 875
4 F.2d 994 (2d Cir. 1989), ... the Court finds that a determination of th[is] fact-
5 intensive inquir[y] would be better suited in a motion for summary judgment”), *but*
6 *see Gordon*, 909 F.3d at 271 (a case on which the City relies; the Ninth Circuit
7 holding that resolution of the artist-relevance doctrine was impractical even at
8 summary judgment)

9 Moreover, even if it was appropriate to consider the City’s arguments about
10 the artistic-relevance doctrine at the motion-to-dismiss stage, the FAC shows that
11 the City’s Post was not an expressive work and, even if it was, it was explicitly
12 misleading as to whether the Tournament sponsored or approved it.

13 The City must “make a threshold legal showing that its allegedly infringing
14 use is part of an expressive work protected by the First Amendment.” *Gordon*, 909
15 F.3d at 264. This, the City cannot do. “In determining whether a work is
16 expressive, we analyze whether the work is communicating ideas or expressing
17 points of view.” *VIP Prods. LLC v. Jack Daniel’s Properties, Inc.*, 953 F.3d 1170,
18 1174-75 (9th Cir. 2020). This is a high hurdle to clear.

19 As the City’s case law confirms, the Ninth Circuit has found only that titles
20 of movies, television shows, and musical recordings, as well as video games, and a
21 greeting card, and a dog toy, are expressive works. *See Gordon*, 909 F.3d at 265
22 (discussing Ninth Circuit’s prior extension of *Rogers v. Grimaldi* to titles of
23 movies, television shows, and musical recordings; extending it to a greeting card);
24 *VIP Prods. LLC v. Jack Daniel’s Prods., Inc.*, 953 F.3d 1170, 1175 (9th Cir. 2020)
25 (dog toy); *Brown v. Electronic Arts, Inc.*, 724 F.3d 1235, 1241 (9th Cir. 2013)
26 (video game); *VIRAG, S.R.L. v. Sony Comput. Ent. Am. LLC*, 699 Fed. App’x. 667,
27 668 (9th Cir. 2017) (video game); *Caiz v. Roberts*, 382 F. Supp. 3d 942, 949 (C.D.
28 Cal. 2019) (musical recording in light of *E.S.S. Ent. 2000, Inc. v. Rock Star Videos*,

1 *Inc.*, 547 F.3d 1095, 1100 (9th Cir. 2008)); *Dr. Seuss Enterprises, L.P. v.*
2 *ComicMix LLC*, No. 16-CV-2779-JLS, 2018 WL 2306733, at *4 (S.D. Cal. May
3 21, 2018) (book); *Pomegranate Commc’ns, Inc. v. Sourcebooks, Inc.*, No. 19-cv-
4 00119, 2019 WL 7476688, at *4 (D. Ore. Dec. 16, 2019) (book); *Reflex Media,*
5 *Inc. v. Pilgrim Studios, Inc.*, No. 18-2260, 2018 WL 6566561, at *6 (C.D. Cal.
6 Aug. 27, 2018) (television series); and *Dickinson v. Ryan Seacrest Enterprises,*
7 *Inc.*, No. 18-2260, 2018 WL 6112628, at *5 (C.D. Cal. Oct. 1, 2018) (television
8 episode).

9 A common theme permeates the types of expressive works adopted by the
10 Ninth Circuit, namely: “the work is communicating ideas or expressing points of
11 view.” *VIP Prods. LLC*, 953 F.3d at 1174-75 (dog-chew toys were expressive
12 works because they “communicate[] a ‘humorous message,’ using word play to
13 alter the serious phrase that appears on a Jack Daniel’s bottle—‘Old No. 7 Brand—
14 with a silly message—‘The Old No. 2.’ The effect is a simple message conveyed
15 by juxtaposing the irreverent representation of the trademark with the idealized
16 image created by the mark’s owner”) (internal quotation marks omitted); *Gordon,*
17 909 F.3d at 268-69 (greeting cards were expressive works because they “rel[y] on
18 graphics and text to convey a humorous message through the juxtaposition of an
19 event of some significance—a birthday, Halloween, an election—with the honey
20 badger’s aggressive assertion of apathy”) (internal quotation marks and citation
21 omitted).

22 Here, there is nothing expressive about the City’s Post. Indeed, the City’s
23 Post is nothing more than a copy-and-paste-job of *the Tournament’s* Official
24 Program, together with a recitation of historical facts, namely, the teams that
25 played in the 1956 iteration of the Tournament’s Rose Bowl Game—all to create
26 the mistaken impression that the City is the source or sponsor of the Tournament’s
27 Rose Bowl Game and/or that the Tournament sponsored or approved of the City’s
28 Post. The City tellingly does not cite a scintilla of authority to support the

1 proposition that any court has extended—or will extend—*Rogers v. Grimaldi* to a
2 garden-variety social-media post, like the City’s Post. In fact, the City’s case law
3 confirms that its Post is not an expressive work. *See Chaquico v. Freiberg*, No.
4 17-cv-02423, 2017 WL 4805578, at *7 (N.D. Cal. Oct. 24, 2017) (defendant used
5 the plaintiff’s IP (trademark-protected likeness) in “a purely commercial context.
6 Defendants have not, at this early stage, offered any arguments that suggest the
7 advertisements in question appeared in an expressive work. The *Rogers* test is
8 reserved for expressive works. Based on the current record, the Court finds the
9 SAC alleges Defendants’ advertisements are not expressive, and that the *Rogers*
10 test does not apply”).

11 Nonetheless, even if the City’s Post was an expressive work, the
12 Tournament’s allegations in the FAC are more than sufficient to satisfy *Rogers*’
13 second prong for at least two reasons.

14 First, the City used the Tournament’s ROSE BOWL mark in the same
15 manner that the Tournament uses it on Instagram, namely: recounting historical
16 aspects of the Tournament’s Rose Bowl Game. This is fatal to the City’s ability to
17 invoke *Rogers*. Indeed, when the junior user (*i.e.*, the City) uses the mark in the
18 same manner that the trademark owner/senior user (*i.e.*, the Tournament) uses it,
19 “the potential for explicitly misleading usage is especially strong,” and puts the
20 senior user, like the Tournament, “at a significant disadvantage in warding off
21 infringement by [the junior user], merely because the product being created by the
22 [junior user] is also ‘art.’ That would turn trademark law on its head.” *Gordon*,
23 909 F.3d at 270.

24 Second, as shown in the FAC, the Tournament’s ROSE BOWL mark is the
25 centerpiece of the City’s Post—and the lack of any accompanying artistic
26 expression evinces the City’s intent to create confusion about the source and/or
27 sponsorship of the Tournament’s Rose Bowl Game, and the City’s Post. *See*
28 *Gordon*, 909 F.3d at 271 (“[U]sing a mark as the centerpiece of an [allegedly]

1 expressive work itself, unadorned with any artistic contribution by the junior user,
2 may reflect nothing more than an effort to induce the sale of goods or services by
3 confusion or less the distinctiveness and thus the commercial value of a
4 competitor's mark") (internal quotation marks and citation omitted).

5 Based on the foregoing, this Court should deny the City's Motion to Dismiss
6 Counts 3-5, 7, and 8 of the FAC, respectively, based on the artistic-relevance
7 doctrine.

8 **B. The Tournament Sufficiently Pleads a Claim for False**
9 **Advertising in Count 6 of the FAC.**

10 In Count 6 of the FAC, the Tournament asserts a claim for false advertising
11 under 15 U.S.C. § 1125(a)(1)(B). *See* FAC at ¶¶ 142-153.

12 Under the Lanham Act, to prevail on its false advertising claim, a plaintiff
13 must sufficiently allege five elements: (1) defendant's conduct or statements
14 constitute commercial speech; (2) the statement contains misrepresentations;
15 (3) defendant is in commercial competition with plaintiff; (4) the statement was
16 made for the purpose of influencing consumers to buy defendant's goods or
17 services, and (5) the statement is sufficiently disseminated to the relevant
18 purchasing public. *See Ariix, LLC v. NutriSearch Corp.*, 985 F.3d 1107, 1114-1115
19 (9th Cir. 2021).

20 At the pleading stage, the Tournament is not required to prove all elements
21 of a false advertising claim sufficient to emerge victorious on the merits of its
22 claims. The Tournament's only requirement to overcome a 12(b)(6) motion is to
23 allege facts sufficient to "plausibly suggest" false advertising by the City. *See*
24 *Name.Space, Inc. v. Internet Corp. for Assigned Names and Numbers*, 795 F.3d
25 1124, 1129 (9th Cir. 2015) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557
26 (2007)). The Tournament has satisfied this requirement.

27 The FAC plausibly alleges that the City's statements on January 1, 2021
28 constitute commercial advertising. The Tournament plainly makes this allegation,

1 stating “Defendant’s January 1 Statements constitute commercial advertising
2 and/or commercial promotion.” FAC at ¶ 144. Commercial speech is “usually
3 defined as speech that does no more than propose a commercial transaction.”
4 *United States v. United Foods, Inc.*, 533 U.S. 405, 409, 121 S.Ct. 2334, 150
5 L.Ed.2d 438 (2001). However, courts view this definition as just a starting point,
6 and will apply common sense to decipher between commercial speech and other
7 types of speech. *See Ariix*, 985 F.3d at 1115.

8 Because there is often difficulty in drawing clear lines between commercial
9 and non-commercial speech, the Supreme Court has outlined three factors to
10 consider. “Where the facts present a close question, ‘strong support’ that the
11 speech should be characterized as commercial speech is found where, the speech is
12 an advertisement, the speech refers to a particular product, and the speaker has an
13 economic motivation.” *Hunt v. City of L.A.*, 638 F.3d 703, 715 (9th Cir. 2011)
14 (citing *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66–67 (1983)). While
15 these factors are important, the Supreme Court also stated in *Bolger* that they are
16 not dispositive. The Supreme Court has also cited decisions designating
17 commercial speech as speech proposing a commercial transaction, which occurs in
18 an area traditionally subject to government regulation. *Cent. Hudson Gas & Elec.*
19 *Corp. v. Pub.c Serv. Comm’n of N.Y.*, 447 U.S. 557, 562 (1980).

20 Here, it is more than plausible for the Tournament to assert that the City’s
21 January 1 Statements are commercial speech under *Bolger* and *Hunt*. Government
22 officials regularly make statements regarding proposed commercial transactions.
23 Recent examples include the many statements made by various state governors and
24 city mayors in the bid for Amazon’s HQ2 and statements related to the recently-
25 announced relocation of Major League Baseball’s 2021 All-Star Game away from
26 Georgia in light of new voter suppression legislation. *See* Sara Salinas & Paayal
27 Zaveri, “Here are reactions from all 20 mayors of Amazon’s favored HQ2 cities --
28 plus Detroit’s sad statement,” CNBC (Jan. 19, 2018 9:35 AM),

1 [https://www.cnbc.com/2018/01/18/heres-how-cities-are-reacting-to-being-finalists-](https://www.cnbc.com/2018/01/18/heres-how-cities-are-reacting-to-being-finalists-for-amazon-hq2.html)
2 [for-amazon-hq2.html](https://www.cnbc.com/2018/01/18/heres-how-cities-are-reacting-to-being-finalists-for-amazon-hq2.html); Mae Anderson, “Georgia governor vows a fight after MLB
3 yanks All-Star Game,” AP (Apr. 3, 2021), [https://apnews.com/article/joe-biden-](https://apnews.com/article/joe-biden-mlb-baseball-georgia-atlanta-braves-faa074fb2add294d2568045dc9faac8a)
4 [mlb-baseball-georgia-atlanta-braves-faa074fb2add294d2568045dc9faac8a](https://apnews.com/article/joe-biden-mlb-baseball-georgia-atlanta-braves-faa074fb2add294d2568045dc9faac8a). The
5 Rose Bowl Game, and the festivities surrounding it, constitute a commercial
6 transaction for the parties. As stated in the FAC, the Tournament raised over
7 \$270,000 to construct the Rose Bowl Stadium. *See* FAC at ¶ 28. Given the
8 substantial financial windfall the Rose Bowl Game provides for the City, it is
9 reasonable to believe that the City’s January 1 Statement was primarily made out
10 of economic motivation. Keeping the Rose Bowl Game in Pasadena’s Rose Bowl
11 Stadium is vital to the City due to the immense positive commercial impact the
12 Game brings to the City and its businesses—not just through the license and fees
13 under the MLA, but also through the revenues generated by thousands of fans
14 converging on the City around the New Year holiday. Further, the City’s January 1
15 Statement refers to a particular product: The Rose Bowl Game. The City’s January
16 1 Statements constitute commercial speech.

17 The Tournament has also sufficiently pled the second element of false
18 advertising claim. Plaintiff’s claims must reasonably allege that the City’s January
19 1 Statements include false or misleading representations of fact. *Ariix, LLC*, 985
20 F.3d at 1121. “[A] false advertising claim may be based on implied statements” as
21 long as those statements are specific and deceptive. *Prager Univ. v. Google LLC*,
22 951 F.3d 991, 1000 (9th Cir. 2020). Statements of opinion and puffery, however,
23 are not actionable. The City’s January 1 Statements were provided by an elected
24 government official, directly to *The New York Times*. *See* FAC at ¶ 75-78. That
25 alone is sufficient to plausibly identify these statements as fact, not opinion or
26 puffery. The January 1 Statements were also plainly false; the Tournament
27 exclusively owns all trademarks and goodwill associated with the Rose Bowl
28 Game and the event is affiliated and associated with the Tournament by

1 consumers. *See* FAC at ¶ 61-73. Yet, the January 1 Statements assert that the City
2 owns the Rose Bowl Game and its affiliated trademarks, despite the fact that the
3 City functions as merely the geographic location and owner of the venue for the
4 Tournament’s Rose Bowl Game. These statements were not what might amount to
5 puffery or opinion, such as the quality or prestige of the Tournament’s Rose Bowl
6 Game. The January 1 Statements were statements of fact intended to mislead the
7 public to believe that the Tournament was acting unlawfully by attempting to hold
8 the game in a location other than in the city of Pasadena in 2021. It is reasonable to
9 believe that the City’s statement was made for the purpose of influencing
10 consumers – in this case, to attempt to keep the Tournament’s Rose Bowl Game in
11 the city of Pasadena.

12 As stated previously, the January 1 Statements were disseminated to the
13 public via *The New York Times*, a national (and internationally available) and
14 reputable news source. *See* FAC at ¶ 6; 75; 145. The Tournament has sufficiently
15 alleged that the City’s statement was sufficiently disseminated to the relevant
16 purchasing public.

17 The City and the Tournament can also plausibly be considered to be in
18 competition with one another. While the parties cooperate annually to plan and
19 stage the Rose Bowl Game, they have differing and sometimes adverse interests
20 under the underlying commercial agreements concerning staging and hosting the
21 Rose Bowl Game, from use and maintenance of physical facilities, to financial
22 commitments and outlays, the revenues generated, assumption of risk, and so on.

23 Based on the foregoing, the Tournament’s allegations in the FAC are
24 sufficient to state a plausible false advertising claim under 15 U.S.C. §
25 1125(a)(1)(B). Accordingly, this Court should deny the City’s Motion to Dismiss
26 Count 6 of the FAC.

27
28

1 **C. The Tournament Sufficiently Pleads a Claim for Breach of**
2 **Contract Under California Law in Count 9 of the FAC.**

3 In Count 9 of the FAC, the Tournament asserts a claim for breach of contract
4 under California law. *See* FAC at ¶¶ 164-172.

5 Under California law, “[a] cause of action for breach of contract requires
6 proof of the following elements: (1) existence of the contract; (2) plaintiff’s
7 performance or excuse for nonperformance; (3) defendant’s breach; and
8 (4) damages to plaintiff as a result of the breach.” *ProMex v. LLC Hernandez*, 781
9 F. Supp. 2d 1013, 1017 (C.D. Cal. 2011) (awarding trademark owner nominal
10 damages on breach-of-contract claim).

11 Plaintiff’s breach-of-contract claim rests on the City’s material breaches of
12 the MLA, including, for example, by: the Instagram Post (which breaches the
13 City’s obligation under the MLA not to use the Tournament’s ROSE BOWL
14 GAME without Tournament approval), and disseminating false, misleading, and
15 deceptive statements about the City’s alleged ownership of the Tournament’s
16 family of ROSE-formative marks (which breaches the City’s obligation under the
17 MLA not to interfere with the Tournament’s exclusive ownership, and right to use,
18 the Tournament’s marks). *See* FAC at ¶¶ 168, 169.

19 The City does not dispute the sufficiency of the Tournament’s allegations in
20 the FAC concerning the first or second elements. *See generally* Motion. Instead, in
21 a classic cart-before-the-horse argument, the City claims that it did not breach the
22 MLA because its breaches “were constitutionally protected activities.” *Id.* at 33.
23 However, as the City must concede, there has been no such finding. What is more,
24 as discussed, *passim*, the Tournament’s allegations in the FAC are sufficient to
25 render it plausible—plausibility being the relevant inquiry on the City’s Motion to
26 Dismiss the FAC—that the City’s breaches are not constitutionally protected
27 activities; rather, they are cognizable acts of infringement, unfair competition, false
28

1 association, false endorsement, false designation of origin, and false advertising,
2 for which the City must answer.

3 The City, in a last-ditch effort, argues that the Tournament also fails to state
4 a plausible breach-of-contract claim under California law because at this time, the
5 Tournament alleges only nominal damages, and reserves its right to seek actual
6 damages. *See* Motion at 34; *see also* FAC at ¶ 172. The City’s argument fails for
7 at least three reasons.

8 *First*, the City’s material breaches of the MLA inflict reputational harm to
9 the Tournament and the goodwill associated with its family of ROSE-formative
10 marks, which is difficult (if not impossible) to quantify in the form of actual
11 damages.

12 *Second*, the City’s argument is premature insofar as it seeks to preclude the
13 Tournament from taking discovery on, and seeking to establish, actual damages.
14 The Tournament should have the right to take discovery on actual damages in light
15 of its express reservation in the FAC of its right to seek such damages.

16 *Third*, the City’s argument ignores well-settled California law, which holds
17 that, even if “no actual damages can be established, a plaintiff who has established
18 that a contract was breached is entitled to an award of nominal damages as the
19 breach itself is a ‘legal wrong that is fully distinct from the actual damages.’”
20 *ProMex, LLC*, 781 F. Supp. 2d at 1019 (“Hence, the Court awards Plaintiffs
21 nominal damages in the amount of \$1.00”) (quoting *Sweet v. Johnson*, 169 Cal.
22 App. 2d 630, 632 (Ct. App. 1959) (“The maxim that the law will not be concerned
23 with trifles does not, ordinarily, apply to violation of a contract right. Accordingly,
24 nominal damages, which are presumed as a matter of law to stem merely from the
25 breach of a contract, may properly be awarded for the violation of such a right”) *Id.*
26 at 633 (internal citations omitted) (citing Cal. Civ. Code § 3360) (“When a breach
27 of duty has caused no appreciable detriment to the party affected, he may yet
28 recover nominal damages”)); *see also In re Facebook Priv. Litig.*, 192 F. Supp. 3d

1 1053, 1061-62 (N.D. Cal. 2016) (“The court concludes that *Aguilera* and *Ruiz* [...]
2 do not defeat a plaintiff’s ability to recover nominal damages for breach of contract
3 even in the absence of actual damages. Plaintiffs, therefore, have alleged a legal
4 wrong that is fully distinct from the actual damages”) (referencing *Aguilera v.*
5 *Pirelli Armstrong Tire Corp.*, 223 F.3d 1010 (9th Cir. 2000) (a case on which the
6 City relies)).

7 Based on the foregoing, the Tournament’s allegations in the FAC are
8 sufficient to state a plausible breach-of-contract claim under California law.
9 Accordingly, this Court should deny the City’s Motion to Dismiss Count 9 of the
10 FAC.

11 **III. To the Extent the Court Grants the Motion, the Tournament Requests**
12 **Leave to Amend.**

13 As explained in the preceding sections, the City’s arguments—that this
14 Court is without jurisdiction and that certain claims are inadequately pleaded—are
15 meritless. To the extent the Court disagrees, however, the Tournament request
16 leave to file a Second Amended Complaint addressing any perceived deficiencies.

17 **CONCLUSION**

18 For these reasons, the Tournament requests that the Court deny the City’s
19 motion to dismiss.

20 Dated: April 20, 2021

Respectfully submitted,

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