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9 Attorneys for Plaintiffs  
Forty Niners Stadium Management Company LLC  
10 and Forty Niners SC Stadium Company LLC

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SANTA CLARA**

14 FORTY NINERS STADIUM  
15 MANAGEMENT COMPANY LLC, and  
16 FORTY NINERS SC STADIUM COMPANY  
LLC,

17 Plaintiffs,

18 v.

19 CITY OF SANTA CLARA, a municipal  
corporation; SANTA CLARA STADIUM  
20 AUTHORITY, a joint powers agency; and  
DOES 1-20, inclusive,  
21

22 Defendants.

Case No. 19CV355432

**COMPLAINT FOR DECLARATORY  
RELIEF**

E-FILED  
9/20/2019 3:43 PM  
Clerk of Court  
Superior Court of CA,  
County of Santa Clara  
19CV355432  
Reviewed By: J. Duong

1 Plaintiffs Forty Niners Stadium Management Company LLC, a Delaware limited liability  
2 company, and Forty Niners SC Stadium Company LLC, a Delaware limited liability company, for  
3 their Complaint against Defendants City of Santa Clara, a municipal corporation, and Santa Clara  
4 Stadium Authority, a joint powers agency, allege as follows:

5 **PARTIES**

6 1. Plaintiff Forty Niners Stadium Management Company LLC ("Stadium Manager")  
7 is a Delaware limited liability company with its principal place of business located in Santa Clara,  
8 California.

9 2. Plaintiff Forty Niners SC Stadium Company LLC ("StadCo") is a Delaware limited  
10 liability company with its principal place of business located in Santa Clara, California.

11 3. Defendant City of Santa Clara ("City") is a municipal corporation and charter city  
12 organized and existing under the laws of the State of California.

13 4. Defendant Santa Clara Stadium Authority ("SCSA") is a joint powers agency  
14 existing under California Government Code section 6532, located in Santa Clara, California.

15 5. Does 1 through 20, inclusive, are sued herein pursuant to California Code of Civil  
16 Procedure section 474 under fictitious names, inasmuch as their true names and capacities are  
17 presently unknown to Plaintiffs. Plaintiffs will amend this complaint to designate the true names  
18 and capacities of these parties when they have been ascertained. Plaintiffs are informed and  
19 believe, and on that basis allege, that Does 1 through 20, inclusive, were employees, agents, or  
20 alter egos of defendants, or are otherwise responsible for all of the acts hereinafter alleged.  
21 Plaintiffs are informed and believe, and on that basis allege, that the actions of Does 1 through 20,  
22 inclusive, as alleged herein, were duly ratified by defendants, with each Doe acting as the  
23 employee, agent or alter ego of defendants, within the scope, course, and authority of the agency.

24 **FACTUAL BACKGROUND**

25 **The Stadium Management Agreement**

26 6. Plaintiffs have been forced to bring this action because City and SCSA have  
27 engaged in conduct in violation of Plaintiffs' contractual rights granted to Plaintiffs with respect to  
28 the management and operation of Levi's Stadium (the "Stadium"). Specifically, and as more fully

1 set forth below, in order to ensure that the Stadium, once it was constructed, would be maintained,  
2 managed and operated at the level, and in the condition, required by the parties, StadCo and SCSA  
3 selected Stadium Manager to provide management services for the Stadium, on behalf of each of  
4 them, on a continual, year-round basis, with such management services to include the overseeing  
5 of day-to-day operations and maintenance of the Stadium. Management of the Stadium is a 365-  
6 day-a-year undertaking. Stadium Manager employs in excess of 100 full-time and 700 part-time  
7 employees to perform this function.

8           7.       Because StadCo would be making a substantial investment in the construction of  
9 the Stadium, and because the Stadium would serve as the home of the San Francisco Forty Niners  
10 NFL team, an affiliate of StadCo, it was essential to StadCo that the maintenance, management,  
11 and operation of the Stadium be placed in competent and professional hands, and that such  
12 maintenance, management, and operation not be undermined by, or subject to, political  
13 motivations or maneuvering on the part of SCSA or City. Recognizing that the City's elected  
14 leadership and political climate would change over the contemplated 40-year span of the economic  
15 relationship of the parties, the parties were careful to ensure that the relevant agreements contain  
16 protections against the risk that such volatility would undermine the operation of the Stadium.

17           8.       In order to ensure competent and professional management, and insulation from  
18 shifting political motivations and influences, StadCo, SCSA, and Stadium Manager entered into  
19 the Stadium Management Agreement by and among Santa Clara Stadium Authority, Forty Niners  
20 Stadium Management Company LLC, and Forty Niners SC Stadium Company LLC, dated as of  
21 March 28, 2012 (the "Management Agreement").

22           9.       The Management Agreement was executed in conjunction with the Amended and  
23 Restated Stadium Lease Agreement by and between the Santa Clara Stadium Authority and Forty  
24 Niners SC Stadium Company LLC (the "Lease"). The Lease and the Management Agreement  
25 govern the occupancy, use, operation, and management of the Stadium.

26           10.       Pursuant to the Management Agreement, Stadium Manager serves as the sole and  
27 exclusive manager of the Stadium on behalf of both Stadium Authority and StadCo.  
28

1 **SCSA's Purported "Partial Termination" Of The Management Agreement**

2 11. Section 8.1.1 of the Management Agreement establishes the exclusive grounds on  
3 which the Management Agreement may be terminated unilaterally by SCSA:

4 8.1.1 The Stadium Authority may terminate this Agreement for  
5 cause by written notice upon the occurrence of any of the following:  
6 (i) fraud or intentional and material misrepresentation by or at the  
7 direction of the Stadium Manager in connection with this  
8 Agreement; (ii) misappropriation or conversion of any funds  
9 received pursuant to this Agreement by or at the direction of the  
10 Stadium Manager; or (iii) willful misconduct of the Stadium  
11 Manager resulting in an Event of Default, which Event of Default is  
12 not cured in accordance with Article 11 hereof.

13 12. At its meeting on September 17, 2019, SCSA's Board of Directors ("Board"), a  
14 body comprised of the City's Mayor and other City Council members, took action purporting to  
15 terminate the Management Agreement insofar as it authorizes Stadium Manager to act on behalf of  
16 SCSA (the "Partial Termination Action"). No general description of this action appeared on the  
17 published agenda for that Board meeting, and neither Plaintiffs nor the public generally had any  
18 notice that such an action would be considered.

19 13. Following a unanimous vote on the Partial Termination Action, SCSA sent  
20 Stadium Manager a "Notice of Termination of Management Agreement in regards to SCSA, Non-  
21 NFL Operations and Non-NFL Events" (the "Notice of Termination" or "Notice"). A copy of the  
22 Notice of Termination is attached hereto as Exhibit A.

23 14. SCSA's Notice of Termination states that SCSA "is hereby terminating the  
24 Management Agreement with Forty Niners Stadium Management Company LLC (Stadium  
25 Manager) for the management of Non-NFL Operations and Non-NFL Events. This Notice is not to  
26 terminate Stadium Manager's management and operation of NFL games at Levi's Stadium."

27 15. The Management Agreement does not provide any mechanism for the termination  
28 of Stadium Manager as the manager for SCSA but not StadCo. As set forth above, the  
Management Agreement assures competent, professional, and non-political management and  
operation of the Stadium by a single manager acting on behalf of both SCSA and StadCo.  
Contrary to the express terms of the Management Agreement, SCSA has purported to rewrite the  
Management Agreement, with the intention of retaining a separate manager to serve its purposes.

1           16.     Separate and apart from the fact that the Management Agreement does not  
2 authorize a "partial termination," the stated grounds for the purported action are baseless. The  
3 Notice identifies three grounds: that Stadium Manager has (1) committed "fraud, intentional  
4 misrepresentation, and material omissions of fact in connection with the Management  
5 Agreement"; (2) committed "misappropriation and self-dealing"; and (3) engaged in "willful  
6 misconduct that resulted in two Events of Defaults, which Stadium Manager failed to cure." As  
7 explained below, none of these claims bears even the slightest scrutiny.

8           17.     The Notice of Termination asserts that Stadium Manager committed fraud by (a)  
9 claiming to have substantial experience and expertise in the management and operation of "public  
10 assembly facilities,"(b) intentionally misrepresenting facts and omitting material facts in  
11 connection with its presentation of claims for payment of a contract with a vendor called NEx  
12 Systems. Neither of these theories has any basis in fact.

13                 a.     As an initial matter, the Notice of Termination appears to assume, without  
14 basis, that a representation of substantial experience in the management of "public assembly  
15 facilities" means experience in the management of "government-owned public assembly  
16 facilities." But "public assembly facilities" refers to facilities where members of the public  
17 assemble, regardless of who owns those facilities. In either case, the statement is true: the Forty  
18 Niners' executive team had extensive experience with publicly owned public assembly facilities  
19 (e.g., Candlestick Park).

20                 b.     The Notice also asserts that Stadium Manager's lack of "public assembly  
21 facility" expertise is demonstrated by a decline in net revenue for Non-NFL Events. In fact, no  
22 part of any decline in net revenue was the result of a lack of public assembly expertise on the part  
23 of Stadium Manager. The decline was in large measure the consequence of dysfunction created by  
24 the City's and SCSA's vacillating, arbitrary, and onerous restrictions placed on operation of the  
25 Stadium for Non-NFL Events, and other damaging actions. These include, for example, early  
26 curfews, disparaging comments, and public disclosure of confidential information, which have  
27 discouraged major music stars from appearing at the Stadium.

28                 c.     The assertion that Stadium Manager made misrepresentations regarding a

1 contract with NEx Systems is false as well. For example, Stadium Manager's statement regarding  
2 payment of prevailing wages was that, upon inquiry by Stadium Manager, NEx Systems  
3 confirmed that it had paid prevailing wages. NEx Systems did make this representation. When  
4 Stadium Manager discovered the representation may have been inaccurate, it diligently worked to  
5 ensure workers were paid the correct wages. As part of that effort, Stadium Manager refunded to  
6 SCSA the *entirety* of its expenditures on the contract. As Stadium Manager informed SCSA, the  
7 difference between that refund and the total contract amount represents the amount that Forty  
8 Niners entities had already paid, from their own resources, toward this contract. In the end, SCSA  
9 paid nothing.

10 18. The allegations of misappropriation and self-dealing are false as well.

11 a. According to the Notice, (a) "Stadium Manager booked Non-NFL Events  
12 for the Stadium Authority that lose money for the Stadium Authority," (b) SCSA "is informed and  
13 believes that a 49ers entity is a part owner of some of these events," and (c) "Stadium Manager  
14 and StadCo receive additional Suite revenues by reason of the booking of these events."

15 b. Not every event is profitable. That is not "misappropriation." Nor is the  
16 receipt of Suite revenue "self-dealing." Stadium Manager receives no revenue from Non-NFL  
17 Events apart from what is transparently specified in the Management Agreement. All revenue  
18 received by StadCo from Non-NFL Events, whether those events are profitable or not, is revenue  
19 to which StadCo is entitled under the Lease. Suite revenue, like all Stadium revenues and  
20 expenses, is allocated in accordance with written agreements that were negotiated and executed by  
21 the parties. It is absurd and irresponsible to label as "self-dealing" the adherence to the terms of  
22 the parties' written business relationship.

23 c. Stadium Manager has always evaluated potential events on their merits, and  
24 selected events with the goal of maximizing revenue for SCSA. Stadium Manager's operation of  
25 the Stadium has been highly successful, generating substantial economic benefits for the SCSA  
26 through events like the College Football Playoff National Championship, Wrestlemania, the NHL  
27 Outdoor Stadium Series, COPA America, and Beyoncé, Coldplay, the Rolling Stones, and  
28 Grateful Dead concerts. Marquee events build the Stadium brand, one of the explicit goals under

1 the Stadium Management Agreement in addition to generating operating revenues, which in turn  
2 aid the Stadium Manager in its successful booking of lower profile, profitable events such as  
3 corporate conferences, holiday parties, and full stadium buyouts for corporate employee  
4 engagement. There has been no financial misconduct by Stadium Manager.

5 19. Finally, the Notice of Termination accuses Stadium Manager of willful misconduct  
6 resulting in uncured events of default. As with SCSA's other allegations, this claim is patently  
7 false.

8 a. The Notice references a series of Notices of Breach and Notices of Default  
9 that SCSA sent to Stadium Manager, relating to alleged deficiencies in Stadium Manager's  
10 payment of prevailing wages, procurement, and conflict of interest laws. No uncured Event of  
11 Default was identified in this series of Notices, let alone one resulting from willful misconduct.

12 b. On March 21, 2019, SCSA served on Stadium Manager the first Notice of  
13 Breach of the Management Agreement referenced in the Notice of Termination, alleging that  
14 Stadium Manager had failed to comply with procurement and prevailing wage requirements in the  
15 NEx Systems contract. SCSA demanded that Stadium Manager "cure" the "breach" within 30  
16 days, or be declared in default of the Management Agreement.

17 c. In response, Stadium Manager took immediate steps to cure any possible  
18 deviation from applicable procurement and prevailing wage requirements, and it engaged experts  
19 in those fields to review and advise on third-party contracts generally. SCSA refused to  
20 acknowledge this solution. Instead, on April 26, 2019, SCSA purported to declare Stadium  
21 Manager in default.

22 d. Despite repeated efforts by StadCo and Stadium Manager to address  
23 SCSA's unreasonable and unlawful demands, including a proposed cooperative process for  
24 ensuring ongoing compliance, SCSA issued *another* Notice of Breach on June 14, 2019. This  
25 Notice of Breach accused Stadium Manager of sweeping violations of procurement, prevailing  
26 wage and/or conflict of interest requirements, and unilaterally, in bad faith, asserted that due to the  
27 "breach": (1) it was entitled to refuse payment on *all* vendor contracts until a cure acceptable to it  
28 was undertaken; (2) it was entitled to cease such payments until Stadium Manager proved that *no*

1 *past vendor contract* violated *any* provision of state or local law; and (3) it had the right to  
2 unilaterally reform the Management Agreement to revoke Stadium Manager's authority to enter in  
3 to contracts with third parties for goods and services. The Notice of Breach, however, failed to  
4 identify a single circumstance constituting a violation.

5 e. Stadium Manager responded by pointing out this key omission. Stadium  
6 Manager also identified two contracts (apart from the NEx contract referenced above) with respect  
7 to which it was aware, from informal conversations with SCSA staff, that SCSA had raised  
8 questions. Stadium Manager detailed remedial steps undertaken that fully addressed, or "cured,"  
9 the stated concerns. Refusing to explain the basis for its claims or even to acknowledge the  
10 remedial steps taken, SCSA issued a "Notice of Default" with respect to the still-unidentified  
11 violations.

12 f. Thus, each of the identified Notices of Breach was either deficient – such  
13 that Stadium Manager had no way to respond to it – or was "cured" promptly and in good faith by  
14 Stadium Manager. The Notice of Termination nowhere alleges anything approaching an uncured  
15 Event of Default, let alone one resulting from "willful misconduct."

16 20. The truth is that Stadium Manager has maintained, managed and operated the  
17 Stadium in an effective and professional manner, to the mutual benefit of SCSA and StadCo, just  
18 as the Management Agreement, and the Stadium Lease, contemplate. And it has done so  
19 notwithstanding repeated acts of interference and sabotage by City and SCSA, which have  
20 engaged in precisely the kind of politically motivated attacks, obstruction, and interference that the  
21 Lease and the Management Agreement are intended to guard against.

22 **FIRST CAUSE OF ACTION**

23 **(Declaratory Relief)**

24 21. Plaintiffs reallege and reincorporate by reference paragraphs 1 through 20 as if  
25 fully set forth herein.

26 22. Plaintiffs contend (i) that SCSA's purported "partial termination" lacks any legal  
27 basis, and is of no force or effect; and (ii) that Stadium Manager remains the exclusive manager  
28 for all events, year-round, at the Stadium under both the Lease and the Management Agreement.



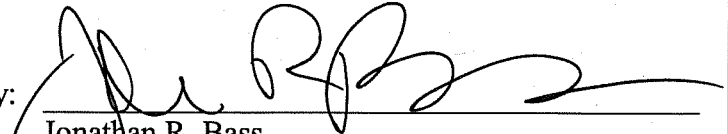


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DATED: September 20, 2019

COBLENTZ PATCH DUFFY & BASS LLP

By: 

Jonathan R. Bass  
Attorneys for Plaintiffs  
Forty Niners Stadium Management Company LLC  
and Forty Niners SC Stadium Company LLC

# **EXHIBIT A**



*Sent Via Certified Mail, Return Receipt Requested  
and Email al.guido@49ers.com*

September 17, 2019

Al Guido, President  
San Francisco Forty Niners Management Company  
4900 Marie P. De Bartolo Way  
Santa Clara, California 95054

**SUBJECT: Notice of Termination of Management Agreement in regards to  
the Stadium Authority, Non-NFL Operations and Non-NFL Events**

Dear Mr. Guido:

PLEASE TAKE NOTICE that Santa Clara Stadium Authority (Stadium Authority) is hereby terminating the Management Agreement with Forty Niners Stadium Management Company LLC (Stadium Manager) for the management of Non-NFL Operations and Non-NFL Events. This Notice is not to terminate Stadium Manager's management and operation of NFL games at Levi's Stadium.

This termination is pursuant to Section 8.1.1 of the March 28, 2018 Stadium Management Agreement, as amended (collectively, Management Agreement), and based on (1) Stadium Manager's fraud, intentional misrepresentation, and material omissions of facts in connection with the Management Agreement; (2) Stadium Manager's misappropriation and self-dealing; and (3) Stadium Manager's willful misconduct that resulted in two Events of Defaults, which Stadium Manager failed to cure.

First, Stadium Manager committed fraud and intentionally misrepresented facts in connection with its performance under the Management Agreement. Stadium Manager represented that it has "substantial experience and expertise in the management and operation of public assembly facilities" (Management Agreement, Recital E). This representation was false, as demonstrated by Stadium Manager's failure to comply with legal requirements and obligations, including but not limited to prevailing wage laws, conflict of interest laws, and the Public Records Request Act. The representation was also false, as demonstrated by the continued and substantial decline of Stadium Authority Operating and Net Revenues based on Stadium Manager's performance and omissions. Stadium Authority's net revenue for the recent 2018-2019 fiscal year is only estimated at \$18,591, and Stadium Manager projects the net revenue for the current 2019-2020 fiscal year to be \$0.00. Performance Rent payments to the City of Santa Clara is significantly reduced by these minimal to non-existent Non-NFL Net Revenue earnings, which results in the City of Santa Clara no longer receiving fair market value for the land as required by Measure J.

Stadium Manager also committed fraud, intentionally misrepresented facts, and omitted material facts in connection with its presentation of claims for payment of the NEx Agreement and for services for the Stadium. Stadium Authority paid for approximately \$308,568 of NEx services based on Stadium Manager's representations. Stadium Manager affirmatively represented in writing that the services complied with prevailing wage laws, which was a false statement. In addition, Stadium Manager requested and submitted for Stadium Authority's retroactive approval a NEx contract that included a total of \$643,567 for costs and services, a total that the Stadium Manager also represented in writing. When the prevailing wage law violations became known and undisputed, Stadium Manager refunded to Stadium Authority the previously paid amounts of only \$308,568, without any reconciliation or explanation of why Stadium Manager had presented a claim to the Stadium Authority for the higher contract amount of \$643,567.

Second, Stadium Authority also terminates the Management Agreement based on Stadium Manager's misappropriation and self-dealing under the Management Agreement, and violation of its fiduciary duties to Stadium Authority. Stadium Manager booked Non-NFL Events for the Stadium Authority that lose money for the Stadium Authority. Stadium Authority is informed and believes that a 49ers entity is a part owner of some of these events, and that Stadium Manager and StadCo receive additional Suite revenues by reason of the booking of these events. Thus, Stadium Manager, StadCo or its affiliates, receive a financial benefit from these actions at the expense of the Stadium Authority. Accordingly, Stadium Manager's actions constitute breaches of its fiduciary duties as agent of Stadium Authority to conduct the management and operation of the Stadium at all times with integrity and good faith, as well as control Manager Operating Expenses, StadCo Operating Expenses and Stadium Authority Operating Expenses, and maximize Operating Revenues. Stadium Manager's actions are self-dealing and have resulted in misappropriation based upon Stadium Manager charging Stadium Authority the costs and expenses for the money losing events even when other 49ers entities receive the financial benefit of those events.

Finally, Stadium Authority's termination of the Management Agreement is also based on Stadium Manager's willful misconduct that resulted in two Events of Defaults, which have not been cured. On March 21, 2019, Stadium Authority served a Notice of Breach pertaining to the NEx Agreement and services, which demanded a cure that Stadium Manager provide the documentation showing that the agreement, services and work is in compliance with prevailing wage laws. Stadium Manager did not cure this breach. Thus, on April 26, 2019, Stadium Authority served a Notice of Default. On June 14, 2019, Stadium Authority served a second Notice of Breach pertaining Stadium Manager's failure to comply with prevailing wage laws, conflict of interest laws, and procurement obligations. Stadium Authority had partially suspended payment of Shared Stadium Expenses based on these violations, with the stated position that payments would be made upon Stadium Manager's production of records supporting each invoice or expense. This Notice of Breach demanded a cure that Stadium Manager produce its records of procurement activity on behalf of Stadium Authority, as well as

MR. AL GUIDO, PRESIDENT  
Re: NOTICE OF TERMINATION  
September 17, 2019  
Page 3 of 3

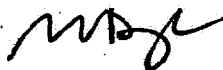
the supporting records for the recent or any upcoming Shared Stadium Expenses. Stadium Manager did not cure this breach either. Thus, on August 16, 2019, Stadium Authority served a second Notice of Default. Each of these defaults resulted from Stadium Manager's willful misconduct, including Stadium Manager's substantial disregard and gross negligence for Stadium Authority's interests, the legal requirements for a public facility and public works, and Stadium Manager's legal obligations and contractual duties.

**For all these reasons, the Stadium Authority hereby terminates the Management Agreement as to Non-NFL Operations pursuant to Section 8.1.1 of the Management Agreement.**

This Notice of Termination pertains the Stadium Manager's duties, rights and obligations pertaining to the Stadium Authority, including but not limited to the Stadium Authority Season and the Non-NFL Season or events. Stadium Authority is terminating the Management Agreement without Forty Niners SC Stadium Company LLC (StadCo)'s written consent, as expressly provided and allowed under Section 8.1.1 of the Management Agreement. Accordingly, this Notice of Termination does not pertain to Stadium Manager's duties, rights and obligations pertaining to StadCo, or the NFL Season and NFL events.

This Termination will become effective on November 15, 2019, due to the practical needs for a transition to a new manager, including coordination with StadCo and Stadium Manager. Until that termination date, Stadium Manager's obligation to comply with its legal and contractual obligations continues. Stadium Authority reserves all rights.

Sincerely,



Brian Doyle  
Stadium Authority Counsel

cc: Deanna Santana, Stadium Authority Executive Director  
Jihad Beauchman, Stadium Manager Counsel  
Jeffrey Knowles, Esq.  
Hannah Gordon, Esq.  
Mohammad Walizadeh, Esq.

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