



## Agenda Report

19-1043

Agenda Date: 9/17/2019

### REPORT TO COUNCIL AND STADIUM AUTHORITY BOARD

#### **SUBJECT**

Informational Report on Litigation Matters Between the City/Stadium Authority and the Forty Niners, and Third-Party Litigation Matters Arising from the Stadium

#### **BACKGROUND**

The City of Santa Clara owns the land on which Levi's Stadium is built. The Santa Clara Stadium Authority (SA) is a public agency formed through a Joint Powers Authority agreement that owns the Stadium and leases it to the San Francisco Forty Niners Stadium Company for holding NFL games. The Stadium Authority has a management agreement with another Forty Niners entity called the Forty Niners Management Company to operate and manage the stadium for both NFL and non-NFL events. The revenue and expenses related to the non-NFL events belong to the Stadium Authority.

The Lease revenue is primarily dedicated to the repayment of the debt incurred to build the stadium and then to provide for various reserve funds dedicated to capital maintenance and end of life expenses at the end of the lease. The Lease also provides for the possibility of performance rent to be paid to the City based upon the success of the management company in booking non-NFL events on behalf of the Stadium Authority.

Since the Stadium's opening in 2014, the Forty Niners have initiated both judicial and non-judicial litigation (i.e., arbitration proceedings) against the City and the Stadium Authority that have had adverse effects on the anticipated advantages of the City's agreement to locate the Forty Niners in a publicly financed stadium in Santa Clara. As demonstrated by the following report, all of the litigation between Santa Clara and the 49ers has been initiated by the 49ers.

The report also includes a brief description of lawsuits brought by third parties against the City and/or the Stadium Authority arising from an issue occurring at the stadium (for example, a class of disabled persons suing the Stadium Authority, alleging that the Stadium is not ADA-compliant).

It is often reported that there is a "feud" or a series of "tiffs" between Santa Clara and the 49ers. As a City Attorney who is also a Santa Clara resident I believe it is important for Santa Clara residents to understand that the series of disputes has been turned into litigation against our City by the 49ers. This level of litigation is an enormous drain on the City Attorney's Office that hinders our ability to provide legal services for the City for all of the municipal services that serve the residents and businesses other than the 49ers.

This report provides a brief description of each case and its status. Please note that this report does not address asserted claims that have not matured into actual litigation.

#### **DISCUSSION**

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**A. LITIGATION BETWEEN CITY/SA AND FORTY NINERS' ENTITIES*****Stadium Rent Arbitration***

Forty Niners initiated arbitration against SA after SA Board denied the team's rent adjustment calculation, which would have resulted in a \$170 million reduction in the rent they pay to use the Stadium facility.

The arbitrator (a retired judge) returned a decision ordering *an increase* in the annual rent the 49ers must pay to SA, resulting in a swing of approximately \$180 million when compared with what the team initially sought from the SA Board. Because SA prevailed in the arbitration, SA was also awarded the attorney's fees and costs it had expended in the litigation, approximately \$2.3 million.

***Public Safety Cost Arbitration***

Forty Niners initiated arbitration against SA alleging that they have overpaid public safety cost reimbursement under the Stadium Lease in the amount of approximately \$660,000 and demand that SA refund this amount, plus interest and attorney's fees. SA denies the allegations, and the arbitration will concern the legality, interpretation and proper calculation of the relevant Stadium Lease terms. This matter is still pending and will likely be litigated through 2020.

***Operation and Maintenance Expenses Arbitration***

Forty Niners initiated arbitration against SA alleging that SA failed to fulfill its contractual obligations under the Stadium Lease and Management Agreement by refusing to pay its share of operation and maintenance expenses, and by requiring Forty Niners to complete additional management tasks without appropriate payment therefor. SA denies the allegations and argues that Forty Niners failed to follow strict state and local law requirements in their management of the Stadium's affairs, which amounts to a failure to fulfill the team's obligations to SA. Due to the serious nature of these failures, SA was forced to take remedial action. This matter is still pending and will likely be litigated through 2020.

***Forty Niners v. Stadium Authority, Gillmor; Case No. 17CV304903***

Forty Niners filed a lawsuit in Santa Clara County Superior Court against SA and Mayor Gillmor alleging, essentially, that they have been wrongfully accused of failing to perform their contractual obligations and that SA improperly failed to provide required estoppel certificates. SA filed a cross-complaint alleging that the team has improperly withheld SA's records. 49ers voluntarily dismissed their lawsuit against SA and Mayor Gillmor, but SA's cross-claim continues to be litigated. This matter is still pending will likely be litigated through 2020.

***Forty Niners Stadium Company v. City of Santa Clara; Case No. 18CV326430***

Forty Niners filed a lawsuit in Santa Clara County Superior Court against City alleging that they have overpaid the City for use of the Santa Clara Golf Course for event parking in the amount of approximately \$1.05 million. City has filed a cross-complaint alleging that the City was underpaid approximately \$718,000. This matter is still pending and will likely be litigated through 2020.

**B. LITIGATION WITH THIRD PARTIES ARISING FROM THE STADIUM*****City of Santa Clara v. Bress, Santa Clara Plays Fair; Case No. 112CV217730***

The City filed a declaratory relief action (which is a request for the court to consider an issue of law, and to provide a declaration as to the application of that law to a factual scenario) requesting a

judicial determination as to whether or not the Stadium development agreement approval was subject to referendum. The Forty Niners were an interested party in the case and they filed a writ seeking a judgment that the approval was not subject to referendum. The Court agreed and granted the team's writ.

*Sharma v. SA, et al.*; Sacramento Superior Court Case No. 34-2013-80001396

The County of Santa Clara, through its Auditor-Controller Vinod Sharma, sued the City's former RDA, SOSA, Housing Authority and SA related to the dispute regarding the RDA winding down. The City and County have negotiated the terms of the wind down and disposal of assets. Technically the case is still pending, as the terms pertaining to non-Stadium-related parcels remain to be finalized.

*Patel v. City, SA, Forty Niners, et al.*; Case No. 115CV286138

Plaintiffs were assaulted by two alleged gang members in a bathroom at the Stadium during a football game. They sued City, SA, Forty Niners and the private security contractor, claiming that the design of the bathrooms was faulty and security measures at the entrance and at the bathrooms were inadequate. The City and SA successfully tendered defense and indemnity of this action to the team and the security contractor. Insurers for the team and the security contractor settled with the plaintiffs.

*Santa Clara Youth Soccer League v. City*; Case No. 15-CV-289572

Plaintiffs filed a writ petition to prevent the City from allowing the NFL to use the youth soccer facility. Plaintiff's petition for a preliminary injunction was denied in January 2016, the NFL was dismissed from the case in July 2016, and the City was dismissed in March 2017.

*Davis v. City of Santa Clara, et al.*; Case No. C15-05603 NC

Plaintiff, an attendee at a football game, became intoxicated and agitated, requiring police to arrest him. He alleges during that arrest, excessive force was used. The City maintained that the officer acted correctly, and City's Motion for Summary Judgment was granted. The case was dismissed by the Court.

*Maranon v. City, SA, et al.*; Case No. C15-04709 HRL

Plaintiff, a disabled attendee at a non-NFL event at the stadium, contends that his wheelchair became lodged in a drainage grate, which threw him from his chair, causing injury. He also claims other various ADA violations in and around the stadium site. The City and Stadium Authority successfully tendered defense and indemnity of this case to the Forty Niners. The case is still pending.

*Peters v. SA, et al.*; Case No. 116CV294924

Plaintiff filed a breach of contract and fraud action against SA and Legends Sales & Marketing LLC contending he has been unable and/or prevented from fully utilizing his seat licenses (plaintiff is a ticket broker and owns 69 SBLs) due to changed terms and method of ticketing. SA was able to obtain a dismissal of the case at an early stage with a planned Motion to Dismiss.

*Nevarez v. City of Santa Clara, et al.*; Case No. 5:16-cv-07013 HRL

Plaintiffs, a wheelchair-bound man and his wife, on behalf of a class of similarly situated stadium patrons, claim to be patrons of both NFL and non-NFL events. They allege that the configuration of the stadium, parking lots, public rights of way, and ticketing procedures, deny them "equal access" under the ADA and related laws. This matter has been successfully tendered to Forty Niners for

defense and indemnity. Turner Devcon has been brought into the case as a defendant, as well. A class was certified and the case is set for trial in late 2019.

*Mr. Ticket, Inc. v. SCSA, et al.*; Case No. CGC-17-556740

Plaintiff, a ticket broker who purchased multiple SBLs for Levi's Stadium, alleges that the manner in which the ticket system is operated for NFL games precludes Plaintiff from reaping the expected profits from his seat licenses. Forty Niners accepted our tender, and appointed counsel to represent SCSA. SCSA was subsequently dismissed from the case on demurrer.

*Flynn, Alcarez, et al., v. City, SA, Mtn. View, Gilroy, et al.*, Case No. 5:18-cv-07688 NC

Plaintiffs, intoxicated stadium patrons, resisted being ejected from a football game. In the course of gaining physical compliance, one of the plaintiffs fell over the railing and onto the field, taking a Santa Clara police officer with him. The plaintiffs claim they suffered minor injuries. Criminal charges are pending against one of the plaintiffs. Several officers were involved in the incident, including Special Events Officers ("double-badgers") regularly employed by other cities. The other cities (Mtn. View and Gilroy) have also been named as defendants along with all of the individual officers involved in the incident. Per our agreements with the other cities, Santa Clara will defend and indemnify the other cities. The City's motion to dismiss was granted as to the false arrest and free speech claims. Now only the excessive force claims remain, which will continue to be litigated.

*Weaver v. City of Santa Clara, Stadium Authority, et al.*, Case No. 19CV346749

Plaintiff claims that he witnessed a fight in the stands to which no security personnel responded and that, as a result, he was forced to follow the suspect himself, injuring his hip in the process. He sued various Forty Niners entities, various NFL entities, Landmark Event Staffing (private security contractor), City, SA, etc. The case was tendered on behalf of all of the City/SA entities to the Forty Niners for defense and indemnity, and the tender was accepted. Defense counsel was appointed by the team's insurance carrier, and counsel obtained a dismissal of the case.

## **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

## **FISCAL IMPACT**

This Report is for informational purposes only and does not seek Council/Board approval of any specific action that would have fiscal consequences.

## **COORDINATION**

This Report has been coordinated with the City Manager's Office.

## **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

**RECOMMENDATION**

Note and file Informational Report on Status of Litigation Matters Between the City/Stadium Authority and the Forty Niners, and Third-Party Litigation Matters Arising from the Stadium.

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