LYNNE C. HERMLE (STATE BAR NO. 99779)
lchermle@orrick.com
JOSEPH C. LIBURT (STATE BAR NO. 155507)
jliburt@orrick.com
DAVID A. LUCERO (STATE BAR NO. 253300)
dlucero@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, California 94025
Telephone: +1-650-614-7400
Facsimile: +1-650-614-7401

CHRISTINA GUEROLA SARCHIO (Pro Hac Vice)
csarchio@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street, N.W.
Washington, District of Columbia 20005
Telephone: +1-202-339-8400
Facsimile: +1-202-339-8500

JAMES W. QUINN (Pro Hac Vice)
james.quinn@weil.com
BRUCE S. MEYER (Pro Hac Vice)
bruce.meyer@weil.com
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: +1-212-310-8000
Facsimile: +1-212-310-8007

Attorneys for Defendant The National Basketball Players Association

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

G. WILLIAM HUNTER,

Plaintiff,

v.

DEREK FISHER, *et al.*,

Defendants.

Case No. RG13679736

DEFENDANT NBPA'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRERS TO COMPLAINT

Date: August 27, 2013
Time: 3:45 p.m.
Dept: 24
Reservation No.:
Judge: The Hon. Frank Roesch
Complaint Filed: May 16, 2013

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

I. INTRODUCTION

Any company in America would be well within its rights to terminate an employee who had failed to act consistent with his fiduciary duty. That this case involves a union or professional sports does not confer any unique legal rights on the employee sufficient to survive demurrers to his breach of contract/wrongful termination claims. To the contrary, since an executive director of a union is held to an even higher standard given the position of public trust he holds, any actions that compromise that trust demand termination.

Even more fundamentally, the proposed express employment contract that Plaintiff Billy Hunter ("Hunter") relies on was never formed because it was never approved, as required by the Constitution and By-Laws of Hunter's employer, the National Basketball Players Association ("NBPA" or "Union"). Consequently, any claims based on it fail as a matter of law.

Hunter also alleges an implied contract claim, but this also fails because every express contract he signed with the NBPA contained an express at-will provision, as did the proposed express contract upon which he bases his implied contract claim. It is black-letter law that an implied contract for cause cannot be inconsistent with an express at-will contract, nor can an implied contract for cause be based on a document that itself provides for at-will employment.

For this and other reasons discussed below, all four of Hunter's claims against the NBPA must be dismissed.

II. RELEVANT FACTUAL BACKGROUND

Hunter's Complaint alleges fourteen causes of action, but only asserts the first four against the NBPA: (1) breach of express contract, (2) breach of express contract by repudiation, (3) breach of implied contract, and (4) breach of the covenant of good faith and fair dealing. The Complaint makes the follow allegations relevant to these demurrers:

At issue in this lawsuit is that in 2010, Hunter and the NBPA executed an employment contract ("2010 alleged contract"), with Derek Fisher, the Union's President, signing on the NBPA's behalf. (Compl. ¶ 28.) The 2010 alleged contract expressly incorporates the NBPA's By-Laws (Compl. Exh. D at 1), which in turn requires the Executive Director's employment contract be "approved by two-thirds (2/3) of the combined total of all Board of Player

Representatives and Executive Committee members" (Klempner Decl., Exh. A, Art. V, § 1.).

Hunter had been initially hired in July 1996 by the NBPA to serve as its Executive Director. (Compl. ¶ 21; Compl. Exh. A.) In 1999 and again in 2005, Hunter and the NBPA extended Hunter's employment for an additional term. (Compl. ¶¶ 24, 26.) Each of these prior contracts similarly expressly incorporated the NBPA's By-Laws. (Compl. Exhs. A-C.). Hunter's 2010 alleged contract, however, was never approved. (Compl. ¶ 97.)

Moreover, each of Hunter's prior employment contracts contained an express at-will provision. (Compl. Exhs. A-C.) So too did the 2010 alleged contract. (Compl. Exh. D.)

In April 2012, and as a result of an investigation jointly initiated by the U.S. Attorney's Office for the Southern District of New York and the U.S. Department of Labor, the NBPA retained the law firm of Paul Weiss to respond to the government-issued subpoenas and conduct an internal investigation. (Compl. ¶ 84; Request for Judicial Notice ("RJN"); Hermle Decl., Exh. A, pp. 2-3.) On January 17, 2013, Paul Weiss issued its findings on its internal investigation (the "Report"). (Compl. ¶ 86; RJN; Hermle Decl., Exh. A.) The Report found, among other things, that Hunter acted inconsistently with his fiduciary duties to the union members. (RJN; Hermle Decl., Exh. A, pp. 3, 5-6, 32.)

III. LEGAL STANDARD

A civil complaint is intended to frame and limit the issues, and apprise the defendant of the basis upon which the plaintiff seeks recovery. *See Fuentes v. Tucker*, 31 Cal. 2d 1, 4 (1947); *Perkins v. Superior Court*, 117 Cal. App. 3d 1, 6 (1981). A complaint must be sufficiently clear to apprise the defendant of the alleged wrongs. *See Metzenbaum v. Metzenbaum*, 86 Cal. App. 2d 750, 753 (1948) (requiring "reasonable precision and [] sufficient clarity and particularity [so] that the defendant may be apprised of the nature, source and extent of his cause of action."); *Bernstein v. Piller*, 98 Cal. App. 2d 441, 443 (1950) (requiring "clearness and precision so that nothing is left to surmise"). While a demurrer assumes the truth of all properly pleaded material allegations, it does not assume the truth of "contentions, deductions or conclusions of fact or law." *Moore v. Regents of Univ. Cal.*, 51 Cal. 3d 120, 125 (1995).

Documents that are referenced in a complaint are subject to judicial notice and may be

considered on a demurrer. *Salvaty v. Falcon Cable Television*, 165 Cal. App. 3d 798, 800 n.1 (1985) (trial court properly took judicial notice of documents referenced in complaint in sustaining demurrer without leave to amend); *Swiss Park, Inc. v. City of Duarte*, 136 Cal. App. 3d 755, 758 (1982) (trial court properly took judicial notice of full document only partially quoted in complaint in sustaining demurrer without leave to amend); *Marina Tenants Ass'n v. Deauville Marine Dev. Co.*, 181 Cal. App. 3d 122, 130 (1986) (judicial notice of lease was appropriate because "the pleader cannot be allowed to bypass demurrer by suppressing facts which the court will judicially notice.").

IV. ARGUMENT

For the reasons set forth below, Hunter's four claims against the NBPA (First through Fourth Claims for Relief) fail to state a claim for relief and, accordingly, should be dismissed.

A. Hunter's First Claim for Relief (Breach of Express Contract) Should Be Dismissed Because the 2010 Alleged Contract Was Never Approved in Accordance with the Constitution and By-Laws

Hunter's First Claim for Relief for breach of the 2010 alleged contract fails for the simple reason that the contract was never approved and, therefore, never became an enforceable agreement. Where, as here, an organization's by-laws specifically require board approval of an agreement's terms and conditions, any contract prepared without that approval is without force and effect. *See Black v. Harrison Home Co.*, 155 Cal. 121, 127 (1909) (affirming judgment invalidating contract where the defendant corporation's by-laws required its president to secure board approval before entering into the contract); *see also Weisner v. 791 Park Ave. Corp.*, 6 N.Y.2d 426, 433-34 (N.Y. 1959) (concluding that purported contract was void because it was never approved by the company's board pursuant to the corporation's by-laws); *Cooper v. Anderson-Stokes, Inc.*, 571 A.2d 786, 1990 Del. LEXIS 47, *6 (Del. 1990) (holding no valid contract could exist "without full Board approval.").

Indeed, this has been the governing legal principle since at least 1880, when in *Yates v National Home*, 103 U.S. 675 (1880), the United States Supreme Court denied the plaintiff's claims for additional salary because the underlying contract governing such additional pay was never approved by the appropriate parties in accordance with his employer's by-laws. *See* 103

U.S. at 674.[1]

Hunter's claim rests on the enforceability of the 2010 alleged contract, which, by its terms, expressly incorporates the NBPA's Constitution and By-Laws, in their entirety, as part of the proposed agreement. (*See* Compl., Exh. D, ¶ 1 (providing that "the Constitution and By-Laws of the NBPA" are "incorporated herein by reference").)[2] The Constitution and By-Laws unambiguously prescribe the specific procedure required for the approval of each of the Executive Director's proposed employment contracts:

> [T]he appointment of an Executive Director, and the terms of his employment contract, must be approved by two-thirds (2/3) of the combined total of all Board of Player Representatives and Executive Committee members.

(RJN; Klempner Decl., Exh. A, Art. V, § 1.) By his own account, Hunter had actual notice of this requirement as early as 1996, long before the negotiation of the 2010 alleged contract. (*See* Compl. ¶ 22.)[3] Nonetheless, it is undisputed that Hunter's 2010 alleged contract was never approved by a supermajority of the Board of Player Representatives and Executive Committee. (*Compare id.* (alleging that the terms of Hunter's 1996 Employment Contract were approved by a supermajority of the NBPA's governing bodies), *with id.* ¶¶ 28-31, 98 (omitting any such allegation); *see also id.* ¶ 118 (relying upon the NBPA's alleged "assent" to the terms of the 2010

---

[1] There, as here, the policy concerns animating the rule are plain enough: "[t]he manifest object of the by-law in question was to remove from the officers of the asylum, charged with the immediate conduct of its affairs, all possible temptation to so manage the institution as to derive pecuniary advantage therefrom beyond their respective salaries or stated pay." *Yates*, 103 U.S. 676. In this case, the requirement of supermajority approval of the terms of an Executive Director's contract was on its face designed to ensure that the specific terms of any such contract receive careful scrutiny from the NBPA's governing bodies and that those bodies have an opportunity to operate as an effective check against inappropriate contractual terms. Nor is this a mere hypothetical concern. For the reasons stated below, the circumstances surrounding the negotiation of the Proposed Employment Contract provide an alternative ground for dismissal of Hunter's claims. (*See infra.* Part IV.C.)

[2] The Constitution and By-Laws are also incorporated into the Complaint itself. (*See* Compl. ¶ 6 (alleging that Hunter's rights are determined by reference to the Constitution and By-Laws; *see also id.* ¶¶ 22, 85.)

[3] An e-mail accompanying the Paul Weiss Report, itself referenced in the Complaint, further reveals that Hunter was reminded by outside counsel that the Proposed Employment Contract was never approved "as required by the prior By-Laws." (RJN; Hermle Decl., Exh.B.)

alleged contract by virtue of Fisher's signature and three prior contracts but not approval by supermajority).)

Because the 2010 alleged contract was never approved by the NBPA's Board of Player Representatives and Executive Committee, it never became an enforceable agreement. Absent an enforceable agreement, Hunter's First Claim for Relief must be dismissed.

B. Hunter's Second Claim for Relief (Breach of Express Contract By Repudiation) Should Be Dismissed Because It Is Superfluous and Otherwise Defective

Through his Second Claim for Relief, Hunter alleges that the NBPA breached the 2010 alleged contract by "expressly repudiating" the proposed agreement. (Compl. ¶ 112.) Specifically, Hunter contends that the NBPA repudiated the proposed agreement through its termination letter dated February 17, 2013 (*see id.* ¶ 96), in which the NPBA informed Hunter, among other things, that (1) it was terminating his at-will employment "effective immediately," and (2) the 2010 alleged contract "was not properly negotiated, executed, or approved" and was, therefore, "null, void, invalid, and unenforceable" (*id.*, Exh. E at 1).[4]

1. The Claim Is Duplicative of Hunter's First Claim for Relief and Thus Superfluous

Distilled to its essence, Hunter's claim for breach of express contract by repudiation claim rests on the same alleged wrong underlying Hunter's First Claim for Relief—*i.e.*, his discharge though the February 17, 2013 termination letter. Indeed, there is no independent cause of action for "breach of contract by repudiation." Rather, the concept of anticipatory repudiation merely permits the plaintiff to elect whether to treat the defendant's repudiation as a breach and immediately seek damages or, alternatively, wait and bring suit upon the defendant's eventual non-performance. *Taylor v. Johnston*, 15 Cal. 3d 130, 137 (1975); *see also Lucente v. Int'l Bus. Machs. Corp.*, 146 F. Supp. 2d 298, 317 n.5 (S.D.N.Y. 2001) ("Technically speaking, there is no cause of action for 'anticipatory breach of contract.' There is only a claim for breach of

[4] The termination letter further stated as follows: "Nonetheless, we note that there are grounds to terminate your employment 'for cause.' To the extent a tribunal in a future proceeding determines that the Proposed Employment Contract is enforceable, this letter shall be construed as notice of a 'for cause' termination pursuant to paragraph 6 of that Proposed Employment Contract." (Compl., Exh. E at 1.)

contract.") (applying New York law), *rev'd on other grounds*, 310 F.3d 243 (2d Cir. 2002). In other words, it is a concept that relates to the timing of a claim and the measurement of damages; it is not a stand-alone claim. Moreover, the concept has no meaningful relationship to the facts of this case for one simple reason: because the NBPA informed Hunter of his discharge and the NBPA's position regarding the invalidity of the 2010 alleged contract simultaneously through the February 17, 2013 termination letter,the timing of the claim and measurement of damages, if any, are identical. In short, the claim is one and the same. Hunter's claim for breach of express contract by repudiation is simply superfluous and should be dismissed as such.

2. **The Claim Must Fail Because the 2010 Alleged Contract Was Never Properly Approved and Because Hunter Affirmatively Elected to Treat the Contract as Still in Effect**

Even assuming, *arguendo*, that an independent claim for breach of contract by repudiation existed in the abstract, Hunter has failed to state a claim for relief in this specific case for at least two reasons.

First, as outlined above, the 2010 alleged contract was never properly approved in accordance with the NBPA's Constitution and By-Laws. (*See supra* Part III.A.) Without an enforceable contract, *ipso facto* there can be no repudiation.

Second, Hunter cannot rely on a theory of anticipatory repudiation because the concepts of anticipatory breach and actual breach are mutually exclusive, and Hunter affirmatively decided not to treat the February 17, 2013 termination letter as an anticipatory breach and instead adopted the (incorrect) position that the 2010 alleged contract remained valid and enforceable. On May 15, 2013—almost three months after the NBPA's alleged "repudiation"—Hunter sent the NPBA a notice, which is incorporated in the Complaint (*see* Compl. ¶ 30), in which he purported to "extend the term of [his] Contract of Employment for an additional year." (RJN; Hermle Decl., Exh. D at 1.) This election to treat the 2010 alleged contract as if it remained valid despite the February 17, 2013 termination letter precludes Hunter from now seeking relief under a theory of anticipatory breach. *See Taylor*, 15 Cal. 3d at 137 ("When a promisor repudiates a contract, the injured party faces an election of remedies: he can treat the repudiation as an anticipatory breach and immediately seek damages for breach of contract . . . or he can treat the repudiation as an

empty threat . . . and exercise his remedies for actual breach if a breach does in fact occur at such time."); *accord Inter-Power of New York Inc. v. Niagara Mohawk Power Corp.*, 259 A.D.2d 932, 934 (N.Y. 1999) (applying New York law); *see also Verus Pharms., Inc. v. Astrazeneca AB*, No. 09 Civ. 5660 BSJ, 2010 WL 3238965, at * 12 (S.D.N.Y. Aug. 16, 2010) (dismissing claim based on a theory of anticipatory breach where the plaintiff was simultaneously pursuing a claim for actual breach) (applying New York law), *aff'd*, 427 F. App'x 49 (2d Cir. 2011).

C. Hunter's Third Claim for Relief (Breach of Implied-in-Fact Contract) Should Be Dismissed Because it is Inconsistent with his At-Will Employment

Hunter attempts to put before the court both an express contract governing his employment, and an implied contract that allegedly existed between he and the Union wholly apart—and in contrast to—the written instrument he propounds. In addition to defying logic, this defies the law. Hunter's Third Claim is barred because "a contract may not be implied in fact from the conduct of the parties where it appears that they intended to be bound only by a formal written agreement." *Valentino v. Davis*, 270 A.D.2d 635, 638 (N.Y.A.D. 2000); *see also Julien Studley, Inc. v. N.Y. News, Inc.*, 70 N.Y.2d 628, 629 (N.Y. 1987) ("[a] contract cannot be implied *in fact* where the facts are inconsistent with its existence . . . or where there is an express contract covering the subject-matter involved."). "Indeed, there simply cannot exist a valid express contract on one hand and an implied contract on the other, each embracing the identical subject but requiring different results and treatment." *Tollefson v. Roman Catholic Bishop*, 219 Cal. App. 3d 843 (Cal. App. 4th Dist. 1990); *Wal-Noon Corp. v. Hill*, 45 Cal. App. 3d 605, 613 (Cal. App. 3d Dist. 1975) (same).

Hunter has attached to his Complaint four putative employment contracts, all of which contain an express at-will provision. (Compl. Exhs. A-D). Hunter does not allege that the NBPA's President Derek Fisher or the Union made any specific assurances of continued employment, nor does he allege that any representations were made that he could only be terminated for cause. Instead, he relies solely on the fact that he was offered contract "extensions" in 1999, 2005 and 2010 as evidence of implied assurances of continued employment. (*See* Compl., ¶¶ 116-118.) Each of these putative contracts, however, expressly

state that Hunter could be terminated without cause; *i.e.*, he was at-will. Hunter has not pled any facts alleging conduct that would supersede or otherwise alter the express at-will language in his contracts. Thus, there was no *actual mutual understanding* regarding the existence of an implied contract not to terminate except for good cause. *Guz v. Bechtel Nat'l, Inc.* 24 Cal. 4th 317, 337 (2000) ("[T]he issue is whether other evidence of the parties' conduct has a tendency in reason to demonstrate the existence of an *actual mutual understanding* on particular terms and conditions of employment."); Cal. Labor Code § 2922.

D. Hunter's Fourth Claim for Relief (Breach of the Implied Covenant of Good Faith and Fair Dealing) Should Be Dismissed as Superfluous

Through his Fourth Claim for Relief, Hunter alleges that the NBPA breached the implied covenant of good faith and fair dealing by discharging him prior to the term designated in the 2010 alleged contract. First, this claim fails because the alleged contract of which the implied covenant would be a term does not exist, therefore the covenant does not exist.

Second, the gravamen of this claim is indistinguishable from Hunter's First Claim for Relief alleging breach of express contract. (*Compare* Compl. ¶ 106 ("[T]he NBPA breached the Employment Contract by discharging Hunter before the end of his employment term under the Employment Contract and 2010 Extension[.]"), *with id.* ¶ 127 ("[T]he NBPA breached the Employment Contract by discharging Hunter before the end of his employment term under the Employment Contract and 2010 Extension[.]").) So styled, the claim is entirely superfluous and, as such, must be dismissed. *See Guz*, 24 Cal. 4th at 327("[W]here breach of an actual [contract] term is alleged, a separate implied covenant claim, based on the same breach, is superfluous."); *accord Permasteelisa, S.p.A. v. Lincolnshire Mgmt., Inc.*, 16 A.D.3d 352, 352 (N.Y.A.D. 2005) (applying New York law).[5]

[5] In any event, Hunter may not invoke the implied covenant of good faith and fair dealing to transform an at-will employment relationship into one requiring good cause for discharge. *See generally Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 698 n.39 (1988) ("[W]ith regard to an at-will employment relationship, breach of the implied covenant cannot logically be based on a claim that a discharge was made without good cause. If such an interpretation applied, then all at-will contracts would be transmuted into contracts requiring good cause for termination, and Labor code section 2922 would be eviscerated."); *Murphy v. Am. Home Prods. Corp.*, 58 N.Y.2d 293, 304-05 (N.Y. 1983) ("In the context of [at-will] employment it would be incongruous to say that an inference may be drawn that the employer impliedly agreed to a provision which would be destructive of his right of termination.") (applying New York law).

E. Hunter Missed the Contractual Deadline for Challenging the Propriety of his Termination Under the Terms of the 2010 Alleged Contract Upon Which He Relies

The gravamen of Hunter's Complaint is that the NBPA improperly terminated his alleged employment contract – the 2010 alleged contract. Under the express terms of the 2010 alleged contract, however, Hunter can no longer challenge the merits of that termination. Section 10 of the 2010 alleged contract mandates, "exclusively through arbitration," the resolution of any dispute "concerning the meaning, interpretation, application or enforcement" of the 2010 alleged contract. (Compl. Exh. D at § 10.) Moreover, disputes covered by this arbitration provision "include[], but [are] not limited to, a dispute concerning whether the Employer has 'cause' to discharge the Employee." (*Id.*) The 2010 alleged contract required Hunter to "make a timely request for arbitration i.e., within ninety (90) days from the date [he] knew . . . of the event which gives rise to the dispute." Importantly, Hunter agreed that "[a]bsent the filing of a timely request for arbitration, the action taken shall be deemed **final and binding** and **not subject to any further review**." (*Id.* (emphasis added).)

Here, the "action taken" was the termination of Hunter's employment with the NBPA, both because the 2010 alleged contract was never properly approved and for cause. Disputes concerning termination are clearly covered by the arbitration provision in the 2010 alleged contract, "including, but not limited to," termination disputes concerning whether the NBPA had cause to terminate Hunter. Hunter never filed any request for arbitration, and the ninety (90) day deadline is well past.[6] Therefore, under the express terms of the 2010 alleged contract upon which Hunter relies, Hunter's termination as Executive Director of the NBPA is "final and binding and not subject to any further review." (*Id.*) Thus, Hunter cannot maintain the majority of his claims in this case.

Hunter's claims against the NBPA – the First through Fourth Claims for Relief – all rely on the allegation that Hunter's termination as Executive Director was improper and therefore

[6] Hunter alleges in this complaint that the NBPA informed him of his termination in a February 17, 2013 letter. (*See* Compl. ¶¶ 96-99.) Accordingly, the ninety (90) day deadline passed on May 18, 2013.

resulted in a breach of the 2010 alleged contract. (*See* Compl. ¶¶ 102-129.) Because Hunter failed to make a timely request for arbitration, however, his termination is now "final, binding and not subject to any further review." (*Id.* at Exh. D § 10.) Thus, Hunter's claims against the NBPA – all for breach of contract – fail.

Hunter may attempt to rely on California Code of Civil Procedure § 1281.12 to argue that his filing of the complaint in the instant matter tolled the 90-day time limitation contained in the 2010 alleged contract. This position is unavailing. The 90-day time limitation contains two components: (i) a procedural requirement that Hunter file arbitration within 90 days and (ii) an effect on the parties' substantive rights under the contract should he fail to comply with the 90-day time period. Section 1281.12 provides that "the commencement of a civil action" within the time specified in an arbitration agreement "shall toll the applicable time limitations contained in the arbitration agreement . . . ." While this provision may toll the first component, the time under which Hunter can bring an arbitration, it should not alter the clear contractual intent of the parties contained in the second component that all actions taken by a party within the scope of the arbitration provision shall be deemed final and binding after 90 days if the grieving party has not filed a request for arbitration.

Indeed, this is consistent with the statutory history of Section 1281.12, which, as explained by the California Supreme Court, provides that the statue prevents "parties from being either forced to abide by arbitration agreements of dubious validity instead of seeking court evaluation, initiating costly and duplicative proceedings, or being unfairly deprived of any forum for resolution of the dispute." *Pearson Dental Supplies, Inc. v. Superior Court*, 48 Cal. 4th 665, 673 (2010).[7] There is no issue here concerning the validity of the arbitration agreement since Hunter is seeking to enforce the contract containing that agreement. Nor can Hunter complain that he would have to maintain duplicative proceedings or be deprived of any forum for resolution

[7] In *Pearson*, the time limitation at issue was much more akin to a traditional statute of limitations as it provided that failure to timely file arbitration mandated that "the claim shall be void and considered waived to the fullest extent allowed by law." *Pearson*, 48 Cal. 4th at 673. Here, the 90-day time period does not focus on a procedural waiver of the claim, but rather mandates the finality of the "action taken" by one of the parties.

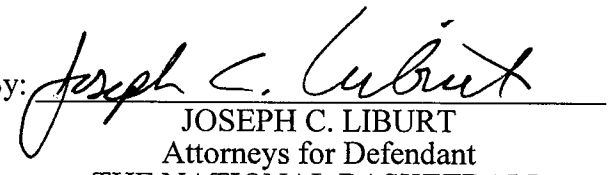
of the dispute. If Section 1281.12 tolls the 90-day period for purposes of instituting arbitration, Hunter can still bring a claim in the arbitral forum. Hunter should not, however, be allowed to flaunt the clear contractual intent to file arbitration within 90 days or allow the action he seeks to challenge to become "final and binding and not subject to any further review."[8]

V. CONCLUSION

Hunter fails to state a claim upon which relief can be granted against the NBPA, and his four causes of action against the NBPA must therefore be dismissed.

Dated: July 1, 2013

LYNNE C. HERMLE
CHRISTINA GUEROLA SARCHIO
JOSEPH C. LIBURT
DAVID A. LUCERO
Orrick, Herrington & Sutcliffe LLP

By: 
JOSEPH C. LIBURT
Attorneys for Defendant
THE NATIONAL BASKETBALL
PLAYERS ASSOCIATION

[8] The claims brought against the NBPA are subject to the arbitration provision in the 2010 alleged contract Hunter is seeking to enforce, if the Court determines that the 2010 alleged contract was formed. Accordingly, if the Court does not outright dismiss these claims pursuant to this Demurrer or the accompanying Anti-SLAPP motion, the NBPA reserves it right to seek arbitration of this dispute.