CIRCUIT COURT OF ST. LOUIS CITY, MISSOURI
TWENTY-SECOND JUDICIAL CIRCUIT

ST. LOUIS REGIONAL CONVENTION AND SPORTS COMPLEX AUTHORITY, *et al.*, Plaintiffs, v. NATIONAL FOOTBALL LEAGUE, *et al.*, Defendants.	Cause No.: 1722 CC00976 Div. No. 21

MEMORANDUM IN SUPPORT OF DEFENDANTS THE RAMS AND E. STANLEY KROENKE'S APPLICATION TO COMPEL ARBITRATION OF ALL COUNTS

INTRODUCTION

In 1995, the Rams left Los Angeles because of an inadequate stadium. They moved to St. Louis, which had just lost an NFL team because of an inadequate stadium. To avoid repeating those experiences, the Rams and St. Louis officials entered into a detailed relocation agreement and "agreed to certain team-friendly lease terms." Pet. ¶24. Those terms included a promise by the St. Louis officials that the Rams would receive a first-tier stadium—or could relocate if they did not. More important for purposes of this motion, the parties also agreed to broad arbitration clauses providing that any "claim arising out of, in connection with, or in relation to the interpretation, performance or breach of" the relocation agreement or lease "shall be settled by arbitration." Ex. A (Relocation Agreement) §8.10; Ex. B (Amended and Restated Lease) §25.

Ultimately, St. Louis did not maintain the venue as a first-tier stadium. Plaintiffs "concluded it would not be prudent to implement the [stadium] improvements" that a binding arbitration found would be necessary to satisfy the first-tier stadium promise, and so the Rams

exercised their right to relocate. More than a year later, plaintiffs brought this lawsuit to recover damages from the Rams (and dozens of other defendants, including the NFL) for alleged contract, quasi-contract, and tort violations related to the relocation. All of those claims necessarily arise "out of, in connection with, or in relation to the interpretation, performance or breach of" the relocation agreement and lease, which contain the parties' "entire agreement" and provide the Rams' relocation right that underlies all of plaintiffs' claims. Ex. A §§8.5, 8.10, 8.12; Ex. B §§21, 25. Under the plain terms of the parties' bargain, the claims "shall be settled by arbitration." Ex. A §8.10; Ex. B §25.

STATEMENT OF FACTS

A. The History of the NFL in St. Louis

The Chicago Cardinals, an original member of the NFL, moved to St. Louis in 1960. After a quarter-century in which the Cardinals struggled to fill Busch Stadium (which it shared with the St. Louis Cardinals baseball team), the Cardinals sought a new stadium. Despite extensive negotiations with St. Louis officials, no stadium deal materialized, and the Cardinals relocated to Arizona in 1988. *See* Ex. C (Appendix 1 to Rams' Relocation Application) at 4; *St. Louis Convention & Visitors Comm'n (CVC) v. NFL*, 154 F.3d 851, 852 (8th Cir. 1998).

Hoping to win an expansion team, St. Louis decided to build a new football stadium—with no tenant. Initially called the Trans World Dome and later renamed the Edward Jones Dome, the stadium was constructed with approximately $250 million in public funds managed by the Regional Convention and Sports Complex Authority ("RSA"), which owns the stadium. *CVC*, 154 F.3d at 853. The rights to lease the new stadium were assigned to the St. Louis Convention & Visitors Commission ("CVC"), a government-controlled body whose members are appointed by the St. Louis mayor and county executive. §67.601, RSMo; Ex. D (Operating Lease) at 1.

Although St. Louis built the stadium, it failed to secure an expansion team. "Problems associated with control over the [stadium] lease and the potential ownership group caused St. Louis to be passed over in the NFL's expansion voting." *CVC*, 154 F.3d at 853. With an empty stadium to fill, city leaders turned "their attention toward attracting an existing team." *Id.*

B. The Rams Move to St. Louis

Meanwhile, in Southern California, the Los Angeles Rams were playing in "one of the worst sports facilities in the country." Ex. C at 4; Ex. E (L.A. Times, *Newer Stadiums Leave Anaheim in the Dust*, July 17, 1994). Negotiations between the Rams and local officials over a new stadium had broken down, and the Rams were exploring a move. *Id.* St. Louis officials approached the Rams about filling the new stadium in St. Louis. *CVC*, 154 F.3d at 853. What followed was a careful negotiation culminating in detailed agreements governing the Rams' tenure in St. Louis. Given the parties' experiences, the agreements focused largely on the quality of the stadium. And given the need for St. Louis to fill its empty dome, the Rams were able to secure a good bargain. *See* Pet. ¶24 (plaintiffs "agreed to certain team-friendly lease terms").

1. The Relocation Agreement

The "NFL Franchise Relocation Agreement"—signed by the Rams, the CVC, and the RSA, with the City and County named as "Sponsors"—structures the relationship between the Rams and the St. Louis entities. Ex. A at 1. The relocation agreement references and includes as exhibits more than a dozen separate contracts defining the parties' rights and responsibilities on various issues, including the stadium lease and annexes (discussed below). *Id.* §§5.1-5.17. All of those contracts are fully integrated as "the entire agreement between the parties" and could "be amended, modified, or supplemented only" by written agreement. *Id.* §§8.5, 8.12. Critical for purposes of this motion, the relocation agreement incorporates the broad arbitration clause in Section 25 of the stadium lease. *Id.* §8.10.

2. The Lease and the First-Tier Stadium Standard

The centerpiece of the parties' agreements was the stadium lease, captioned the "Amended and Restated Lease" (Ex. B), which incorporates multiple annexes and covers numerous aspects of stadium operations, from access rights and rent to seating and maintenance. The most critical provision of the lease—one to which the parties devoted "an enormous amount of time and attention … negotiating" (Ex. F (Initial Arbitration Award) at 9)—is the "first-tier" stadium standard. Under the first-tier stadium standard, which is elaborated in Annex 1 to the lease, the parties agreed that

> The Facilities, taken as a whole, and each Component of the Facilities, respectively taken as a whole, are to be "First Tier" on March 1, 2005 and March 1, 2015. To be "First Tier" at those dates, the Facilities, taken as a whole, and each Component of the Facilities, respectively taken as a whole, must be among the "top" twenty-five percent (25%) of all NFL football stadia and NFL football facilities, if such NFL football stadia and facilities were to be rated or ranked according to the matter sought to be measured. It is acknowledged and agreed by the parties hereto that to meet this First Tier standard at such times may require upgrades, alterations, additions and improvements, including without limitation additional construction to the Facilities, any or all of the Components and any or all part(s).

Ex. G (Annex 1) §1.3.1. Because there are 32 NFL teams, the "top 25%" requirement meant the Rams' stadium had to be in the top 8, both as a whole and with respect to each of 15 enumerated components, such as stadium lighting, seating, concessions, and the playing field. *Id.* §1.1.1.

Critically, the lease provided the Rams with just one remedy for a breach of the first-tier stadium standard: the option to convert the lease's 30-year term to an annual tenancy and "to relocate … as of the end of any year of the lease period." Ex. B §16(e)(i). This relocation remedy, which, as the arbitrators found, was "laboriously negotiated," reflected the Rams' determination to avoid repeating their experience in Anaheim and the football Cardinals' experience in St. Louis. Ex. F at 9. The relocation remedy also made sense for St. Louis. The RSA worried from the outset that it might not be able to afford a first-tier stadium, and it preferred *not* to commit in advance to

funding any necessary upgrades. Ex. C at 8; Ex. H (Fax from Fred Berger to Milt Hyman). The parties agreed that any dispute over performance of the first-tier standard—like all disputes about the lease—would be settled through arbitration. Ex. G §1.4.

3. The Arbitration Clause in Section 25 of the Lease

Section 25 of the lease contained a broad arbitration clause providing that

> Any controversy, dispute or claim between or among any of the parties hereto (and/or any of those consenting hereto pursuant to the Consents to Assignment (other than the City, County, or SLMFC, which may only bring an action or against which an action may only be brought in United States Federal District Court for the Eastern District of Missouri, with the right to jury waived)) to this Amended Lease, related to this Amended Lease, including, without limitation, any claim arising out of, in connection with, or in relation to the interpretation, performance or breach of this Amended Lease … shall be settled by arbitration.

Ex. B §25. The arbitration clause's reference to "those consenting" to the lease "pursuant to the Consents to Assignment" included the City, County, and RSA, which all signed "Consents to Assignment" affirming their consent to the "terms and conditions set forth" in the lease. Ex. I (Assignment and Assumption Agreement (and Consents Thereto)) at 10 ¶1, 12 ¶1, 14 ¶1. The arbitration clause is also expressly incorporated into the relocation agreement, Annex 1 to the lease, and the Second Amendment to the lease—*all of which the RSA signed*. Ex. A §8.10; Ex. G §5.1; Ex. J (Second Amendment to Annex 1) §3.M. Plaintiffs' execution of all these agreements was critical to the Rams; the lease states expressly that the Rams would not have "relocate[d] to St. Louis in the absence of" these promises by the City, County, and RSA. Ex. B at 4.

C. Negotiations Pursuant to the First-Tier Stadium Standard

As set forth in the lease, the Rams' stadium would first be measured for compliance with the first-tier stadium standard in 2005. In 2002, the Rams and the CVC began discussing the steps necessary to meet that deadline. After several years of deadlock, the parties agreed to extend the

deadline to 2007, then to waive the deadline in return for approximately $30 million in improvements funded by the CVC and the RSA. Ex. J §3.J.

1. The 2012 Negotiations and Arbitration

To avoid a repeat of the 2005 deadlock, the Rams, the CVC, and the RSA agreed to a detailed mechanism for addressing the first-tier requirement ahead of the next measurement deadline in 2015. Ex. J at §§3.E-G. The CVC agreed to deliver plans on February 1, 2012, that it "reasonably believe[d] would improve" the stadium to first-tier status by 2015, along with "a financial plan" the CVC "believe[d], in good faith" could be implemented to satisfy the requirement. *Id.* §3.E. The Rams could accept the CVC's plans, in which case the CVC had to implement them, or else the Rams could propose their own, alternative plans by June 1, 2012. *Id.* §3.F. The CVC would then have the option to implement the Rams' plans or reject them, in which case both plans would be submitted to an independent arbitration panel. *Id.* §3.I. The arbitrators' decision would be final and binding. *Id.* The CVC, the RSA, and the Sponsors could then decide whether to implement those plans—or instead allow the Rams to exercise their contractual right to relocate.

As the 2012 plan deadline approached, it was well-understood in St. Louis that creating a first-tier stadium would require a significant monetary investment—perhaps "[o]ne in which the cost could hit 10 figures." Ex. K (St. Louis Post-Dispatch, *New Venues Put City on Notice for Keeping Rams*, May 30, 2008). Remarkably, however, just a week before the deadline, the CVC approached the Rams and proposed a concededly "non first-tier" alternative in which the CVC would spend $48 million to build a new parking structure and other minor stadium improvements in return for another waiver of the first-tier requirement. Ex. L (Term Sheet for CVC's Alternative (Not First-Tier) Proposal to the Rams). The CVC also proposed *shortening* the Rams' lease by five years, moving the end date from 2025 to 2020. *Id.* The Rams rejected both proposals.

A week later, the CVC submitted its purported "first-tier plan." The CVC proposal did not change the size of the dome, called for only $124 million in improvements, and stated that the Rams would have to cover more than half that cost—a suggestion squarely foreclosed by the requirement that the CVC submit a financial plan that "can be implemented *by the CVC and/or the [RSA] or presented to the Sponsors and implemented by such Sponsors*." Ex. J §3.E (emphasis added). The Rams rejected the proposal.

On May 1, 2012, the Rams submitted their plan to improve the stadium to first-tier status. The Rams' plans were developed by the same firm that designed Lucas Oil Stadium in Indianapolis and AT&T Stadium in Dallas, and the plans were based on data from all 31 other NFL stadiums. To respect St. Louis' limited financial resources, the Rams asked for the minimum required under the lease—a stadium that placed eighth in the NFL. The proposed cost was almost $250 million less than Lucas Oil Stadium in Indianapolis, a similar Midwestern market. Ex. C at 20-21. The CVC rejected the Rams' plans.

On June 15, 2012, the Rams and the CVC filed arbitration demands, as required by their contract. The Rams also asked the arbitration panel for a summary, pre-hearing ruling addressing the CVC's proposal that the Rams provide funding for the stadium upgrades. Relying on the plain language of the parties' contracts, the arbitrators granted the Rams' motion. The panel concluded that "the lease clearly places the obligation to pay" for upgrades to meet the first-tier standard "on CVC"—and not in any part on the Rams. Ex. M (Order on Rams Mot. to Strike) at 5.

Essentially conceding that its earlier proposal was inadequate, the CVC submitted revised "first-tier" stadium plans in August and November 2012. These revised plans barely improved the prior ones. Most important, they retained the same size and structure of the dome, committed to a

much smaller investment than recent upgrades at other NFL stadiums, and insisted—even *after* the arbitration ruling to the contrary—that the Rams pay more than half the costs. Ex. C at 23-24.

The arbitration took place in January 2013. On February 1, 2013, the independent panel issued a unanimous decision that the "RAMS 2012 Plans will produce a First Tier Stadium and that the CVC 2012 Plans will not." Ex. F at 6. The panel emphasized that the stadium's deficiencies arose "principally because of the small footprint on which the Dome is built … the smallest in the NFL." *Id.*

2. The 2013-2014 Period of Silence

As noted, the lease and its amendments gave the CVC and the RSA the option either to implement the plans approved by the arbitrators or to allow the Rams to exercise their contractual rights to convert the lease to an annual tenancy and explore relocation. Ex. B §16(e)(i); Ex. J §3.M. In July 2013, City officials made their choice. The RSA advised the Rams that the lease Sponsors—*i.e.*, the RSA, the City and the County—had concluded "it would not be prudent to implement the Edward Jones Dome improvements suggested in the arbitrators' March 20, 2013, Final Award." Ex. N (Letter from James F. Shrewsbury to Kevin Demoff); *see also* Ex. O (Letter from Kathleen M. Ratcliff to Kevin Demoff). "Consequently," the CVC informed the Rams the same day, "the CVC is not in a position to commit to the St. Louis Rams." *Id.* at 1. The Rams heard nothing further from St. Louis officials about the stadium for the next 16 months, until November 2014. During that time, Rams' owner Stan Kroenke acquired property in Inglewood, California (first a 60-acre tract and later the acreage for the stadium site), and the Rams began to explore the possibility of exercising their contractual right to relocate.

3. The "Task Force"

In November 2014—some 20 months after the arbitration, and 16 months after the Rams were told that St. Louis was unwilling to "commit" to them—Missouri Governor Jay Nixon

announced the formation of a two-man "task force" to devise a stadium plan to keep the Rams in St. Louis. Although the Rams' rights to convert the lease and relocate had already been triggered by the RSA and the CVC's decision not to implement the first-tier plans approved by the arbitrators, the Rams nevertheless attended every task force meeting they were invited to attend. Ex. C at 29. The new proposals, however, were little better than the old. The task force architects presented a plan for a stadium on the same size footprint as the Jones Dome—exactly what the arbitrators had called "principally" the obstacle to the stadium achieving first-tier status. Ex. F at 6. Even more remarkable, the task force proposed that the Rams and the NFL foot more than half the bill for the new stadium—even though the arbitrators had concluded that the contractual obligation to pay for a first-tier stadium fell to the CVC, the RSA, and the Sponsors.

The task force's proposal for even limited public funding to build a new stadium soon collapsed. A bipartisan group of Missouri legislators sued to block the task force's construction plan as violating Missouri law. *See* Ex. P (Petition, *Schaaf v. Nixon*, No. 15AC-CC00239 (Cole Cty. Cir. Ct.)). The President Pro Tem of the Missouri Senate wrote a letter to the mayor, the governor, and the NFL commissioner calling it "speculative at best" to rely on the proposed public funding stream. Ex. Q (Letter from Sen. Ron Richard to Hon. Francis G. Slay) at 2. And three-quarters of the Missouri General Assembly went on record opposing the task force's proposal to fund the stadium. *See* Ex. R (Kansas City Star, *Fight Over St. Louis Football Stadium Is a Billion-Dollar Game of Chicken*, Dec. 11, 2015). In short, the contractually agreed-to price for a first-tier stadium—as determined by independent arbitrators—was a price St. Louis officials chose not to pay.

D. The Rams Exercise Their Contractual Right to Relocate

On January 26, 2015, the Rams exercised their contractual right to convert the lease to an annual tenancy. Although they continued to meet regularly and in good faith with the task force,

the Rams also met with the NFL about the possibility of moving to Los Angeles. In early 2016, the Rams submitted a relocation application thoroughly documenting their contractual right to leave St. Louis, their compliance with the NFL's relocation guidelines, and the benefits to the league of the Rams' return to Los Angeles. Ex. C; Ex. S. NFL Commissioner Goodell submitted the application to the NFL member clubs, and on January 12, 2016, the member clubs approved the Rams' relocation application by more than the required three-quarters majority. Two weeks later, the Rams terminated their lease and moved to Los Angeles.

E. This Lawsuit

On April 12, 2017, the RSA, the City, and the County sued the Rams and their owner, Stan Kroenke, along with the NFL, all NFL teams, and all NFL owners. The petition states five counts, all of which arise from the Rams' exercise of their contractual right to relocate the team—a right the parties here "laboriously negotiated" when the Rams moved to St. Louis more than 20 years ago. Ex. F at 9; Pet. ¶24.

ARGUMENT

The Rams' relocation agreement and lease include broad arbitration clauses that, under settled state and federal law, require arbitration of any claim that touches on or requires reference to the lease. Although none of plaintiffs' counts states a claim, each touches on or requires reference to the lease and should therefore be compelled to arbitration. Arbitration applies to all plaintiffs, based on both the text of the arbitration clause and the intent of the parties. Finally, Mr. Kroenke, the Rams' owner and a defendant who did not sign the lease, should be permitted to enforce the arbitration clause based on agency principles and because plaintiffs' claims do not distinguish between him and the Rams.

I. UNDER THE LEASE'S BROAD ARBITRATION CLAUSE, THE COURT MUST COMPEL ARBITRATION OF ANY DISPUTE THAT TOUCHES ON THE LEASE.

Under Missouri law, a party may move to compel arbitration of "any existing controversy" governed by a written arbitration agreement. §§435.350, 435.355, RSMo. When the arbitration agreement appears in a contract affecting interstate commerce, the Federal Arbitration Act ("FAA"), 9 U.S.C. §1 *et seq.*, "governs the applicability and enforceability of" the arbitration clause. *State ex rel. Hewitt v. Kerr*, 461 S.W.3d 798, 805 (Mo. banc 2015). The Missouri Supreme Court has expressly determined that "the Rams operate in interstate commerce," *id.*, so the arbitration clause in the Rams' lease is governed by the FAA, which requires a "strong presumption in favor of arbitrability." *Ruhl v. Lee's Summit Honda*, 322 S.W.3d 136, 139 (Mo. banc 2010).

In determining whether a claim is covered by an arbitration clause, "the circuit court first must decide whether the arbitration clause is narrow or broad." *Kansas City Urology, P.A. v. United Healthcare Servs.*, 261 S.W.3d 7, 11 (Mo. App. W.D. 2008). "A broad arbitration provision covers all disputes arising out of a contract to arbitrate; a narrow provision limits arbitration to specific types of disputes." *Dunn Indus. Grp., Inc. v. City of Sugar Creek*, 112 S.W.3d 421, 428 (Mo. banc 2003). Here, Section 25 of the lease requires arbitration of "[a]ny controversy, dispute or claim between or among any of the parties hereto … related to this Amended Lease, including, without limitation, any claim arising out of, in connection with, or in relation to the interpretation, performance or breach of this Amended Lease." Ex. B. It is thus the paradigmatic "broad" arbitration clause that "covers all disputes arising out of a contract to arbitrate." *Dunn*, 112 S.W.3d at 428; *see, e.g., Kansas City Urology*, 261 S.W.3d at 12 (finding arbitration clause that covered any "dispute … relating to or arising from this Agreement" to be broad); *Midland Prop. Partners, LLC v. Watkins*, 416 S.W.3d 805, 817 (Mo. App. W.D. 2013) (similar).

Because the lease arbitration clause is broad, the "trial court should order arbitration of any dispute that 'touches matters covered by the parties' contract.'" *Ruhl*, 322 S.W.3d at 139; *accord PRM Energy Systems, Inc. v. Primenergy, L.L.C.*, 592 F.3d 830, 837 (8th Cir. 2010) ("Arbitration may be compelled under a broad arbitration clause … as long as the underlying factual allegations simply touch matters covered by the arbitration provision."). Put differently, arbitration is mandatory so long as the claim "requires reference to or construction of some part of the [c]ontract." *Estate of Athon v. Conseco Fin. Servicing Corp.*, 88 S.W.3d 26, 30 (Mo. App. W.D. 2002). That standard is deliberately easy to meet. A motion "to arbitrate [a] particular grievance should not be denied unless it may be said *with positive assurance* that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986) (emphasis added); *see Dunn*, 112 S.W.3d at 429 ("only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail"). Indeed, "a court can even compel the parties to arbitrate the question of whether a controversy relates to an agreement with a broad arbitration clause." *Senda v. Xspedius Commc'ns, LLC*, No. 06-cv-1626, 2007 WL 781786, at *2 (E.D. Mo. Mar. 13, 2007). "Doubts should be resolved in favor of coverage." *AT&T*, 475 U.S. at 650; *see Dunn*, 112 S.W.3d at 429.

II. ALL COUNTS FALL WITHIN THE SCOPE OF THE LEASE'S BROAD ARBITRATION CLAUSE.

A motion to compel arbitration of multiple claims is assessed on a claim-by-claim basis. "[I]f a dispute presents multiple claims, some arbitrable and some not, the former must be sent to arbitration even if this will lead to piecemeal litigation." *KPMG LLP v. Cocchi*, 565 U.S. 18, 19 (2011). Here, each of the counts falls within the scope of the broad arbitration clauses found in the relocation agreement and the lease because each arises "out of, in connection with, or in relation to the interpretation, performance or breach of" the contracts. Ex. B §25. Put differently, each of

the claims "touches matters covered by" or "requires reference to … some portion of the parties' contract." *Ruhl*, 322 S.W.3d at 139; *Estate of Athon*, 88 S.W.3d at 30. At the very least, it cannot "be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute[s]"—which alone is sufficient to compel arbitration of all five counts in the petition. *AT&T*, 475 U.S. at 650.

A. Count I (Breach of Contract) Falls Within the Scope of the Lease's Broad Arbitration Clause.

Count I of the petition alleges that defendants breached the NFL relocation policy, which plaintiffs allege "is a binding, enforceable contract." Pet. ¶47. Even assuming the policy is an enforceable contract (which it is not), plaintiffs' allegations arise "out of, in connection with, or in relation to the interpretation, performance or breach of" the lease and related contracts. Ex. B §25. Arbitration is therefore required.

Plaintiffs' overarching theory in Count I is that they "relied on the [NFL Relocation] Policy's obligations and standards in structuring their relationship with the Rams." Pet. ¶55. But that theory fails at the starting gate, because plaintiffs and the Rams actually structured their relationship around a fully-integrated "NFL Franchise Relocation Agreement" that "*contain[ed] the entire agreement* between the parties," after the issuance of the NFL relocation policy, and *never once mentioned it.* Ex. A §8.5 (emphasis added). The relocation agreement's merger and integration clause supersedes any alleged agreement or claimed understanding by the City, the County, or the RSA with respect to the NFL relocation policy and independently bars Count I. Resolution of Count I therefore necessarily requires "reference to or construction of" the relocation agreement, *Estate of Athon*, 88 S.W.3d at 30, and thus it must be arbitrated. *See* Ex. B §25 (requiring arbitration of any dispute "in relation to the interpretation" of the agreement); Ex. A §8.10 (incorporating lease arbitration clause).

Moreover, as plaintiffs themselves allege several times, the NFL relocation policy requires teams to "work diligently and in good faith to maintain suitable stadium facilities in their home territories." Pet. Ex. A (NFL Relocation Policy) §A, ¶1; Pet. ¶¶15, 22, 49. Any assessment of the Rams' compliance with the NFL relocation policy will necessarily touch on or require reference to matters covered by the lease and its amendments. Plaintiffs' allegation that the Rams failed to "work diligently and in good faith to maintain suitable stadium facilities," Pet. ¶49, would necessarily focus heavily on the first-tier stadium promise, the rights and remedies under the lease, and the multi-year process of upgrade planning, negotiation, and arbitration expressly outlined in the lease and its amendments. Ex. B §16(e); Ex. G §1.3; Ex. J §3. The Court could not reasonably assess, for example, the legal effect of the "hundreds of millions of dollars to attract and retain an NFL Team" that plaintiffs allege they spent "[d]uring the past twenty years," Pet. ¶51, without referring to the lease and amendments that were in force during that same twenty-year period. Those lease terms and amendments governed virtually all aspects of "maintain[ing] suitable stadium facilities," Pet. Ex. A §A, ¶1, and gave the Rams the express right to relocate if they were not provided a first-tier stadium, Ex. B §16(e); Ex. J §3.M.

Indeed, the need for "suitable stadium facilities" was the driving purpose behind the Rams' relocation to St. Louis. For this reason, the lease is filled with detailed provisions directly addressing that objective and thereby presenting arbitrable issues. *See, e.g.*, Ex. B §6 (governing "stadium seats," "concourses and amenities," and "box suites"); Ex. G ("Facilities Status, Management Maintenance, and Repair"); Ex. J §§3.J, 3.L (improvements to playing field and conversion to club seats). To take just one example, plaintiffs allege that they "agreed to and did install a new playing surface" in the stadium. Pet. ¶23. By definition, that allegation arises "in relation to the … performance or breach of" the Second Amendment to Annex 1 (Ex. J), which

includes an entire section about improving the playing surface (Section J), and therefore falls squarely within the scope of the arbitration clause. Clearly, any assessment of plaintiffs' effort to maintain "suitable stadium facilities" in St. Louis, Pet. Ex. A §A, ¶1, would start with the contracts setting forth the parties' own assessment of what that standard would require.

Independently, numerous other provisions in the NFL relocation policy implicate the lease and thus trigger arbitration of plaintiffs' breach claim. In addition to advocating that teams "work diligently and in good faith to maintain suitable stadium facilities," *id.*, the NFL relocation policy also suggests consideration of the "adequacy of the stadium in which the club played its home games" and "the willingness of the stadium authority or the community to remedy any deficiencies," *id.* §C, ¶3—considerations that would implicate many of the same lease and amendment provisions discussed above. And perhaps clearest of all, the NFL relocation policy bars a team from relocating if doing so "would result in a breach of the club's current stadium lease," *id.* §D, ¶1, a provision that on its face mandates "reference to or construction of" the lease and accordingly requires arbitration. *Estate of Athon*, 88 S.W.3d at 30.

In sum, myriad aspects of plaintiffs' claim that the Rams breached the NFL relocation policy arise "out of, in connection with, or in relation to the interpretation, performance or breach of" the lease and related contracts. Ex. B §25. Indeed, at bottom, Count I seeks damages for the way the Rams exercised their right to relocate after plaintiffs decided not to do what the arbitrators found necessary to comply with the lease's first-tier stadium standard. Resolving that core allegation not only "touches on" and "requires reference to" the lease and its amendments, but is *controlled* by the lease and its amendments. *Ruhl*, 322 S.W.3d at 139; *Estate of Athon*, 88 S.W.3d at 30. That is far more than enough to show that Count I requires arbitration. *See, e.g.*, *Dunn*, 112 S.W.3d at 429.

B. Count II (Unjust Enrichment) Falls Within the Scope of the Lease's Broad Arbitration Clause.

Count II of the petition alleges the Rams defendants unjustly enriched themselves at plaintiffs' expense. Pet. ¶¶59-72. In particular, plaintiffs contend that the Rams and their owner increased the value of the franchise by moving to Los Angeles, which they allege "wrongfully depriv[ed] Plaintiffs of the opportunity to retain the Rams in St. Louis." Pet. ¶63. Under Missouri law, an unjust enrichment claim "requires a showing that: (1) the plaintiff conferred a benefit on the defendant; (2) the defendant appreciated the benefit; and (3) the defendant accepted and retained the benefit under inequitable and/or unjust circumstances." *Binkley v. Am. Equity Mortg., Inc.*, 447 S.W.3d 194, 199 (Mo. banc 2014).

Like the breach-of-contract claims in Count I, the unjust enrichment claims in Count II must be arbitrated. In applying the FAA, a court's "task is to look past the labels the parties attach to their claims to the underlying factual allegations and determine whether they fall within the scope of the arbitration clause." *3M Co. v. Amtex Sec., Inc.*, 542 F.3d 1193, 1199 (8th Cir. 2008) (affirming decision to compel arbitration of unjust enrichment claim). A court must compel arbitration of an unjust enrichment claim "as long as the underlying factual allegations simply 'touch matters covered by' the arbitration provision." *Id.* (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 n.13 (1985)); *see Gore v. Alltel Commc'ns, LLC*, 666 F.3d 1027, 1035-36 (7th Cir. 2012) (arbitration required for unjust enrichment claim where it is at least "tangentially related to the agreement" with the arbitration clause).

Under that standard, virtually every allegation in Count II presents an arbitrable issue. First, plaintiffs in their own words allege that the benefits conferred upon the Rams included "use of a publicly-funded stadium under team-friendly terms, and stadium upgrades made throughout the team's tenure in St. Louis." Pet. ¶66. Those alleged benefits squarely implicate the

"interpretation, performance or breach of" the lease, Ex. B §25; indeed, it is hard to imagine anything that would more clearly require reference to the lease than an alleged benefit of the "use of a publicly-funded stadium under team-friendly terms," Pet. ¶66. The whole point of the lease is to provide the Rams with "use of a publicly-funded stadium" and establish the terms of its use. *See, e.g.*, Ex. B §6 ("Use of the Facilities"). And as plaintiffs themselves acknowledge in their petition, the "team-friendly terms" referenced in Count II are "team-friendly *lease* terms" that "Plaintiffs agreed to" in "negotiations with the Rams." Pet. ¶24 (emphasis added). Of course, if plaintiffs agreed to confer those benefits by contract, there can be no unjust enrichment based on the Rams' realization of those very benefits. At the very least, there is no way to analyze the alleged benefits of team-friendly lease terms without referring to the lease, which triggers arbitration under settled law.

Plaintiffs' reliance on "stadium upgrades made throughout the team's tenure in St. Louis," Pet. ¶66, likewise implicates the "interpretation, performance or breach of" the lease, Annex 1, and the Second Amendment to the lease. Annex 1 expressly states that meeting the first-tier promise "may require upgrades" and outlines a procedure for making them. Ex. G §1.3.1. Annex 1 and the Second Amendment—both of which incorporate the lease arbitration clause—are also rife with references to "improvements" at the stadium. *See, e.g., id.*; *id.* §§2.1-2.3; *id.* §4.4.1; Ex. J §§E, I, J. The elements of plaintiffs' unjust enrichment claim based on the Rams' receipt of stadium upgrades thus necessarily require reference to the lease and its amendments. This alone is sufficient to compel arbitration of Count II. *Estate of Athon*, 88 S.W.3d at 30.

There is more, however. The third element of plaintiffs' unjust enrichment claim—that "it would be unjust for the defendant to retain the benefit"—also requires reference to the lease. *Sparks v. PNC Bank*, 400 S.W.3d 454, 460 (Mo. App. E.D. 2013). Plaintiffs contend that the Rams

defendants "wrongfully depriv[ed] Plaintiffs of the opportunity to retain the Rams in St. Louis." Pet. ¶63. But deprivation of any "opportunity to retain the Rams in St. Louis" would not be "wrongful[]" if the Rams had a *right* to relocate. As discussed above, the lease and subsequent amendments expressly conferred that right if the Rams did not have a first-tier stadium by 2015. Ex. B §16(e); Ex. J §3.M. The unjust enrichment claim thus not only requires the "interpretation, performance or breach of" the lease, but is defeated by its terms. *See, e.g.*, *Estate of Athon*, 88 S.W.3d at 30-31 (contract "rights" that were a defense to claim were also a basis for compelling arbitration); *see also Lunsford v. Deatherage*, No. SD 34525, 2017 WL 1927862, at *4 (Mo. App. S.D. May 10, 2017) (compelling arbitration where "determination of a tort duty may depend upon a determination of the legal effect of" a contractual provision subject to an arbitration clause).

Finally, plaintiffs' allegations in support of Count II repeatedly invoke asserted breaches of the NFL relocation policy, another independent basis to compel arbitration. *See* Pet. ¶¶ 62, 68. As detailed in the discussion of Count I, allegations involving breach of the NFL relocation policy necessarily implicate the lease and require arbitration. *See supra* Part II.A. The same is true with respect to Count II.

C. Counts III and IV (Fraudulent Misrepresentation) Fall Within the Scope of the Lease's Broad Arbitration Clause.

Plaintiffs' fraud claims likewise must be arbitrated. Counts III and IV of the petition allege the Rams and Mr. Kroenke made fraudulent misrepresentations based on a collection of statements between 2010 and 2016 that plaintiffs say induced them to "continu[e] to support and finance the Dome and to spend money to create a new stadium for the Rams." Pet. ¶74. Multiple elements of those claims require consideration of the lease and its amendments, necessitating arbitration. *Ruhl*, 322 S.W.3d at 139; *Estate of Athon*, 88 S.W.3d at 30.

"The elements of fraudulent misrepresentation are: (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) the speaker's intent that it should be acted on by the person in the manner reasonably contemplated; (6) the hearer's ignorance of the falsity of the representation; (7) the hearer's reliance on the representation being true; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximately caused injury." *Renaissance Leasing, LLC v. Vermeer Mfg. Co.*, 322 S.W.3d 112, 131-32 (Mo. banc 2010). It is well established that "[b]roadly worded arbitration clauses such as the ones at issue here are generally construed to cover tort suits arising from the same set of operative facts covered by a contract between the parties to the agreement." *CD Partners, LLC v. Grizzle*, 424 F.3d 795, 800 (8th Cir. 2005); *see Leonard v. Delaware North Companies Sport Service, Inc.*, No. 15-cv-1356, 2016 WL 3667979, at *5 (E.D. Mo. July 11, 2016) (same).

As a threshold matter, the relocation agreement's merger and integration clause bars any fraud claim. That clause states that the relocation agreement and expressly incorporated documents, including the lease and its annexes, "contain[ed] the entire agreement between the parties" and could be amended only by written consent. Ex. A §§8.5, 8.12. But plaintiffs point to no written agreement with the Rams they rely on. Nor could they: there is no written agreement that limited the Rams' right to relocate after the CVC, the RSA, the City, and the County decided not to implement the 2012 arbitration award. Because the relocation agreement's merger and integration clause is a defense to Counts III and IV, adjudicating those claims plainly requires reference to the lease. Arbitration is therefore required. *See Estate of Athon*, 88 S.W.3d at 30-31.

Independently, plaintiffs allege numerous purportedly false statements that "require[] reference to" the lease. *Id.* at 30. For example, plaintiffs allege Mr. Kroenke's April 21, 2010 statement that he was "going to attempt to do everything that" he could "to keep the Rams in St.

Louis" was fraudulent. Pet. ¶77. But any assessment of plaintiffs' right to rely on that statement (element 7) or ability to show injury caused by the statement (element 9) must take into account the fact that the Rams in 2010 were in the midst of an extensive multi-year process *mandated by the lease and its amendments* to resolve the stadium issues and determine whether the Rams would ultimately have the right to relocate. Put differently, no reasonable listener could consider—let alone rely on or be harmed by—Mr. Kroenke's 2010 commitment to "do everything" he could "to keep the Rams in St. Louis" without also considering the many things the lease and its amendments required the parties to do, along with the Rams' contractual right to relocate. The alleged misrepresentations thus arise "from the same set of operative facts covered by a contract between the parties" and require arbitration under the lease arbitration clause. *CD Partners*, 424 F.3d at 800; *see Leonard*, 2016 WL 3667979, at *5; *Systime Computer Corp. v. Wireco World Group, Inc.*, No. 11-9036, 2012 WL 2317090, at *4-5 (W.D. Mo. June 18, 2012).

Indeed, several statements plaintiffs allege to be fraudulent expressly refer to the lease. For example, there is no way to assess plaintiffs' right to rely on Kevin Demoff's statement that "[t]he lease issue isn't what we're focused on," without some reference to the lease. Pet. ¶77. Likewise, both the alleged falsity and plaintiffs' alleged right to rely on Mr. Demoff's statement that "[w]e still have two years left on the lease before it goes year to year" necessarily require reference to the lease. *Id.* Plaintiffs essentially admit as much by dating this statement, in their own words, to a period "[a]fter the 2012 lease arbitration." *Id.*

Plaintiffs further concede the need to refer to the lease by framing their own argument for the Rams' "duty to disclose their intentions" in terms of the plaintiffs' "series of business transactions with the Rams and Mr. Kroenke"—another allegation that necessarily references the fully-integrated lease, its amendments, and related contracts such as the relocation agreement. Pet.

¶79. Similarly, plaintiffs allege they relied on "supposed truth of the representations" in spending "considerable time and money … working on a new stadium complex plan." Pet. ¶82. But plaintiffs had an independent obligation under the lease and its amendments to develop "a new stadium complex plan" that would meet the first-tier promise in the lease. *See* Ex. B §16(e); Ex. G §1.3; Ex. J §3.

Separately, plaintiffs in Count III ground their right to rely on the Rams' statements in the "obligations imposed under the Relocation Policy." Pet. ¶83. But, as explained in detail above, evaluating the obligations imposed under the NFL relocation policy necessarily requires reference to the lease. *See supra* Part II.A. That is a further, independent basis to compel arbitration of Count III.

Finally, Count IV repeats the allegation from Count III that plaintiffs "spent considerable time and money financing and working on a new stadium complex plan" in reliance on the Rams defendants' statements. Pet. ¶94. But plaintiffs were obligated by the lease and its amendments to work on a new stadium plan before the 2012-2013 "first-tier" arbitration. And after the arbitration, plaintiffs could not plausibly have spent money on a new stadium plan without taking into account the Rams' contractual right to relocate. *See* Ex. B §16(e); Ex. J §3.M.

At bottom, it strains credulity for plaintiffs to say with "positive assurance" that nothing in these sprawling claims even "touches matters covered by" the lease or its amendments, *AT&T*, 475 U.S. at 650; *Ruhl*, 322 S.W.3d at 139—especially when plaintiffs purport to rely on their "series of business transactions with the Rams and Mr. Kroenke," a series that includes the lease and the relocation agreement, to make their putative fraud claims. Pet. ¶79 (alleging "Rams and Mr. Kroenke … were under a duty to disclose" because "Plaintiffs were involved in a series of business transactions with the Rams and Mr. Kroenke"). Counts III and IV must be sent to arbitration.

D. Count V (Tortious Interference with Business Expectancy) Falls Within the Scope of the Lease's Broad Arbitration Clause.

Count V of the petition alleges that "all Defendants, except the Rams" tortiously interfered with plaintiffs' "valid business expectancy in an ongoing relationship with the Rams." Pet. ¶99. Plaintiffs apparently assert this claim against Mr. Kroenke, even though they do not allege any conduct (much less any independent tort) on his part in Count V. And for good reason, as "there can be no liability for tortious interference with a business expectancy against … an agent of" the party with whom the business expectancy allegedly exists. *Jurisprudence Wireless Commc'ns, Inc. v. CyberTel Corp.*, 26 S.W.3d 300, 303 (Mo. App. E.D. 2000).

Even setting that legal defect aside, arbitration is nevertheless required. Plaintiffs allege a "valid business expectancy in an ongoing relationship with the Rams" and a "probable future business relationship between the Rams and Plaintiffs." Pet. ¶¶99, 103. But those claims by their own terms require reference to the relocation agreement and lease, because there is no way to divorce plaintiffs' asserted expectancy in an ongoing or future business relationship with the Rams from the Rams' contractual right to relocate. *See* Ex. B §16(e). Furthermore, plaintiffs base their business expectancy in part on the NFL relocation policy, and that policy necessarily requires reference to the lease and its amendments. *See supra* Part II.A. Count V therefore falls within the scope of the arbitration clause as well.

III. ALL PLAINTIFFS ARE SUBJECT TO ARBITRATION UNDER THE CONTRACTS' BROAD ARBITRATION CLAUSE.

The RSA, the City, and the County are all bound by the arbitration clause in the relocation agreement and the lease. The Rams and Mr. Kroenke can thus compel arbitration against all of them.

A. The RSA Is Bound by the Contracts' Broad Arbitration Clause.

In interpreting an arbitration agreement, courts apply the "usual rules and canons of contract interpretation." *Dunn*, 112 S.W.3d at 428. "The cardinal principle of contract interpretation is to ascertain the intention of the parties and to give effect to that intent." *Id.* Accordingly, the "terms of a contract are read as a whole to determine the intention of the parties and are given their plain, ordinary, and usual meaning." *Id.*

To begin, the RSA signed the relocation agreement, Annex 1 to the lease, and the Second Amendment to the lease, all of which are plainly "touche[d] on" by plaintiffs' claims, and all of which expressly incorporate the arbitration clause in Section 25 of the lease. *See* Ex. A §8.10; Ex. G §5.1; Ex. J §3.M. Under settled precedent, "incorporation by reference" of an arbitration clause is binding and enforceable. *Cent. Trust Bank v. Graves*, 495 S.W.3d 797, 802-03 (Mo. App. W.D. 2016) (quoting *CD Partners*, 424 F.3d at 799); *see Granger v. Rent-A-Ctr., Inc.*, 503 S.W.3d 295, 299 (Mo. App. W.D. 2016) (same). Missouri courts routinely compel arbitration under these circumstances. *See, e.g.*, *Metro Demolition & Excavating Co. v. H.B.D. Contracting, Inc.*, 37 S.W.3d 843, 846 (Mo. App. E.D. 2001) (finding arbitration clause applicable when one contract incorporated a different contract containing an arbitration clause); *Sheffield Assembly of God Church, Inc. v. Am. Ins. Co.*, 870 S.W.2d 926, 931 (Mo. App. W.D. 1994) (same); *Jim Carlson Constr., Inc. v. Bailey*, 769 S.W.2d 480, 482 (Mo. App. W.D. 1989) (same).

And while that would be enough to require arbitration of all claims, the RSA is also bound by the arbitration clause in the lease itself, which applies to disputes between or among "any of the parties hereto" and "*any of those consenting hereto pursuant to the Consents to Assignment*." Ex. B §25 (emphasis added). The RSA is one of "those consenting" to the lease "pursuant to the Consents to Assignments." *Id.* Specifically, the RSA signed a consent to the Assignment and Assumption Agreement stating that it "hereby consents to the AMENDED LEASE and to the

ASSIGNMENT on the terms and conditions set forth therein." Ex. I at 14 ¶1. In addition, the RSA's consent stated that the Rams "would not execute and deliver" the lease "in the absence of the [RSA's] consent." *Id.* ¶B. And the RSA in this very lawsuit acknowledges that it "agreed to certain team-friendly lease terms" in "negotiations with the Rams." Pet. ¶24. Under the "plain, ordinary, and usual meaning" of the lease and the expressly stated "intention of the parties," the RSA would be bound by the lease's arbitration even if it were not already incorporated by reference into agreements with the Rams that it signed. *Dunn*, 112 S.W.3d at 428.

B. The City and County Are Bound by the Contracts' Broad Arbitration Clause.

The City and County are likewise bound by the broad arbitration clause in the lease and the relocation agreement. The text of the clause itself again makes this clear. The clause extends to any dispute "between or among any of the parties hereto (and/or any of those consenting hereto pursuant to the Consents to Assignment (other than the City, County, or SLMFC, which may only bring an action or against which an action may only be brought in United States Federal District Court for the Eastern District of Missouri, with the right to jury waived))." Ex. B §25. The City and the County both signed Consents to the Assignment, *see* Ex. I at 10 ¶1 (County), 12 ¶1 (City), which brings them within the scope of the arbitration clause's first parenthetical phrase.

While Section 25's second parenthetical phrase provides an exception from the general arbitration rule for claims the City and County can bring in federal court, Ex. B §25, that narrow carve-out within the arbitration provision does not apply here because the City and County chose *not* to bring their claims against the Rams in federal court. Having declined to avail themselves of the only other forum the arbitration carve-out permits, the broad arbitration clause governs.

When construing an arbitration clause, courts apply the "cardinal principle of contract interpretation," which "is to ascertain the intention of the parties and to give effect to that intent."

Dunn, 112 S.W.3d at 428. Here, the parties plainly did not intend to allow the City and County to sue the Rams in *St. Louis City* courts—a forum *not mentioned at all* in the detailed language of Section 25, and one the Rams would never have agreed to. The only logical construction of Section 25 is that a suit brought by the City and County must proceed in arbitration if they chose to plead themselves out of federal court. After all, the federal court carve-out is nested inside a provision making arbitration applicable to "those consenting" to the lease "pursuant to the Consents to Assignment," which the City and County both did. Ex. B ¶25. With the carve-out provision inoperative (by plaintiffs' choice), the natural reading of Section 25 is that the City and County are bound by the arbitration clause as parties consenting to the lease.[1] *See id.* ¶23 (severability clause). That reading is reinforced by the Recital stating that the Rams would not have "relocate[d] to St. Louis in the absence of the … the approval of, and the consent to, this Amended Lease … by the" City and County (as well as the RSA). *Id.* at 4. And the City and County can hardly claim that they had no say in these provisions; they are designated as "Sponsors" in the lease, *id.* at 2, and they allege in their own petition that they "agreed to certain team-friendly lease terms" in "negotiations with the Rams." Pet. ¶24.

In short, sophisticated parties bargained for a detailed arbitration provision that makes consenting parties subject to arbitration, with a narrow carve-out for federal court suits—before a judge, not a jury. Allowing the City and County to avoid both federal court *and* arbitration, the

[1] Alternatively, the carve-out requiring the City and County to bring suit in federal court is a forum-selection clause that the Court must enforce by dismissing the petition for lack of jurisdiction. *See Serv. Vending Co. v. Wal-Mart Stores, Inc.*, 93 S.W.3d 764, 769 n.2 (Mo. App. S.D. 2002) (motion to dismiss "for improper venue relating to a forum selection clause … should be treated as an issue of jurisdiction"); *Raydiant Tech., LLC v. Fly-N-Hog Media Grp., Inc.*, 439 S.W.3d 238, 240-41 (Mo. App. S.D. 2014) (forum-selection clause for "any dispute, controversy, or proceeding arising out of or related to this Agreement" applied to both contract and tort claims). These are the only possibilities under the contract, and either way the City's and County's claims against the Rams and Mr. Kroenke cannot proceed in this forum and must be dismissed.

only two alternatives the drafters contemplated, "would be contrary to the principles that a contract should be construed as a whole, that all provisions should be harmonized if possible, and that a construction that would render a provision meaningless should be avoided." *Dunn*, 112 S.W.3d at 429. "It would also conflict with the principle that doubts as to arbitrability should be resolved in favor of coverage." *Id.* And it would allow the City and County to avoid both arbitration and federal court by simply joining a non-diverse party as a defendant (such as the Kansas City Chiefs here), impermissibly allowing "a creative and artful pleader" to draft "around an otherwise-applicable arbitration clause." *Chelsea Family Pharmacy, PLLC v. Medco Health Sols., Inc.*, 567 F.3d 1191, 1198 (10th Cir. 2009). It simply cannot be that when a contract expressly allows for dispute resolution in just two forums, but one is unavailable because of the plaintiff's pleading choices, the plaintiff somehow becomes entitled to file suit in an additional, extra-contractual forum. Nothing in Missouri or federal law supports such an anomalous and atextual approach to contract interpretation.

Although no more is needed, there are additional, independent grounds for compelling arbitration against the City and County. Missouri law provides that principles of estoppel can bind a non-signatory to a contractual arbitration clause by "accepting or claiming" direct "benefits" under that contract. *Granger*, 503 S.W.3d at 299; *see Netco, Inc. v. Dunn*, 194 S.W.3d 353, 360-61 (Mo. banc 2006); *Graves*, 495 S.W.3d at 803. Here, the City and County received substantial direct benefits under the express terms of the lease, including indemnification from the CVC, Ex. B §11; the right to demand reports and accountings, *id.* §18; and receipt of notices in the same manner as signatories of the lease, *id.* §14. Having consented to the lease and these direct benefits, the City and County are estopped from repudiating the arbitration clause.

Finally, if there is any question at all whether the City and County are bound by the lease's arbitration provision, this Court should compel arbitration because it cannot be "said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *AT&T*, 475 U.S. at 650; *see Dunn*, 112 S.W.3d at 429; *Senda*, 2007 WL 781786, at *2 ("a court can even compel the parties to arbitrate the question of whether a controversy relates to an agreement with a broad arbitration clause"). The arbitrators can then decide.

IV. DEFENDANT KROENKE IS ENTITLED TO ARBITRATE UNDER THE LEASE'S BROAD ARBITRATION CLAUSE.

Like the Rams, Stan Kroenke—the Rams' owner—is entitled to arbitrate all claims under the lease. Although non-signatories generally may not enforce a contractual arbitration clause, *see Netco*, 194 S.W.3d at 361-62, they may when "the relationship between the signatory and nonsignatory defendants is sufficiently close that only by permitting the nonsignatory to invoke arbitration may evisceration of the underlying arbitration agreement between the signatories be avoided." *Kohner Props., Inc. v. SPCP Grp. VI, LLC*, 408 S.W.3d 336, 344 (Mo. App. E.D. 2013) (quotation marks omitted); *see Bull v. Torbett*, --- S.W.3d ----, 2017 WL 2772630 at *3-4 (Mo. App. W.D. June 27, 2017) (same); *CD Partners*, 424 F.3d at 800 (same).

In determining whether signatory and non-signatory defendants are "sufficiently close" that both can compel arbitration, courts look to whether plaintiffs "treated signatory and non-signatory defendants as a 'single unit.'" *Kerr*, 461 S.W.3d at 814; *see Dominium Austin Partners, L.L.C. v. Emerson*, 248 F.3d 720, 728 (8th Cir. 2001) (plaintiffs' allegations referred to signatory and non-signatory defendants "as though they were signatories"). In *Kerr*, for example, the plaintiffs referred to four different Rams entities collectively as "the Rams" or "Defendants," and the Missouri Supreme Court permitted all four defendants to compel arbitration, even though only

one of them was a signatory to the contract containing the arbitration clause. *Kerr*, 461 S.W.3d at 815.

Plaintiffs here adopt the same approach as the plaintiffs in *Kerr*, and Mr. Kroenke is therefore entitled to compel arbitration for the same reason as the Rams defendants in *Kerr*. The claims repeatedly refer to the "Rams," and to the "Defendants" collectively, but only rarely to Mr. Kroenke separately. And even when the allegations specifically identify him, they do not distinguish between him and the Rams in any substantive way. Indeed, plaintiffs' entire underlying theory for a breach of the NFL relocation policy—which is asserted in Count One and reincorporated throughout—requires treating the Rams and Mr. Kroenke jointly, because Mr. Kroenke is not an independent party to the NFL relocation policy that plaintiffs allege all defendants breached. *See Kerr*, 461 S.W.3d at 816. As in *Kerr*, plaintiffs "cannot treat [non-signatory] defendants severally for arbitration purposes but jointly for all other purposes." *Id.* at 815. Their "claim against the defendants is a single one that should be referred in its entirety to arbitration." *Id.*; *cf. Bull*, 2017 WL 2772630, at *7 (non-signatory who was founder, managing member, and agent of company that signed contract could invoke arbitration clause in contract).

Independently, Mr. Kroenke is also bound by, and can enforce, the arbitration provision under an agency theory. "An agent is subject to the same contractual provisions, including arbitration contracts, to which the principal is bound." *Nitro Distrib., Inc. v. Alticor, Inc.*, 453 F.3d 995, 999 (8th Cir. 2006). To the extent plaintiffs' petition includes any allegations specific to Mr. Kroenke, they all concern his actions and statements in his capacity as Chairman of the Rams—*i.e.*, as an agent acting on the Rams' behalf. *See, e.g.*, Pet. ¶¶26, 27, 41. To be sure, the Missouri Supreme Court held in *Netco* that non-signatory agents are not "bound" to an arbitration clause "by the signature of a principal." 194 S.W.3d at 358. But the question here is not whether Mr.

Kroenke is *bound* to the arbitration clause; it is whether he can *invoke* the arbitration clause on the same basis as his principal, the Rams. Under well-settled agency principles not disturbed in *Netco*, he can. *See Nitro*, 453 F.3d at 999.

CONCLUSION

For all of these reasons, the Court should compel all plaintiffs to arbitrate all of their claims against the Rams (Counts I through IV) and Mr. Kroenke (Counts I through V).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

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