

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Honorable Philip A. Brimmer**

Civil Action No.: 13-cv-2481-PAB-CBS

ROBERTO FUENTES, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

KROENKE SPORTS &  
ENTERTAINMENT, LLC, d/b/a [sic]  
TICKETHORSE, LLC, and JOHN  
DOE DEFENDANTS,

Defendants.

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**DEFENDANT KROENKE SPORTS & ENTERTAINMENT, LLC'S NOTICE OF  
SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS COMBINED MOTION TO  
DISMISS PLAINTIFF'S CLASS ACTION COMPLAINT**

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Defendant Kroenke Sports & Entertainment, LLC ("KSE"), by its attorneys, files this Notice Of Supplemental Authority In Support Of Its Combined Motion To Dismiss Plaintiff's Class Action Complaint [Doc. No. 21, filed 10/25/2013], attaching hereto The Honorable John W. Madden, IV's Order Granting Partial Summary Judgment And Dismissal ("Order") issued May 29, 2014, in *Sweet v. Colorado Rockies Baseball Club, Ltd.*, Case No. 13CV34445, District Court for the City and County of Denver, Colorado, dismissing the plaintiff's<sup>1</sup> "class [action] claims for damages under the CCPA, all claims seeking injunctive and declaratory relief, the

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<sup>1</sup> As Plaintiff here, the plaintiff in *Sweet* is represented by Steven L. Woodrow and the Edelson law firm.

breach of contract claims, the breach of the implied covenant of good faith and fair dealing claims, and the unjust enrichment claims, . . . with prejudice.” *See* Order at 8, Exhibit 1 hereto. Specifically, KSE quotes from the Order as follows relative to the dismissal in *Sweet* of claims nearly identical to those brought by Plaintiff in this action:

1. “The damages available in a private civil action under the CCPA are delineated by C.R.S. § 6-1-113(2). The statute specifically provides that actual damages are an available remedy in a private civil action – except in a class action.” Order at 4-5. This language expressly supports the prohibition of the putative class here from recovering monetary damages. *See* Motion To Dismiss Plaintiff’s Class Action Complaint And Jury Demand (“Motion To Dismiss”) at 13; *see also* [KSE’s] Reply In Further Support of Motion To Dismiss [Doc. No. 48, filed 12/13/2013] (“Reply”) at 5-7.
2. “[T]here is no provision for any party to seek declaratory relief under the CCPA. Accordingly, the Plaintiff may not pursue injunctive or declaratory relief in connection with violations of the CCPA.” Order at 6. This language forecloses Plaintiff’s claim here for injunctive and/or declaratory relief. *See* Plaintiff’s Complaint And Jury Demand, Prayer For Relief, ¶ 3 (seeking “[a]n injunction requiring [KSE] to cease [its allegedly] unlawful imposition of [allegedly] unlawful restrictions on the resale of tickets to entertainment at [KSE] properties.”).
3. “Since the tickets at issue were licenses, not contracts, and *since the Plaintiff has not alleged that she or any class member was denied admission*, she has failed to state a claim [for breach of contract] upon which relief may be granted.” Order at 7

(emphasis added). As in *Sweet*, Plaintiff here “has not alleged that KSE *ever* sought to enforce the ticket and/or website language as misinterpreted by Plaintiff.” See Motion To Dismiss at 7 (emphasis in original); *see also* Reply at 2, 4.

4. “There is no claim that the [Colorado Rockies] received the payment for the ticket but then did not permit access to the associated baseball game. *Even under the Plaintiff’s own allegations, she received from the Defendant what she purchased, and she has no claim for unjust enrichment.*” Order at 8 (emphasis added). As in *Sweet*, Plaintiff here received what he purchased, as there is no claim that KSE received payment for tickets but then did not permit access to the associated KSE event.

KSE accordingly requests the Court consider this decision in ruling upon its Motion To Dismiss.

Dated: May 30, 2014.

Respectfully submitted,

*s/Kevin D. Evans*

By: \_\_\_\_\_

Kevin D. Evans  
John T. Osgood  
STEESE, EVANS & FRANKEL, P.C.  
6400 S. Fiddlers Green Circle  
Suite 1820  
Denver, Colorado 80111  
Telephone: 720.200.0676  
Facsimile: 720.200.0679  
Email: [kdevans@s-elaw.com](mailto:kdevans@s-elaw.com)  
[josgood@s-elaw.com](mailto:josgood@s-elaw.com)

IJay Palansky  
STEESE, EVANS & FRANKEL, P.C.  
The Army and Navy Club Building  
1627 I Street, N.W.  
Suite 850  
Washington, DC 20006  
Email: [ipalansky@s-elaw.com](mailto:ipalansky@s-elaw.com)

Attorneys for Defendant KROENKE SPORTS &  
ENTERTAINMENT, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of May, 2014, I caused the foregoing **DEFENDANT KROENKE SPORTS & ENTERTAINMENT, LLC'S NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS COMBINED MOTION TO DISMISS PLAINTIFF'S CLASS ACTION COMPLAINT** to be filed with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to the following attorneys of record:

Steven L. Woodrow  
Megan L. Lindsey  
Patrick Peluso  
EDELSON, LLC  
999 West 18th Street  
Suite 3000  
Denver, CO 80202  
Telephone: 303.357.4878  
Facsimile: 303.446.9111  
[swoodrow@edelson.com](mailto:swoodrow@edelson.com)  
[mlindsey@edelson.com](mailto:mlindsey@edelson.com)  
[ppeluso@edelson.com](mailto:ppeluso@edelson.com)

*s/Leigha Wickham*

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Leigha Wickham