UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MATTHEW AJZENMAN, et al., Plaintiffs, v. OFFICE OF THE COMMISSIONER OF BASEBALL d/b/a MAJOR LEAGUE BASEBALL, et al., Defendants.	CV 20-3643 DSF (JEMx) Order GRANTING Office of the Commissioner, *et al.*'s Motion to Dismiss (Dkt. 77)

The Office of the Commissioner and 28 of the 30 baseball team defendants (collectively, Defendants)[1] move to dismiss Plaintiffs' Corrected Amended Class Action Complaint. Dkt. 77 (Mot.). Plaintiffs oppose. Dkt. 99 (Opp'n). The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. For the reasons stated below, the motion is GRANTED.

I. BACKGROUND

Each season, through the coordination of the Major League Baseball (MLB) Office of the Commissioner, MLB teams agree to play each other in a schedule of games. Dkt. 42 (Complaint or Corr. Am. Compl.) ¶ 35. A majority vote of the teams is required in order to take "[a]ny action related to scheduling for the [] season." Id. (first alteration in original). The Commissioner, in coordination with eight

[1] The entities associated with the Oakland Athletics and the San Francisco Giants bring a separate motion to dismiss and to compel arbitration.

teams of his choosing, is tasked with "carrying out discipline and decisions in the best interest of the national game of Baseball." Id. ¶ 34 (internal quotation marks omitted).

The 2020 MLB season was scheduled to begin on March 26, 2020 and run through the first week of October. Id. ¶ 74. Due to COVID-19, on March 12, 2020, MLB Commissioner Robert D. Manfred Jr. postponed the start of the season by two weeks. Id. ¶¶ 33, 75. Four days later, the MLB posted an online announcement that the season would be further postponed to at least mid-May 2020. Id. ¶ 76. At this point, millions of fans had already purchased tickets to 2020 MLB games. Id. ¶ 75. Following this announcement, MLB teams posted various updates on ticketing policies online. Id. ¶¶ 77-78. As of the filing of the Complaint, no ticket refunds had been issued to ticketholders because the MLB had yet to formally cancel any games. Id. ¶ 79. The MLB had "not issued any refunds during this crisis despite the fact it is virtually impossible that a season can be played because (i) certain dates for games ha[d] already passed; (ii) government and health officials ha[d] indicated that games [were] not going to be played, and if so, likely without spectators; and (iii) MLB itself ha[d] given indications that games will not be rescheduled as usual." Id. ¶ 80.

Plaintiffs, eight individuals who purchased MLB tickets either directly from teams or from ticket merchants, bring this action on behalf of themselves and two putative classes – a class of persons and entities who bought tickets directly from MLB teams and a class of those who purchased tickets from ticket merchants. Id. ¶ 99. Plaintiffs bring claims for violations of California's Consumer Legal Remedies Act (CLRA) and California's Unfair Competition Law (UCL), civil conspiracy, and unjust enrichment. Id. ¶¶ 110-137. Four plaintiffs

purchased tickets from the ticket merchant defendants.[2] The following six plaintiffs purchased tickets from the team directly:[3]

- Plaintiff Matthew Ajzenman purchased season tickets directly from the New York Mets for the 2020 MLB season. Id. ¶ 9. The games were to be played in New York. Id. ¶ 10.
- Plaintiff Benny Wong purchased three tickets from the San Francisco Giants and three season tickets from the Oakland Athletics. Id. ¶ 14. The games were to be played in California. Id. ¶ 15.
- Plaintiffs Jeremy and Amanda Woolley purchased two partial season ticket packages from the Chicago Cubs. Id. ¶ 18. The games were to be played in Illinois. Id. ¶ 22.
- Plaintiff Anne Berger purchased two tickets from the Chicago Cubs. Id. ¶ 23. The games were to be played in Illinois. Id. ¶ 24.
- Plaintiff Krystal Moyer purchased tickets from the Philadelphia Phillies. Id. ¶ 30. The game was to be played in Pennsylvania. Id. ¶ 31.

Though Plaintiffs purchased tickets from – or for games involving – only a limited number of MLB teams, they bring this suit against all 30 teams in the league in addition to the Office of the Commissioner. Id. ¶ 32.

Since the suit was filed, each Plaintiff who purchased a ticket directly from one of the MLB teams bringing this motion has received a full refund or credit. See Dkts. 77-4 ¶¶ 4, 6 (Berger and Woolley each

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[2] The Court has ordered the claims of Plaintiffs who purchased tickets from ticket merchants to arbitration. Dkt. 104. The remaining Plaintiffs' claims against the ticket merchant defendants have been dismissed. Dkt. 103.

[3] One additional named plaintiff, Plaintiff Cathey Mattingly, also purchased tickets directly from a team. Compl. ¶ 25. However, she has dismissed her claims in their entirety. Dkt. 76.

received a full refund), 77-8 ¶ 5 (Ajzenman received an account credit for the amount he paid and a bonus credit), 77-10 ¶ 4 (Moyer received a refund).[4] The single Plaintiff who received a credit rather than a refund – Ajzenman – had the option of seeking a refund, but did not. Dkt 77-8 ¶¶ 4-5.

II. LEGAL STANDARD

A. Personal Jurisdiction

"Personal jurisdiction over a nonresident defendant is tested by a two-part analysis." Chan v. Soc'y Expeditions, Inc., 39 F.3d 1398, 1404 (9th Cir. 1994). "First, the exercise of jurisdiction must satisfy the requirements of the applicable state long-arm statute." Id. "Second, the exercise of jurisdiction must comport with federal due process." Id. at 1404-05. Because California's long-arm statute reaches as far as due process allows, see Cal. Civ. Proc. Code § 410.10, the Court need only consider whether the exercise of jurisdiction comports with due process.

It has long been settled that a court may exercise personal jurisdiction over a nonresident defendant only if the defendant has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (internal quotation marks omitted).

Personal jurisdiction may be either general or specific. See Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414

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[4] The Court's consideration of these declarations on a motion to dismiss is proper. Whether a claim is moot goes to a court's subject matter jurisdiction, see Ruvalcaba v. City of Los Angeles, 167 F.3d 514, 521 (9th Cir. 1999), and, therefore, a motion to dismiss based on mootness is brought as a 12(b)(1) motion, see Fed. R. Civ. P. 12(b)(1). "Unlike a Rule 12(b)(6) motion, a Rule 12(b)(1) motion can attack the substance of a complaint's jurisdictional allegations despite their formal sufficiency, and in so doing rely on affidavits or any other evidence properly before the court." St. Clair v. City of Chico, 880 F.2d 199, 201 (9th Cir. 1989).

nn. 8 & 9 (1984). "General jurisdiction exists when a defendant is domiciled in the forum state or his activities there are 'substantial' or 'continuous and systematic.'" Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998) (quoting Helicopteros, 466 U.S. at 414-16). "Specific jurisdiction" exists where the claim for relief arises directly from defendant's contacts with the forum state. See AT&T Co. v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588 (9th Cir. 1996).

B. Subject Matter Jurisdiction

"The Constitution limits Article III federal courts' jurisdiction to deciding 'cases' and 'controversies.'" Oklevueha, 676 F.3d at 835 (quoting U.S. Const. art. III, § 2). The Court's "role is neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies consistent with the powers granted the judiciary in Article III of the Constitution." Thomas v. Anchorage Equal Rights Comm'n, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc).

Plaintiffs bear the burden of establishing subject matter jurisdiction. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). On a motion pursuant to Rule 12(b)(1), the Court accepts as true all factual allegations and construes the pleadings in the light most favorable to the plaintiff. Oklevueha Native Am. Church of Haw., Inc. v. Holder, 676 F.3d 829, 834 (9th Cir. 2012). "However, conclusory allegations and unwarranted inferences are insufficient to defeat a motion to dismiss." Id.

"In support of a motion to dismiss under Rule 12(b)(1), the moving party may submit 'affidavits or any other evidence properly before the court . . . . It then becomes necessary for the party opposing the motion to present affidavits or any other evidence necessary to satisfy its burden of establishing that the court, in fact, possesses subject matter jurisdiction.'" Colwell v. Dep't of Health & Hum. Servs., 558 F.3d 1112, 1121 (9th Cir. 2009) (alteration in original) (quoting St. Clair, 880 F.2d at 201).

III. DISCUSSION

Defendants move to dismiss the Complaint based on (1) lack of personal jurisdiction over the out-of-state baseball teams; (2) lack of standing to sue teams from which no Plaintiff purchased a ticket; and (3) mootness of Plaintiffs' claims because they have received refunds or credits.

A. Personal Jurisdiction

Defendants argue that the Court lacks personal jurisdiction over the 25 MLB teams based outside of California (the Out-of-State Clubs). Mot. at 18. Plaintiffs argue only that the Court has specific jurisdiction, Opp'n at 4-9, based on purposeful availment rather than purposeful direction, id. at 6.

The Ninth Circuit has established a three-part test for determining when a state may constitutionally exercise specific jurisdiction over a defendant:

> (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum . . . ;
>
> (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
>
> (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004) (citing Lake v. Lake, 817 F.2d 1416, 1421 (9th Cir. 1987)). The plaintiff bears the burden of satisfying the first two prongs of the test. Id. If the plaintiff succeeds, the burden shifts to the defendant to demonstrate that the exercise of jurisdiction would be unreasonable. Id. (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476-78 (1985)).

1. Purposeful Availment

To determine if there is purposeful availment, courts consider whether the defendant's conduct and connection with the forum state creates a reasonable anticipation of being haled into court there. See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980); see also Burger King Corp., 471 U.S. at 475 (this "requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person" (internal quotation marks and citation omitted)).

Plaintiffs argue that the Out-of-State Clubs "purposefully availed themselves of California law by regularly scheduling, traveling to, and playing against clubs located in California." Opp'n at 6. The Court agrees these activities are sufficient to establish purposeful availment.

2. Arising Out Of

Courts "rely on a 'but for' test to determine whether a particular claim arises out of forum-related activities and thereby satisfies the second requirement for specific jurisdiction." Ballard v. Savage, 65 F.3d 1495, 1500 (9th Cir. 1995). The question here is, but for the Out-of-State Club's contacts with California, would Plaintiffs' claims have arisen?

Defendants rely on Payne v. Office of the Commissioner of Baseball, in which the district court held that there was no personal jurisdiction over out-of-state baseball clubs because plaintiff's theory of liability "center[ed] on each team's negligence in connection with its own stadium netting and distractions." No. 15-cv-03229-YGR, 2016 WL 1394369, at *6 (N.D. Cal. Apr. 8, 2016). They argue – correctly – that Plaintiffs' claims "would have arisen even if the California teams did not host any particular Out-of-State Club during the season." Id. Plaintiffs argue this case differs from Payne because all teams, including the Out-of-State Clubs, develop the schedule and were involved in the cancelation or rescheduling of regular season games, so

there is an adequate connection between the purposeful availment and the claims. [5]

While both parties rely on Payne, the Court finds this case more similar to Senne v. Kansas City Royals Baseball Corp., 105 F. Supp. 3d 981 (N.D. Cal. 2015). In Senne, minor league baseball players asserted state employment claims against MLB and its thirty teams, some of which challenged personal jurisdiction. Id. at 990. One of these, the New York Yankees, employed a number of scouts based in California. Id. at 1039. The court had to decide whether plaintiffs' claims arose out of defendants' recruiting and scouting in California based on choosing between one of two framings. Id. at 1041. The plaintiffs framed the issue "at a rather general level," arguing that "[p]laintiffs' claims for wage and hour violation would not have arisen but for the *collective* scouting and recruiting activities of MLB teams in California." Id. The defendants argued a narrower approach, that plaintiffs "ha[d] not satisfied the 'arising out of' requirement because many of the named [p]laintiffs do not claim to have been recruited by the specific [defendant] against whom that [p]laintiff asserts a claim." Id. at 1041-42. The court "conclude[d] that the narrower framing of the issue [was] more consistent with the Supreme Court's recent guidance on specific jurisdiction." Id. at 1042.

The Court finds that, as in Senne, personal jurisdiction here should be based on a narrow framing – but for the Out-of-State Clubs playing games in California, would Plaintiffs' claims have arisen? Because none of the Out-of-State Club games that Plaintiffs bought tickets for was scheduled to be played in California, Plaintiffs' injury would have arisen even if none of the Out-of-State Clubs had games scheduled in California for the entire season. Consequently, the claims do not "arise out of" forum-related activities. The claims against the Out-of-State Clubs are DISMISSED without leave to amend.

[5] Plaintiffs are reminded that all citations to legal databases should, when possible, cite to Westlaw rather than Lexis per the Court's standing order.

B. Subject Matter Jurisdiction

Because the Court has dismissed the Out-of-State Clubs' claims and the Oakland Athletics and San Francisco Giants have moved to dismiss separately, the only remaining Defendants at issue here are Angels Baseball LP, Moreno Baseball LP, Guggenheim Baseball Management LLC, Los Angeles Dodgers, Inc., Padres, L.P., Office of the Commissioner of Baseball, and Commissioner Robert D. Manfred, Jr. (collectively, Remaining Defendants). Mot. at 23-24; dkt. 77-1 (Bases for Dismissal). Defendants argue that all lack standing.[6] Mot. at 23.

1. Standing

Defendants contend Plaintiffs do not have standing to sue defendants from which no plaintiff purchased a ticket, which includes all Remaining Defendants. Mot. at 22.

To establish standing, a plaintiff must demonstrate that she "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. Spokeo, Inc. v. Robins, 136 S. Ct 1540, 1547 (2016). In the class action context, "if none of the named plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class." O'Shea v. Littleton, 414 U.S. 488, 494 (1974). However, "[i]n a class action, standing is satisfied if at least one named plaintiff meets the requirements." Bates v. United Parcel Serv., Inc., 511 F.3d 974, 985 (9th Cir. 2007).

Plaintiffs argue they can trace their injury to all Defendants because Defendants were engaged in a conspiracy. While a civil conspiracy "does not enlarge the nature of the claims asserted by the

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[6] Defendants also argue that the suit should be dismissed for lack of subject matter jurisdiction because Plaintiffs' claims are now moot. However, they do not argue that for any of the Remaining Defendants. See Bases for Dismissal at 1-2, 4.

plaintiff," it can "enlarge the pool of responsible defendants by demonstrating their causal connection to the violation." Lacey v. Maricopa Cty., 693 F.3d 896, 935 (9th Cir. 2012). As the Court noted in addressing the ticket merchants' motion to dismiss in this case, "[s]tanding, then, stands or falls with the civil conspiracy allegations." Dkt. 103.[7]

Defendants point out that the Court found Plaintiffs did not adequately allege a conspiracy against the ticket merchant defendants, see Reply at 14; Dkt. 103 at 8-12, but the facts Plaintiffs rely on here are different from those alleged against the ticket merchant defendants. "To prove a claim for civil conspiracy, [a plaintiff is] required to provide substantial evidence of three elements: (1) the formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful conduct." Kidron v. Movie Acquisition Corp, 40 Cal. App. 4th 1571, 1581 (1995). To show the first element of conspiracy a plaintiff must show "(i) knowledge of wrongful activity, (ii) agreement to join in the wrongful activity, and (iii) intent to aid in the wrongful activity." Craigslist Inc. v. 3Taps Inc., 942 F. Supp. 2d 962, 981 (N.D. Cal. 2013) (citing Kidron, 40 Cal. App. 4th at 1583). Here, Plaintiffs' allegations supporting conspiracy include:

- There was an MLB directive not to issue refunds. Corr. Am. Compl. ¶ 1 (relying on an article from a Chicago Cubs fan blog).
- A majority vote of teams is required in order to take any action related to scheduling for the season. Id. ¶ 35.

[7] The cases Plaintiffs cite in support of their standing argument are inapposite, including In re National Football League's Sunday Ticket Antitrust Litigation, which analyzed antitrust, not Article III, standing. 933 F.3d 1136, 1157 (9th Cir. 2019) ("[T]he plaintiffs' allegation that they were directly injured by the conspiracy among the NFL teams, the NFL, and DirecTV is sufficient to allege *antitrust* standing for purposes of surviving a motion to dismiss." (emphasis added)).

- The teams "each employed similar conduct with respect to the refusal to issue refunds for games during the 2020 MLB regular season." Id. ¶ 36.[8]

But these facts do not plausibly allege that Plaintiffs' injury is traceable to the Remaining Defendants. Even though the teams and the MLB work together to make scheduling decisions, Plaintiffs have not alleged sufficient facts to show the scheduling decisions were in furtherance of a conspiracy. In Twombly, the Supreme Court found that "[w]ithout more, parallel conduct does not suggest conspiracy." 550 U.S. at 556-57. While that case involved a motion to dismiss a Sherman Act conspiracy claim, id. at 554-55, the Court finds its analysis helpful in analyzing this state common law conspiracy liability claim. As in Twombly, here Plaintiffs' allegations are insufficient because they are "consistent with conspiracy but [] equally consistent with lawful conduct." In re Graphics Processing Units Antitrust Litig., 527 F. Supp. 2d 1011, 1023 (N.D. Cal. 2007).

Plaintiffs themselves appear to be confused about what exactly the conspiracy was, alleging in their opposition that "Defendants conspired to limit the supply of games to be played with fans in attendance, all following the purchase of tickets, without issuing full monetary refunds with interest." Opp'n at 11. The allegations in the Complaint involve a conspiracy to postpone refunds, not "limit the supply of games." Further, despite the fact that the Complaint rests on accusations that Defendants postponed instead of cancelled games to avoid refunds, Corr. Am. Compl. ¶ 96, the Opposition argues that Defendants "conspired together to cancel and reschedule games." Opp'n at 11.

For these reasons, the Court finds that the Plaintiffs do not having standing to sue the Remaining Defendants and GRANTS Defendants' motion to dismiss as to them with leave to amend.

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[8] Plaintiffs cite additional allegations in the Complaint, Opp'n at 11, but these consist of legal conclusions, not factual allegations.

2. Mootness

Because the Court has found Plaintiffs lack standing, it need not consider the mootness issue at this time.

IV. CONCLUSION

Defendants' motion to dismiss is GRANTED. All Plaintiffs' claims against the Out-of-State Clubs are dismissed for lack of personal jurisdiction without leave to amend. All Plaintiffs' claims against the Remaining Defendants are DISMISSED for lack of standing with leave to amend.[9] An amended complaint must be filed no later than November 2, 2020. Failure to file by that date will waive the right to do so. The Court does not grant leave to add new defendants or new claims. Leave to add new defendants or new claims must be sought by a properly noticed motion.

IT IS SO ORDERED.

Date: October 6, 2020

Dale S. Fischer
United States District Judge

[9] In its separately issued Order, the Court dismissed each of Plaintiffs' claims. Therefore, in amending their complaint, Plaintiffs should address not only the deficiencies in their pleading of conspiracy but also the deficiencies in their individual claims.