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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

RICHARD HELTEBRAKE, Plaintiff and Appellant, v. CITY OF RIVERSIDE, Defendant and Respondent.	B254132 (Los Angeles County Super. Ct. No. BC507269)

APPEAL from a judgment of the Superior Court of Los Angeles County, Elizabeth A. White, Judge. Affirmed.

Thomas Law Firm, Allen L. Thomas, Sivi G. Pederson and Gordon C. Stuart for Plaintiff and Appellant.

Cristina L. Talley, Interim City Attorney and Gregg M. Gu, Deputy City Attorney for Defendant and Respondent.

Greines, Martin, Stein & Richland LLP, Timothy T. Coates and Alana H. Rotter for Defendant and Respondent

I. INTRODUCTION

Plaintiff, Richard Heltebrake, appeals from a demurrer dismissal of his first amended complaint entered in favor of defendant, the City of Riverside. We have previously issued an unpublished opinion under this case number resolving other issues concerning plaintiff and several codefendants. (*Heltebrake v. City of Los Angeles* (Aug. 11, 2015, B2541323) [nonpub. opn.].) We now resolve the remaining dispute between plaintiff and defendant.

We conclude plaintiff has forfeited any contentions concerning the merits of the demurrer dismissal as it relates to his contract breach claims. In his opening brief, he chose not to address the grounds for the demurrer to his contract breach claims in any depth. As we will explain, plaintiff's constitutional and declaratory relief claims have no merit. Additionally, plaintiff has likewise failed to demonstrate the trial court abused its discretion in denying him leave to amend his first amended complaint. We thus affirm.

II. THE FIRST AMENDED COMPLAINT'S ALLEGATIONS

A. General Allegations

Plaintiff's first amended complaint alleges claims against defendant for: contract breach (second cause of action); due process violations under the federal and state Constitutions (sixth and seventh causes of action); and declaratory relief (eighth cause of action). Plaintiff sued: the Counties of San Bernardino and Riverside; defendant and the Cities of Los Angeles and Irvine; James and Karen Reynolds; Lee McDaniel; Daniel J. McGowan; and the law firm of Richards, Watson & Gershon. Plaintiff's claims arise out of the refusal of the aforementioned public entities to pay a reward for information provided in connection with the shooting death of Christopher Dorner. Between February 3 and 7, 2013, Mr. Dorner had murdered Monica Quan, Keith Lawrence and a police officer employed by defendant. In addition, two other officers were wounded by Mr. Dorner. Mr. Dorner's crime spree lead the aforementioned public entities to offer rewards and the effort to arrest him was highly publicized.

On February 10, 2013, a press release was prepared by the Los Angeles Police Department. The press release explained why a press conference would be held later in the day: "To announce a reward for information leading to the apprehension and conviction of [Mr.] Dorner, the suspect wanted for murdering [Ms.] Quan, [Mr.] Lawrence, a Riverside Police Officer and for shooting and wounding police officers from the Riverside and Los Angeles Police Departments." On February 10, 2013, the televised news conference was held involving: then Los Angeles Mayor Antonio Villaraigosa; defendant's Mayor Rusty Bailey; Irvine's Mayor Dr. Steven Choi; and various law enforcement agencies. According to the first amended complaint: "Mayor Villaraigosa

on behalf of the City of Los Angeles offered a one million dollar reward for the apprehension and capture of [Mr.] Dorner. Mayor Villaraigosa announced that the reward was comprised of funds donated from multiple jurisdictions, including the Cities of Los Angeles, Riverside and Irvine, and private entities and individuals."

On February 10, 2013, the day before the press conference, Mayor Bailey prepared a resolution authorizing up to $100,000 "toward the reward." Defendant's city council was to vote on the resolution on February 12, 2013, the day after the press conference. The media advisory issued by the Riverside Police Department on February 10, 2013 states: "At a joint press conference in Los Angeles today, officials of the cities of Riverside, Los Angeles and Irvine, accompanied by federal law enforcement officials, announced a $1 million dollar reward for information leading to the capture and conviction of [Mr. Dorner]. 'This is the largest local reward ever offered, to our knowledge,' said Los Angeles Police Chief Charlie Beck. The reward includes contributions from businesses and private individuals as well as public funds. . . . Mayor . . . Bailey and Riverside Police Chief Sergio Diaz spoke at the press conference. [¶] . . . Mayor . . . Bailey has prepared a resolution, to be voted on by the full City Council on Tuesday, February 12, 2013, authorizing up to $100,000 toward the reward. Similarly, Supervisor John Benoit, in his capacity as the chair of the Riverside County Board of Supervisors, will on Wednesday, February 13, 2013, present to the board a resolution authorizing $100,000 for the reward from the County."

On February 11, 2013, Mayor Bailey issued a special meeting notice concerning defendant's city council which states in part, "Notice is hereby given that a Special Meeting of the City Council . . . will be held on February 12, 2013 . . . for adoption of a Resolution . . . offering a reward in the amount of $100,000 for information leading to the arrest and conviction of the person or persons responsible for the murder of Riverside Police Officer Michael Crain and the assault of his partner officer on February 7, 2013."

Defendant's February 12, 2013 revised city council agenda identifies as a matter to be considered on the discussion calendar, "Mayor Bailey recommends a Resolution . . . offering a reward in the amount of $100,000 for information leading to the arrest and conviction of the person or persons responsible for the murder of Riverside Police Officer Michael Crain and the assault of his partner officer on February 7, 2013. . . ." Defendant's city council minutes for February 12, 2013, state in part: "The City Council adopted a resolution offering a $100,000 reward for information leading to the arrest and conviction of the person responsible for the murder of Riverside Police Officer Michael Crain and the assault of his partner officer while the officers were acting in the line of duty: whereupon, the title having been read and further reading waived, Resolution No. 22497 . . . offering a Reward in the Amount of $100,000 for Information Leading to the Arrest and Conviction of the Person or Persons Responsible for the Murder of Riverside Police Officer Michael Crain and the Assault of His Partner Officer on February 7, 2013, was presented and adopted[.]" Plaintiff alleges in the first amended complaint that the foregoing resolution offered a $100,000 reward for information leading to the

"apprehension and capture" of Mr. Dorner. As noted, defendant's actual city council minutes state that the reward was to be given to persons providing for information leading to the suspect's arrest and conviction.

Also, on February 12, 2013, the City of Los Angeles City Council approved a $100,000 reward for information leading to the identification, apprehension and conviction of Mr. Dorner. Later, on March 12, 2013, the City of Irvine adopted a resolution providing that $100,000 was to be included in the multi-agency reward fund. The resolution states that it is appropriate for the City of Irvine to contribute to the multi-agency reward. Two of the resolution's whereas clauses refer to rewarding persons who provided information that led to the identification and apprehension of the individual responsible for the killings.

According to the first amended complaint, the City of Los Angeles received additional funds from unidentified "corporations, entities, and individuals" which increased the amount of the $1 million reward. These unspecified funds which added to the $1 million reward offered by the City of Los Angeles, were placed into a trust account entitled, "Dorner Reward Trust Account" maintained by the law firm of Richards, Watson & Gershon.

The first amended complaint describes plaintiff's interactions with Mr. Dorner and others. Plaintiff worked at a youth camp located in the Barton Flats area of the San Bernardino National Forest. Prior to February 10, 2013, plaintiff learned about Mr. Dorner's criminal conduct. On February 10, 2013, plaintiff learned of the reward

discussed at Mayor Villaraigosa's press conference on the same day. While returning to the youth camp on February 12, 2013, plaintiff saw San Bernardino County Deputy Sheriff Paul Franklin. Plaintiff and Deputy Franklin, who were both driving, acknowledged each other. Deputy Franklin was followed by a Department of Fish and Game truck. Thereafter, plaintiff was confronted by Mr. Dorner. Plaintiff was ordered out of his truck. Mr. Dorner then drove away in plaintiff's truck. After Mr. Dorner drove away, plaintiff telephoned Deputy Franklin. The first amended complaint describes their telephone conversation: "When Deputy Franklin answered [his telephone], he asked, 'What do you have?' Plaintiff responded by reporting that his truck had just been stolen at gun point by [Mr.] Dorner. Deputy Franklin responded by asking, 'Where?' Plaintiff reported his location. . . . Deputy Franklin asked for a description of [his] truck and plaintiff provided him with the description. While speaking with Deputy Franklin, plaintiff heard gunshots from a direction downhill from his location, which he also reported to Deputy Franklin." It was only because of plaintiff's telephone call that law enforcement became aware that: Mr. Dorner was traveling downhill and driving a silver pickup truck; Mr. Dorner was driving on a particular road; and shots were being fired from the direction in which Mr. Dorner had driven.

The gunshots resulted from an encounter between the fish and wildlife department employees and Mr. Dorner. Mr. Dorner then continued to flee until he barricaded himself in a nearby cabin. It was there that Mr. Dorner was "apprehended and captured" by the authorities. According to the first amended complaint, plaintiff's telephone call

was a substantial factor in Mr. Dorner's apprehension and capture. Plaintiff's telephone call "notified law enforcement" of Mr. Dorner's exact location. Further, plaintiff's telephone call provided an exact description of the truck Mr. Dorner was driving. As noted, the truck driven by Mr. Dorner was the one stolen at gunpoint from plaintiff.

According to the first amended complaint, plaintiff's actions constituted an acceptance of the defendant's reward offer, as well as those of the other jurisdictions and unnamed private entities and individuals. On February 19, 2013, plaintiff accepted the $1 million reward offer of the City of Los Angeles. On March 20, 2013, plaintiff accepted the $100,000 reward offer of the City of Irvine. On April 5, 2013, plaintiff accepted defendant's $100,000 reward offer. Plaintiff accepted defendant's reward offer by presenting a government claim. Defendant rejected plaintiff's government claim as a matter of law.

B. The Allegations Relevant to the Particular Causes Of Action

The first cause of action seeks relief from the City of Los Angeles for contract breach. Because the cause of action for contract breach against defendant incorporates by reference the similar claim against the City of Los Angeles, we will digest the relevant allegations here. Plaintiff alleges that on February 10, 2103, Mayor Villaraigosa held a press conference and offered a $1 million reward for the "apprehension and capture" of Mr. Dorner. Mayor Villaraigosa announced the award was comprised of funds donated

by multiple jurisdictions, including defendant and private entities and individuals. Defendants' Mayor Bailey and the Mayor of Irvine, Dr. Steven Choi, were present at Mayor Villaraigosa's press conference. According to the first amended complaint: "Because of the statements of Mayor Villaraigosa and the presence of the Mayors of [defendant] and Irvine at the news conference, which were repeated throughout the media thereafter, plaintiff was aware that a Dorner reward offer was being made by the City of Los Angeles, [defendant] and [the] City of Irvine."

On February 12, 2013, the City of Los Angeles "ratified and/or reformed" the prior offer of Mayor Villaraigosa. The first amended complaint alleges, "the City of Los Angeles adopted the resolution to offer a $100,000 [reward] for information leading to the identification, apprehension and conviction of Dorner." Plaintiff alleges that he accepted the award, communicated his acceptance but has not been paid. In addition, plaintiff alleges that the City of Los Angeles created an administrative process for reviewing claims for the reward monies. Additionally, according to the first amended complaint, defendant created "the administrative procedure by fiat" which was: without consideration; "illusory"; an adhesion contract; unfair and biased; and required he waive his Seventh Amendment jury trial and appeal rights.

The second cause of action alleges defendant breached a contract with plaintiff. The second cause of action realleges the events occurring at the February 10, 2013 press conference presided over by Mayor Villaraigosa. On February 10, 2013, Mayor Bailey drafted a resolution authorizing "up to $100,000 toward the reward." According to a

media advisory prepared by defendant's police department, Mayor Bailey spoke at the press conference. In addition, the media advisory states in part, "Mayor . . . Bailey has prepared a resolution, to be voted on by the full City Council on Tuesday, February 12, 2013, authorizing up to $100,000 toward the reward." Plaintiff accepted the reward offer by notifying Deputy Franklin of Mr. Dorner's whereabouts. Thus, defendant was contractually obligated to pay plaintiff the reward it offered.

Additionally, plaintiff alleges that defendant attempted to modify its contractual obligations, or create a novation by establishing an administrative procedure to determine who was to receive reward monies. According to plaintiff, defendant's actions adopted an administrative procedure which: was done without consideration; created an illusory and adhesive contract; was unfair and biased; and improperly required him to waive his jury trial rights guaranteed by the Seventh Amendment and the right to appeal.

The sixth cause of action, filed pursuant to title 42 United States Code section 1983, alleges that defendant and the Cities of Los Angeles and Irvine violated his civil rights. On April 5, 2013, the City of Los Angeles issued procedures for "the Dorner Investigation Reward" which was designed to create a process for the distribution of the funds. There were multiple claimants to the rewards. The first amended complaint alleges defendant "concurred, agreed, and adopted the procedures" dictated by the City of Los Angeles. The City of Los Angeles appointed three retired judges who would decide how to distribute the donated monies maintained in the Richards, Watson & Gershon trust account.

The April 5, 2013 procedures identified two retired judges and one retired California Supreme Court Justice who were to hear the reward issue. The retired jurists were recommend how the reward money should be distributed: "The judges will make a recommendation(s) as to whether any claimant or claimants offered information that led to the identification and apprehension of [Mr.] Dorner, and how the reward money should be distributed, if at all. For purposes of this reward it is irrelevant that Mr. Dorner may have been deceased when 'apprehended'. For purposes of this reward, it is also irrelevant that Mr. Dorner has not been convicted. The reward is not conditioned on his conviction, and even if it were, satisfaction of that condition would be legally excused. Mr. Dorner's death has made satisfying such a condition impossible." The April 5, 2013 procedures identify: who is eligible for the reward; law enforcement's responsibilities in connection with the determination as to whom shall receive the reward; and the responsibilities of the two retired judges and justice. The procedures identify: the process for private entities to actually donate to the fund; the manner in which the funds were to be maintained by the law firm of Richards, Watson & Gershon; the requirement that the reward money be distributed in accordance with the recommendation of the judges and the justice; and that if all of the monies in the fund were not paid out to claimants, then a pro rata share would be returned to the aforementioned donors.

The "Responsibilities of Judges" portion of the procedures states in part: "The judges engaged in this process have agreed to: [¶] [¶] Make a recommendation, as to whom and at what percentage, the reward money that has been collected should be

distributed." Once the recommendations were publicly announced, they would be transmitted to the law firm of Richards, Watson, & Gershon. The law firm was then to distribute the reward money in accordance with the recommendation of the retired judges and justice. The first amended complaint alleges: "[The City of Los Angeles] established the procedures for the three judge tribunal to follow, and required plaintiff to agree in advance to the decision made by the tribunal as to donated monies and public entity monies, waive plaintiff's right to a jury trial, any right of appeal of any decision by the tribunal, and forfeit his vested right to the reward if he did not agree to accept the administrative procedures created by fiat by the defendant public entities." The April 5, 2013 procedures applied only to the jurisdictions and private entities who placed their funds in a trust account: "Therefore, be it resolved that the jurisdictions and private entities who are participating in this process have agreed to place their donated funds in a trust account, and that such funds will be distributed in accordance with the procedures set forth herein; and [¶] Therefore, be it resolved that the jurisdictions and private entities who are participating in this process have agreed that the following procedures will be followed."

The April 5, 2013 procedures explained that cities such as defendant may insist upon claimants following its own rules for collecting the rewards: "While it is generally the intent of the reward donors to create a universal process that is adopted by all private donors and jurisdictions who offered reward money, it must also be recognized that individual Cities and Counties who offered reward money may have their own

established reward process that is based on their local ordinances, precedents, or advice of counsel. As a result, claimants need to be aware that they may need to follow the rules, requirements or procedures for each individual jurisdiction that offered a reward in addition to the requirements set forth in this document. Nothing in these procedures should be interpreted as circumventing or superseding the requirements of any City or County that offered a reward during the Dorner investigation. Cities and Counties who offered a reward may choose to participate in these procedures. To the extent they agree, they may submit the reward monies to the trust account that has been established and that has been described herein." At another point, the April 5, 2013 procedures state: "In an effort to offer clarity as to the participants in this process and identify those who have pre-existing established reward procedures with which claimants should also comply, please see Exhibit A to this document. This list is for information purposes only. All claimants are responsible to ensure that they have filed all necessary claims and have followed any rules and procedures established by Cities and Counties who offered a reward."

Attached to the April 5, 2013 procedures is an exhibit A. Exhibit A identifies entities who are contributing to the trust fund account. Defendant is not listed as one of those entities. Additionally, exhibit A identifies jurisdictions that have pre-existing established reward procedures which must be followed. Defendant is not listed as one of those jurisdictions. Exhibit A also states: "All claimants are responsible to ensure that they have filed all necessary claims and have followed any rules and procedures

established by Cities and Counties who offered a reward. Nothing in these procedures should be interpreted as circumventing or superseding the requirements of any City or County that offered a reward during the Dorner investigation. Cities and Counties who offered a reward may [choose] to participate in these procedures. To the extent they agree, they may submit their reward monies to the trust account that has been established and that has been described herein." The April 5, 2013 procedures conclude by reiterating that to the extent that an individual jurisdiction has a claim procedure, it must be followed.

Further, the April 5, 2013 procedures described how claims are to be evaluated. According to the procedures, law enforcement agencies that participated in the investigation "will be invited" to collaborate in reviewing reward claims. Defendant's police department was one of the agencies invited to participate in the procedures promulgated by the City of Los Angeles. After the conclusion of the April 19, 2013 claim submission deadline, unidentified law enforcement officers were to present information to the panel of two judges and one justice. The law enforcement entities participating the process were to: document the date any claim is received as well as the claimant's name and address; ensure all claims were presented to the panel; inform the claimants that the claims would be processed and presented to the retired judges and justice; explain to the claimants who are ineligible for the rewards why they cannot receive payment; provide the panel of retired judges and the one retired justice with information as to why a claimant is ineligible; and make recommendations to the panel.

Attached to the procedures, in addition to exhibit A, is an acknowledgment and waiver form. The waiver provision states in part: "Upon the submission of a claim under the Dorner Reward Fund ('Fund'), the Claimant, on behalf of themselves and their heirs, agents, representatives, successors, and assigns, irrevocably and unconditionally releases and discharges the City of Los Angeles, the City of Irvine, [t]he County of Los Angeles, the County of Riverside, the County of San Bernardino, the U.S. Marshals Service, the Federal Bureau of Investigation, and all private donors to the Dorner Reward Fund whether identified by name or whether listed as anonymous, and all individuals and entities who contributed to or have participated in organizing the Fund (to include, but not be limited to the Judges named in the Procedures for the Dorner Investigation Reward, issued on April 5, 2013) from any and all claims . . . ." The acknowledgment and waiver form also contained a Civil Code section 1542 waiver. As can be noted, the acknowledgment and waiver form makes no reference to defendant.

In connection with the federal civil rights claim, plaintiff alleges the following: the administrative procedures were non-binding on the public entities; the public entities retained the discretion to make any decision about awarding the reward monies that have been promised; four public entities are not identified and defendant had its own established reward procedures which excluded it from any determination by the tribunal; there was no requirement that the law enforcement agencies, which includes defendant's police department actually participate in the tribunal process; the City of Los Angeles failed to disclose actual or potential conflicts of interest with the two retired judges and

the one retired justice; the process did not allow for a fair hearing; defendant and the other public entities failed to provide a fair and impartial process for evaluating who is entitled to the reward monies; and defendant acquiesced in these and other aspects of unfairness created by the City of Los Angeles and Mayor Villaraigosa. Defendant never submitted a claim under the procedures adopted by the City of Los Angeles.

The seventh cause of action alleges a violation of the California Constitution, article I, sections 1 and 7. The eighth cause of action seeks declaratory relief as to the legal rights and duties arising out of the reward offers.

III. DEFENDANT'S DEMURRER

Defendant demurred to the first amended complaint. Defendant argued: the second cause of action failed to state a claim for contract breach; title 42 United States Code section 1983 claim had no merit because plaintiff had no enforceable property interest and he failed to participate in the reward process; plaintiff's state constitutional due process claim had no merit for the same reason his federal claim was without merit and damages were unavailable under the California Constitution; and, as none of plaintiff's other claims had any merit, neither did his declaratory relief cause of action. Defendant's judicial notice motion sought judicial notice of provisions of the Riverside City Charter (city charter). City charter article II section 200 specifies defendant's general powers. City Charter article 419 states in part: "The City shall not be bound by any contract except as hereinafter provided unless the same shall be made in writing, approved by the City Council and signed on behalf of the City by the Mayor and City Clerk or by such other officer or officers as shall be designated by the City Council. Any of said officers shall sign a contract on behalf of the City when directed to do so by the City Council. [¶] By ordinance or resolution the City Council may authorize the City Manager to bind the City, with or without written contract, for the acquisition of equipment, materials, supplies, labor, services, or other items, if included within the

budget approved by the City Council, and may impose a monetary limit upon such authority."

IV. THE ANALYSIS IN THE OPENING BRIEF IS INSUFFICIENT TO PRESERVE PLAINTIFF'S CONTRACT CLAIMS

The opening brief contains three pages of analysis concerning defendant. The opening brief: identifies the applicable standard or review; identifies in a brief paragraph the facts directly relevant to defendant; and then engages in the following argument concerning two of the causes of action, "Thus, the basic core facts to state valid claims for breach of contract and violation of his civil rights was plead as to the City of Riverside." As to the declaratory relief claim, plaintiff presents the following single sentence as argument with citation to one case: "Furthermore, [plaintiff] sued the City of Riverside for declaratory relief that cannot be decided by demurrer. (*Qualified Patients Assn.* [] *v. City of Anaheim* (2010) 187 Cal.App.4th 734, 756[, d]isagreed with on other grounds (*Pack v. Superior Court* (2011) 199 Cal.App.4th 1070.))" Defendant argues that the foregoing truncated briefing is insufficient to preserve plaintiff's contract based claims for review. We agree with defendant. All of plaintiff's contract based claims which are being pursued against a public entity have been forfeited. (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 366, fn. 2; *People v. Barnett* (1998) 17 Cal.4th 1044, 1107, fn. 37.) In fact, plaintiff waited to address the contract breach issues an appropriate matter in the reply brief. As a result,

defendant did not have an adequate opportunity to respond to the specific contentions raised on appeal by plaintiff. No doubt, defendant could discuss the issues presented in the trial court but not with the precision those matters were discussed in the reply brief. (*In re Marriage of Khera & Sameer* (2012) 206 Cal.App.4th 1467, 1477 ["'Obvious reasons of fairness militate against consideration of an issue raised initially in the reply brief . . . .'"]; *Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794, fn. 3 ["To withhold a point until the closing brief deprives the respondent of the opportunity to answer it . . . ."] The contract breach issues were not timely nor fully briefed and thus are forfeited. (*Julian v. Hartford Underwriters Ins. Co.* (2005) 35 Cal.4th 747, 761, fn. 4; see Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2015) ¶ 9:78.2, p. 9-26.)

V. PLAINTIFF'S CONSTITUTIONAL CLAIMS ARE WITHOUT MERIT

Plaintiff alleges that defendant has violated his rights to a fair administrative hearing. He alleges: to receive the reward he must give up his right to file suit by utilizing defendant's administrative process; this includes waiving the right to file suit to compel production of defendant's documents; defendant acquiesced in the efforts by the Cities of Irvine and Los Angeles to "establish a constitutionally flawed process" ; and defendant and the Cities of Irvine and Los Angeles established procedures to deprive him of his "constitutional rights to a fair administrative hearing."

Our colleagues in Division Eight of this appellate district described the scope of an enforceable constitutional property right: "The federal and California Constitutions place procedural constraints on the deprivation of property interests. (U.S. Const., 14th Amend.; Cal. Const., art. I, §§ 7, 15.) '[P]roperty interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money.' (*Board of Regents v. Roth* (1972) 408 U.S. 564, 571-572.) However, a 'claimant must . . . identify a statutorily conferred benefit or interest of which he or she has been deprived.' (*Ryan v. California Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1071.) Specifically, a party must demonstrate a promise or guarantee of a specific benefit or right in the entity's policies or state law. (See *Roth*, *supra*, at pp. 577-578.)" (*Chan v. Judicial Council of California* (2011) 199 Cal.App.4th 194, 200; see *Burt v. County of Orange* (2004) 120 Cal.App.4th 273, 283-284.)

Our colleagues in Division Seven of this appellate district synthesized the controlling rule of law concerning federal procedural due process rights: "As the Supreme Court has emphasized, '[t]he hallmark of property, . . . is an individual entitlement grounded in state law, which cannot be removed except "for cause."' [Citations.] Once that characteristic is found, the types of interests protected as "property" are varied and, as often as not, intangible, relating "to the whole domain of social and economic fact." [Citations.]' [¶] '[T]wo general types of contract rights are recognized as property protected under the Fourteenth Amendment: (1) where "the contract confers a protected status, such as those 'characterized by a quality of either

extreme dependence in the case of welfare benefits, or permanence in the case of tenure, or sometimes both, as frequently occurs in the case of social security benefits'"; or (2) where "the contract itself includes a provision that the state entity can terminate the contract only for cause."'" (*Benn v. County of Los Angeles* (2007) 150 Cal.App.4th 478, 489-490, fn. omitted citing *Logan v. Zimmerman Brush Co.* (1982) 455 U.S. 422, 430-431.) Also, United States Supreme Court described a property interest for purposes of a federal due process right thusly, "A person's interest in a benefit is a 'property' interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing. [Citation.]" (*Perry v. Sindermann* (1972) 408 U.S. 593, 601 citing *Board of Regents v. Roth, supra*, 408 U.S. at p. 577.)

Defendant is correct that the first amended complaint fails to allege a procedural due process violation. To begin with, none of plaintiff's contentions concerning the other public entities' reward procedures have any merit. Nothing that occurred in the Los Angeles press conference gave rise to a constitutional right. The extensive reward procedures created by the City of Los Angeles have no application to defendant. The written documents synthesized above and attached to the first amended complaint make it clear defendant has nothing to do with the Los Angeles procedures. The exhibits attached to the first amended complaint negate any constitutional claim as it relates to the events in Los Angeles, including the reward procedure and press conference. Plaintiff's allegations appearing in the first amended complaint are inconsistent with the written

procedures promulgated by the City of Los Angeles. The exhibits are controlling and the first amended complaint's contrary conclusory allegations concerning a relationship between defendant and the City of Los Angeles are of no legal effect. (*Peak v. Republic Truck Sales Corp.* (1924) 194 Cal. 782, 790; *Mission Oaks Ranch, Ltd. v. County of Santa Barbara* (1998) 65 Cal.App.4th 713, 720.)

Also, plaintiff's title 42 United States Code section 1983 civil rights claim is subject to federal pleading requirements; mere conclusory allegations will not support such a cause of action. *(Catsouras v. Department of California Highway Patrol* (2010) 181 Cal.App.4th 856, 891; *Bach v. County of Butte* (1983) 147 Cal.App.3d 554, 564; see *Buenavista v. City and County of San Francisco* (1989) 207 Cal.App.3d 1168, 1172-1173, fn. 2; *Kreutzer v. County of San Diego* (1984) 153 Cal.App.3d 62, 69-70.) The allegations in the first amended complaint do not create a constitutional right to the reward monies. We have synthesized the relevant constitutional procedural due process principles. As can be noted, none of those authorities support plaintiff's federal constitutional claims. Further, defendant is not a party to the alleged unconstitutional claims process utilized by the City of Los Angeles. Thus, none of the aforementioned relevant constitutional procedural due process principles grant plaintiff any potential relief because of the City of Los Angeles procedures.

Moreover, the first amended complaint makes no non-conclusory allegations as to defendant's procedures. In fact, defendant's procedures are not even discussed in the first amended complaint. Plaintiff is pursuing what is in essence a facial challenge to

unspecified provisions of the unalleged procedures established by defendant. A procedural due process facial challenge has been classified by federal courts as an exceptional remedy. (*Carey v. Wolnitzek* (6th Cir. 2010) 614 F.3d 189, 201; see *United States v. Shrake* (7th Cir. 2008) 515 F.3d 743, 745 [Supreme Court justices are "united on the proposition that facial review is reserved for exceptional situations."].) A typical facial challenge requires the plaintiff establish that no set of circumstances exist under which the enactment is valid or the challenged provision lacks any plainly legitimate sweep. (*Speet v. Schuette* (6th Cir. 2010) 726 F.3d 867, 872; *Jordan v. Jackson* (4th Cir. 1994) 15 F.3d 333, 343.) Further, a plaintiff may not assert a facial procedural due process challenge absent evidence (in our case nonconclusory allegations) of access to procedure is absolutely blocked. Or the plaintiff must allege the procedures are a sham. (*Alvin v. Suzuki* (3rd Cir. 2000) 227 F.3d 107, 118-119; *McDaniels v. Flick* (3rd Cir. 2000) 59 F.3d 446, 460.) Plaintiff's conclusory allegations do not comply with the foregoing requirements for stating a federal civil rights procedural due process claim.

Further, plaintiff is not entitled to any state constitutional due process relief. Damages are not available for a due process violation under the California Constitution. (*Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300, 303, 320-321; *Richards v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 304, 317.)

In terms of leave to amend, at oral argument we requested plaintiff's counsel to explain what additional allegations would appear in a second amended complaint.

Plaintiff's counsel merely reiterated the allegations appearing in the first amended complaint. Thus, no abuse of discretion resulted when the trial court refused to grant leave to amend on any of plaintiff's constitutional claims. (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 522; *Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 333.)

VI. THE TRIAL COURT CORRECTLY SUSTAINED THE DEMURRER WITHOUT LEAVE TO AMEND AS TO THE DECLARATORY RELIEF CAUSE OF ACTION

The trial court sustained the demurrer without leave to amend in connection with the eighth cause of action for declaratory relief. Insofar as the declaratory relief cause of action is premised upon any contract breach, it has no merit for the reasons previously discussed. Those issues have been forfeited. In connection with plaintiff's constitutional contentions, we have explained why they have no merit. Thus, plaintiff has failed to allege facts sufficient to show he is entitled to a favorable declaration of rights on his federal and state constitutional causes of action. Under these circumstances, the trial court appropriately sustained the demurrer to the declaratory relief cause of action. (*Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943, 947; *Lockheed Martin Corp. v. Continental Ins. Co.* (2005) 134 Cal.App.4th 187, 221.)

VII. DISPOSITION

The judgment of dismissal is affirmed. Defendant, the City of Riverside, shall recover its costs on appeal from plaintiff, Richard Heltebrake.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

I concur:

KRIEGLER, J.

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Mosk, J., Dissenting

I dissent because I believe that the trial court erred in sustaining the demurrer as to all of the causes of action in the First Amended Complaint (FAC), except that it did not err in sustaining the demurrer as to the seventh cause of action for violation of plaintiff's due process rights under the California Constitution.

A. Abandonment of Appeal

The City of Riverside contends that plaintiff has waived or otherwise forfeited any arguments that the trial court erred in sustaining the demurrer because plaintiff made only perfunctory arguments in its opening brief. We have discretion to consider issues not properly raised in an appellant's opening brief. (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2015) ¶ 9:21, p. 9-6; *Jameson v. Desta* (2009) 179 Cal.App.4th 672, 674, fn. 1; *In re Jonathon S.* (2005) 129 Cal.App.4th 334, 340; *Greenlining Institute v. Public Utilities Com.* (2002) 103 Cal.App.4th 1324, 1329, fn. 5.)

The City of Riverside had ample opportunity to address the issues, and did so. The City of Riverside did not demonstrate that it was prejudiced.

Although points raised for the first time in an appellant's reply brief will not ordinarily be considered unless good reason is shown for failure to do so in the opening brief (*Hibernia Savings and Loan Society v. Farnham* (1908) 153 Cal. 578, 584), "there is nothing to prevent [us] from considering the point if [we] wish[] to do so, because [we] can consider points not raised at all." (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 723, pp. 790-791.) I therefore would decline to exercise discretion to hold that plaintiff has abandoned his appeal concerning the City of Riverside.

B. Merits

Plaintiff alleged in the FAC the following causes of action against the City of Riverside: (1) breach of contract, (2) violation of his federal due process rights, (3) violation of the California due process rights, (4) and declaratory relief. Each of the causes of action is at least largely dependent upon there being an enforceable contract. "[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff. [Citation.]" (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.)

Plaintiff alleged that "on February 12, 2013, [the City of Riverside's] City Council adopted [a] resolution offering a $100,000 reward for Dorner. . . . Therefore, as of February 12, 2013, the defendant, the City of Riverside, offered a $100,000 reward for information leading to the apprehension and capture of Dorner." Plaintiff alleged that "[a]dditionally, and/or in the alternative," by doing so the City of Riverside "ratified or reformed" the February 10, 2013, oral offer made during the press conference at which the City of Riverside's Mayor was present.

An offer of a reward is an offer of a unilateral contract—i.e. one that can only be accepted by actual performance. (*Davis v. Jacoby* (1934), 378-379). A cause of action for damages for breach of a reward contract must allege an offer of reward, the plaintiff's performance of the requested service with knowledge of and in reliance on the offer, a demand for the reward, and defendant's refusal to pay. (*Wilson v. Stump* (1894), 257-258; see *Burke v. Wells, Fargo & Co.* (1875) 50 Cal. 218, 220-222.)

Section 419 of the Riverside City Charter provides that the City of Riverside shall not be bound by any contract unless it is made in writing, approved by the City Counsel and signed on behalf of the City by the Mayor and City Clerk or by such other officer or officers as shall be designated by the City Council. The City of Riverside concedes that

its adopted reward resolution was in compliance with section 419 of the Riverside City Charter.[1]

The City of Riverside argues that the adoption of the reward resolution occurred after plaintiff's telephone call to Deputy Franklin and therefore it did not constitute acceptance of the City of Riverside's offer. The City of Riverside similarly contends that plaintiff did not perform with the knowledge of and in reliance on a valid reward offer. Plaintiff alleged that he knew of the reward oral offer made during the February 10, 2013, press conference. It is reasonable to infer that the City of Riverside's authorization of the reward resolution was made retroactive to the time of the February 10, 2013, oral reward offer made during the press conference. (See *Smith v. State* (Nev. 1915) 151 P. 512, 513 ["It may be reasonably assumed that the legislature had knowledge at the time of the passage of the act [authorizing an award] that one or more [people] were in pursuit of the outlaws"].)

Plaintiff alleged that the City of Riverside's February 12, 2013, adopted reward resolution ratified the February 10, 2013, oral offer made during the press conference at which the City of Riverside's Mayor was present. Ratification occurs when the principal subsequently "approv[es] the act of the agent." (*Schweitzer v. Bank of America* (1941) 42 Cal.App.2d 536, 542.) "An agency may be created, and an authority may be conferred, by . . . subsequent ratification." (Civ. Code, § 2307; *van't Rood v. County of Santa Clara* (2003), 572.) Civil Code section 2310 states that "[a] ratification can be made . . . in the manner that would have been necessary to confer an original authority for the act ratified . . . ." Ratification of an unauthorized contract made by an agent can be ratified "by implication from the offerees or principal's retention and enjoyment of its benefits. [Citations.]" (*Durgin v. Kaplan* (1968) 68 Cal.2d 81, 91, fn. 10.) "But 'ratification is possible only when the person whose unauthorized act is to be accepted purported to act

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[1] As the City of Riverside notes, the trial court took judicial notice of its adopted reward resolution in connection with the hearing on its prior demurrer to the original complaint.

as agent for the ratifying party.' [Citation.]" (*van't Rood v. County of Santa Clara, supra,* 113 Cal.App.4th at p. 571.) "Whether there was a ratification [of a contract is] a question of fact." (*Kerr Gifford & Co. v. American Distilling Co.* (1939) 35 Cal.App.2d 390, 396.) "[T]he effect of a ratification is that the authority which is given to the purported agent relates back to the time when he performed the act." (*Rakestraw v. Rodrigues* (1972) 8 Cal.3d 67, 73; *County of Calaveras v. Calaveras County Water Dist.* (1960) 184 Cal.App.2d 276, 283.)

The City of Riverside argues that the City Council's authorization of the reward resolution was not a ratification of the reward offer made at the February 10, 2013, press conference because the adopted reward resolution contained additional terms, including that the reward offer expired in 60 days and that the City of Riverside's City Council had "sole discretion" over all decisions on the materiality of the information provided. The City of Riverside has not cited to any applicable authorities that ratification of a contract offer requires that the ratification event not contain additional terms that just set forth procedures for implementation of the contract.

Moreover, those additional terms in the reward resolution are not as a matter of law sufficiently material to preclude a binding contract. Although the resolution provided that the reward offer expired in 60 days, within that time plaintiff sent a letter to the City of Riverside notifying it that he was accepting the reward offer and making a claim for it.

Moreover, although the reward resolution stated that the City of Riverside's City Council had "sole discretion" over all decisions on the materiality of the information provided, its discretion was reasonably limited by the implied covenant of good faith and fair dealing. Whether there was such a breach of the implied covenant of good faith is a question of fact that cannot be determined by demurrer. (See *Locke v. Warner Bros.* (1997) 57 Cal.App.4th 354, 367.)

Although not specifically alleged by plaintiff in the FAC, there can be no reasonable doubt that the City of Riverside's Mayor, who was present at the press

conference, was the City of Riverside's agent.[2] For purposes of the demurrer, the City of Riverside's authorization of the reward resolution created at least a factual issue as to whether there was a ratification of the reward offer made at the February 10, 2013, press conference.

The City of Riverside's authorized reward resolution offered a $100,000 reward for information leading to Dorner's "arrest and conviction." The City of Riverside contends that plaintiff's acceptance of the reward offer was not enforceable because Dorner was not actually "convicted." Because Dorner died before he could be convicted, the "conviction" condition of any reward offer was impossible and was not a requirement for acceptance. (*Smith v. State, supra*, 151 P. at p. 514; *Burke v Wells, Fargo & Co*., *supra,* 50 Cal at p. 221; *Madsen v Dakota State Bank* (S.D. 1962) 114 N.W.2d 93, 94-95; *Bloomfield v Maloney* (Mich. 1913) 142 N.W. 785, 789; *Elkins v. Board of County Comm'rs of Wyandotte County* (Kan. 1912) 120 P. 542, 544; Civ. Code, § 1441.)

The City of Riverside argues that the reward resolution adopted by it was made pursuant to Government Code section 53069.7 authorizing it to offer a reward for the furnishing of information leading to "the arrest and conviction" of any person who killed or seriously harmed a peace officer. The City of Riverside contends that the adoption of the reward resolution was not made pursuant to Government Code section 53069.5 authorizing it to offer and pay a reward, and determine the amount of such rewards, for information leading to "the determination of the identify of, and the apprehension of," any person whose willful misconduct results in injury or death to any person. This is not clear on the statutory authority. The issue is not under which law the authorization was made but is one of contract law.

In addition, there is often compliance with a statute when that compliance is substantial, albeit not complete. (*Costa v. Superior Court* (2006) 37 Cal.4th 986, 1019, fn. 20; *Greven v. Superior Court* (1969) 71 Cal.2d 287, 291; *People v. Peterson* (1973) 9

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[2] Even if it must be alleged, plaintiff should be given the opportunity to amend the FAC to allege that the Mayor was acting as the agent for the City Council, who under the Charter for the City of Riverside is responsible for authorizing the reward offer.

Cal.3d 717, 722, 723; *St. Mary v. Superior* Court (2014) 223 Cal.App.4th 762, 779; *People v. Carroll* (2014) 222 Cal.App.4th 1406, 1422; *Sunlight Electric Supply Co. v. McKee* (1964) 226 Cal.App.2d 47, 49-50.) It appears that the objective of Government Code section 53069.7, which would technically require "the arrest and conviction" would be satisfied by his "apprehension" in light of his having died during the encounter with the law enforcement officers.

The City of Riverside contends the trial court properly sustained the demurrer as to the FAC's cause of action for violation of plaintiff's due process rights under the California Constitution because California's due process clause does not authorize an action for money damages. I agree. Plaintiff prays "[f]or an award damages under the [California] due process clause[] . . . fully compensating plaintiff for the damages suffered as a direct and proximate result of [defendant] City of Riverside . . . attempting to deprive plaintiff [of] his vested right in the reward money." Damages are not among the remedies available for a violation due process rights set forth in article I, section 7, subdivision (a) of the California Constitution. (*Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300, 329 [no private right of action for damages under the due process clause of the California Constitution].)

The City of Riverside also challenges plaintiff's cause of action for violation of his federal due process claim. Contrary to the City of Riverside's contentions, plaintiff has stated facts sufficient to constitute a cause of action. Central to plaintiff's federal due process claim are the Procedures, attached as an exhibit to the FAC, that create a process for the distribution of the reward monies. According to plaintiff, the Procedures deprived him of his right to claim the reward fees. Under the Procedures, in order for plaintiff to be considered eligible for the reward monies, plaintiff was required to consent to the Procedures, which included agreeing to a panel of three retired judges to decide who would receive the reward monies, to an unconditional release discharge all claims against all parties involved for any and all claims arising from the reward claim process, that the decision of the panel would be final and not subject to appeal or further review, and to the

establishment of a deadline for submittal of the claim. Such a condition, even if valid, would deprive plaintiff of the right to challenge a governmental decision.[3]

The City of Riverside argues the Procedures do not list it as one of "'the entities participating in this reward process'" and do not list it among the entities that would be released from liability on the "Acknowledgement and Waiver Form." Plaintiff however alleged in the FAC that the City of Riverside "secretly communicated [its] agreement to the [Procedures] to the City of Los Angeles." That is, for purposes of the demur, plaintiff made an allegation that is not contradicted by the Procedures.

The City of Riverside contends that plaintiff's federal due process claim does not state facts sufficient to constitute a cause of action because plaintiff does not have a "vested interest" in the reward funds given that the City of Riverside's adopted resolution regarding the reward funds states that the relevance of the information concerning Dorner's apprehension, and the determinations of the reward offer, shall be within the "sole discretion" of the City of Riverside's city council. The council of the City of Riverside does not have unfettered discretion. The implied covenant of good faith and fair dealing provides a reasonable limitation on the discretion of the City of Riverside's City Council—"to refrain from doing anything to injure the right of [plaintiff] to receive the benefits of the agreement." (*Benavides v. State Farm General Ins. Co.* (2006) 136 Cal.App.4th 1241, 1249.)

The City of Riverside contends that the trial court's sustaining of the demurrer to the declaratory relief cause of action should not be reversed because plaintiff was not prejudiced because, arguing that there is no breach of contract, the declaratory judgment would have been adverse to plaintiff. Contrary to the City of Riverside's contention, plaintiff is prejudiced by the order. As noted above, the breach of contract claim does not fail, as a matter of law, and the trial court erred in sustaining the demurrer to the

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[3] The parties have not argued whether the Procedures constituted a lawful delegation of authority. (See generally *Light v. State Water Resources Control Bd.* (2014) 226 Cal.App.4th 1463, 1490-1494; see also C*ity of Glendale v. Marcus Cable Associates, LLC* (2014) 231 Cal.App.4th 1359, 1380-1381.)

declaratory relief cause of action. Again, I would only hold that under the applicable standards, plaintiff has stated facts sufficient to constitute a cause of action. I express no opinion on the merits of the case.

For the reasons stated above, I would reverse the judgment entered in favor of the City of Riverside following the trial court's sustaining of its demurrer without leave to amend, affirm the order sustaining the demurrer as to the seventh cause of action for violation of plaintiff's due process rights under the California Constitution, and otherwise reverse the order and remand the matter to the trial court.

MOSK, J.