

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	2:24-cv-07237-MRA-AS	Date	June 13, 2025
Title	<i>MSB Investors, LLC, et al. v. County of Santa Barbara, et al.</i>		

Present: The Honorable MONICA RAMIREZ ALMADANI, UNITED STATES DISTRICT JUDGE

Gabriela Garcia

None Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None Present

None Present

Proceedings: (IN CHAMBERS) ORDER DENYING IN SUBSTANTIAL PART AND GRANTING IN MINOR PART DEFENDANT’S MOTION TO DISMISS [ECF 11]

Before the Court is Defendant’s Motion to Dismiss Plaintiff’s Complaint. ECF 12. The Court read and considered the moving, opposing, and reply papers and deemed the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); L.R. 7-15. For the reasons stated herein, the Court **DENIES IN SUBSTANTIAL PART** and **GRANTS IN MINOR PART** the Motion with leave to amend.

I. BACKGROUND

On July 23, 2024, Plaintiffs MSB Investors, LLC (“Mustang”) and MSBG Partners, LLC (“MSBG”) (collectively, “Plaintiffs”) filed this breach of contract case against the County of Santa Barbara (“Defendant” or “County”) and Does 1-10 in Santa Barbara County Superior Court. ECF 1-1. On August 26, 2024, the case was removed to federal court. ECF 1. Mustang and MSBG are California limited liability companies; MSBG is an affiliate of Mustang. ECF 1-1 ¶¶ 4, 10, 19. Plaintiffs’ claims against the County arise out of a contract that Mustang entered with the County to develop and operate a recycling solution project. *Id.* ¶ 20. The Court describes the relevant facts as alleged in Plaintiffs’ Complaint.¹

In the early 2000s, the County and the Cities of Santa Barbara, Goleta, Buellton, and Solvang (collectively, the “Public Participants”) agreed to work together to address California

¹ When deciding a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the court is required to presume that all well-pleaded allegations are true, resolve all reasonable doubts and inferences in the pleader’s favor, and view the pleading in the light most favorable to the non-moving party. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *Daniels-Hall v. NEA*, 629 F.3d 992, 998 (9th Cir. 2010).

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state waste management, global warming, and recycling requirements. *Id.* ¶ 16. Because the Public Participants lacked the expertise necessary to identify and assess technological solutions to satisfy the State’s requirements or develop, implement, and operate the resulting project and facility, the County issued a Request for Proposals (“RFP”) to find a private partner for a partnership. *Id.* ¶ 17. The RFP asked for proposals from the private sector to permit, design, finance, build, own, and operate a plant to separate recyclables and organic waste from trash for 20 years following commencement of full-scale operations. *Id.* ¶ 18. The RFP envisioned that none of the Public Participants would have an ownership interest in the resulting plant. *Id.*

Mustang was created by two groups who had significant experience acquiring, financing, developing, and managing projects in other California cities, including former landfills that required significant regulatory agency permitting and entitlement experience. *Id.* ¶ 19. Mustang included on its team two highly regarded international companies whose technologies were suited for Santa Barbara. *Id.* ¶ 21. Its team also included a highly regarded local company as the Engineering, Procurement & Construction Contractor who, with assistance from the international companies, would be responsible for all aspects of the proposed “ReSource Center.” *Id.* ¶¶ 20-21. Mustang would therefore be the entity bringing the project to the County and the would-be owner, but not do any construction, engineering, or other work that required a license. *Id.* ¶ 21. Instead, any such work would be completed by its licensed team members. *Id.*

In June 2010, Mustang submitted its ReSource Center proposal, and in July 2011, the County selected Mustang as the preferred partner. *Id.* ¶ 22. In January 2012, the County Board of Supervisors (“Board”) ratified the decision. *Id.* However, due to County delays, the initial contract between the County and Mustang was not signed until July 2016 and was amended and reinstated in November 2016. *Id.* ¶ 23. The final contract was subsequently amended six more times. *Id.*

During contract negotiations, the County changed the partnership from that contemplated in the RFP (where Mustang would own the ReSource Center) to make Mustang the operator of the Center. *Id.* ¶ 25. Mustang’s “profit-potential would be significantly less,” but Mustang accepted this result in exchange for the County assuming the risk should revenues not be sufficient to cover the plant’s operating costs. *Id.* “The Contract therefore contains numerous provisions requiring the County to ensure a minimum revenue floor in the event the Contract’s economic assumptions did not materialize.” *Id.* For example, Section 10.8 of the Contract (“Cash Flow Assistance”) recognized that significant problems could arise depending on the “highly volatile” revenue stream. *Id.* ¶ 26. Therefore, the County was required to give Mustang short- and long-term monetary assistance if recycling revenues were less than anticipated. *Id.* And Section 10.10 (“Extraordinary Relief”) of the Contract “contained additional procedures to address other

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causes of economic shortfalls.” *Id.*

Due to other County delays, construction of the ReSource Center did not begin until December 2018. *Id.* ¶ 24. The first part of the ReSource Center, the “Recovery Facility,” was completed in January 2021. *Id.* Commissioning and operations began in February 2021. *Id.* The second part of the Center, the Anaerobic Digestion Facility (“Digester”), was completed in July 2021. *Id.* It began operations in August 2021. *Id.* By July 2022, 100% of the organics diverted by the Recovery Facility were being processed by the Digester. *Id.* ¶ 24.

The COVID-19 pandemic negatively impacted the revenue stream that was intended to cover 75% of the ReSource Center’s operating costs. *Id.* ¶¶ 27-28. The “Extraordinary Review” and “Cash Flow Assistance” provisions included in the Contract between the parties were created to address these kinds of structural issues. *Id.* ¶ 31. Mustang advised the County of these issues starting in January 2022; Mustang also made a request in April 2022 to access its contractual line of credit to partially fund more than \$1 million in operating losses incurred and anticipated for the January to June 2022 period due to recyclable revenue declines. *Id.* Mustang made its first official request for Cash Flow Assistance and Extraordinary Review on August 15, 2022. *Id.*

However, during the summer of 2022, a conflict developed involving Leslie Wells, the Deputy Director of Public Works and lead County employee for the Contract. *Id.* ¶ 32. Wells personally negotiated a contract with the City of Santa Maria that required Santa Maria to pay a significant fee increase to the County for waste processing, which other waste processors did not charge, making the Contract uneconomical for Santa Maria. *Id.* ¶¶ 32, 33. This deprived the ReSource Center of long-term revenue. *Id.* ¶ 33. John Dewey, Mustang and MSBG’s principal, informed certain County Supervisors of the significant impact this loss would have on the ReSource Center and the County’s taxpayers. *Id.* ¶ 34.

After these events, the County refused to “timely and adequately” provide Cash Flow Assistance and Extraordinary Review to Mustang under the Contract. *Id.* ¶ 36. The County then began postulating that design issues might be impacting the loss of recyclable revenue. *Id.* ¶ 37. By October 2022, the revenue deficit for recyclable sales for the second fiscal year was accumulating at over \$250,000 per month. *Id.* ¶ 38. Total revenues were running approximately \$400,000 per month under operating costs. *Id.*

On November 6, 2023, the County notified Mustang of its intent to terminate the Contract. *Id.* ¶ 44. The Notice did not identify specific contractual provisions that Mustang was alleged to have breached. *Id.* The Complaint alleges that these breaches were, at best, “curable events” under Section 14.2(B) of the Contract, which precluded the County from terminating the Contract unless (1) it gave Mustang an opportunity to cure and (2) Mustang failed to reasonably cure the

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problem within 30 days. *Id.* On December 12, 2023, the Board voted to terminate the Contract, effective January 3, 2024. *Id.* ¶ 46.

Based on these allegations, Plaintiffs² bring claims against the County and Does 1-10 for (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) unjust enrichment (brought only by Mustang against the County); (4) violation of equal protection; and (5) retaliation. *Id.* On September 3, 2024, the County moved to dismiss all of Plaintiffs' claims. ECF 11. Plaintiffs oppose. ECF 17.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) permits dismissal for failure to state a claim upon which relief can be granted. “On a motion to dismiss, all material facts are accepted as true and are construed in the light most favorable to the plaintiff.” *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012) (citing *Coal. for ICANN Transparency, Inc. v. VeriSign, Inc.*, 611 F.3d 495, 501 (9th Cir. 2010)); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Dismissal is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory. *See Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008). In other words, a complaint must “state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (per curiam). This is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.

III. DISCUSSION

A. Request for Judicial Notice

As an initial matter, Defendant requests that this Court take judicial notice of several “[m]aterials and documents made available to the [Board] for the Board of Supervisors’ December 12, 2023, public meeting and hearing regarding whether to terminate the Contract with MSB Investors, LLC for Development and Operation of the Tajiguas ReSource Recovery Project[.]”

² Because Plaintiffs Mustang and MSBG jointly filed their Complaint and Opposition, the Court refers to the Complaint’s allegations as “Plaintiffs’ allegations” or the “Complaint’s allegations,” and to the arguments contained in Plaintiffs’ Opposition as “Plaintiffs’ arguments.” Where the Complaint’s allegations pertain to one Plaintiff individually, the Court specifies so.

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ECF 12 at 2. Defendant attaches 19 exhibits to its request.

Judicial notice of such an extensive factual record at the pleading stage, submitted by Defendant to support its Motion to Dismiss, is inappropriate. “Generally, district courts may not consider material outside the pleadings when assessing the sufficiency of a complaint” under Rule 12(b)(6), unless the extrinsic material is incorporated into the complaint by reference or subject to judicial notice. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018); *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007).

Defendant is essentially asking the Court to take judicial notice of facts that dispute Plaintiffs’ factual allegations—namely, whether Defendant’s proffered reasons for terminating its contract with Plaintiffs were indeed pretextual. As the Ninth Circuit has held, “the unscrupulous use of extrinsic documents to resolve competing theories against the complaint risks premature dismissals of plausible claims that may turn out to be valid after discovery.” *Khoja*, 899 F.3d at 998. Accordingly, Defendant’s Request for Judicial Notice is **DENIED**.

B. Mustang’s Breach of Contract Claim³

Defendant argues that Mustang’s breach-of-contract claim fails as a matter of law because Mustang lacked a contractor’s license. ECF 11 at 13-14. Under section 7031(a) of the California Business and Professions Code, a contractor may not maintain any action, legal or equitable, “to recover compensation for the performance of any act or contract unless he or she was duly licensed *at all times* during the performance of that *act or contract*.” *MW Erectors, Inc. v. Niederhauser Ornamental Metal Works Co., Inc.*, 36 Cal. 4th 412, 418 (2005) (citing Cal. Bus. & Prof. Code § 7031(a)) (internal quotation marks omitted).⁴ California “imposes strict and harsh penalties for a contractor’s failure to maintain proper licensure.” *Id.* Indeed, “section 7031 applies despite injustice to the unlicensed contractor.” *Hydrotech Sys., Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988, 995 (1991); *see also MW Erectors*, 36 Cal. 4th at 424 (“Section 7031(a) will be applied, regardless of equitable considerations, even when the person for whom

³ The Court addresses MSBG’s standing to jointly assert claims for breach of contract and breach of the covenant of good faith and fair dealing separately below.

⁴ Section 7031(a) specifically states that “no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action . . . for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that they were a duly licensed contractor at all times during the performance of that act or contract regardless of the merits of the cause of action brought by the person[.]” Cal. Bus. & Prof. Code § 7031(a).

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the work was performed has taken calculated advantage of the contractor’s lack of licensure.”).

Not every act, however, requires a contractor’s license, and section 7031(a) “does not necessarily preclude the recovery of compensation for acts for which no contractor’s license was required.” *MKB Mgmt., Inc. v. Melikian*, 184 Cal. App. 4th 796, 806 (2010). “Thus, when testing the sufficiency of pleadings against section 7031(a), courts must determine whether the agreement at issue ‘can reasonably be interpreted to require [the plaintiff] to perform work for which no license was required.’” *SG Blocks, Inc. v. Hola Cmty. Partners*, 521 F. Supp. 3d 881, 891 (C.D. Cal. 2021) (quoting *Exec. Landscape Corp. v. San Vicente Country Villas IV Ass’n*, 145 Cal. App. 3d 496, 501 (1983)).

First, even if portions of the contract required Mustang to act as a contractor and thereby to have a contractor’s license for that work, Mustang’s breach-of-contract claim also seeks compensation for the *operational* services it provided—services that they argue do not require a contractor’s license. ECF 17 at 12-14. The Complaint alleges that Mustang was selected by the County to complete two different tasks: to oversee the building of the ReSource Center and to then *operate* the Center. ECF 1-1 ¶¶ 18, 25. Defendant argues that the operational task was merely “incidental to” building the ReSource Center. ECF 11 at 17. But as the Complaint alleges, the County’s RFP asked for proposals from the private sector that provided that, in addition to designing and building a ReSource Center, the participant would go on to own and operate the Center *for 20 years* following commencement of full-scale operations. ECF 1-1 ¶ 18. Furthermore, the Contract separates payment to Mustang for construction and operational services. Compare Contract Article 4 (“Project Development”) with Article 5 (“General Operations Requirements”), 6 (“Material Recovery Facility”), 7 (“Anaerobic Digestion Facility”), 8 (“Marketing”), 10.3 (“Facility Operations”). Thus, reading the alleged facts in the light most favorable to Mustang, the Court finds that Mustang has plausibly stated a breach-of-contract claim based on the portions of the Contract concerning Mustang’s operation of the ReSource Center.

Second, as to the ownership of the ReSource Center, Mustang argues that the County sought a partner at the RFP stage that would “own” the ReSource Center, for which Mustang did not need a license and all the work to be performed was by licensed contractors. ECF 17 at 9-10. While there is an exception to the contractor licensing requirement for “owners” under section 7044 of the California Business and Professions Code, that exception applies only to an owner who is “building or improving structures *on his or her property*.” Cal Bus. & Prof. Code § 7044 (emphasis added). As Defendant points out, the RFP did not contemplate that Mustang would own the *land* on which the ReSource Center would be built. ECF 19 at 9-10. This exception therefore does not apply.

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Plaintiffs argue that, after the County withdrew the “ownership” aspect of the partnership, it nevertheless identified Mustang as its “authorized representative.” ECF 17 at 9-10; Ex. A at 15. Section 7040 of the California Business and Professions Code excludes “authorized representatives” of a county from the contractor’s license requirement. *Id.* at 10. In so arguing, Plaintiffs cite to a revised exhibit to the original contract, defining Mustang’s role under the “Revised Exhibit AA, Progress Payment Provisions” as follows: “Developer MSB, acting as the County’s authorized representative, is charged with planning, designing, and constructing the TRRP and pursuant to Business & Professions Code Section 7040, Developer will oversee and coordinate all requests for progress payments for all construction work[.]”⁵ ECF 17-1 at 18.

Defendant responds that this new exhibit does not demonstrate that Mustang was to act as an “authorized representative” in carrying out all aspects of the contract; rather, it indicates only that Mustang was to act “in some sort of representative capacity when assisting to manage progress payments.” ECF 19 at 10. The Court is not persuaded by Defendant’s narrow interpretation. Reading the alleged facts in the light most favorable to Mustang at this stage of the proceedings, the authorized representative exception to the contractor’s licensing requirement plausibly applies.

For all these reasons, the Motion to Dismiss is **DENIED** as to Mustang’s breach-of-contract claim.

⁵ The Court takes judicial notice of this revised portion of the contract. Federal Rule of Evidence 201 “permits a court to notice an adjudicative fact if it is ‘not subject to reasonable dispute.’” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018) (quoting Fed. R. Evid. 201(b)). “A fact is ‘not subject to reasonable dispute’ if it is ‘generally known,’ or ‘can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.’” *Id.* (quoting Fed. R. Evid. 201(b)(1)-(2)). Additionally, courts regularly take judicial notice of “undisputed matters of public record.” *Harris v. Cnty. of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (internal citations omitted); *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001). A court can take judicial notice of “[p]ublic records and government documents available from reliable sources on the Internet, such as websites run by governmental agencies.” *U.S. ex rel. Modglin v. DJO Glob. Inc.*, 48 F. Supp. 3d 1362, 1381 (C.D. Cal. 2014) (taking judicial notice of documents from FDA’s website); *see also Daniels-Hall*, 629 F.3d at 999 (taking judicial notice of information on the website of two school districts because they were government entities). The court considers the judicially noticed materials in ruling on the Motion to Dismiss. *See Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988).

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C. Breach of the Covenant of Good Faith and Fair Dealing Claim

Defendant argues that Mustang’s claim for breach of the covenant of good faith and fair dealing derives from their barred breach-of-contract claim and therefore is also precluded by section 7031 of the California Business and Professions Code. ECF 11 at 18 (citing *Maciel Builders LLC v. U.S. Farming Int’l LLC*, No. 19-CV-03660-BLF, 2020 WL 759509, at *6 (N.D. Cal. Feb. 14, 2020) (applying section 7031 to dismiss breach-of-contract and breach-of-IMPLIED-covenant-of-good-faith and fair dealing claims because they were “effectively seek[ing] compensation for unlicensed work.”)). Because Plaintiff’s breach-of-contract claim survives dismissal, this claim also survives. Defendant makes no other arguments in support of dismissing this claim. Thus, the Motion to Dismiss is **DENIED** as to this claim.

D. Unjust Enrichment Claim

Defendant argues that Mustang’s unjust enrichment claim is similarly precluded by section 7031 because the “enrichment” at the expense of an unlicensed contractor is not “unjust” as a matter of law. ECF 11 at 19 (citing *MW Erectors*, 36 Cal. 4th at 426, 444)). Mustang responds that, even if section 7031 did apply, it may nevertheless recover for the County’s unjust enrichment based on its services that did *not* require a license. ECF 17 at 16.

Alternatively, Defendant argues that this claim must fail because a County cannot be liable under an “unjust enrichment” theory as a matter of law. ECF 11 at 20 (citing *Doe v. Regents of Univ. of Cal.*, 672 F. Supp. 3d 813 (N.D. Cal. 2023)). “Although the general rule under California law is that public entities are not subject to unjust enrichment claims, that rule is based on the need to protect public entities from obligations under contracts beyond their legal authority.” *Honeywell, Inc. v San Francisco Auth.*, 72 F. App’x 609, 614 (9th Cir. 2003) (citing *Lundeen Coatings Corp. v. Dep’t of Water & Power*, 232 Cal. App. 3d 816 (1991); *Miller v. McKinnon*, 20 Cal. 2d 83 (1942)). In *Miller*, the California Supreme Court held that a public entity *may* be held liable under an implied-in-law or quasi-contract theory where the entity enters a contract within its powers to contract but that contract is “rendered invalid for some mere irregularity or some invalidity in the execution thereof[.]” 20 Cal. 2d at 91. *See also Doe*, 672 F. Supp. 3d at 822 (expressly applying this rationale to plaintiff’s unjust enrichment claim against a public entity). Therefore, because Plaintiffs’ allegations allow for such a possibility—*i.e.*, they plausibly show that the parties believed they had entered into a valid contract, but portions of that contract may yet be invalidated by section 7031(a)—Mustang may plead its unjust enrichment claim in the alternative.

As with Plaintiffs’ prior claim, Defendant’s Motion to Dismiss is **DENIED** as to this claim.

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E. MSBG’s Third-Party Beneficiary Allegations

Defendant argues that MSBG has failed to establish standing to bring any contract-based claims as a third-party beneficiary to the Contract. ECF 11 at 28.

“[O]nly a party to a contract or an intended third-party beneficiary may sue to enforce the terms of a contract or obtain an appropriate remedy for breach.” *GECCMC 2005-C1 Plummer St. Off. Ltd. P’ship v. JPMorgan Chase Bank Nat. Ass’n*, 671 F.3d 1027, 1033 (9th Cir. 2012). “[U]nder California law, a contract must be made expressly for the benefit of a third party for that party to enforce the contract as a third-party beneficiary.” *Nat’l Rural Telecommunications Co-op v. DIRECTV, Inc.*, 319 F. Supp. 2d 1094, 1100 (C.D. Cal. Nov. 10, 2003) (citing Cal. Civ. Code § 1559). “Expressly” means “in an express manner; in direct or unmistakable terms; explicitly; definitely; directly.” *Smith v. Microskills San Diego L.P.*, 153 Cal. App. 4th 892, 898 (2007) (internal quotation and citation omitted); *see also GECCMC 2005-ca Plummer Street Office Ltd. P’ship v. JPMorgan Chase Bank, Nat’l Ass’n*, 671 F.3d 1027, 1033 (9th Cir. 2012) (reasoning, on appeal of a motion to dismiss, that the “clear intent hurdle is a high one”) (internal quotation marks omitted). While a party seeking to sue as a third-party beneficiary “need not be specifically or individually identified in the contract, [it] must fall within a class clearly intended by the parties to benefit from the contract.” *Klamath Water Users Protective Ass’n v. Patterson*, 204 F.3d 1206, 1211(9th Cir. 1999). “One way to ascertain such intent is to ask whether the beneficiary would be reasonable in relying on the promise as manifesting an intention to confer a right on him or her.” *Id.* “When a government contract is at issue, plaintiffs must overcome a presumption that nonparties who benefit from the contract are incidental, rather than intended, beneficiaries.” *Jafari v. FDIC*, No. 12-cv-2982-LAB-RBB, 2015 WL 3604443, at *6 (S.D. Cal. June 8, 2015) (citing *GECCMC 2005-C1*, 671 F.3d at 1033); *see Orff v. United States*, 358 F.3d 1137, 1147, n.5 (9th Cir. 2004) (explaining that the contract’s language must show a “‘clear intent’ to rebut the presumption that the [third parties] are merely incidental beneficiaries.”).

In support of MSBG’s third-party beneficiary claims, Plaintiffs argue that the Contract includes a provision that allows Mustang to use or sell landfill gas, that Mustang informed the County that MSBG would be doing this work, and that the County reviewed and consented to this plan. ECF 17 at 25 (citing ECF 1-1 ¶ 43). However, Plaintiffs do not allege that the terms of the contract expressly included MSBG or subcontractors generally as intended third-party beneficiaries of the contract. Nor do Plaintiffs provide any legal authority that allows the Court to look *beyond* the express language of the contract to determine if MSBG or a group to which MSBG might belong are third-party beneficiaries. As such, the Complaint fails to show that MSBG has standing to enforce the Contract as a third-party beneficiary. *Lundeen Coatings Corp. v. Dep’t of Water & Power*, 232 Cal. App. 3d 816, 834 (1991) (“Subcontractors cannot recover

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directly from public entity owners of a construction project on a theory of third-party beneficiary of the prime contract, unless they are specifically intended to benefit from the issuance of the prime contract.”); *Nat’l Rural Telecommunications Co-op*, 319 F. Supp. 2d at 1100 (finding that party was not a third-party beneficiary to an agreement where plaintiff did not offer the court “any legal authority that permits the Court to look beyond the express language of the contract to find that a third party is a third party beneficiary.”)

The Court **GRANTS** the Motion to Dismiss MSBG as a party to Mustang’s claims for breach of contract and breach of covenant of good faith and fair dealing.

F. Equal Protection Claim

Defendant argues that Plaintiffs’ equal protection claim fails because Plaintiffs are government contractors, and they do not allege that they were treated differently from other “similarly situated parties” or that the County lacked a rational basis for its decision to terminate the Contract. ECF 11 at 21.

An equal protection claim can be established in one of two ways: a “class-based” theory or a “class-of-one” theory. *Engquist v. Or. Dep’t of Agric.*, 553 U.S. 591, 601 (2008). A “class-of-one” theory alleges that the plaintiff “has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” *Vill. Of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam). To determine whether a plaintiff has stated such a claim against a government entity, the Court looks to whether the government’s decision “was so discretionary that the class-of-one claim is barred as a matter of law.” *Building 11 Invs. LLC v. City of Seattle*, 912 F. Supp. 2d 972, 984 (W.D. Wash. Dec. 5, 2012) (citing *Olech*, 528 U.S. at 562; *Catcove Corp. v. Heaney*, 685 F. Supp. 2d 328, 333 (E.D.N.Y. 2010)). For example, in the public employment context, the Supreme Court has found the class-of-one theory a “poor fit” because an employment decision is “subjective and individualized, resting on a wide array of factors that are difficult to articulate and quantify.” *Engquist v. Or. Dep’t of Agric.*, 553 U.S. at 591, 604-05 (2008). Outside of the “public employment bar,” however, “it appears unlikely that there are categories of government decisions entirely protected from a class-of-one claim.” *Building 11 Invs. LLC*, 912 F. Supp. 2d at 984 (citing *Olech*, 528 U.S. at 562; *Catcove Corp.*, 685 F. Supp. 2d at 333).

Here, the Complaint alleges that Mustang had a long-term contract based on a public-private partnership with Defendant; the parties had a mutual understanding regarding revenue support; Plaintiffs requested revenue support from the County at the same time that the County developed an “unjustified hostility” toward Plaintiffs; the County delayed and withheld revenue support and designed pretexts to avoid performance; the County used unsupported speculation to

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withhold contractually-required funding; Leslie Wells publicly admitted that she would make Plaintiffs fail; and the formal termination of the agreement was based on purely pretextual grounds. ECF 1-1 ¶¶ 32-52. The Complaint further alleges that, after the contract was canceled, the County authorized agreements with four new entities to operate the ReSource Center and provided the successor operators with the operational revenue and operating resources the County had refused to provide Plaintiffs. *Id.* ¶¶ 47, 76.

Based on the foregoing, the Court finds that Plaintiffs have sufficiently alleged that they were treated differently than similarly situated entities. Defendant placed Plaintiffs’ comparators, the “Other Entities,” in the same operating position as Mustang, to operate the same facility, and treated them differently by granting these Other Entities resources it had denied to Plaintiffs. *See SmileDirectClub, LLC v. Tippins*, 31 F.4th 1110, 1123 (9th Cir. 2022) (“[A] class-of-one plaintiff must be similarly situated to the proposed comparator in all material respects.”).

Plaintiffs have also plausibly alleged that there was no rational reason for Defendant to terminate its contract with Mustang—that the decision was undertaken for retaliatory reasons. *See Cellette v. Pomerantz*, No. 2:20-cv-4013-SB (MAR), 2022 WL 20804411, at *4 (C.D. Cal. May 20, 2022) (“A successful equal protection claim may [] be brought by a ‘class of one,’ where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.”); *Building 11 Invs.*, 912 F. Supp. 2d at 976 (class-of-one equal protection claim survived where city “sought to unwind” a deal “due to community pressure and used [plaintiff’s] proposed amendments as the pretext to do so.”).⁶

Defendant’s Motion to Dismiss Plaintiffs’ equal protection claim is therefore **DENIED**.

G. Retaliation Claim

Defendant argues that Plaintiffs’ First Amendment retaliation claim fails because the Complaint does not allege (a) that Plaintiffs’ speech was the “but-for” cause of the County’s

⁶ Defendant argues in its Motion that *Monell* bars this claim and Plaintiffs’ First Amendment retaliation claim (described below). *Monell v. New York City Dep’t of Soc. Servs.*, 436 U.S. 658 (1978). However, on Reply, Defendant abandons this argument as to the equal protection claim. To be sure, a claim against a government entity is not precluded by *Monell* where the government body responsible for the alleged unconstitutional action had “final policymaking authority,” as alleged in the Complaint. *See, e.g.*, ECF 1-1 ¶ 46, 74; *see also Lytle v. Carl*, 382 F.3d 978, 983 (9th Cir. 2004) (“[A] municipality can be held liable for an isolated constitutional violation when the person causing the violation has final policymaking authority.” (citation omitted)).

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treatment of Plaintiff and (b) that their constitutional injuries were caused by an official County policy or action. ECF 11 at 24, 26-27. Plaintiffs respond that, at the pleading stage, they need not prove but-for causation but only plausibly allege that their constitutionally protected activity was a substantial or motivating factor in Defendant’s conduct. ECF 17 at 20. They also argue that the Complaint plausibly alleges that Wells’ retaliatory motives influenced the County’s adverse decisions towards Plaintiffs and set up the formal County termination decision. *Id.* at 24-25.

A plaintiff alleging a First Amendment retaliation claim must state facts establishing that: “(1) he engaged in constitutionally protected activity; (2) as a result, he was subjected to adverse action by the defendant that would chill a person of ordinary firmness from continuing to engage in the protected activity; and (3) there was a substantial causal relationship between the constitutionally protected activity and the adverse action.” *Blair v. Bethel Sch. Dist.*, 608 F.3d 540, 543 (9th Cir. 2010). Plaintiffs must allege more than “mere evidence” that a defendant was aware of the expressive conduct at issue—they must “(i) establish proximity in time between [plaintiffs’] expressive conduct and the allegedly retaliatory actions; (ii) produce evidence that the defendants expressed opposition to his speech, either to him or to others; or (iii) demonstrate that the defendants’ proffered explanations for their adverse actions were false and pretextual.” *Alpha Energy Savers, Inc. v. Hansen*, 381 F.3d 917, 929 (9th Cir. 2004) (citing *Coszalter v. City of Salem*, 320 F.3d 968, 977 (9th Cir. 2003); *Keyser v. Sacramento City Unified Sch. Dist.*, 265 F.3d 741, 751-52 (9th Cir. 2001)).

The Complaint plausibly establishes proximity in time between Plaintiffs’ expressive conduct and the alleged retaliatory actions. It alleges that in the summer of 2022, Plaintiffs’ principal, John Dewey, complained about Wells’ handling of a deal with the City of Santa Maria and made certain direct statements to Wells and to certain Supervisors. *Id.* ¶¶ 32, 34. After these statements, the “County’s response to Mustang’s contractual requests began to show animus and [] retaliation against Mustang”—namely, one of delaying and withholding contractually required funds. *Id.* ¶ 35. This alleged link in time between Dewey’s alleged statements and the alleged adverse actions (withholding Cash Flow funds) plausibly demonstrates the causal relationship between the speech and the adverse action. *See Alpha Energy*, 381 F.3d at 929 (finding that where speech and alleged adverse action occur within three-to-eight months of each other, that timeline “‘easily’ supports an inference of retaliation.”) (citation omitted).

The Complaint also plausibly alleges that Defendant’s explanations for its treatment of Plaintiffs was pretextual. It alleges that the County’s proffered reasons for not complying with the Cash Flow obligation (namely, that the assistance applied only if a lower price was paid for recyclables) contradicted the Contract’s terms and intent and the County’s prior representations.

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ECF 1-1 ¶ 39. The County’s treatment of Plaintiffs, such as miscalculating and then refusing to correct the per-tonnage tip fee rate that the Public Participants had to pay for waste deliveries, undermined the ReSource Center’s operations and provided a pretext to the County to terminate the Contract. *Id.* ¶¶ 41-44. *See Allen v. Iranon*, 283 F.3d 1070, 1075 (9th Cir. 2013) (in determining whether a plaintiff has stated a claim for First Amendment retaliation, courts “often look to evidence that the employer’s proffered reasons for the challenged decision were pretextual”). Moreover, to the extent Defendant argues that (1) Plaintiffs do not allege causation because the County’s antagonism was based on cost concerns, not animus, (2) Defendant stated that the basis for terminating the Contract was Plaintiffs’ performance failures, and (3) other facts outside the Complaint show that the County acted adversely before Dewey’s criticisms of Wells, such arguments focus on *factual disputes* and cannot properly be resolved at the pleading stage. *See Espy v. Indep. Blue Cross*, 613 F. App’x 633, 634 (9th Cir. 2015) (“[A]t the motion to dismiss stage a court should treat plausible factual allegations in the complaint as true.”).

Plaintiffs’ retaliation claim is not precluded by *Monell*. Under *Monell*, municipalities and their agencies and supervisory personnel cannot be held liable under § 1983 on any theory of respondeat superior or vicarious liability; however, they can be held liable for deprivations of constitutional rights resulting from formal policies or customs. *Monell v. New York City Dep’t of Soc. Servs.*, 436 U.S. 658 (1978). “[A] municipality can be held liable for an isolated constitutional violation when the person causing the violation has final policymaking authority,” *Christie v. Iopa*, 176 F.3d 1231, 1235 (9th Cir. 1999) (internal quotation marks and citation omitted), or if a “final policymaker ratifies a subordinate’s actions,” *Lytle v. Carl*, 382 F.3d 978 (citing *Christie*, 176 F.3d at 1238).

The Complaint alleges that Wells directed the County’s custom and policy of delay/underpayment and designing pretextual excuses for non-performance motivated by animus, that her actions dictated County policy, and that the County ratified Wells’ retaliatory pretexts. ECF 1-1 ¶ 25; ECF 1-1 ¶¶ 35, 86. Whether a particular official has final policymaking authority is a question of state law. *McMillian v. Monroe Cnty.*, 520 U.S. 781, 786 (1997). Under California law, the Board is the County’s final policymaking authority. *See Levy v. Cnty. of Alpine*, No. 2:13-cv-02643-RHW-DB, 2017 WL 1476899, at *2 (E.D. Cal. Apr. 25, 2017) (citing Cal. Gov. Code § 23005). At this preliminary stage of litigation, the Court finds that Plaintiffs have plausibly alleged that the Board ratified Wells’ allegedly retaliatory actions. *Lytle*, 382 F.3d at 986-88. And whether Wells’ actions dictated County policy is a factual question that cannot be answered now. *See, e.g., Collins v. City of Harker Heights*, 503 U.S. 115, 122 (1992).

Thus, for all these reasons, Defendant’s Motion to Dismiss is **DENIED** as to this claim.

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H. Leave to Amend

Federal Rule of Civil Procedure 15(a) provides that once the time for amending a pleading as a matter of course has expired, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). In general, “[t]he court should freely give leave when justice so requires.” *Id.* At base, “leave to amend should be granted if it appears *at all possible* that the plaintiff can correct the defect.” *Crowley v. Bannister*, 734 F.3d 967, 977 (9th Cir. 2013) (quoting *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000)).

Here, the Court finds that granting leave to amend would not be futile. *See United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) (“Leave to amend is warranted if the deficiencies can be cured with additional allegations that are ‘consistent with the challenged pleading’ and that do not contradict the allegations in the original complaint.” (quoting *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296-97 (9th Cir. 1990))).

Plaintiffs are **GRANTED LEAVE TO AMEND** the pleading, correcting the deficiencies identified herein in a manner consistent with all Rule 11 obligations. Any amended complaint shall be filed within **21 days** of the date of this Order. Plaintiffs shall attach to the amended complaint a redline copy reflecting all additions and deletions of material from the Complaint. Any claim not included in a timely-filed amended complaint will be deemed dismissed without leave to amend.

IV. CONCLUSION

For the foregoing reasons, the Motion to Dismiss is **DENIED IN SUBSTANTIAL PART** and **GRANTED IN MINOR PART**.

IT IS SO ORDERED.

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