UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Minnesota Vikings Football Stadium, LLC, a Delaware limited liability company, Plaintiff, v. Wells Fargo Bank, National Association, a national banking association, Defendant.	File No. 15-cv-04502-DWF-JSM **DEFENDANT'S MEMORANDUM OF LAW IN RESPONSE TO PLAINTIFF'S MOTION FOR A MANDATORY PRELIMINARY INJUNCTION**

I. INTRODUCTION

This is a straightforward contractual dispute about signs, not an emergency requiring the extraordinary remedy of injunctive relief. Minnesota Vikings Football Stadium, LLC ("the Vikings"), asks this Court for emergency, injunctive relief based merely on the illumination and raised lettering of two roof-top signs on top of Wells Fargo's two new 17-story towers in the Minneapolis Downtown East redevelopment project. According to the Vikings, the raised lettering and illumination of the signage irreparably injures them by somehow "distract[ing] from the image" of the new Vikings Stadium.[1] The Vikings argue for immediate injunctive relief to prevent this speculative, never-before-recognized form of irreparable injury, even though the Stadium is still under construction and even though the Vikings will not play a home game at the Stadium until

[1] Pl.'s Mem. in Support of Mot. for a Mandatory Preliminary Injunction (hereinafter "Vikings' Br."), Doc. 12 at p. 25. All page citations in this brief are to the record ECF pagination unless otherwise noted.

August of 2016. Moreover, the Vikings completely fail to explain how raised lettering on the signage, as opposed to the mere presence of the signs themselves, causes them any harm, let alone irreparable harm. Far from a spontaneous "photo-bomb," the Vikings agreed in February 2014 to Wells Fargo's installation of prominent, 56' x 56' roof-top signage on top of its two buildings, representing Wells Fargo's $300 million investment in Downtown East.

In fact, the operative terms of the parties' Agreement Regarding Signage ("the Signage Agreement" or "Agreement") provide that Wells Fargo may install "roof-mounted or roof-applied" signs as "**depicted** in terms of image, location, scale, size (56' x 56') and utility" in the Agreement's Exhibit D, a Master Signage Plan. (Declaration of Donald Becker ("Becker Decl."), Ex. 6, Doc. 15-6 at p. 3 § 1(a) & Ex. D at p. 40.) The Plan depicts the Wells Fargo logo to be installed on top of the buildings:

(*Id.*)

The roof-top signage on top of the Wells Fargo towers is as "depicted" in Exhibit D to the Agreement, and there is no prohibition anywhere in the Agreement restricting illumination of the signage. The Vikings' overreaching attempts to dictate the signage on

top of Wells Fargo's buildings should, therefore, be rejected. There is no breach of the Agreement, much less a material one.

The Vikings' motion for a mandatory preliminary injunction should be denied. The Vikings have not met, and cannot meet, their high burden to show that a mandatory preliminary injunction should issue to prevent irreparable injury.

II. BACKGROUND

A. Wells Fargo and Its Leading Partnership in the Downtown East Redevelopment Project.

Wells Fargo is a national banking association. (Declaration of Brent E. Hanson ("Hanson Decl.") ¶ 2.) Its 20,000-plus Minnesota team members make Wells Fargo the tenth largest employer in the State of Minnesota. (*Id.*)

Wells Fargo is also the leading stakeholder in the Downtown East redevelopment project. Coincident with construction of the Vikings' new stadium, the City of Minneapolis, Ryan Companies, and Wells Fargo partnered to put in place a $400 million Downtown East mixed-use redevelopment project. (*Id.* ¶ 3.) Wells Fargo has invested $300 million into the project. (*Id.* ¶ 4.) Among other things, Wells Fargo's commitment has included the construction of two 17-story office towers, which will entail Wells Fargo moving over 5,000 team members to its new Downtown East campus, and a financial contribution to the green-space commons area known as "The Commons," which will serve the Downtown East neighborhood. (*Id.*) In fact, Wells Fargo was recently awarded the 2025 Plan Impact Award by the Minneapolis Downtown Council for Wells Fargo's

commitment to build and invest in the Downtown East area. (*See* http://www.downtownmpls.com/impactaward (last visited on January 4, 2016).)

B. Negotiation of the February 2014 Signage Agreement.

The Wells Fargo roof-top signage that forms the basis of this dispute has been a subject of discussion between Wells Fargo and the Vikings for over two years. (Hanson Decl. ¶ 5.) As a reflection of its investment in Downtown East, Wells Fargo desired roof-top signage on top of its two 17-story buildings. (*Id.* ¶ 6.) The Vikings, however, opposed the signs Wells Fargo sought to install on its own buildings—opposition which nearly scuttled the Downtown East redevelopment project. (*Id.* ¶ 7.)

Eventually, in late 2013, the Vikings relented. (*Id.* ¶ 8.) The parties discussed various basic details regarding the roof-top signage and what it would look like, including: the size of the signs (56' x 56'); the locations of the signs on the roofs; the signs' horizontal, as opposed to vertical, orientation; and the image of the signs. (*Id.*) At no point in these discussions did the Vikings communicate an objection to illumination of the signs. (*Id.*)

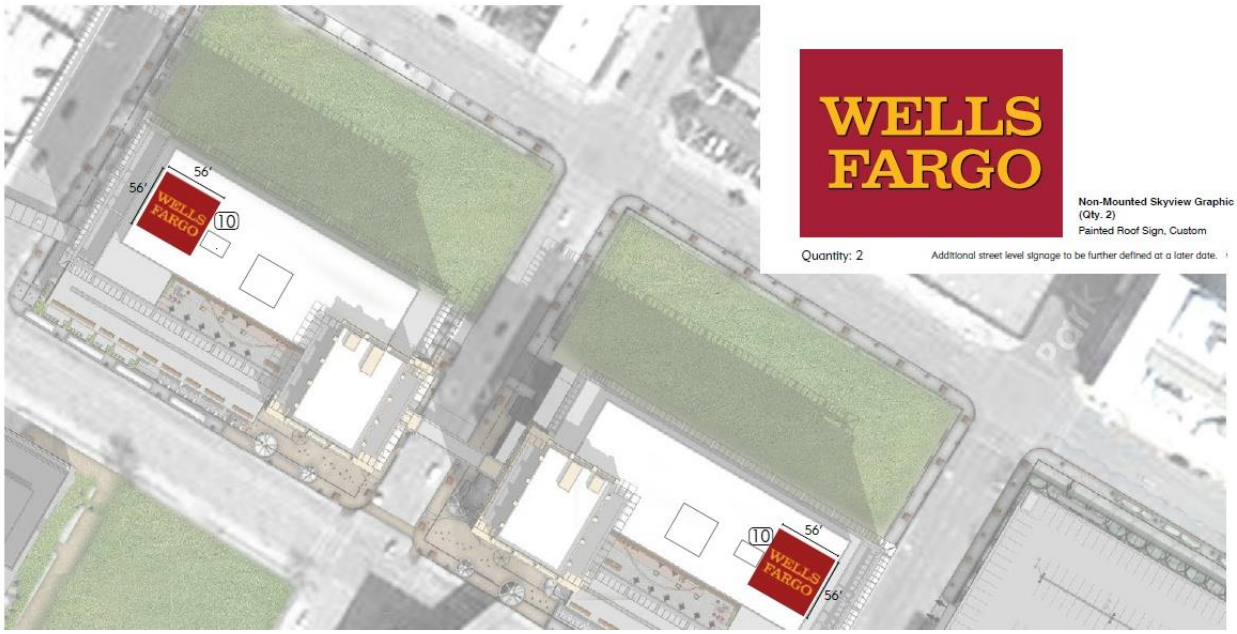
As ultimately memorialized in their February 10, 2014 Signage Agreement, the Vikings agreed as follows:

> [The Vikings and their] Affiliates will discontinue opposition to and will not oppose Wells Fargo's efforts now or in the future to obtain approval from the City of Minneapolis for the Roof Top signs, wall mounted signs and ground mounted monuments depicted in terms of image, location, scale, size (or smaller) and utility on the Master Signage Plan, or substitute signage in conformance with this Agreement.

Becker Decl., Ex. 6, Doc. 15-6 at p. 4 § 2.) Wells Fargo, for its part, agreed to certain signage restrictions. The Agreement provides:

> 1. Signage Restrictions. The following types of exterior signs (meaning both signs outside of or on the exterior of the buildings and signs on the interior of the buildings that are directed to and visible from the exterior of the building) and skyway signs, other than skyway signs expressly permitted in subsection (d), are prohibited on the Ryan Property:
>
> (a) roof-mounted or roof-applied signs of any kind other than (i) those depicted in terms of image, location, scale, size (56' x 56') and utility on the attached Downtown East Master Signage Plan Revision dated January 22, 2014 and attached as Exhibit D (the "**Master Signage Plan**"); provided that roof top signs of the same image and in the same location as the 56' x 56' signs depicted on the Master Signage Plan may be smaller in size, scale, and utility;
>
> ….

(*Id.* at p. 3 § 1(a).) Exhibit D—the "Master Signage Plan"—included the following depiction of the 56' x 56' Wells Fargo, roof-top signs:



(*Id.* at p. 40 (D-9).)

C. Amendment of the Minneapolis Roof-Top Signage Ordinance and the City's Approval of the Wells Fargo Roof-Top Signage.

At the time of the Signage Agreement, the City of Minneapolis Sign Ordinance prohibited certain roof-top signage, including the signage Wells Fargo sought to install on top of its towers. Thus, in early 2014, Wells Fargo promoted an amended City of Minneapolis Sign Ordinance which, in its final and adopted form, would provide as follows:

> (a) *In general.* Notwithstanding the height limits of Tables 543-2, Specific Standards for Signs in the OR2, OR3 and Commercial Districts, 543-3, Specific Standards for Signs in the Downtown Districts, and 543-4, Specific Standards for Signs in the Industrial Districts, one roof sign shall be allowed, subject to the following:
>
> * * *
>
> (c) *Roof signs affixed flat on the roof and viewed from above*. Roof signs identifying the name or logo of a building or use, affixed flat on the roof and viewed from above, shall be subject to the following:
>
> (1) A roof sign shall be located on a building with a flat roof that exceeds fifteen (15) stories and shall be installed on or above the fifteenth (15) story.
>
> (2) Notwithstanding the area limits of Tables 543-2, Specific Standards for Signs in the OR2, OR3 and Commercial Districts, 543-3, Specific Standards for Signs in the Downtown Districts, and 543-4, Specific Standards for Signs in the Industrial Districts, a roof sign shall not exceed twenty-five (25) percent of the roof area on which the sign is located.

> (3) Signs shall be non-illuminated or externally illuminated in such a way that the light shall be aimed and shielded directly onto the roof sign only.

(Hanson Decl. ¶ 9, Ex. A.) The Vikings did not object to or oppose the proposed amendment, which clearly permits illumination of roof-top signage. (Vikings' Br. at 9.) The proposed signage amendment was unanimously passed by the Minneapolis City Council on March 28, 2014 in what is now Minneapolis Ordinance § 543.425. (Hanson Decl. ¶ 9, Ex. A.)

In addition to obtaining amendment of the City of Minneapolis Sign Ordinance, Wells Fargo submitted its design proposals for the roof-top signage to the City of Minneapolis for approval. (*Id.* ¶ 11.) This submission included a depiction of the roof-top signage prepared by Wells Fargo's sign contractor, Signtech. (*Id.*) The City of Minneapolis approved Wells Fargo's signage plans without objection. (*Id.*)

D. Wells Fargo's Communications With the Vikings About the Roof-Top Signage After the Execution of the Signage Agreement.

After the execution of the Signage Agreement and during the course of 2014 and into 2015, Wells Fargo kept the Vikings apprised of the plans for their roof-top signage. (*Id.* ¶ 12.) Wells Fargo did so in an effort to maintain good, cooperative relations with its new neighbor. (*Id.*) Contrary to the Vikings' attempt to characterize these various communications and meetings as confrontational, Wells Fargo's discussions with the Vikings were businesslike and cordial. (*Id.* ¶ 13.) Likewise, at no time did Wells Fargo seek amendment of the Signage Agreement, admit that the Signage Agreement prohibited illumination, or admit that its proposed roof-top signage violated the terms of the Signage

Agreement. (*Id.*) The Vikings' self-serving characterizations to the contrary are incorrect. (*Id.*)

During the course of Wells Fargo's post-Signage Agreement discussions with the Vikings, the parties discussed illumination of the roof-top signage. (*Id.* ¶ 14.) Wells Fargo consistently maintained that it was entitled to illuminate the signs, and, indeed, the Vikings repeatedly acknowledged that there is no specific prohibition of illumination in the terms of the Signage Agreement. (*Id.*) At no time in these discussions did Wells Fargo make threats, as the Vikings incorrectly claim. (*Id.* ¶ 15.) To the contrary, Wells Fargo tried to persuade the Vikings that its proposed signage plan was in the best interests of all parties, because illumination of only the "Wells Fargo" lettering presented a cleaner, subtle, and more sophisticated image than down-lit illumination of the entire 56' x 56' square. (*Id.*) The Vikings, however, continued to object to Wells Fargo's planned signage, and the parties were unable to resolve their disagreement regarding the Signage Agreement. (*Id.* ¶ 16.)

E. Wells Fargo's Installation of the Roof-Top Signage, the Vikings' Lawsuit, and the Vikings' Motion for Preliminary Injunction.

Unable to resolve its continued disagreement with the Vikings regarding the Signage Agreement, Wells Fargo proceeded with installation of the roof-top signage. The materials for the signs have been on the roofs of the two Wells Fargo towers for more than three months. (Declaration of William Hailey ("Hailey Decl.") ¶ 2.) Construction of the signage began in April of 2015 and has continued as scheduled. (*Id.* ¶ 3.) The 56' x 56' roof-top signs include a painted red background and Wells Fargo

lettering raised approximately a foot and a half from the from the roof surface. (*Id.* ¶ 4, Ex. A at sheet 14.) The signs have not yet been illuminated. (*Id.* ¶ 6.)

On December 22, 2015, less than two days before Christmas Eve, the Vikings filed their lawsuit against Wells Fargo in Hennepin County District Court, pleading claims for breach of contract and declaratory judgment. (Compl., Doc. 1-1.) The Vikings simultaneously filed a motion for preliminary injunction and attempted to schedule a hearing just eight days later. (Am. Notice of Mot. and Mot., Doc. 1-5.)

On December 24, 2015, two days later, Wells Fargo removed this case to federal court. (Notice of Removal, Doc. 1.) While the Vikings make unfounded claims that Wells Fargo acted to cause improper delay (Vikings' Br. at 21), the Vikings cannot and do not dispute Wells Fargo's statutory right to be in federal court under 28 U.S.C. § 1441.

The Vikings filed their Motion for Mandatory Preliminary Injunction on December 29, 2015, and simultaneously sought emergency, expedited handling of the motion. (Pl.'s Mot. for Mandatory Preliminary Injunction, Doc. 10.) According to the Vikings, and even though the parties' Signage Agreement plainly allows for Wells Fargo's installation of 56' x 56' roof-top signs depicting the red and gold Wells Fargo logo, the emergency demanding extraordinary relief is that the existing Wells Fargo roof-top signage can be illuminated and includes raised lettering. (Vikings' Br. at p. 1.) For injunctive relief, the Vikings ask the Court to take away Wells Fargo's right to any and all roof-top signage, proposing an order directing Wells Fargo to "cover the roof top signs on the Wells Fargo Towers with solid colored material, such that the roof top signs

(full or partial), sign infrastructure, and any letters, logo, or other markings are not visible." (Vikings' Proposed Order.)[2]

III. ARGUMENT

A. Injunctive Relief is an Extraordinary Remedy Rarely Granted.

Injunctive relief is an extraordinary remedy that is not routinely granted. *Calvin Klein Cosmetics Corp. v. Lenox Labs., Inc.*, 815 F.2d 500, 503 (8th Cir. 1987); *Travel Tags, Inc. v. UV Color, Inc.*, 690 F. Supp. 2d 785, 797 (D. Minn. 2010). A preliminary injunction may be granted only if the moving party can demonstrate: (1) the movant will suffer irreparable harm absent the injunction; (2) the balance of harms favors the movant; (3) the movant is likely to succeed on the merits; and (4) the public interest favors the movant. *Dataphase Sys. Inc. v. CL Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981). The movant bears the "complete burden" of proving all of the *Dataphase* factors. *Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 418 (8th Cir. 1987). And to obtain a preliminary injunction, which is "an extraordinary and drastic remedy," the movant must meet its burden with "a clear showing." *Minn. Made Hockey, Inc. v. Minn. Hockey, Inc.*, 761 F. Supp. 2d 848, 856 (D. Minn. 2011). Applying the *Dataphase* factors, the Court must "flexibly weigh the case's particular circumstances to determine whether the balance of equities so favors the movant that justice requires the court to intervene." *Hubbard Feeds, Inc. v. Animal Feed Supplement, Inc.*, 182 F.3d 598, 601 (8th Cir. 1999).

[2] To the extent paragraph two of the Vikings' Proposed Order actually requests injunctive relief beyond the two roof-top signs that are the subject of the Vikings motion, no such request is before the Court and there is no basis for granting such relief.

B. The Vikings Seek to Disrupt, Not Preserve, the Status Quo and Must Make a Clear Showing of Compelling Circumstances Under the Heightened Standard for Obtaining a Mandatory Preliminary Injunction.

The black-letter purpose of a preliminary injunction is to preserve the status quo. *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir. 1994) ("A court issues a preliminary injunction in a lawsuit to preserve the status quo and prevent irreparable harm until the court has an opportunity to rule on the lawsuit's merits."). The "status quo" means "[t]he situation that currently exists." *Black's Law Dictionary* 1420 (7th ed. 1999). But preservation of the status quo is not what the Vikings seek in their motion for preliminary injunction. The status quo here is that Wells Fargo has an undisputed contractual right to display two 56' x 56' roof-top signs of the Wells Fargo logo on top of the buildings. (Becker Decl., Ex. 6, Doc. 15-6 at p. 3 § 1.) And that signage is already installed.[3] The Vikings seek to change that status quo by requesting an injunctive order directing Wells Fargo to "cover the roof top signs on the Wells Fargo Towers with solid colored material, such that the roof top signs … are not visible." (Vikings' Proposed Order.) Remarkably, the Vikings ask the Court to entirely and indefinitely deprive Wells Fargo of even the signage that it is undisputedly entitled to display.

[3] The Vikings complain that minimal additional work on the signage has gone forward since they filed their initial papers with the Hennepin County District Court. But Wells Fargo has not done anything improper. Wells Fargo had no duty to provide the Vikings the injunctive relief they seek in these proceedings based on the Vikings' overblown assertion of irreparable harm and (incorrect) contention that the Wells Fargo roof-top signage violates the Signage Agreement. Moreover, construction on the signs has not "accelerated" as the Vikings incorrectly assert. (Vikings' Br. at p. 16.) Construction has proceeded as scheduled. (Hailey Decl. ¶ 3.)

Recognizing that they are actually asking the Court to disrupt the status quo, the Vikings concede they are asking for a "mandatory," as opposed to a prohibitory, preliminary injunction. But "mandatory injunctive relief is rarely granted absent compelling circumstances." *Jackson v. Nat'l Football League*, 802 F. Supp. 226, 232 (D. Minn. 1992); *see Citizens Concerned for Separation of Church & State v. City & Cty. of Denver*, 628 F.2d 1289, 1299 (10th Cir. 1980) ("It is fundamental that mandatory injunctive relief should be granted only under compelling circumstances inasmuch as it is a harsh remedy not favored by the courts"), *cert. denied*, 452 U.S. 963 (1981). And courts are "more reluctant to grant a mandatory, or affirmative, injunction than a prohibitory, or negative, one." 11A C. Wright, A. Miller, Fed. Prac. & Proc. Civ. § 2942 (3d ed.).[4] Here, because the Vikings essentially ask the Court to grant the same relief that the Vikings would obtain if they won at trial, their burden on this motion is a "heavy one." *Sanborn Mfg. Co., Inc. v. Campbell Hausfeld/Scott Fetzer Co.*, 997 F.2d 484, 486 (8th Cir. 1993). The Vikings do not meet this burden.

[4] The Vikings' rely on *Ferry-Morse Seed Co. v. Food Corn, Inc.*, 729 F.2d 589 (8th Cir. 1984), for the proposition that the Eighth Circuit has rejected the argument that more stringent requirements govern the granting of a mandatory preliminary injunction, as opposed to a prohibitory one. (Vikings' Br. at p. 22.) This misreads *Ferry-Morse*. In *Ferry-Morse*, the Eighth Circuit actually recognized courts' application of more stringent standards in analyzing motions for mandatory preliminary injunction and held, nevertheless, that under the facts and circumstances of the case the district court had properly applied the *Dataphase* analysis in granting a mandatory preliminary injunction. *Id.* at 593.

C. The Vikings Cannot Demonstrate Irreparable Harm.

On a motion for preliminary injunction, a "threshold inquiry is whether the movant has shown the threat of irreparable injury" and "[t]he failure to show irreparable harm is, by itself, a sufficient ground upon which to deny a preliminary injunction …." *Gelco Corp.*, 811 F.2d at 418; *see Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003) ("Failure to show irreparable harm is an independently sufficient ground upon which to deny a preliminary injunction."); *see also* 11A C. Wright, A. Miller, Fed. Prac. & Proc. Civ. § 2948.1 (3d ed.) ("Perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.").

1. Contractual Terms Regarding the Presence or Absence of Irreparable Harm Do Not Control.

Attempting to manufacture irreparable harm where there is none, the Vikings rely heavily on a provision in the Signage Agreement stating that if a party "fails to observe [a] restriction in the [Signage] Agreement …, the persons … benefited by the restriction would suffer irreparable harm for which a recovery of money damages would not be an inadequate remedy." (Vikings' Br. at pp. 26-27.) But this contract language does not abrogate the Court's independent duty to apply the injunction standards, and the contract language "alone is certainly not enough to establish a finding of irreparable harm." *Leggett & Platt, Inc. v. Fleetwood Indus., Inc.*, No. 3:15-cv-05064, 2015 WL 4160401, at *3 (W.D. Mo. July 9, 2015); *Outcomes Pharm. Health Care, L.C. v. Nat'l Comty.*

Pharmacists Ass'n, No. 4:05-cv-00682, 2006 WL 3782905, at *13 (S.D. Iowa Dec. 22, 2006) (recognizing the same rule).

Federal courts simply do not permit parties to a contract to create a right to injunctive relief where it would otherwise be inappropriate. *See, e.g., Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 356 F.3d 1256, 1266 (10th Cir. 2004) (contract provision regarding nature of harm arising from alleged breach of contract, standing alone, is "insufficient to support a finding of irreparable harm"); *Int'l Ass'n of Plumbing & Mech. Officials v. Int'l Conference of Bldg. Officials*, 79 F.3d 1153, 1996 WL 117447, at *2 & n.3 (9th Cir. March 15, 1996) (citing cases for same proposition and recognizing that "the court must independently determine whether any injury which has been demonstrated is in fact irreparable"); *Smith, Bucklin & Assocs., Inc. v. Sonntag*, 83 F.3d 476, 481 (D.C. Cir. 1996) ("Although there is a contractual provision that states that the company has suffered irreparable harm if the employee breaches the covenant and that the employee agrees to be preliminarily enjoined, this by itself is an insufficient prop."); *Baker's Aid v. Hussmann Foodservice Co.*, 830 F.2d 13, 16 (2d Cir. 1987) ("[C]ontractual language declaring money damages inadequate in the event of a breach does not control the question whether preliminary injunctive relief is appropriate."); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) ("A preliminary injunction is . . . never awarded as of right").

Accordingly, the Vikings' cannot meet their high burden to demonstrate irreparable harm based on the irreparable-harm term of the Signage Agreement. Rather, this Court must conduct its own independent analysis of whether the raised lettering and

illumination of Wells Fargo's roof-top signage irreparably harms the Vikings. As made plain below, the Vikings cannot make the required showing and their motion, therefore, fails.

2. The Vikings' Claims of Irreparable Harm Are Speculative and Unsubstantiated.

The Vikings' only claim of irreparable harm is that the raised lettering and illumination of the allegedly non-conforming Wells Fargo signs "distracts from the image" of the Stadium. (Vikings' Br. at p. 25.) In other variations of the same theme, the Vikings assert that the roof-top signs "usurp[] the iconic image" of the Stadium and somehow "misappropriat[e] and dilut[e] [the Vikings'] rights to [the Stadium] image," purportedly harming the Vikings' asserted right "to control the branding and images of the Stadium, Stadium Infrastructure, and Stadium Site." (*Id.* at pp. 1, 23-25.)

The basis of the Vikings' alleged irreparable harm betrays the weakness of the Vikings' position. The basis of the Vikings' asserted irreparable injury cannot be the mere presence of Wells Fargo signage on the top of the two Wells Fargo towers. There is no dispute that even under the Vikings' reading of the Signage Agreement, Wells Fargo has the right to install two roof-top signs, 56' x 56' in dimension, on top of the buildings. The Vikings' argument and claim of "emergency," rather, must boil down to the assertion that the raised lettering and illumination of the Wells Fargo roof-top signage causes irreparable injury separate and beyond the alleged distraction from the image of the Stadium caused by the presence of 56' x 56' Wells Fargo signs without raised lettering or illumination. This the Vikings cannot do. Indeed, they make no serious attempt to do so.

The law is clear that "injunctive relief is not appropriate where the alleged threat of harm is merely speculative." *Cargill, Inc. v. Hartford Acc. & Indem. Co.*, 531 F. Supp. 710, 715 (D. Minn. 1982); *Bloom v. O'Brien*, 841 F. Supp. 277, 279 (D. Minn. 1993) ("Possible or speculative harm is not enough."); *see also Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001) (recognizing that caselaw requires alleged irreparable injury to "be both certain and great"). Indeed, the Supreme Court has firmly rejected lenient standards allowing preliminary injunctions based only on the possibility of irreparable harm, requiring instead a clear showing that irreparable harm is likely to occur without a preliminary injunction to preserve the status quo. *Winter*, 555 U.S. at 22 ("Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.").

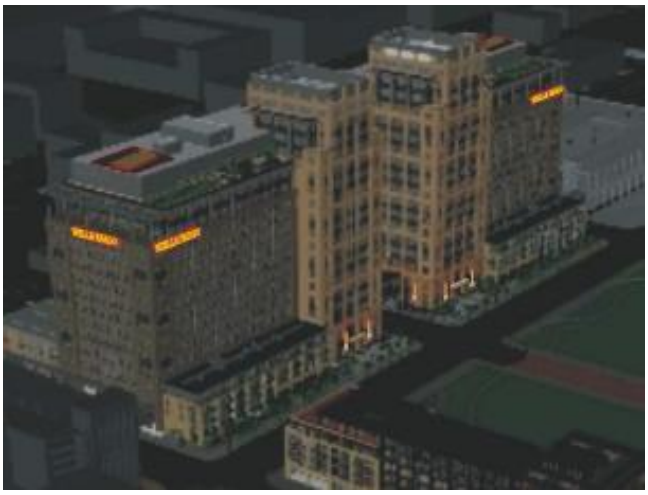
(a) The Claimed Image-Based Injury is Speculative and Illusory.

Here, the Vikings' vague, alleged image-based injury is speculative and illusory. The Vikings argue in conclusory fashion that the raising of the lettering "a foot off of the roof top creates a completely different image" than the image the signage would portray if the lettering were flush with the roof surface. (Vikings' Br. at p. 31.) But it strains credibility to argue that this marginal difference between allegedly conforming and non-conforming signage, which can only be seen from the air, causes irreparable injury to the Vikings. In fact, when the signs are viewed from directly overhead, it would be impossible to tell that the signage is raised at all. Tellingly, the Vikings do not even

attempt to explain why it is that the presence of raised lettering on the roof-top signage (as opposed to non-raised lettering) will harm, dilute, or distract from the "image" of the Stadium or how it is that any such harm will come about. Instead, the Vikings' theory is premised on the notion that an undetermined number of persons viewing the Stadium webcam can navigate to the aerial view of the City of Minneapolis, direct the camera to the Wells Fargo buildings, zoom in on the roof of the buildings, and that the Vikings' interest in the image of the still-incomplete Stadium will somehow be forever harmed because the Wells Fargo lettering is slightly raised from the surface of the roof. This theory is, at a minimum, far-fetched. The Vikings' claim of irreparable injury based on raised lettering is speculative and supported by nothing more than the Vikings' conclusory, overreaching say-so.

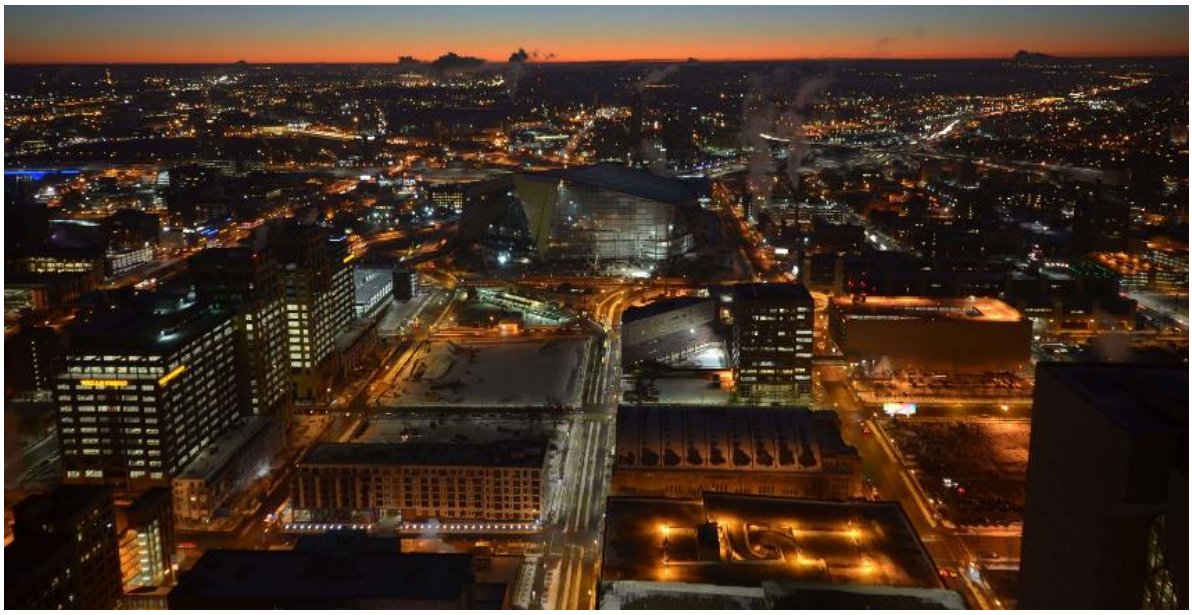
The fact that the signs can be illuminated cannot serve as a basis for the Vikings' alleged irreparable injury either. The Vikings' supposed illumination-based injury is belied by the fact that each building includes two illuminated Wells Fargo signs, 58' x 5' in dimension, with raised lettering, at the very top of the faces of the buildings. These four prominent signs were undisputedly agreed to by the Vikings and have been illuminated and functioning for weeks without any complaint from the Vikings:

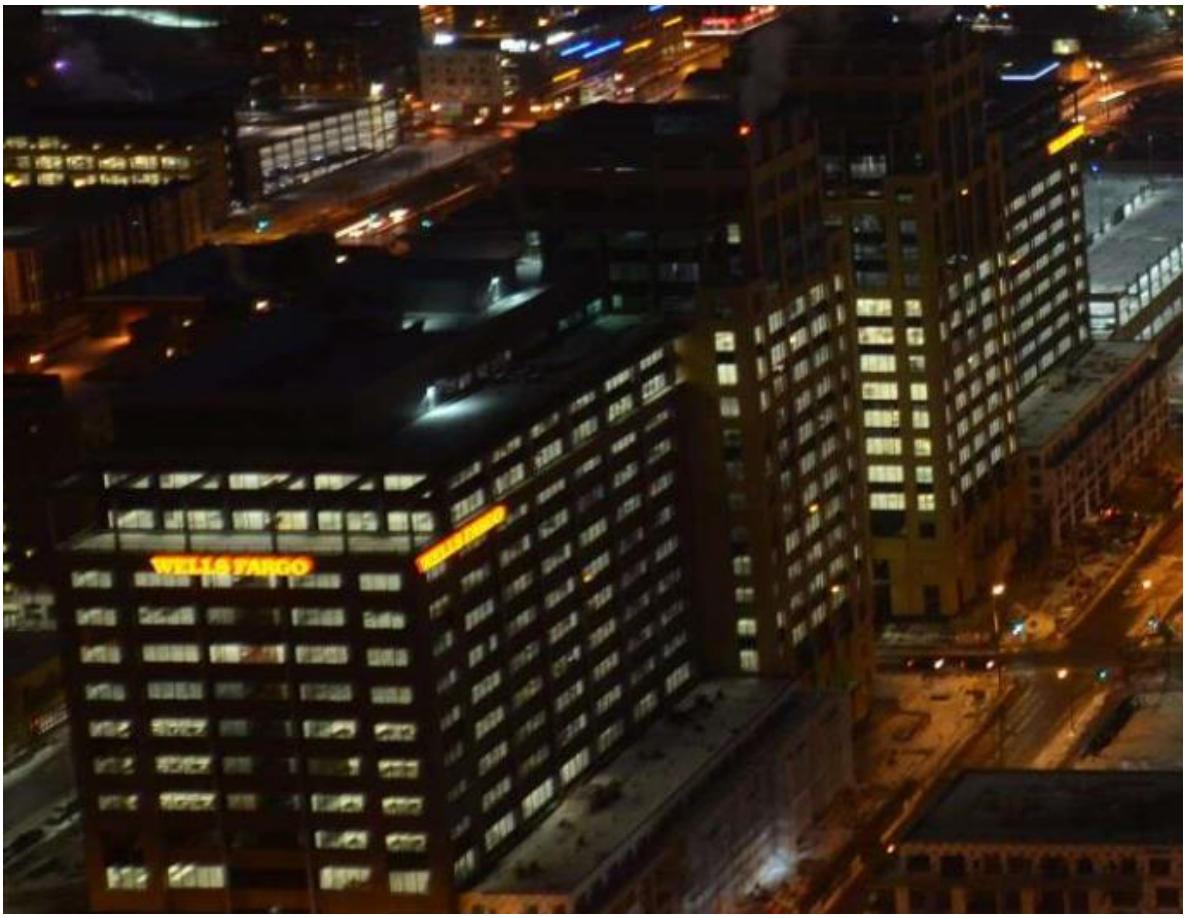
(Becker Decl., Ex. 6, Doc. 15-6 at p. 39 (D-8); Hailey Decl. ¶ 7.) Moreover, as shown in the rendering immediately below, these four illuminated roof-edge Wells Fargo signs are in close proximity to the roof-top signage, such that those undisputedly conforming signs are in the aerial view of the roof-top signage.



(Hailey Decl., Ex. A at sheet 8.) The Vikings undisputedly knew, and agreed, that Wells Fargo would have large, visible illuminated signage on the faces of the Wells Fargo

buildings. Photos showing these prominent roof-edge signs, thus, seriously undercut the Vikings illumination-based irreparable-injury argument.





(Grote Decl., Exs. A-C.) At bottom, the Vikings simply have no explanation for how illuminated roof-top signage irreparably harms them independently of the illuminated 58' x 5' roof-edge signage to which they agreed and have no objection, and which will always be in the same view as the roof-top signage.

(b) Irreparable-Injury Case Law Cited By the Vikings is Inapposite.

Tellingly, the Vikings do not cite a single case from anywhere in the country recognizing vague, image-based irreparable injury like the injury they allege here. Instead, the Vikings attempt to analogize their purported injury to violations of non-compete agreements, restraints on speech, harms to reputation, and trademark violations. (Vikings' Br. at p. 25-26.) But none of these situations come close to approximating the amorphous image-based injury claimed by the Vikings.

The Vikings cite *Life Time Fitness, Inc. v. DeCelles* in support of their position. 854 F. Supp. 2d 690 (D. Minn. 2012). But the *DeCelles* case was about a former personal trainer who left Life Time for a competitor and then started to bring Life Time clients to his new employer and solicit Life Time employees. *Id.* at 693-94. In granting a preliminary injunction, the Court observed that in the non-compete context, a professional employee's acquired influence over clients of their employer is presumed to be irreparable harm. *Id.* at 695. *DeCelles* bears no resemblance to this case, where there is no such recognized presumption of irreparable harm, where the Vikings cannot show that the purportedly non-conforming signage has exerted influence over anyone, and where this is far from a classic non-compete context in which the harm alleged is concrete and non-speculative.

The Vikings' reliance on *Occupy Minneapolis v. County of Hennepin* and attempt to claim that their speech is being restrained fares no better. 866 F. Supp. 2d 1062 (D. Minn. 2011). The *Occupy Minneapolis* case is a First Amendment case, which is legally unique. *Id.* at 1067 (addressing irreparable injury in the First Amendment context). Here, the Vikings' First Amendment rights simply are not implicated. No government entity is suppressing the Vikings' speech, and there is no authority for the proposition that the Vikings have a protected First Amendment right to protect the "image" of the Stadium or the Stadium Site. And insofar as the Vikings rely on the fact that in the Signage Agreement they agreed not to oppose amendment of the Minneapolis signage ordinance consistent with the anticipated signage, this past agreement cannot be transformed into irreparable harm. To warrant an injunction, the threatened, irreparable

harm must be prospective. *See Dombrowski v. Pfister*, 380 U.S. 479, 485 (1965) ("[I]njunctive relief looks to the future …."); *Matson Logistics v. Smiens*, Civ. No. 12-400, 2012 WL 2005607, at *14 (D. Minn. June 5, 2012) ("Determining the threat of irreparable harm is a prospective analysis …."). The Vikings cannot show, and do not claim, that their prospective First Amendment rights will be harmed by a government entity without an injunction against Wells Fargo.[5]

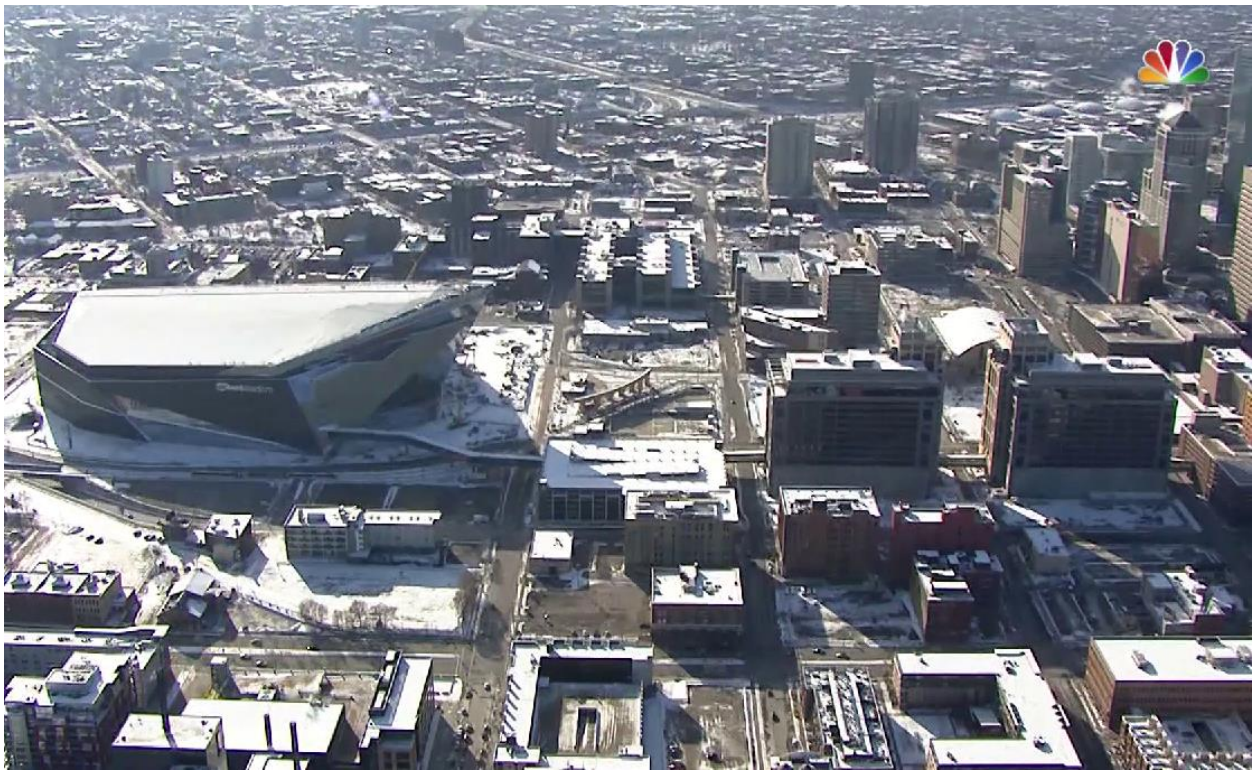
The decisions in *MSP Corp. v. Westech Instruments, Inc.*, 500 F. Supp. 2d 1198 (D. Minn. 2007), and *United Healthcare Insurance Co. v. AdvancePCS*, 316 F.3d 737 (8th Cir. 2002), do not help the Vikings either. *MSP Corp.* is a trademark-infringement case in which the Court presumed the existence of irreparable harm based on a likelihood of consumer confusion resulting from a competing, allegedly infringing trademark. 500 F. Supp. 2d at 1217. Similarly, in *AdvancePCS*, the threat of irreparable harm was based on threatened loss of member goodwill to the movant based on potential adverse drug reactions caused by the defendant-competitor's actions. 316 F.3d at 741. Here, the Vikings do not, and cannot, allege that the presence of a Wells Fargo logo on the roof of a Wells Fargo building causes consumer confusion harming the Vikings. And there is no applicable presumption of irreparable harm because this is not a trademark-infringement

[5] Furthermore, the Vikings were never denied an opportunity to object to the roof-top signage ordinance for which Wells Fargo advocated. The Vikings were undisputedly aware of the proposed ordinance under consideration, including that the ordinance allowed for illumination of roof-top signage. (*See* Vikings' Br. at p. 9.) Had the Vikings seriously thought that illumination was prohibited by the Signage Agreement, they would have, and could have, raised the issue at the time of the ordinance's proposal and passage.

case. Unlike the cases on which the Vikings rely, here, the Vikings cannot possibly show any loss of goodwill, reputation, or anything of the sort, simply because the roof-top signage installed by Wells Fargo has raised letters as opposed to lettering flush against the roof surface.

(c) Aerial Images Offered By the Vikings Belie Their Claim of Harm.

The Vikings also rely on video footage from NBC and assert that "[t]elevision broadcasts of the National Football League games, even this season, have shown aerial photography of U.S. Bank Stadium and the surrounding Downtown East Project (including the Wells Fargo Towers) to those viewers, and will certainly continue to do so." (Vikings' Br. at p. 25.) But the video submitted by the Vikings only serves to demonstrate their overreach and failure to make a clear demonstration of injury—much less irreparable, non-speculative injury. In the submitted NBC video, the wording of the Wells Fargo roof-top signage is indecipherable – even when one knows where to look for the signage:



(Declaration of Jeff Anderson ("Anderson Decl."), Ex. 1, Doc. 16-1; Grote Decl., Ex. D.) Moreover, the roof-tops of the Wells Fargo buildings are simply not distinguishable from the many other roof tops shown in the video.

Ultimately, the Stadium remains under construction, and the Vikings will not play a home game at the Stadium until *August of 2016*—over eight months from now. The Vikings' claims of emergency and irreparable harm are speculative and overblown. The Vikings' motion, therefore, fails.

D. The Balance of Harms Favors Wells Fargo and Does Not Tip Decidedly in Favor of the Vikings.

In contrast to the irreparable-harm factor, the balance-of-harms analysis examines the harm of granting or denying the injunction upon both parties to the dispute. *Dataphase*, 640 F.2d at 114. "The balance of harm must tip decidedly toward the

plaintiffs to justify issuing a preliminary injunction." *Marigold Foods, Inc. v. Redalen*, 809 F. Supp. 714, 720 (D. Minn. 1992); *accord Lynch Corp. v. Omaha Nat'l Bank*, 666 F.2d 1208, 1212 (8th Cir. 1981). "When considering the balance of harms, courts must weigh the threat to each of the parties' rights and economic interests that would result from either granting or denying the preliminary injunction." *Katch, LLC v. Sweetser*, No. 15-cv-3760, 2015 WL 6942132, at *15 (D. Minn. Nov. 10, 2015) (internal citation omitted). Notably, "in conducting the balance of harms analysis required under *Dataphase*, an illusory harm to the movant will not outweigh any actual harm to the non movant." *SEMO Envtl. Servs., LLC v. SEM Envtl, LLC*, No. 1:11-cv-226, 2013 WL 823292, at *4 (E.D. Mo. Mar. 6, 2013).

Here, the Vikings cannot show that the balance of harms tips decidedly in their favor. As set forth above, the purported image-based harm to the Vikings from the installed Wells Fargo signage is speculative and illusory at best. On the other hand, Wells Fargo would clearly be harmed as a result of the injunctive relief the Vikings ask this Court to award. If Wells Fargo is made to cover its roof-top signage as the Vikings request, it will plainly be denied its contractual right to display 56' x 56' Wells Fargo roof-top signs on top of its two 17-story towers.

In short, the harm to Wells Fargo from the requested injunctive relief would far outweigh the undefined, speculative, and *de minimis* harm to the Vikings from the signs' raised lettering and illumination. At a minimum, the Court should conclude that the Vikings have not met their burden to show that the balance of harms tips decidedly in their favor, and, therefore, their motion should be denied.

E. The Vikings Will Not Succeed on the Merits of Their Claims.

The Vikings' claim against Wells Fargo is a singular breach of contract claim.[6] (Compl., Doc. 1-1 ¶¶ 24-32.) The elements of a breach of contract claim under Minnesota law are: "(1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant." *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011). *Knaak v. Armour-Eckrich Meats LLC*, 991 F. Supp. 2d 1052, 1055 (D. Minn. 2014) (recognizing elements under Minnesota law).

1. Wells Fargo is Not in Breach of the Signage Agreement.

The primary goal of contract interpretation is to determine and enforce the intent of the parties. *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323-324 (Minn. 2003). Where the parties express their intent in unambiguous words, those words are given their plain and ordinary meaning. *Id.* But contract terms "are not to be viewed in isolation." *Id.* "'Intent is ascertained, not by a process of dissection in which words or phrases are isolated from their context, but rather from a process of synthesis in which the words and phrases are given a meaning in accordance with the obvious purpose of the contract as a whole.'" *Id.* (quoting *Republic Nat'l Life Ins. Co. v.*

[6] The Vikings also plead a claim for declaratory judgment, but the claim is, in essence, one for a declaration of the parties' contractual rights and duties under the Signage Agreement. (Compl., Doc. 1-1 ¶¶ 30-32.) In conclusory fashion, the Vikings also attempt to assert a right to rescission of a single term of the agreement. (*Id.*) But even assuming for the sake of argument that a partial-rescission claim were legally cognizable, the Vikings do not attempt to show they are likely to prevail on the merits of that claim for relief. Rather, the Vikings' motion is based solely on their breach-of-contract claim.

Lorraine Realty Corp., 279 N.W.2d 349, 354 (Minn. 1979)). A contract is ambiguous where it is reasonably susceptible to more than one interpretation. *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 148 (Minn. 2002).

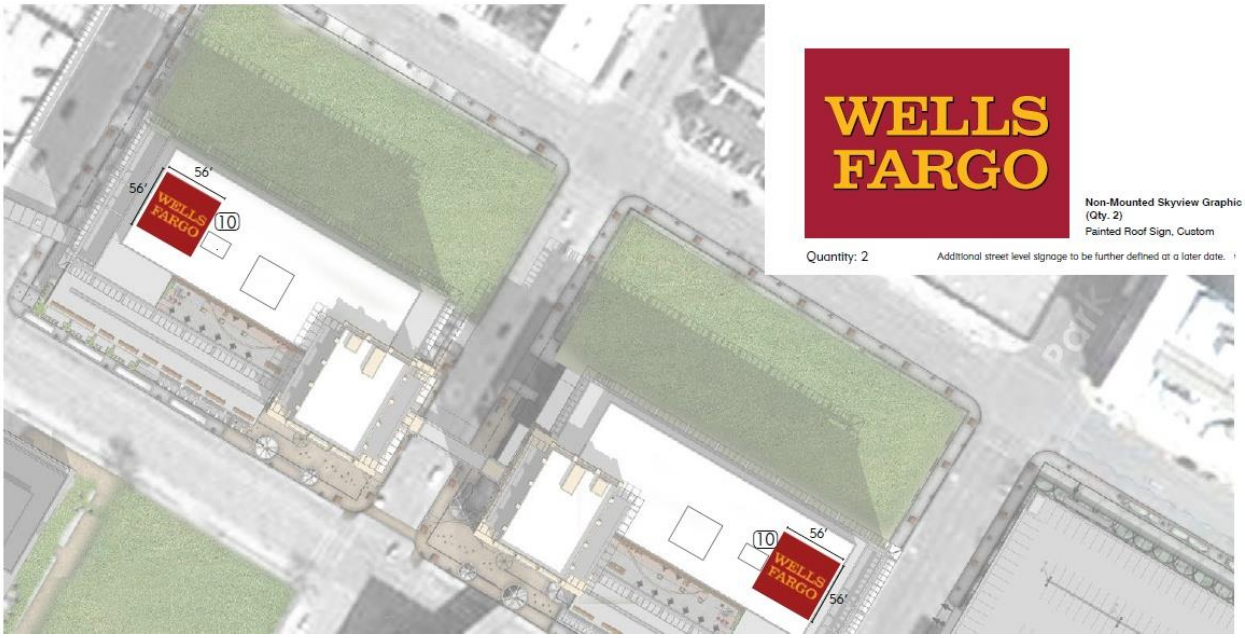
(a) The Signage Agreement Does Not Prohibit Illumination of Wells Fargo's Roof-Top Signage.

The Vikings assert that Wells Fargo has breached the Signage Agreement by installing "illuminated roof top signs." (Vikings' Br. at p. 1.) But conspicuously absent from the Vikings' briefing is any citation to or quotation of contract language prohibiting illumination of Wells Fargo's roof-top signage. That is because there is no such restriction in the contract.

The operative terms of the Signage Agreement state:

> 1. Signage Restrictions. The following types of exterior signs (meaning both signs outside of or on the exterior of the buildings and signs on the interior of the buildings that are directed to and visible from the exterior of the building) and skyway signs, other than skyway signs expressly permitted in subsection (d), are prohibited on the Ryan Property:
>
> (a) roof-mounted or roof-applied signs of any kind other than (i) those depicted in terms of image, location, scale, size (56' x 56') and utility on the attached Downtown East Master Signage Plan Revision dated January 22, 2014 and attached as Exhibit D (the "**Master Signage Plan**"); provided that roof top signs of the same image and in the same location as the 56' x 56' signs depicted on the Master Signage Plan may be smaller in size, scale, and utility;
>
> ….

(Becker Decl., Ex. 6, Doc. 15-6 at p. 3 § 1(a).) Exhibit D then depicts the anticipated signage as follows:



(*Id.*, Ex. 6, Doc. 15-6 at p. 40 (D-9).) There is no prohibition of illumination in the plain language of the Signage Agreement, and, therefore, the lighting of the signs cannot constitute a breach of the Agreement. Indeed, multiple pages of Exhibit D—the Master Signage Plan—state "All Lettersets to be internally illuminated with red halo" and "All Banners will incorporate architectural lighting." (*Id.* at pp. 35-38 (D-4, D-5, D-6, D-7).) Thus, not only is there no prohibition on illumination of the various Wells Fargo signs, illumination of the Wells Fargo lettering on the buildings is provided for in the Exhibit.

Making their entire "no-illumination" argument in a footnote, the Vikings effectively concede the absence of any illumination restriction in the contract. They contend, however, that the Signage Agreement restricts illumination of the roof-top signs because it "does not show" the signage to be illuminated. (Vikings' Br. at p. 31 n.13.)

This attempt to infer a prohibition from contractual silence lacks merit. Implicit in the Vikings' position is the notion that the Signage Agreement was required to state every possible particular of the roof-top signage in order to be permissible. That was not the parties' intent. When the Signage Agreement was executed in February 2014, construction had not begun on the Wells Fargo buildings and Wells Fargo was not in a position to discuss more than the basics of the envisioned roof-top signage—that the sign would be affixed horizontally to the roof, that it would be 56' x 56' foot in dimension, and that the signage would include the gold Wells Fargo lettering on red background, as depicted in Exhibit D's graphic. (Hanson Decl. ¶ 8.) This is why the parties flexibly defined the anticipated signage in terms of its "depicted … image, location, size (56' x 56') and utility." (Becker Decl., Ex. 6, Doc. 15-6 at p. 3 § 1(a).)

The Vikings' position is also inconsistent with the legal maxim that "[e]verything that the law does not forbid is permitted." *Black's Law Dictionary* 1694 (7th ed. 1999) (defining the maxim "*Tout ce que la loi ne defend pas est permis*"). Absent Wells Fargo having constrained itself by contract, it is free to erect whatever roof-top signage it wishes within the confines of the law. Here, there is no prohibition on illumination in the contract, and had the Vikings wished to restrict illumination, they should have included and insisted on such a restriction within the contract.

The Vikings' no-illumination argument is also irreconcilable with the undisputed fact that they did not oppose the new City of Minneapolis roof-top signage ordinance. As the Vikings admit in their own briefing, the Vikings agreed they would "not oppose Wells Fargo's efforts …. to obtain approval from the City of Minneapolis for the Roof

Top signs … depicted in terms of image, location, scale, size (or smaller) and utility on the Master Signage Plan," and "[w]ithout opposition from [the Vikings], on April 5, 2014, the City of Minneapolis Sign Ordinance was amended to permit roof top signs under certain limited circumstances." (Vikings' Br. at pp. 8-9.) The amended Minneapolis Ordinance § 543.452 undisputedly states that roof top signs may be "externally illuminated in such a way that the light shall be aimed and shielded directly onto the roof sign only." Thus, the Vikings certainly would have opposed the illumination portion of the new Minneapolis Ordinance if illumination of Wells Fargo's roof-top signage was not what the parties contemplated in the Master Signage Plan. The Vikings' lack of objection to the new Ordinance confirms the lack of any illumination restriction in the Signage Agreement.

The Vikings' position also belies common sense and the purpose of the signage. A sign is made to be seen. And the very point of an aerial roof-top sign, as expressly contemplated in the Signage Agreement, is for it to be seen from the sky, including at night. (Becker Decl., Ex. 6, Doc. 15-6 at p. 3 § 1(a).) This is why the operative contract language throughout sections one and two of the Signage Agreement focuses on the "depict[ion]" and "image" of the contemplated signage. (*Id.* at §§ 1(a) & 2.) Illumination of the signage goes hand in hand with its "image" and "utility" and it belies common sense for it to be non-illuminated. (*Id.*)

At the very best for the Vikings, the Signage Agreement is ambiguous regarding illumination of the roof-top signs. The Vikings' counsel drafted the Signage Agreement. (Becker Decl., Ex. 6, Doc. 15-6 at p. 10 ("This Instrument Was Drafted By: Briggs and

Morgan, P.A. [counsel for the Vikings]").) Accordingly, any such ambiguity must be construed against the Vikings and in favor of Wells Fargo. *See Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995) ("If a contract is ambiguous, it must be construed against its drafter."). Notably, the Signage Agreement does not include a standard, boilerplate term altering this basic canon of contract interpretation. (Becker Decl., Ex. 6, Doc. 15-6.)

At bottom, the Vikings do not demonstrate any likelihood that they will prevail on the claim that the Signage Agreement prohibits illumination of the Wells Fargo roof-top signs. And their motion for injunctive relief fails accordingly.

(b) Wells Fargo's Roof-Top Signage is as "Depicted" in Exhibit D to the Signage Agreement.

The Vikings also argue that the Wells Fargo roof-top signage breaches the Signage Agreement because the signs include raised lettering. According to the Vikings, raised lettering is "mounted," and the Signage Agreement does not allow roof-mounted signs. The Vikings argument that the signs' raised lettering breaches the contract is at odds with the contract as a whole.

The operative, plain language of the Signage Agreement sets forth the parties' agreement that Wells Fargo was entitled to install "roof-mounted or roof-applied signs" on top of the Wells Fargo buildings as "**depicted** in terms of image, location, scale, size (56' x 56') and utility" in Exhibit D to the Agreement. (*Id.* at p. 3 § 1(a) (emphasis added).) The Signage Agreement does not "incorporate[]" Exhibit D, the Master Signage

Plan, into the contract, as the Vikings incorrectly assert.[7] (Vikings' Br. at p. 7.) To the contrary, the contract's focus on what is "depicted," as opposed to described, in Exhibit D was to reflect the uncertainty inherent in attempting to define the signage that would be installed on top of the buildings in February 2014—before the buildings had even been constructed. (Hanson Decl. ¶ 8.) Thus, to allow for flexibility, the parties defined the signage in reference to the "image, location, scale, size (56' x 56') and utility" of the signage "depicted" in Exhibit D. The terms image, location, scale, size and utility have *meaning* and were included in the Signage Agreement to make it plain that Wells Fargo was not strictly limited to the exact images and descriptions shown in the Exhibit. For example, if Wells Fargo changed its name, through merger or otherwise, the terms provide the flexibility needed so that "NewName" signage could replace the "Wells Fargo" signage. Similarly, since the provisions of the Signage Agreement run with the land (Becker Decl., Ex. 6, Doc. 15-6 at p. 5 § 4), if Wells Fargo sold the buildings to "NewCo," that owner would be allowed to install NewCo signage of the same image, location, scale, size and utility. Accordingly, the Vikings are wrong to read the Signage Agreement as limiting Wells Fargo to only the exact images and descriptions shown in Exhibit D. Wells Fargo is simply not so constrained. In any event, the signs installed on top of the buildings "depict[]" the "image" in Exhibit D:

[7] The Signage Agreement specifically incorporates the recitals into the Agreement (Becker Decl., Ex. 6, Doc. 15-6 at p. 7 § 15) but it says nothing as to the incorporation of the Exhibits.

(Becker Decl., Ex. 6, Doc. 15-6 at p. 40 (D-9).) Accordingly, the Vikings cannot demonstrate that Wells Fargo's installed, roof-top signage differs "in terms of the image, location, scale, size (56' x 56') and utility" from the signage "depicted" in Exhibit D to the Signage Agreement.

Unable to deny that the signage is consistent with the depicted image in Exhibit D, the Vikings rely on the secondary language in the Exhibit stating "Non-Mounted Skyview Graphic (Qty. 2) Painted Roof Sign, Custom." (*Id.*) But this interpretative approach is the tail wagging the dog. Here, controlling weight must be given to the plain, operative terms of the Signage Agreement itself, which says nothing about the language in Exhibit D having significance that supersedes the language of the Signage Agreement expressly allowing for "roof-mounted or roof-applied" signs as "depicted." (*Id.* at p. 3 § 1(a).)

Furthermore, the Vikings cannot rely on the "Non-Mounted" phrase in Exhibit D in isolation. The Signage Agreement does not set up a categorical bar against roof-

mounted signage, as the Vikings incorrectly contend. To the contrary, the terms of the Signage Agreement state expressly that the signage "depicted" in Exhibit D is an exception to the general restriction on "roof-mounted" signs, meaning that the signage depicted in Exhibit D can, in fact, be roof-mounted. (*Id.*) Thus, at best for the Vikings, the phrase "Non-Mounted" in Exhibit D creates an ambiguity, which should be construed against the Vikings, as the drafter of the contract. (*Id.* at p. 10 ("This Instrument Was Drafted By: Briggs and Morgan, P.A. [counsel for the Vikings]").) The Vikings' reliance on Exhibit D's use of the term "painted" fares no better. Even if the term in the Exhibit deserved weight, there is no dispute here that the red background of the sign is, in fact, "painted" on the roof. (Hailey Decl., Ex. A at sheet 14; Declaration of Kevin R. Coan, Ex. 1, Doc. 14-1.)

2. The Vikings Are Not Likely to Succeed in Proving That Any Technical Breach of the Signage Agreement is Material.

The Vikings have also not made a clear showing that they are likely to succeed on the merits of their breach of contract claim because, even if the Vikings could show a likelihood of a technical breach, they cannot demonstrate that any such breach is material.

To be actionable and to justify the extraordinary relief sought by the Vikings here, any breach must be a substantial and material one. *See Parkhill v. Minn. Mut. Life Ins. Co.*, 174 F. Supp. 2d 951, 961 (D. Minn. 2000) (recognizing "material breach of the contract" as an element of a breach of contract claim under Minnesota law); *see also U.S. v. Bailey*, 775 F.3d 980, 981 (8th Cir. 2014) ("Technical noncompliance with a contract is

excused under the doctrine of substantial performance if it results in an immaterial breach and the other party receives substantially what it bargained for.") (citing 15 *Williston on Contracts* § 44:52 (4th ed.).) The Vikings own pleading and correspondence acknowledges that it is not enough to show a simple breach. (*See* Vikings' Br. at p. 31 (acknowledging required showing of a "*material* breach of the Signage Agreement"); Becker Decl., Ex. 13, Doc. 15-13 (accusing Wells Fargo of a "*material*" deviation from the Signage Agreement) & Ex. 14, Doc. 15-14 (accusing Wells Fargo of a "*material*" deviation from the Signage Agreement).)

Here, for all the same reasons the Vikings cannot show irreparable harm (*infra* at pp. 13-25), they are highly unlikely to prove that any technical breach of contract is material, particularly where the operative contract language flexibly defines the contemplated signage "as depicted in terms of image, location, scale, size (56' x 56') and utility" in the Master Signage Plan. (Becker Decl., Ex. 6, Doc. 15-6 at p. 3 § 1(a); *id.* at § 2.) Even if the illumination and/or raised lettering of the signs were found to be a breach, the signage on the roof-tops of the two Wells Fargo towers is materially the same in terms of the skyview signs' "image, location, scale, size … and utility." (*Id.*) For this independent reason, the Vikings' motion for preliminary injunction should be denied.

For all of the foregoing reasons, the Vikings cannot show, and have not shown, that they are likely to succeed on the merits of their breach-of-contract claim, and their motion should, therefore, be denied.

F. The Public Interest Favors Wells Fargo.

Finally, the public-interest factor favors Wells Fargo. Here, the Vikings seek to restrict and limit Wells Fargo's commercial expression on its own property for the purpose of advertising its business. The public interest favors the freedom of expression, including commercial expression. *See Bates v. State Bar of Ariz.*, 433 U.S. 350, 364 (1977) (recognizing the public's interest in the "free flow of commercial speech"). And "[t]he public also has an interest in fostering open and fair competition." *Alt. Pioneering Sys., Inc. v. Direct Innovative Prods., Inc.*, 822 F. Supp. 1437, 1445 (D. Minn. 1993).

Nevertheless, the Vikings argue that the public interest favors granting their motion because the "Stadium is being built, in part using public money" and because the property acquired for the construction of the Stadium "was acquired for the benefit of the public." (Vikings' Br. at p. 32.) The Vikings' argument withers under minimal scrutiny. The Vikings are estimated to be worth more than $1.5 billion, and they have managed to obtain $498 million in public funding for their new $1 billion stadium. (Grote Decl., Ex. E; *see* http://www.forbes.com/teams/minnesota-vikings/ (last visited on January 4, 2016); http://www.vikings.com/stadium/new-stadium/faq.html#cost (last visited on January 7, 2016).) The interests the Vikings advance here are unquestionably their own private, pecuniary interests. The Vikings attempt to equate their private, business interests with those of the public is entirely without merit.

IV. CONCLUSION

For all of the foregoing reasons, the Vikings' motion for preliminary injunction should be denied.

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