Case No. 14-15139

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY OF SAN JOSÉ; CITY OF SAN JOSÉ AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSÉ; and THE SAN JOSÉ DIRIDON DEVELOPMENT AUTHORITY,
Plaintiffs and Appellants,

v.

OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as Major League Baseball; and ALLAN HUBER "BUD" SELIG,
Defendants and Appellees.

On Appeal from the United States District Court,
Northern District of California
Case No. 13-CV-02787-RMW, Honorable Ronald M. Whyte, Judge

REPLY BRIEF IN SUPPORT OF APPLLANTS' MOTION TO EXPEDITE BRIEFING AND HEARING ON APPEAL

COTCHETT, PITRE & McCARTHY, LLP
JOSEPH W. COTCHETT (SBN 36324)
PHILIP L. GREGORY (SBN 95217)
FRANK C. DAMRELL, JR. (SBN 37126)
ANNE MARIE MURPHY (SBN 202540)
840 Malcolm Road
Burlingame, California 94010
Telephone: (650) 697-6000
Facsimile: (650) 692-3606

OFFICE OF THE CITY ATTORNEY
RICHARD DOYLE (SBN 88625)
NORA FRIMANN (SBN 93249)
200 East Santa Clara Street, 16th Fl.
San José, California 95113
Telephone: (408) 535-1900
Facsimile: (408) 998-3131

Attorneys for Plaintiffs and Appellants

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I. INTRODUCTION

Defendants/Appellees Major League Baseball and Commissioner Bud Selig (collectively, "MLB") are wrong on the two fundamental points supporting their opposition brief: (1) There is a valid, enforceable Option Agreement between the City of San José and the Athletics Baseball Club, set to expire in **November 2014**; and (2) The City of San José promptly filed and prosecuted this action after MLB and Commissioner Selig refused to have further dealings with the City on relocation issues. Therefore, good cause exists for expediting the briefing and hearing on this appeal because the City of San José will suffer irreparable harm if this appeal is not heard before **November 8, 2014**.

II. THE CITY AND THE A'S HAVE AN ENFORCEABLE OPTION AGREEMENT, DUE TO EXPIRE IN NOVEMBER 2014

In their opposition brief, MLB and Commissioner Selig assert: "the Option Agreement is an *invalid contract* between San José and the Athletics." Opp. Br., p 1 (emphasis added). The City of San José strongly disputes that assertion. As additional evidence showing that statement is wrong, on **January 30, 2014**, Lewis N. Wolff, owner of the Oakland Athletics Baseball Company ("AIG") sent a letter to the Oversight Board of

the Successor Agency to the Redevelopment Agency and clearly stated:

> **AIG considers the Option Agreement to be a valid and enforceable agreement and expects that the Option Agreement will be honored by the Successor Agency and the Oversight Board.**

Reed Decl., ¶18, **Exhibit D** (emphasis added).

Clearly MLB has misled the Court in its statements about the enforceability of the Option Agreement.

The City of San José and the Athletics Investment Group LLC ("Athletics") have a valid, enforceable Option Agreement for the relocation of the Oakland A's Major League Baseball team from Oakland to San José. The option term expires on November 8, 2014. The expiration of the Option Agreement provides good cause to expedite this appeal.

III. THE CITY HAS PROMPTLY PURSUED THIS ACTION

After the City of San José and the A's signed the Option Agreement, MLB and Commissioner Selig **delayed** for almost **three (3) years** from allowing the Athletics to exercise the Option Agreement and move the A's. As detailed in the supporting Declaration of Mayor Chuck Reed, there was no delay by the City of San José in moving forward with the Athletics. Any

delay was directly caused by reliance on communications with MLB. Reed Decl., ¶¶7, 8, 14, 15, 20.

One example of these requested delays occurred in **2010**, after the San José City Council unanimously approved an Environmental Impact Study for the proposed ballpark. *Id*. at ¶6. Thereafter, Mayor Reed called for a public vote of the citizens of San José on whether the Athletics could purchase land and build a new stadium in the City. *Id*. MLB was notified about the potential public vote. *Id*.

Promptly after Mayor Reed called for a vote, Robery DuPay, President & Chief Operating Officer of MLB and a representative of Commissioner Bud Selig, contacted the Mayor to request that **the City delay the vote**, pending a decision by MLB's Relocation Committee on a territorial dispute between the Oakland Athletics and the San Francisco Giants. *Id.* at ¶7. **Exhibit A** to Mayor Reed's Declaration consists of a letter confirming the conversation, as well as the City's press release concerning postponing the vote.

This territorial dispute forms the basis for the underlying refusal of MLB to allow the Athletics to relocate to San José per the MLB Constitution. *Id*. at ¶7. Pursuant to an illegal exclusive territorial rights agreement, MLB has refused to permit the Athletics to relocate from

Oakland to San José, purportedly because the San Francisco Giants own the exclusive territorial rights to San José. Dkt. No. 1, ¶¶ 19, 21; Gregory Decl., ¶2, **Exhibit A**.

Despite several inquiries from the City, MLB's Relocation Committee has yet to make a decision on the territorial dispute between the Oakland Athletics and the San Francisco Giants or the right of the Athletics to move to San José. Reed Decl., ¶9. However, in October **2013**, Mayor Reed learned of a secret letter sent by Commissioner Selig to the Oakland Athletics, allegedly telling the Athletics they were prohibited from moving to San José. *Id*.[1]

On **April 2, 2013**, Mayor Reed wrote Commissioner Selig, requesting a status report on when the A's would be able to move to San José. *Id*. at ¶13, **Exhibit B**. On **April 4, 2013**, Commissioner Selig responded, **refusing** to provide the citizens of the City of San José with a decision (or even a timetable for a decision) on allowing the A's to move to San José. *Id*. at ¶14, **Exhibit C**.

After Mayor Reed received Commissioner Selig's response, it was clear that agreeing with MLB's requests for delays was no longer in the best

[1] In their Opposition Brief, MLB and Commissioner Selig assert: "MLB has declined the Athletics' proposal to relocate to San José." Opp. Br., p 3. However MLB cites no evidence to support this statement. Appellants strongly object to this Court's consideration of this unsupported statement.

interests of the citizens of San José. *Id*. at ¶15. As Mayor Reed states: "I recognized MLB would take steps to block the A's from exercising the Option Agreement and moving to San José and then rely on the outdated antitrust exemption." *Id*. At that point Mayor Reed instructed counsel for the City Attorney to investigate litigation against MLB and Commissioner Selig. *Id*. at ¶16. Shortly thereafter, on **June 18, 2013**, this litigation was filed to force a decision after years of MLB-caused delay. *Id*. at ¶17.

Finally, at the December 13, 2013 Case Management Conference before Judge Ronald M. Whyte, over MLB's objection, Appellants forcefully argued that the District Court should allow an immediate appeal of the order dismissing the antitrust and unfair competition claims. Supplemental Declaration of P. Gregory, ¶2, **Exhibit D**, p. 12.

At MLB's request, the City of San José has been waiting **almost 4 years** for a response to Mayor Reed's **July 2010** letter, both as to allowing the A's to move to San José and to hold a special election. Reed Decl., ¶8. San José should not be punished for acceding to MLB's request for patience. Rather, San José should be granted an expedited briefing schedule and hearing.

IV. THIS APPEAL INVOLVES A MATTER OF GREAT IMPORTANCE TO THE PUBLIC

This case involves a question of great public importance regarding the validity and contours of the so-called "baseball exemption" to the American antitrust laws. MLB continues to deny the rights of baseball clubs and cities to freely negotiate relocation based on indisputably anticompetitive conduct. MLB's conduct is sanctioned based on highly questionable legal precedent and, if allowed to continue, will cause irreparable harm to the City of San José, as well as many other operations of baseball – all of which should be governed by the same antitrust laws affecting **all other sports in the United States**. There is a strong public interest in preventing this illegal conduct from continuing. Also, if this matter is not heard expeditiously, the option term will expire.

Almost **10 years** ago, the City of San José started the development process for a baseball stadium with the intent of attracting a Major League Baseball Club to San José. Reed Decl., ¶19. Almost **5 years** ago, the City of San José started working with the Athletics so the Club could move to San José. *Id*. at ¶20. During that entire time, the City continued to attempt to work with MLB. *Id*. As part of working with MLB, the City of San José delayed moving forward at the request of Commissioner Selig and his

colleagues. *Id*. Now MLB is using the City's acquiescence in these delays to rebut the City's request for expedited briefing and argument. *Id*.

The reason that the Athletics have not yet been able to exercise their option is because MLB continues to **refuse** to allow the Athletics to relocate to San José, illegally restraining competition pursuant to the MLB Constitution and the exclusive territorial rights agreement between and amongst the MLB Clubs. After the expiration of the current Option Agreement in November 2014, the City of San José may not be able to put together the same option package as set forth in the current Option Agreement, and the current opportunity for successfully relocating the Athletics from Oakland to San José will be lost because of MLB's illegal conduct.

Circuit Rule 27-12 provides that "[m]otions to expedite briefing and hearing … will be granted upon a showing of good cause." "Good cause" includes "situations in which . . . in the absence of expedited treatment, irreparable harm may occur or the appeal may become moot."

If MLB's antitrust exemption is not properly distinguished as not applying to the movement of Clubs, the City of San José faces losing the A's to another municipality. Reed Decl., ¶21. If that loss occurs, the damage to the citizens of San José will be irreparable. *Id*. The City of San José will be

seriously harmed if the Oakland A's are not permitted by MLB to move to San José. *Id*. at ¶22. The A's decision to build a privately-funded stadium would be a catalyst for thousands of jobs and millions of dollars to fund vital city services. *Id*. The cumulative impact of these harms to the City underscores their irreparability. *See San Antonio Cmty. Hosp. v. S. Cal. Dist. Council of Carpenters*, 125 F.3d 1230, 1238 n.5 (9th Cir. 1997) (injuries "[t]aken together" can provide "sufficient evidence of substantial and irreparable injury"); *see also, e.g*., *Cohen v. Brown Univ*., 991 F.2d 888, 905 (1st Cir. 1993) (affirming finding that "aggregate injury" or "cumulative severity" of harms was irreparable). *See Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007) (to satisfy the irreparable harm requirement, an antitrust plaintiff must demonstrate that, absent a preliminary injunction, it will suffer "'an injury that is neither remote nor speculative, but actual and imminent,' and one that cannot be remedied 'if a court waits until the end of trial to resolve the harm'" (quoting *Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 114 (2d Cir. 2005)).

A decision on the antitrust issues concerning the Athletics' move should be made before **November 2014** or the Athletics may choose another site for their new stadium. Reed Decl., ¶22. If that occurs, San José will

suffer irreparable harm because an eventual judgment in the City's favor will be too late to allow the Athletics to successfully relocate to San José.

While damages for the economic harm caused by MLB would still offer some remedy to the City of San José, such a remedy is inadequate. Ultimately, MLB's illegal conduct would have been successful in preventing free competition in the baseball market. Dkt. No. 1, ¶ 133; Gregory Decl., ¶2, **Exhibit A**. The only true remedy is an expedited briefing schedule and hearing with a final decision from this Court prior to **November 8, 2014** in order that the Athletics will be permitted to exercise the option set forth in the Option Agreement.

The Court controls its docket and can give preference to cases of public importance. 9 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2351 (3d ed. 2010). This is a case of public importance since it relates to a business that is actively and openly in violation of American antitrust laws, and committing illegal acts that cause significant ongoing harm to competition. Expedited briefing and an expedited hearing on this appeal are necessary to prevent serious harm to the City of San José on a matter of public importance.

V. CONCLUSION

This Court should expedite the schedule for briefing and oral argument for this appeal pursuant to **28 U.S.C. § 1657** and Circuit Rules **27-12** and **34-3** because this appeal qualifies as a case of public importance. Appellants respectfully request this Court order the briefing schedule be set to allow oral argument and a decision to occur significantly in advance of November 8, 2014.

Respectfully submitted,

Dated: February 12, 2014

COTCHETT, PITRE & McCARTHY

By: */s/ Philip L. Gregory*
JOSEPH W. COTCHETT
PHILIP L. GREGORY
FRANK C. DAMRELL, JR.
ANNE MARIE MURPHY

OFFICE OF THE CITY ATTORNEY
RICHARD DOYLE
NORA FRIMANN

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OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as Major League Baseball; and ALLAN HUBER "BUD" SELIG,
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On Appeal from the United States District Court,
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DECLARATION OF CHUCK REED IN SUPPORT OF MOTION TO EXPEDITE BRIEFING AND HEARING ON APPEAL

COTCHETT, PITRE & McCARTHY, LLP
JOSEPH W. COTCHETT (SBN 36324)
PHILIP L. GREGORY (SBN 95217)
FRANK C. DAMRELL, JR. (SBN 37126)
ANNE MARIE MURPHY (SBN 202540)
840 Malcolm Road
Burlingame, California 94010
Telephone: (650) 697-6000
Facsimile: (650) 692-3606

OFFICE OF THE CITY ATTORNEY
RICHARD DOYLE (SBN 88625)
NORA FRIMANN (SBN 93249)
200 East Santa Clara Street, 16th Fl.
San José, California 95113
Telephone: (408) 535-1900
Facsimile: (408) 998-3131

Attorneys for Plaintiffs and Appellants

DECLARATION OF CHUCK REED

I, **CHUCK REED**, declare:

1. I am the Mayor of the **CITY OF SAN JOSÉ**. I make this declaration of my own personal knowledge and, if called to testify as a witness, could and would competently testify to the matters stated herein.

2. Major League Baseball ("MLB") made unsupported assertions of delay in its opposition to the Motion to Expedite, filed by Appellants. The delay in moving forward with the Athletics resulted from communications with MLB.

3. In October **2004**, the City of San José and the San José Redevelopment Agency studied the potential for developing a ballpark in the Diridon Station area of the City of San José.

4. In February **2007**, the process culminated with the certification of an Environmental Impact Report for a ballpark project.

5. In early **2009**, the City of San José began working to develop a modified project and proposed a ballpark to house the Oakland Athletics at a specific site in San José and notified MLB.

6. In **2010**, the San José City Council unanimously approved an Environmental Impact Study for the ballpark. Thereafter, I personally called for a public vote of the citizens of San José on whether the Oakland

Athletics could purchase land and build a new stadium in the City of San José. MLB was notified about the potential vote.

7. Promptly after I called for a vote, Robery DuPay, President & Chief Operating Officer of MLB and a representative of Commissioner Bud Selig, contacted me to request that I delay the vote, pending a decision by Major League Baseball's Relocation Committee on a territorial dispute between the Oakland Athletics and the San Francisco Giants. This dispute forms the basis for the underlying refusal of MLB to allow the Athletics to relocate to San José per the MLB Constitution. A true and correct copy of my letter of **July 2010** confirming the conversation, and the related press release, are attached hereto as **Exhibit A**.

8. The City of San José has been waiting almost 4 years for a response to my **July 2010** letter, both as to allowing the A's to move to San José and to hold a special election.

9. Despite several inquiries, I am informed and believe, MLB's Relocation Committee has never made a decision on the territorial dispute between the Oakland Athletics and the San Francisco Giants or the right of the Athletics to move to San José. However, in October **2013**, I learned a secret letter had been sent by Commissioner Selig to the Oakland Athletics, allegedly telling the Athletics they were prohibited from moving to San José.

10. In March **2011**, the City of San José transferred property in anticipation of the Athletics move to San José.

11. In November **2011**, the City of San José entered into an Option Agreement with the Athletics Investment Group LLC ("Athletics") for the relocation of the Oakland A's Major League Baseball team from Oakland to San José. A copy of the Option Agreement is attached to the Complaint as Exhibit 3.

12. The Option Agreement includes an extension for a third year. The Athletics exercised this extension for a third year, thus extending the option through **November 2014**.

13. On **April 2, 2013**, I wrote Commissioner Selig, requesting a status report on when the A's would be able to move to San José. A true and correct copy of my letter is attached hereto as **Exhibit B**.

14. On **April 4, 2013**, Commissioner Selig responded, **refusing** to provide the citizens of the City of San José with a decision (or even a timetable for a decision) on allowing the A's to move to San José. A true and correct copy of Commissioner Selig's response is attached hereto as **Exhibit C**.

15. After I received Commissioner Selig's response, it was clear that agreeing with Commissioner Selig's requests for delays was no longer

in the best interests of San José. I recognized MLB would take steps to block the A's from exercising the Option Agreement and moving to San José and then rely on the outdated antitrust exemption.

16. At that point I instructed counsel for the City Attorney to investigate litigation against MLB and Commissioner Selig.

17. On **June 18, 2013**, this litigation was filed to force a decision after years of delay.

18. In their opposition brief, MLB and Commissioner Selig assert "the Option Agreement is an invalid contract between San José and the Athletics." (Page 1.) Contrary to that assertion, on **January 30, 2014**, the Oversight Board of the Successor Agency to the Redevelopment Agency received a letter from Lewis N. Wolff, owner of the Oakland Athletics Baseball Company ("AIG"). In characterizing the Option Agreement, Mr. Wolff stated: "AIG considers the Option Agreement to be a valid and enforceable agreement and expects that the Option Agreement will be honored by the Successor Agency and the Oversight Board." A true and correct copy of Mr. Wolff's letter is attached hereto as **Exhibit D**.

19. Almost **10 years** ago, the City of San José started the development process for a baseball stadium with the intent of attracting a Major League Baseball Club to San José.

20. Almost **5 years** ago, the City of San José started working with the A's so the Club could move to San José. During that entire time, the City has attempted to work with MLB. As part of working with MLB, the City of San José has delayed moving forward at the request of Commissioner Selig and his colleagues. Now MLB is using the City's acquiescence in these delays to rebut the City's request for expedited briefing and argument here.

21. If MLB's antitrust exemption is not promptly overturned, the City of San José faces losing the A's to another municipality. If that loss occurs, the damage to the citizens of San José will be irreparable.

22. The City of San José will be seriously damaged if the Oakland A's are not permitted by MLB to move to San José. The A's decision to build a privately-funded stadium would be a catalyst for thousands of jobs and millions of dollars to fund vital city services. A decision on that move should be made before November 2014 or the A's may choose another site for their new stadium.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct, and that this declaration was executed on this 12th day of February 2014 at San José, California.

/s/ Chuck Reed
CHUCK REED

EXHIBIT A

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Chuck Reed
MAYOR

Robert DuPuy
President & Chief Operating Officer
Major League Baseball
245 Park Ave.
New York, NY 10167

Dear Bob:

I have communicated with Athletics owner Lew Wolff and we are in agreement that we will honor the request of Commissioner Bud Selig, as outlined in your call to me.

If our City is approved for Major League Baseball, we are fully prepared to work with the A's and the Commissioner to add another great, baseball-only ballpark to the wonderful venues that have been constructed in recent years.

We appreciate Commissioner Selig's recognition of our significant efforts to assure Major League Baseball that our City and the downtown location we have identified are ideal for the A's and Major League Baseball.

Cisco Field will be a great addition to Major League Baseball. The growing national and international reputation of San Jose, now the 10th largest in the United States, and of Silicon Valley, will further increase the attendance and economic viability that distinguishes Major League Baseball under Commissioner's Selig's leadership.

We would welcome a special election in March of early next year and appreciate your offer to help pay for the election costs should Major League Baseball decide to allow the A's to construct a 100% privately financed ballpark in our City. The lead time for a special election in March is such that we request that Commissioner Selig inform us of his decision on or before October 1st. The sooner the better as our City and civic leadership has been supportive of my request to delay the vote, but wish that this important issue be resolved in a way that, hopefully, will be a great catalyst to the economic base of San Jose and the entire region.

Sincerely.

Chuck

Chuck Reed
San Jose Mayor

200 East Santa Clara Street, 18th floor, San José, CA 95113 *tel* (408) 535-4800 *fax* (408) 292-6422 www.sjmayor.org

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Press Release
Office of Mayor Chuck Reed

For Immediate Release:
July 28, 2010

Contact:
David Low, Office of Mayor Reed
(408) 535-4857 or (408) 499-8328 - cell

Mayor Reed Pulls Proposal to Place Downtown Ballpark Measure on November Ballot

Decision comes after Major League Baseball offers to help cover the added cost for a possible special election and hints that a decision on territorial rights may come in time for a spring vote

San Jose, Calif. – Mayor Chuck Reed has announced that he is pulling his request that the city's Rules Committee place a downtown ballpark initiative on the November 2, 2010 ballot, following a discussion with A's owner Lew Wolff. The decision comes after Major League Baseball (MLB) President Bob DuPuy, speaking on behalf of MLB Commissioner Bud Selig, also agreed to help cover the taxpayer cost if a special election is required in the spring.

"I pursued a November election because I believe the citizens of San Jose deserve to have their voices heard. We have strong community support to build a privately-funded ballpark, which would be a catalyst for thousands of jobs and millions of dollars in revenue to fund vital city services," said Mayor Chuck Reed. "After discussing our options with Lew Wolff, other elected officials and members of Pro Baseball San Jose, we have decided to forgo a November ballot measure."

Mayor Reed will still be asking the City Council to adopt a resolution of support for allowing the Athletics to move to San Jose that incorporates the Mayor's proposed amendments to the city's ballpark Negotiating Principles.

Lew Wolff praised the strong leadership of Mayor Reed. "I'm grateful that San Jose has shown a gritty determination to help us build a new ballpark for our franchise. We appreciate the strong leadership of both the Mayor and Commissioner Selig," Wolff said. "We look forward to a final decision from the Commissioner, and will vigorously pursue an election next year if that decision is a positive one," he added.

Since April 2009, city leaders have been working in partnership with the Athletics on a possible relocation to San Jose. In that time, the city has developed a set of negotiating principles for a new stadium, completed an economic analysis and environmental impact review for a downtown ballpark, and met with members of a special MLB Committee formed to study ballpark options for the Athletics. However, city leaders have been waiting for a response from MLB regarding territorial rights that currently prevent the Athletics from moving to San Jose.

"The initial push to hold a November vote sent a strong signal to league officials that San Jose is serious about attracting a Major League ballclub and that it's time to move forward with the

- more -

process," said San Jose City Councilmember Sam Liccardo, who represents downtown. "The Commissioner's offer to help pay for a possible election in the spring was the first indication that the league is inching closer to a decision on territorial rights."

Mayor Reed and Councilmembers Rose Herrera, Sam Liccardo and Nancy Pyle had originally proposed placing the San Jose Downtown Ballpark and Jobs Measure on the November 2010 ballot to avoid the added expense of a special election. Placing a measure on this November's ballot would have cost several hundred thousand dollars while holding a special election is estimated to cost more than one million dollars. Specific estimates are set by the Santa Clara County Registrar of Voters when a measure is submitted for placement on the ballot. Voter approval is required to use city land or funds in conjunction with a downtown ballpark, and after this November, the next regularly-scheduled election in San Jose is not until June 2012.

Background:

The San Jose Downtown Ballpark and Jobs Measure required that the A's would be responsible for 100% of the cost of building, operating and maintaining a new Major League Baseball ballpark. No new taxes could be raised to bring baseball to San Jose.

Ballpark Economic Impacts

A September 2009 Economic Impact Study commissioned by the City of San Jose states that the estimated $490 million private investment in a new downtown ballpark would bring positive economic benefits to the City:

- More than 2,000 annual jobs (full, part-time, seasonal) of which 970 would be new jobs in San Jose as a result of the project
- $2.9 billion total economic output for the local economy over a 30-year period
- 128 million in annual net economic impact as a result of direct spending on operations (that is partially re-spent in San Jose)
- $5 million in annual revenues for local governments, including approximately $3 million to the City of San Jose's General Fund and Redevelopment Agency

Following a discussion with Athletics owner Lew Wolff, Mayor Reed informed MLB President Bob DuPuy of his decision this morning and will rescind his request that the Rules Committee place the ballpark ballot measure on the agenda for the August 3 City Council Meeting. The Rules Committee will still decide today whether to place the proposed ballpark Negotiating Principles amendments on the August 3 agenda.

The Rules Committee will still meet today to discuss four other proposed ballot measures:

1. Reforming binding arbitration for police officers and firefighters;
2. Instituting a tax on medical marijuana;
3. Raising the sales tax by ¼ percent; and
4. Changing minimum benefits and contribution formulas for employee pensions

# # #

EXHIBIT B

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Chuck Reed
MAYOR

April 2, 2013

Mr. Bud Selig, Commissioner
Major League Baseball
777 E. Wisconsin Avenue, Ste. 3060
Milwaukee, WI 53202

Dear Commissioner Selig:

When will the A's be moving to San Jose? That's the question that is most often asked of me by CEOs of Silicon Valley companies competing to retain and attract global talent, by youngsters excited about competing in little league baseball, and by fans throughout San Jose.

The A's ownership continues to express its desire to locate the team in San Jose and I strongly endorse that outcome. There should be no doubt of San Jose's ability to be a great host city for the team and for Major League Baseball. There should also be no doubt that the stadium could have been under construction by now.

We respect your desire to examine fully all aspects of allowing the A's to move to Northern California's largest city. In 2011, former MLB President Bob Dupuy, speaking on behalf of your office, asked that our City Council delay approving a public vote to advance a planned stadium project in Downtown San Jose. We abided by that request. Mr. Dupuy also indicated that you would soon make a final decision and, if favorable towards San Jose, the MLB would assist the City with the costs of a future election. Two years have passed since. As you know, we have been contacted many times by the MLB's Blue Ribbon Panel and we have responded promptly and thoroughly in every instance. Meanwhile, we continue to communicate with leaders in the community and are prepared to advance implementation actions to the City Council following your decision.

Direct communication between us will help resolve any lingering issues about our commitment to having the A's home plate be located in San Jose and could reduce the probability for additional litigation. I'd appreciate an opportunity to discuss this with you and have asked my Chief of Staff, Pete Furman, to contact your office regarding scheduling a meeting with you. I hope you will look favorably upon the request.

Best Wishes,

Chuck Reed

Chuck Reed
Mayor

c: Lew Wolff

200 East Santa Clara Street, 18th floor, San José, CA 95113 *tel* (408) 535-4800 *fax* (408) 292-6422 www.sjmayor.org

EXHIBIT C

Office of the Commissioner
MAJOR LEAGUE BASEBALL

ALLAN H. (BUD) SELIG
Commissioner of Baseball

April 4, 2013

VIA EMAIL AND UPS OVERNIGHT DELIVERY

Mayor Chuck Reed
City of San Jose
200 East Santa Clara Street
18th Floor
San Jose, California 95113

Dear Mayor Reed:

I appreciate your continued interest in the Oakland Athletics' request to relocate to San Jose, as expressed in your April 2, 2013 letter to me. As you know, Major League Baseball is currently evaluating this request in accordance with our rules. As part of this process, our Select Committee has been in frequent contact with the City of San Jose. If you believe there is additional information that Major League Baseball should consider in completing its assessment, the best way to proceed at this time continues to be for you to contact Robert Starkey or other members of the Committee.

I will not address any of the specifics in your letter, other than to note that your vague reference to "additional litigation" is neither productive nor consistent with process that the Athletics have initiated under our rules. That said, you can rest assured that whatever decision is ultimately made will take into consideration all of the information that we have received and will be in the best interest of Baseball.

Very truly yours,

Allan H. Selig
Commissioner of Baseball

777 E. Wisconsin Avenue
Suite 3060
Milwaukee, WI 53202
(414) 225-8900 / Fax (414) 225-8910

EXHIBIT D

THE OAKLAND ATHLETICS BASEBALL COMPANY

January 30, 2014

Lewis N. Wolff
Owner

Honorable Members of the Oversight Board
San Jose City Hall
200 East Santa Clara Street
San Jose, CA 95120

Subject: Option Agreement dated November 8, 2011 between Athletics Investment Group, LLC and San Jose Diridon Development Authority

Dear Oversight Board Members:

This letter is intended to clarify the position of Athletics Investment Group, LLC (AIG) with respect to the Option Agreement referenced above. AIG entered into the Option Agreement with the San Jose Diridon Development Authority (Authority) in good faith and for good and valuable consideration, which consideration has already been delivered to and accepted by the Authority and the Successor Agency. AIG also exercised its extension of the Option Agreement on September 26, 2013.

AIG considers the Option Agreement to be a valid and enforceable agreement and expects that the Option Agreement will be honored by the Successor Agency and the Oversight Board.

Thank you for your consideration of this matter.

Sincerely,

Lewis N. Wolff

cc: Mike Crowley

11828 La Grange Avenue, Suite 200 • Los Angeles, CA 90025
(310) 477-3593 • Fax (310) 477-2522

Case No. 14-15139

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY OF SAN JOSÉ; CITY OF SAN JOSÉ AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSÉ; and THE SAN JOSÉ DIRIDON DEVELOPMENT AUTHORITY,
Plaintiffs and Appellants,

v.

OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as Major League Baseball; and ALLAN HUBER "BUD" SELIG,
Defendants and Appellees.

On Appeal from the United States District Court,
Northern District of California
Case No. 13-CV-02787-RMW, Honorable Ronald M. Whyte, Judge

SUPPLEMENTAL DECLARATION OF PHILIP L. GREGORY IN SUPPORT OF MOTION TO EXPEDITE BRIEFING AND HEARING ON APPEAL

COTCHETT, PITRE & McCARTHY, LLP
JOSEPH W. COTCHETT (SBN 36324)
PHILIP L. GREGORY (SBN 95217)
FRANK C. DAMRELL, JR. (SBN 37126)
ANNE MARIE MURPHY (SBN 202540)
840 Malcolm Road
Burlingame, California 94010
Telephone: (650) 697-6000
Facsimile: (650) 692-3606

OFFICE OF THE CITY ATTORNEY
RICHARD DOYLE (SBN 88625)
NORA FRIMANN (SBN 93249)
200 East Santa Clara Street, 16th Fl.
San José, California 95113
Telephone: (408) 535-1900
Facsimile: (408) 998-3131

Attorneys for Plaintiffs and Appellants

SUPPLEMENTAL DECLARATION OF PHILIP L. GREGORY

I, PHILIP L. GREGORY, declare:

1. I am an attorney duly admitted to practice before this Court and all courts of the State of California, and am an attorney with the law firm of Cotchett, Pitre & McCarthy, LLP ("CPM"), attorneys for Plaintiffs/ Appellants in this matter. I make this of my own personal knowledge and, if called to testify as a witness, could and would competently testify to the matters stated herein.

2. Attached hereto as **Exhibit D** is a true and correct copy of the transcript of the Case Management Conference held on December 13, 2013, Dkt. No. 61.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct, and that this declaration was executed on this 12th day of February 2014 at Burlingame, California.

/s/ Philip L. Gregory
PHILIP L. GREGORY

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CITY OF SAN JOSE, ET AL,	)	CV-13-2787-RMW
PLAINTIFF,	)	SAN JOSE, CALIFORNIA
VS.	)	DECEMBER 13, 2013
OFFICE OF THE COMMISSIONER OF BASEBALL, ET AL,	)	PAGES 1-26
DEFENDANT.	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RONALD M. WHYTE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: COTCHETT PITRE & MCCARTHY, LLLP
BY: JOSEPH COTCHETT
PHILIP GREGORY
ANNE MARIE MURPHY
840 MALCOLM ROAD, STE 200
BURLINGAME, CA 94010

FOR THE DEFENDANT: KEKER & VAN NEST, LLP
BY: JOHN KEKER
ADAM LAURIDSEN
633 BATTERY STREET
SAN FRANCISCO, CA 94111

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT PRODUCED WITH COMPUTER.

APPEARANCES CONTINUED ON THE NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

FOR THE PLAINTIFF: OFFICE OF THE CITY ATTORNEY
BY: RICHARD DOYLE
200 EAST SANTA CLARA STREET
SAN JOSE, CA 95113

FOR THE DEFENDANT: PROSKAUER ROSE, LLP
BY: SCOTT COOPER
SARAH KROLL-ROSENBAUM
2049 CENTURY PARK EAST, STE 3200
LOS ANGELES, CA 90067

SAN JOSE, CALIFORNIA DECEMBER 13, 2013

P R O C E E D I N G S

(WHEREUPON, COURT CONVENED AND THE FOLLOWING PROCEEDINGS WERE HELD:)

THE CLERK: CALLING CASE C-13-22787.

CITY OF SAN JOSE VERSUS COMMISSIONER OF BASEBALL.

ON FOR CASE MANAGEMENT CONFERENCE.

STATE YOUR APPEARANCES, PLEASE.

MR. GREGORY: GOOD MORNING, YOUR HONOR.

WE ARE PHILIP GREGORY, JOSEPH COTCHETT, ANNE MARIE MURPHY ON BEHALF OF PLAINTIFFS, OF COTCHETT PITRE & MCCARTHY.

MR. DOYLE: RICHARD DOYLE ON BEHALF OF PLAINTIFF, CITY OF SAN JOSE.

MR. KEKER: GOOD MORNING, YOUR HONOR.

JOHN KEKER AND ADAM LAURIDSEN OF KEKER & VAN NEST FOR MAJOR LEAGUE BASEBALL.

MR. COOPER: SCOTT COOPER AND SARAH KROLL-ROSENBAUM, PROSKAUER ROSE, ON BEHALF OF MAJOR LEAGUE BASEBALL.

THE COURT: ALL RIGHT. GOOD MORNING EVERYBODY.

LET ME START BY MAKING A FEW PRELIMINARY COMMENTS BECAUSE MY TENTATIVE THINKING IN THIS CASE DOESN'T PARTICULARLY SQUARE WITH EITHER SIDE'S VIEW OF WHAT SHOULD TAKE PLACE.

IT SEEMS TO ME THAT THE, FAR AND AWAY, THE PRIMARY ISSUE IN THIS CASE AS IT WAS FILED WAS WHETHER OR NOT BASEBALL IS EXEMPT FROM THE ANTI-TRUST LAWS, AND THAT WAS THE FEDERAL CLAIM

1 MADE IN THIS CASE.
2 AND IT SEEMS TO ME THAT -- WELL, I MADE A RULING BASED ON
3 WHAT I FEEL THE CURRENT LAW IS AND I UNDERSTAND THE PLAINTIFF'S
4 DESIRE AND ANTICIPATION, PERHAPS, OF MORE FAVORABLE OUTCOME ON
5 APPEAL. BUT I THINK THAT'S AN ISSUE THAT'S FRANKLY UP TO THE
6 SUPREME COURT AS TO WHETHER IT'S GOING TO MAKE SOME CHANGE IN
7 EXISTING LAW.
8 THAT BEING SAID, THERE REMAINS INTERFERENCE WITH CONTRACT
9 CLAIMS OR PERSPECTIVE ECONOMIC ADVANTAGE CLAIMS THAT ARE NOT
10 BASED ON THE ANTI-TRUST ISSUE, BUT ARE A QUESTION OF WHETHER OR
11 NOT THERE WAS DAMAGE SUFFERED BY THE CITY AS A RESULT OF SOME
12 INTERFERENCE BY BASEBALL WITH THE OPTION AGREEMENT BETWEEN THE
13 CITY AND THE A'S AND THE CITY IN THE DELAY IN MAKING A
14 DECISION.
15 WHETHER OR NOT ONCE A FEDERAL CLAIM IS REMOVED FROM A
16 CASE THE COURT SHOULD RETAIN JURISDICTION DEPENDS, IT SEEMS TO
17 ME, ON FACTORS THAT SUGGEST THAT IN THIS CASE THE COURT SHOULD
18 NOT CONTINUE TO RETAIN JURISDICTION AS MUCH AS IT MIGHT BE FUN
19 OR INTERESTING TO DO SO.
20 IT SEEMS TO ME THAT THE CLAIMS THAT REMAIN ARE PURELY
21 CLAIMS OF STATE LAW, THAT IT'S EARLY IN THE CASE AND THE COURT
22 HAS REALLY SPENT VERY LITTLE TIME WITH RESPECT TO THE STATE LAW
23 CLAIMS. THE PRIMARY FOCUS OF THE COURT'S DECISION WAS ON THE
24 ANTI-TRUST EXEMPTION ISSUE.
25 AND I THINK ONE OF THE FACTORS THE COURT'S HAVE SUGGESTED

1 SHOULD BE CONSIDERED IN DETERMINING WHETHER TO RETAIN
2 JURISDICTION IS WHETHER THERE'S ECONOMIES THAT WOULD BE SERVED
3 BY MAINTAINING THE CASE, WHETHER OR NOT THE COURT HAS DELVED
4 INTO THE ISSUES THAT HAVE ANY SIGNIFICANT EXTENT AND WHETHER OR
5 NOT THE ISSUES ARE CLEARLY ISSUES OF STATE LAW WHICH THEY ARE.
6 AND THAT BEING SAID, I FAIL AT THIS POINT TO SEE WHY IT
7 DOESN'T MAKE SENSE TO DISMISS THE STATE LAW CLAIMS WITHOUT
8 PREJUDICE TO RE FILING IN STATE COURT WHICH WOULD THEN ALLOW
9 ENTRY OF JUDGMENT ON THE ANTI-TRUST CLAIMS TO BE ENTERED AND
10 THE CITY THEN COULD PURSUE ITS APPEAL AND THE STATE COURT THEN
11 WOULD, IF PLAINTIFF CHOSE TO RE FILE, WOULD BE ABLE TO RESOLVE
12 THAT CASE WHICH, AS I SAY, I LOOK AT AS INVOLVING DIFFERENT
13 ISSUES.
14 IT SEEMED TO ME FROM THE PRETRIAL STATEMENT THAT THE
15 METHODOLOGY OF DETERMINING DAMAGES THAT WAS SET FORTH BY THE
16 CITY IS BASED ON THE ANTI-TRUST CLAIM, NOT ON THE REMAINING
17 INTERFERENCE WITH CONTRACT CLAIMS.
18 SO THAT'S WHERE I AM AT THIS POINT, AND I WOULD BE HAPPY
19 TO HEAR BRIEF COMMENTS FROM EACH SIDE.
20 MR. GREGORY, DO YOU WANT TO GO FIRST?
21 MR. GREGORY: THANK YOU, YOUR HONOR.
22 YOUR HONOR, I BELIEVE THAT THE PLAINTIFFS HAVE SET FORTH
23 ALL THEIR REASONS WHY THE COURT SHOULD RETAIN SUPPLEMENTAL
24 JURISDICTION IN OUR CMC STATEMENT.
25 AND RATHER THAN REITERATE THOSE POINTS, AND I'M SURE THE

1 COURT IS VERY AWARE OF THEM, I'M JUST GOING TO SUBMIT ON THE
2 CMC STATEMENT.
3 THE COURT: MR. KEKER?
4 MR. KEKER: THANK YOU, YOUR HONOR.
5 A COUPLE OF POINTS WHICH I KNOW YOU'VE CONSIDERED BUT I
6 FEEL THE NEED TO TALK ABOUT THEM A LITTLE BIT.
7 THE PROBLEM WITH THE CASE GOING UP ON APPEAL AT THIS
8 MOMENT IS THAT WHILE YOU'VE MADE A VERY DEFINITIVE RULING ABOUT
9 THE ANTI-TRUST EXEMPTION, YOU HAVE NOT MADE A DEFINITIVE
10 RULING, I DON'T THINK, MAYBE I MISREMEMBERED, ABOUT THE
11 ANTI-TRUST INJURY.
12 AND THE THRESHOLD QUESTION IF THIS CASE EVER GOT UP TO
13 SOME PLACE HIGH ENOUGH TO REVERSE ALL THIS LAW, OR TO CONSIDER
14 REVERSING ALL THIS LAW, THE THRESHOLD QUESTION WILL BE, DOES
15 THE CITY OF SAN JOSE EVEN HAVE STANDING.
16 AND THE PROBLEM HERE IS WE ARE CONTENDING SAN JOSE HAS NO
17 STANDING IN THE ANTI-TRUST INJURY SENSE BECAUSE THIS OPTION
18 AGREEMENT WAS VOID AB INITIO, NEVER EXISTED, AND THAT THAT --
19 THAT LEGAL PROPOSITION IS IN THE COURSE OF BEING DECIDED IN THE
20 STATE PROCESS.
21 I MEAN, FIRST, THE CONTROLLERS REVERSED THIS AND SENT IT
22 BACK. SAN JOSE LOCAL GOVERNMENT IS TRYING TO DECIDE WHETHER OR
23 NOT THEY WANT TO REAFFIRM THE OPTION AGREEMENT. THEN THEY HAVE
24 TO GO TO THE DEPARTMENT OF FINANCE AND THE DEPARTMENT OF
25 FINANCE HAS TO SAY WHETHER OR NOT THAT'S A LEGITIMATE THING

1 UNDER THE REDEVELOPMENT ACT.

2 AND ASSUMING THEY GET THROUGH ALL THOSE HURDLES, THERE IS

3 THE STAND FOR SAN JOSE WRIT OF MANDATE PROCEEDING THAT'S

4 PENDING BEFORE JUDGE HERLIHY AND IS ABOUT TO GO TO A CMC NEXT

5 WEEK AGAIN, IN WHICH STAND FOR SAN JOSE IS SAYING THIS OPTION

6 AGREEMENT IS VOID, THERE NEVER WAS AN OPTION AGREEMENT.

7 SO IF AND WHEN IT WAS DECIDED THAT THERE NEVER WAS AN

8 OPTION AGREEMENT, THE ENTIRE PREMISE OF SAN JOSE'S STANDING IS,

9 I WON'T SAY, I MEAN, YOU CAN FIGURE OUT THE POSSIBILITIES, BUT

10 AT THAT POINT, NO OPTION AGREEMENT, THEY ARE JUST LIKE

11 ALBUQUERQUE COMING IN HERE SAYING WE WANT A MAJOR LEAGUE

12 BASEBALL TEAM.

13 THE POSITION WOULD BE FAR STRONGER FOR MAJOR LEAGUE

14 BASEBALL TO SAY THIS PLAINTIFF HAS NO ANTI-TRUST INJURY AND

15 THEREFORE NO STANDING TO BRING THIS CASE.

16 IF THAT'S GOING TO BE LITIGATED PROMPTLY, WE THINK, IN

17 THE STATE COURTS, IT MAKES SOME SENSE FOR THE APPEAL OF THE

18 ANTI-TRUST CASE HERE TO WAIT UNTIL THAT'S BEEN ADJUDICATED THEN

19 THAT CAN BE PART OF WHAT GOES UP.

20 THAT WAS REALLY OUR PITCH FOR WHY YOU OUGHT TO KEEP IT,

21 YOU OUGHT TO STAY IT AND LET THE STATE COURTS DECIDE THAT

22 ISSUE. IF IT TURNS OUT THAT THERE'S NO OPTION AGREEMENT AT ALL

23 AS A MATTER OF LAW, THEN THE ANTI-TRUST INJURY CASE TAKES ON A

24 DIFFERENT LIGHT.

25 THAT'S OUR --

1 THE COURT: I'M A LITTLE BIT CONFUSED BY IF THE
2 APPEAL HERE IS DELAYED AND THE STATE COURT DETERMINES FOR SOME
3 REASON THAT THE CITY DIDN'T HAVE THE POWER TO ENTER INTO THE
4 OPTION AGREEMENT, THEN YOU WOULD HAVE WHAT, AN APPEAL BY THE
5 CITY AND STATE COURT OF THAT DECISION AND THEN YOU WOULD
6 COMMENCE THE APPEAL OR THEY WOULD COMMENCE THE APPEAL HERE ON
7 THE ANTI-TRUST ISSUE?
8 MR. KEKER: I THINK WHAT WE DO IS COME IN AND SAY, AS
9 A MATTER OF -- AS A MATTER OF COLLATERAL ESTOPPEL, WE WOULD
10 MOVE FOR SUMMARY JUDGEMENT AND SAY, THE PREMISE OF THIS CASE,
11 WHICH IS THAT SOMEHOW THE OPTION AGREEMENT WAS INTERFERED WITH,
12 IS GONE, THERE'S NO OPTION AGREEMENT.
13 THAT'S BEEN LITIGATED BY SAN JOSE. THEY ARE BOUND BY THE
14 RULING. AND THEN YOU WOULD SAY THAT THEREFORE THAT CASE SHOULD
15 BE, THE INTERFERENCE CLAIM, THE PROSPECTIVE BUSINESS ADVANTAGE
16 CLAIM SHOULD BE DISMISSED, AND THE WHOLE CASE WOULD GO UP AND
17 AS IT WENT UP WE WOULD SAY, BASEBALL WOULD SAY THIS ANTI-TRUST
18 ISSUE IS NOT EVEN RIPE BECAUSE THIS IS NOT A PLAINTIFF THAT HAS
19 STANDING TO RAISE IT.
20 THAT WOULD BE OUR POSITION GOING UP.
21 AND YES, THERE WOULD BE AN APPEAL AT STATE COURT, BUT I
22 DON'T THINK -- ONCE THE STATE COURT HAS MADE THE RULING OR THE
23 DIRECTOR OF FINANCE HAS MADE THE RULING OR THE CITY OF SAN JOSE
24 HAS DECIDED THAT THE OPTION AGREEMENT WAS NO GOOD BECAUSE THEY
25 STILL HAVE TO DECIDE THAT, ONE WAY OR THE OTHER WE WILL SAY,

1 WHAT ARE WE TALKING -- THERE'S NO INTERFERENCE WITH AN OPTION
2 AGREEMENT BECAUSE THERE WAS NO OPTION AGREEMENT AS A MATTER OF
3 LAW.
4 THE COURT: IF I WENT FORWARD HERE WITHOUT STAYING
5 THE CASE, YOU, I TAKE IT, WOULD THEN EITHER FILE A MOTION FOR
6 SUMMARY JUDGEMENT, IF YOU THOUGHT YOU HAD THE BASIS FOR DOING
7 SO, OR GETTING INTO DISCOVERY ON THE INTERFERENCE CLAIMS?
8 MR. KEKER: WELL, WHAT WE WOULD DO IS FILE A MOTION
9 FOR SUMMARY JUDGEMENT ON TWO GROUNDS.
10 ONE OF THEM WOULD BE THAT THIS DECISION WAS MADE A DAY
11 BEFORE, WE ALWAYS ASSUMED THEY UNDERSTOOD THIS BUT MAYBE THEY
12 DIDN'T. BUT A DAY BEFORE THEY FILED THIS CASE, THE
13 COMMISSIONER OF BASEBALL MADE THE DECISION THAT YOU SAID WAS IN
14 HIS POWER TO MAKE.
15 AND SO WE WOULD FILE A SUMMARY JUDGEMENT MOTION SAYING
16 THERE WAS NO DELAY AND THERE'S NO BASIS FOR INTERFERENCE, THAT
17 THE DECISION WAS MADE AND WHAT THEY'RE ARGUING ABOUT IS DELAY.
18 AND THEN WE WOULD ALSO PROBABLY FILE A MOTION FOR SUMMARY
19 JUDGEMENT SAYING THERE IS NO -- THE OPTION AGREEMENT IS VOID AB
20 INITIO BECAUSE OF CALIFORNIA LAW. THE SAME THING THAT THE
21 COURT, THE STATE COURT IS GOING TO BE DECIDING IN THE WRIT OF
22 MANDATE PROCEEDING.
23 AND WHAT WE ARE SUGGESTING IS THAT YOU DON'T NEED TO DO
24 THAT. THAT, WHY DON'T YOU LET, BY STAYING IT, LET THE STATE
25 COURT MAKE THAT DECISION.

SAN JOSE IS THE ONE WHO HAS TRIED TO DELAY THAT DECISION. THEY ARE THE ONES WHO WERE TELLING THE STATE COURT, WAIT, DON'T DECIDE A WRIT OF MANDATE PROCEEDING, JUDGE HERLIHY I THINK HAS IT, DON'T DECIDE THAT, LET THIS PROCESS WORK ITSELF OUT, THE ONE I DESCRIBED, DEPARTMENT OF FINANCE AND SO ON.

SAN JOSE IS ASKING FOR DELAY OF THAT CASE. SO IT CAN'T BE PREJUDICIAL TO THEM, BUT EVENTUALLY THE STATE COURT IS GOING TO DECIDE IT.

WE DON'T THINK THAT YOU SHOULD HAVE TO BURDEN THE FEDERAL COURT WITH DECIDING IT AB INITIO.

BUT THE STATE COURT DECIDED, SAN JOSE WILL BE BOUND AND WE WILL MOVE FORWARD. THEN WE WOULD COME IN AND SAY, OKAY, IT'S BEEN DECIDED THERE IS NO OPTION AGREEMENT.

THE COURT: KIND OF A SIDE ISSUE, BUT WHY IS THIS PURPORTED LETTER THAT INFORMS THE A'S THAT THE MOVE IS NOT APPROVED -- WHAT'S THE BASIS FOR A PROTECTIVE ORDER WITH RESPECT TO THAT?

MR. KEKER: THERE'S CONFIDENTIAL FINANCIAL INFORMATION IN IT, THIS WHOLE, ABOUT THE A'S PLANS THE A'S FINANCING, THE A'S PROPOSAL, AND IN RESPONDING TO IT, THAT LETTER EXPLAINS WHY THE PROPOSAL IS DENIED AND IS NOT GOING TO BE APPROVED.

AND ALL OF THAT INFORMATION WE BELIEVE, AND ALWAYS HAS BEEN TREATED AS CONFIDENTIAL BETWEEN THE COMMISSIONER AND THE CLUBS. IT'S FINANCIAL INFORMATION AND MONEY COMMITMENTS AND THINGS

1 LIKE THAT.
2 THE COURT: SO YOU LOOK AT -- DESPITE THAT, YOUR
3 POSITION IS THAT THAT LETTER IS UNEQUIVOCAL, THE MOVE IS NOT
4 GOING TO BE APPROVED.
5 MR. KEKER: THE PROPOSAL THAT WAS BEFORE THE
6 COMMISSIONER IS DISAPPROVED, THERE IS NO OTHER PROPOSAL BEFORE
7 THE COMMISSIONER.
8 WHAT THE A'S ASKED THE COMMISSIONER TO APPROVE WAS
9 UNEQUIVOCALLY DENIED.
10 THE COURT: OKAY.
11 ANYTHING ELSE YOU WANT TO SAY?
12 MR. KEKER: NO, YOUR HONOR.
13 MR. GREGORY: MAY I, YOUR HONOR?
14 THE COURT: SURE.
15 MR. GREGORY: THANK YOU.
16 YOUR HONOR, IN THE DEFENDANT'S SECTION OF THE CASE
17 MANAGEMENT CONFERENCE SECTION ON PAGE 6, STARTING AT LINE 5,
18 DEFENDANTS STATE QUITE CLEARLY THAT THIS COURT'S ORDER ON THE
19 MOTION TO DISMISS DISMISSED ALL OF THE ANTI-TRUST AND UNFAIR
20 COMPETITION LAW CLAIMS AND ELIMINATED ALL OF THE DAMAGES
21 PURPORTEDLY RESULTS FROM MLB'S ALLEGED REFUSAL TO ALLOW THE
22 ATHLETICS TO RELOCATE TO SAN JOSE.
23 SO THE ANTI-TRUST AND UNFAIR COMPETITION CLAIMS WERE
24 DECIDED FINALLY BY THIS COURT.
25 DEFENDANTS NOW COME IN AND SAY, WELL, YOUR HONOR

1 SHOULDN'T LET THIS CASE GO UP ON APPEAL BECAUSE THERE'S THIS
2 ADDITIONAL ISSUE ABOUT STANDING AND THE OPTION AGREEMENT.
3 WELL, I'M GOING TO GET TO IN A SECOND WHY THAT OPTION
4 AGREEMENT ISSUE IS A RED HERRING.
5 DEFENDANTS HAD A CHOICE ON THE TIMING OF WHEN THEY
6 BROUGHT THEIR MOTION ON THE ANTI-TRUST EXEMPTION AND THE
7 ANTI-TRUST AND UNFAIR COMPETITION CLAIMS.
8 THEY CHOSE TO BRING IT AT THE MOTION TO DISMISS STAGE.
9 AND AS A RESULT THEY CAN'T NOW SAY, WELL, YOUR HONOR, YOU
10 SHOULD HOLD OFF ON CERTIFYING OR ALLOWING AN APPEAL TO GO
11 FORWARD ON THOSE CLAIMS BECAUSE WE MAY WANT TO DO SOMETHING
12 ABOUT STANDING LATER, WE ARE NOT SURE THAT WE WANT TO DO IT,
13 BUT WE MAY, SO DON'T DO ANYTHING.
14 BUT ACTUALLY, THEIR VIEW IS QUITE CLEARLY STATED IN THE
15 CMC STATEMENT. EVERYTHING HAS BEEN DECIDED. THE ISSUE IS
16 READY TO GO UP TO THE NINTH CIRCUIT, AND IF APPROPRIATE, TO THE
17 UNITED STATES SUPREME COURT.
18 AND THAT'S WHAT SHOULD OCCUR ON THOSE ISSUES. STANDING
19 IS NOT BEFORE THIS COURT, GIVEN WHAT THIS COURT HAS DECIDED IN
20 THE MOTION TO DISMISS.
21 IN FACT --
22 THE COURT: IF YOU ARE RIGHT THOUGH, WHICH I THINK
23 YOU ARE AS TO WHAT I DECIDED, BUT WHY UNDER THOSE CIRCUMSTANCES
24 SHOULD I HANDLE STATE LAW CLAIMS THAT INVOLVE STATE LAW?
25 MR. GREGORY: WELL, YOUR HONOR, IF THIS COURT IS

1 INCLINED TO EITHER STAY THIS CASE OR SOMEHOW WAIT AROUND FOR A
2 STANDING DECISION, THEN PLAINTIFFS WOULD PREFER THAT THIS COURT
3 DO WHAT YOU ANNOUNCED WHEN YOU TOOK THE BENCH THIS MORNING
4 WHICH IS NOT EXERCISE PENDENT OR JURISDICTION OVER THOSE
5 CLAIMS, ALLOW US TO PROCEED IN STATE COURT ON THOSE CLAIMS AND
6 TAKE UP ON APPEAL THE REMAINING CLAIMS.
7 BECAUSE WHAT'S GOING ON IN STATE COURT BEFORE
8 JUDGE HUBER, WHO IS THE CEQA JUDGE, ARE CEQA PROCEEDINGS
9 INVOLVING THE OPTION AGREEMENT, COMPLETELY DIFFERENT WITH WHAT
10 WE HAVE HERE.
11 WE HAVE A VALID OPTION AGREEMENT HERE. IN FACT, WHILE
12 MR. KEKER WOULD SAY THE SECRET LETTER PRECLUDES THE A'S FROM
13 MOVING FORWARD ON SAN JOSE, IF THE COURT RECALLS, THE DAY
14 BEFORE WE ARGUED THE MOTION TO DISMISS, THE A'S EXERCISED THEIR
15 RIGHT TO THE EXTEND THE OPTION AGREEMENT.
16 SO WHILE MAJOR LEAGUE BASEBALL CONTENDS THE A'S MOVE TO
17 SAN JOSE IS DEAD, THE A'S PUT FORWARD HARD EARNED MONEY TO
18 EXTEND THE OPTION AGREEMENT. AND THEY'RE NOT FOOLS, THEY
19 OBVIOUSLY BELIEVE THAT THEIR MOVE TO SAN JOSE IS VERY MUCH
20 ALIGNED.
21 BUT IF YOUR HONOR IS INCLINED TO STAY THE OPTION
22 AGREEMENT ASPECTS OF THE PLAINTIFF'S COMPLAINT, WE WOULD PREFER
23 TO GO TO STATE COURT AND ENGAGE IN DISCOVERY AND TRY THAT CASE
24 WHILE THE EXEMPTION OF BASEBALL IS MOVING THROUGH THE
25 NINTH CIRCUIT AND PERHAPS THE SUPREME COURT.

AND SO YOUR HONOR, WHAT WE WOULD PREFER TO DO IS IF THE COURT IS INCLINED TO DISMISS THIS CASE, THE STATE LAW CLAIMS, THE TWO REMAINING CLAIMS, WE WOULD AGREE WITH THAT. AND THEN HAVE AN APPEAL ON THE CLAIMS THAT WERE DISMISSED PURSUANT TO THIS COURT'S ORDER ON THE MOTION TO DISMISS.

THE COURT: WHERE WOULD YOU FILE THE STATE COURT CLAIM?

MR. GREGORY: SANTA CLARA SUPERIOR COURT, YOUR HONOR.

THE COURT: OKAY. THANK YOU.

MR. GREGORY: THANK YOU, YOUR HONOR.

THE COURT: MR. KEKER ANY FINAL COMMENT?

MR. KEKER: VERY BRIEFLY, YOUR HONOR.

AND OBVIOUSLY, WE GET ANOTHER COUNTY INVOLVED BECAUSE THERE WOULD BE, I THINK, AN AUTOMATIC CHANGE OF VENUE WHICH WOULD BE ENTITLED TO, WE MENTION THAT IN THE CMC THAT WE WOULDN'T HAVE TO LITIGATE AGAINST SAN JOSE IN SANTA CLARA COUNTY.

WITH RESPECT TO WHAT -- JUDGE HUBER'S CASE, I WAS MISTAKEN WHEN I SAID JUDGE HERLIHY. THERE WAS A CEQA CLAIM BUT IT'S NOT A CEQA CASE.

THE CASE AS STATED BY THE CMC RAISES THE ISSUE OF THE CALIFORNIA COMMUNITY REDEVELOPMENT LAW, HEALTH AND SAFETY CODE SECTION 34161, ALLEGING THAT BY TRANSFERRING REDEVELOPMENT AGENCY PROPERTY TO ANOTHER ENTITY AND THEN ATTEMPTING TO SUBJECT THAT PROPERTY TO A BELOW MARKET OPTION AGREEMENT, THAT IS A VIOLATION OF LAW WHICH THE CONTROLLER HAS FOUND IT IS.

1 AND CODE OF CIVIL PROCEDURE 526(A), ALLEGING APPROVING
2 ILLEGAL EXPENDITURES OF PUBLIC FUNDS THROUGH THE LEGAL SALE OR
3 USE OF THE DIRIDON PROPERTY.
4 SO VERY MUCH THE STATE COURT REDEVELOPMENT LAW ISSUES
5 ABOUT THE IMPROPRIETY OF THAT OPTION AGREEMENT AND THE VOIDNESS
6 OF THAT OPTION AGREEMENT ARE AT ISSUE IN THE CASE BEFORE
7 JUDGE HUBER WHICH WILL BE DECIDED ON A WRIT OF MANDATE
8 PROCEEDING PRESUMABLY ON AN EXPEDITED BASIS.
9 THE COURT: REMIND ME OF WHAT LAW IT IS THAT SAYS
10 THAT YOU WOULD HAVE A RIGHT TO TRANSFER STATE COURT ACTION OUT
11 OF SANTA CLARA COUNTY?
12 MR. KEKER: I THINK 394 OF THE CODE OF CIVIL
13 PROCEDURE COMES TO MIND. WE'VE GOT IT IN OUR CMC. 394(A),
14 MR. LAURIDSEN REMINDS ME WHICH IS A LAW THAT SAYS IF A PUBLIC
15 ENTITY SUES YOU IN THE PLACE WHERE THEY LIVE, YOU HAVE A RIGHT
16 TO MOVE IT OUT OF THAT COUNTY.
17 I KNOW IT BECAUSE WE ARE IN A CASE WHERE THE METROPOLITAN
18 WATER DISTRICT OF LOS ANGELES BROUGHT A SUIT IN LOS ANGELES AND
19 THAT'S BEING TRIED UP HERE NEXT WEEK, CCP394(A).
20 AS I UNDERSTAND IT, IT'S A MANDATORY TRANSFER PROVISION
21 IF THE CITY IS THE PLAINTIFF.
22 THE COURT: THAT'S CCP SECTION --
23 MR. KEKER: YES, SIR.
24 CALIFORNIA CODE OF CIVIL PROCEDURE 394(A), I HOPE.
25 THE COURT: I DON'T HAVE THE CODE WITH ME, SO --

1 MR. KEKER: IT'S FOOTNOTE 2 ON PAGE 18 OF THE CASE
2 MANAGEMENT -- OF THE SUPPLEMENTAL JOINT CASE MANAGEMENT
3 STATEMENT AND PROPOSED ORDER. IT'S NOT QUOTED BUT IT'S
4 REFERRED TO THERE WITH CASE CITATIONS.
5 SO ONE OF OUR CONCERNS IS -- SO THERE'S A CASE IN SOME
6 COUNTY THAT WE DON'T KNOW YET, THERE'S A CASE THAT'S WRIT OF
7 MANDATE CASE IS IN SANTA CLARA COUNTY, THERE'S AN APPEAL
8 PENDING IN THE NINTH CIRCUIT THAT HAS THIS OPEN ENDED ISSUE
9 ABOUT INJURY, ANTI-TRUST INJURY WHICH STILL THE FACTS ARE BEING
10 DEVELOPED ON IT, THE STATE COURT PROCEEDINGS.
11 WE'VE GOT THREE COURTS DEALING WITH THE SAME PROBLEM WHEN
12 SIMPLY WAITING A LITTLE BIT TO SEE WHAT HAPPENS IN
13 SANTA CLARA COUNTY CAN SOLVE IT ALL, WE THINK.
14 THE COURT: OKAY.
15 ONE MORE TIME THOUGH AS TO WHY IF I RETAIN JURISDICTION
16 OVER THE STATE LAW CLAIMS, THE ADJUDICATION THAT THE OPTION
17 AGREEMENT IS INVALID OR VOID UNDER STATE LAW, THAT WOULD
18 PROVIDE A BASIS ON THE ANTI-TRUST APPEAL TO SAY THERE'S NO
19 ANTI-TRUST INJURY.
20 MR. KEKER: THAT'S OUR POSITION.
21 BECAUSE THE CITY OF ROHNERT PARK, WE TALKED ABOUT THAT
22 BEFORE, THAT WOULD PUT SAN JOSE, SAN JOSE'S WHOLE HOOK THAT IT
23 EVENTUALLY CAME TO IN THE ANTI-TRUST STANDING PART OF THE
24 BRIEFING ON THE MOTION TO DISMISS WAS THAT THEY HAD, THEY
25 WEREN'T JUST ANYBODY OUT THERE, THEY WERE SOMEBODY WITH A

1 CONTRACTURAL RELATIONSHIP WITH THE A'S THAT MATTERED IN AN
2 ANTI-TRUST SENSE. THEY WEREN'T THE GENERAL PUBLIC, BUT INSTEAD
3 THEY WERE SOMEBODY THAT WAS ADVERSELY AFFECTED.
4 I CAN'T REMEMBER ALL THE LANGUAGE OF THOSE CASES, BUT THEY
5 STAND FOR THE PROPOSITION THAT THE CLOSER YOU ARE THEN THE MORE
6 LIKELY YOU HAVE ANTI-TRUST INJURY. IF YOU ARE JUST BACK AMONG
7 THE GREAT UNWASHED CITIES AND STATES WITHOUT A BASEBALL TEAM
8 THEN YOU ARE NOT CLOSE ENOUGH TO HAVE ANTI-TRUST INJURY.
9 AND HERE IF THE OPTION AGREEMENT NEVER EXISTED WHICH IS
10 WHAT STAND FOR SAN JOSE IS ASSERTING, AND IF THAT PROPOSITION
11 IS DECIDED THEN SAN JOSE, AS I HAD MENTIONED IS JUST LIKE
12 ALBUQUERQUE, IT IS A CITY THAT MIGHT LIKE TO HAVE A BASEBALL
13 TEAM BUT HAS NO CONTRACTURAL OR OTHER CONNECTION TO -- OR ANY
14 EXPECTATION ANYMORE THAN ANY OTHER CITY THAT IT WOULD EVER GET
15 A BASEBALL TEAM.
16 THEIR WHOLE ANTI-TRUST STANDING ARGUMENT WAS BASED ON THE
17 FACT THAT THEY ENTERED INTO AN OPTION AGREEMENT FOR THIS LAND
18 WITH THE A'S.
19 IF THEY DIDN'T ENTER INTO AN OPTION AGREEMENT AND IF THAT
20 LAND DOESN'T HAVE ANY CONNECTION TO THE A'S AND WASN'T EVER
21 PROPERLY OFFERED TO THE A'S, THEY DON'T HAVE ANY ANTI-TRUST
22 INJURY. THEY DON'T HAVE STANDING, WOULD BE OUR ARGUMENT.
23 THE COURT: WHAT WOULD -- WELL, IF THE CITY LOST IN
24 STATE COURT IN THE STAND FOR -- I CAN'T REMEMBER THE NAME OF
25 THE CASE.

MR. KEKER: STAND FOR SAN JOSE.

THE COURT: STAND FOR SAN JOSE, AND ASSUME THE CITY APPEALED THAT ADVERSE DECISION, HOW WOULD THAT RELATE TO THE APPEAL -- THEN YOU WOULD MOVE FOR SUMMARY JUDGEMENT ON THE STATE LAW CLAIMS HERE, RIGHT?

MR. KEKER: YES, SIR.

AND WE WOULD SAY THAT SINCE THERE'S A SUPERIOR COURT -- MY UNDERSTANDING OF CALIFORNIA LAW IS THE SUPERIOR COURT JUDGMENT, AND FEDERAL LAW, SUPERIOR COURT JUDGMENT WOULD BECOME COLLATERAL ESTOPPEL AND THE FACT THAT IT WAS BEING APPEALED WOULDN'T AFFECT IT.

I MEAN, WOULDN'T -- OBVIOUSLY IF IT GOT REVERSED SOME TIME, MAYBE IT WOULD. BUT SIMPLY THE PENDENCY OF THE APPEAL WOULD NOT LESSEN THE FACT THAT IT WAS A FINAL JUDGMENT, FINAL DETERMINATION ON THE MERITS BETWEEN THE PARTIES, AND THAT SAN JOSE IS BOUND BY THAT.

THE COURT: WOULD IT BE A FINAL JUDGMENT IF IT'S PENDING APPEAL?

MR. KEKER: IN CALIFORNIA I BELIEVE IT IS, YOUR HONOR. THAT WAS MY UNDERSTANDING.

WE WILL GO CHECK AND IF I'M WRONG I WILL SEND YOU A LETTER.

THE COURT: OKAY. THANK YOU.

MR. KEKER: THANK YOU.

MR. GREGORY: MAY I RAISE THREE POINTS, YOUR HONOR?

THE COURT: REAL QUICKLY. WE CAN'T JUST KEEP GOING

BACK AND FORTH.

MR. GREGORY: NO. THANK YOU, YOUR HONOR.

MR. KEKER REPRESENTED THE POSITIONS WERE NOT CEQA ACTIONS IN THE STAND FOR SAN JOSE. BUT BOTH PETITIONS THE VERIFIED PETITION AND CASE NUMBER, AND I WILL READ THE LAST THREE DIGITS, 196, IS UNDER CALIFORNIA ENVIRONMENTAL QUALITY ACT AND THE VERIFIED PETITION, UNDER CASE 372 IS ALSO UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

SO THOSE ARE CEQA ACTIONS BEFORE JUDGE HUBER AS THE CEQA JUDGE.

SECONDLY, YOUR HONOR --

THE COURT: WHAT DOES THAT -- WHAT'S THE PRACTICAL EFFECT OF THAT.

MR. GREGORY: WELL, THE PRACTICAL EFFECT IS WHAT'S OCCURRING IN THE CEQA CASE IS IF WE WERE TAKING INCONSISTENT POSITIONS HERE.

HOWEVER, WHAT WE ARE DEALING WITH IN THE CEQA CASE IS MAKING SURE THAT THROUGH THE COURT THERE ARE ALL THE CEQA, WHAT I'M GOING TO CALL THE CEQA HOOPS ARE JUMPED OVER AND EVERYTHING IS DONE IN ACCORDANCE WITH CEQA, AND AS A RESULT IT'S NOT TESTING THE VALIDITY OF THE OPTION AGREEMENT BETWEEN THE A'S AND THE CITY OF SAN JOSE.

THAT AGREEMENT IS VALID AND CONTINUES IN FORCE AND EFFECT. AND THAT IS WHAT PLAINTIFF'S ALLEGE IN THEIR COMPLAINT.

THE NEXT POINT, YOUR HONOR, IS THAT THIS COURT STATED IN

1 ITS ORDER ON THE MOTION TO DISMISS THAT IT'S NOT DECIDING THE
2 STANDING ISSUE BECAUSE THE COURT DISMISSES THE ANTI-TRUST
3 CLAIMS ON THE BASIS OF THE FEDERAL ANTI-TRUST EXEMPTION FOR THE
4 BUSINESS OF BASEBALL.
5 SO THE STANDING ISSUE WAS NOT DECIDED BY THIS COURT IN
6 CONNECTION WITH THE MOTION TO DISMISS. AND THAT WAS --
7 THE COURT: I DON'T THINK THE DEFENDANTS DISAGREE
8 WITH THAT.
9 I THINK WHAT THEY'RE SAYING, AS I UNDERSTAND IT, IS LET THE
10 STATE COURT MAKE THE DETERMINATION THAT THE OPTION IS INVALID
11 AND THEN WE ARE GOING TO MOVE FOR SUMMARY JUDGEMENT THAT YOU
12 HAVE NO CLAIM HERE, AND THEREFORE RAISE THE ISSUE THAT
13 ESSENTIALLY WAS -- MADE UP THE -- OR IS THE BASIS OF THE
14 JUDGMENT IN STATE COURT WOULD THEN GET INCORPORATED IN THIS
15 CASE.
16 MR. GREGORY: I UNDERSTAND THAT, YOUR HONOR. AND
17 THAT'S MY THIRD AND FINAL POINT.
18 IF THIS COURT PROCEEDS WITH CERTIFYING OR PERMITTING
19 APPEAL OF THE ANTI-TRUST AND UNFAIR COMPETITION CLAIMS THOSE
20 CAN GO UP.
21 WE THEN FILE IN STATE COURT ON THE UNFAIR -- ON THE
22 INTERFERENCE CLAIMS AND IF THEY BELIEVE IT'S APPROPRIATE THERE
23 TO MOVE FOR SUMMARY JUDGEMENT THEY CAN MOVE FOR SUMMARY
24 JUDGEMENT IN THE STATE COURT.
25 WE DON'T NEED THIS CASE TO SIT AROUND HERE WAITING FOR A

1 STATE COURT DECISION THAT MAY OR MAY NOT BE IN THEIR FAVOR.
2 THAT CAN OCCUR SEPARATELY IN STATE COURT PROCEEDINGS.
3 AND WE CAN -- THERE'S BEEN A FINAL DECISION ON THE
4 EXEMPTION AND ON THE UNFAIR COMPETITION CLAIMS AND THOSE CAN
5 MOVE UP. WE WOULD FILE IN STATE COURT AND THOSE CAN MOVE
6 INDEPENDENTLY.
7 THE COURT: SO ARE YOU SAYING THAT THERE'S NO ACTION
8 PENDING IN STATE COURT THAT RAISES THE ISSUE OF THE POWER OF
9 THE CITY TO ENTER INTO THE OPTION AGREEMENT?
10 MR. GREGORY: THAT'S ONE OF THE -- THE POWER OF THE
11 CITY TO ENTER INTO THE OPTION AGREEMENT IS ONE OF THE ISSUES
12 RAISED IN THE VERIFIED PETITION, YOUR HONOR.
13 WHAT WE ARE SAYING IS, THAT THE OPTION AGREEMENT AS IT
14 NOW STANDS BEFORE THIS COURT IS VALID, FULLY VALID AND
15 ENFORCEABLE.
16 THERE'S BEEN NO DECISION DECIDING IT HAS NOT BEEN VALID.
17 IT IS INVALID OR UNENFORCEABLE. AND AS A RESULT UNTIL THEN
18 BOTH THE CITY AND THE A'S ARE PROCEEDING ON THE OPTION
19 AGREEMENT.
20 THE COURT: RIGHT.
21 BUT I'M GETTING OFF ON A SIDE TRACK THAT I DON'T THINK IS
22 NECESSARILY CRITICAL. BUT I'M -- I GUESS I'M MISSING SOMETHING
23 AS TO WHY, WHETHER IT'S A CEQA ACTION OR SOME OTHER TYPE OF
24 ACTION, MAKES ANY DIFFERENCE IF THE ISSUE IN THE CASE INVOLVES
25 THE POWER OF THE CITY TO ENTER INTO AN OPTION.

1 MR. GREGORY: WELL, YOUR HONOR, OUR POINT IS THAT
2 THAT ACTION IS PROCEEDING SEPARATELY FROM THIS ACTION AS A CEQA
3 ACTION.
4 AND THE ASSERTIONS MADE IN THE CASE MANAGEMENT CONFERENCE
5 STATEMENT WAS THAT THE CITY'S REQUESTING STAYS IN THAT ACTION
6 WHICH ARE RELATED TO THE CEQA ISSUES AND UNRELATED TO THE
7 ENFORCEABILITY OR VALIDITY OF THE OPTION AGREEMENT FOR PURPOSES
8 OF THIS CASE OR FOR PURPOSES IN DEALING WITH THE OAKLAND
9 ATHLETICS.
10 THE COURT: SO?
11 MR. GREGORY: OUR POINT, YOUR HONOR, IS THAT IF THIS
12 COURT IS INCLINED TO LET THE OTHER ACTIONS, THE OTHER CLAIMS
13 RATHER, THE ANTI-TRUST AND UNFAIR COMPUTATION CLAIMS PROCEED ON
14 APPEAL, THEN THE STATE CLAIMS HERE SHOULD BE BROUGHT DOWN TO
15 STATE COURT AND PROCEED IN STATE COURT. AND PERHAPS EVEN BE
16 RELATED TO THOSE CLAIMS IN THE CEQA ACTION.
17 THE COURT: AND WHAT ABOUT THE ARGUMENT THAT IF I
18 DISMISS THE STATE COURT CLAIMS, THEY CAN'T BE FILED IN
19 SANTA CLARA COUNTY, OR IF THEY ARE, THEY HAVE TO BE MOVED?
20 MR. GREGORY: WELL, YOUR HONOR, WHAT WE BELIEVE IS
21 THERE'S GOING TO BE AN ISSUE ABOUT, SHOULD THAT CASE, SHOULD
22 THE CASE WE FILE IN STATE COURT BE RELATED TO THE TWO VERIFIED
23 PETITIONS THAT ARE NOW PENDING BEFORE JUDGE HUBER AND WHAT
24 EFFECT THE CCP CODE SECTION THAT MR. KEKER WAS REFERENCING, I'M
25 GOING TO CALL IT TRUMPS THAT, SUCH THAT EVEN THOUGH IT'S A

RELATED CASE, IT CAN BE -- IT NEEDS TO BE FILED IN A DIFFERENT COUNTY OR VENUE, NEEDS TO BE SET IN A DIFFERENT COUNTY.

THE COURT: THE STATUTE IS PRETTY CLEAR, ISN'T IT?

MR. GREGORY: I'M SORRY?

THE COURT: THE STATUTE IS PRETTY CLEAR, ISN'T IT?

MR. GREGORY: THE STATUTE STATES IT SHALL BE FILED IN A SEPARATE COUNTY; YES, YOUR HONOR.

BUT THE CONSIDERATION IS WHETHER OR NOT BECAUSE IT'S A RELATED CASE, IT'S -- IT CAN BE FILED, AND I DON'T WANT TO SPEND A LOT OF TIME ON STATE COURT PROCEDURE HERE, YOUR HONOR, BUT WHETHER OR NOT WE CAN BRING THAT CASE IN SANTA CLARA COUNTY BECAUSE OF THE RELATED CASES, IS SOMETHING I'M HAPPY TO BRIEF TO YOUR HONOR.

BUT IT'S NOT AN ISSUE I BELIEVE THAT'S --

THE COURT: I DON'T THINK IT'S -- I DON'T VIEW IT AS DISPOSITIVE, I'M JUST KIND OF CURIOUS.

MR. GREGORY: SURE.

THE COURT: OKAY. THANK YOU.

MR. KEKER: YOUR HONOR, ON THIS, WHAT'S GOING ON IN STATE COURT, COULD I MAKE ONE --

THE COURT: FINAL POINT.

MR. KEKER: I KNOW YOU ARE GETTING TIRED OF THIS. I WOULD LIKE TO OFFER --

THE COURT: NO, I ENJOY YOU GUYS.

MR. KEKER: AND WE ENJOY YOU, YOUR HONOR.

1 WE ASK YOU TO TAKE JUDICIAL NOTICE OF THE CASE MANAGEMENT
2 STATEMENT IN THE STATE COURT CASES. AND I'M GOING TO HAND IT
3 UP TO YOU, BUT WHAT THEY ARE SAYING IS THE RESPONDENTS,
4 SAN JOSE, CONTENDED AT THE OCTOBER 18, 2013, CASE MANAGEMENT
5 CONFERENCE THAT THE OUTCOME OF THE OVERSIGHT BOARD AND THE DOF,
6 DEPARTMENT OF FINANCE, PROCESS WAS UNCERTAIN AND COULD RESULT
7 IN THE LITIGATION BECOMING MOOT IF THE DIRIDON PROPERTY WAS NOT
8 ALLOWED TO REMAIN HELD SUBJECT TO THE OPTION AGREEMENT AS AN
9 ENFORCEABLE OBLIGATION. BASED ON THE CLAIMED UNCERTAINTY, THIS
10 IS SAN JOSE SAYING THIS MAY BE MOOT, AND POTENTIAL FOR
11 MOOTNESS, SAN JOSE RESPONDENTS, PROPOSE THAT THE COURT SUSPEND
12 PREPARATION OF THE RECORD AND DEFER SETTING ANEW, A SCHEDULE
13 FOR BRIEFING AND TRIAL AND SO ON.
14 THIS CASE MANAGEMENT CONFERENCE STATEMENT MAKES PLAIN THE
15 CLAIMS ARE NOT LIMITED TO CEQA. CEQA IS ONE OF THEM, BUT
16 THERE'S FOUR CLAIMS AND THEY ARE DESCRIBED IN HERE.
17 AND IF I COULD ASK IF THIS COULD BE TAKEN JUDICIAL NOTICE
18 OF, AND THIS IS JUST A COPY OF IT.
19 COULD I HAND IT TO THE CLERK, YOUR HONOR?
20 THE COURT: SURE.
21 MR. KEKER: THANK YOU.
22 THAT'S ALL I HAVE. THANK YOU.
23 THE COURT: OKAY.
24 I TENTATIVELY, AND I THINK PRETTY FIRMLY AGREE WITH THE
25 POSITION THAT I INITIALLY STATED AND THAT IS THAT THE STATE

1 COURT CLAIMS SHOULD BE DISMISSED FOR LACK OF JURISDICTION
2 SUBJECT TO OBVIOUSLY BEING RE FILED IN STATE COURT.
3 BUT THE ISSUE ON WHICH WE HAVE HAD SOME DISCUSSION
4 TROUBLES ME A LITTLE BIT SO I, I WANT TO GIVE THAT A LITTLE
5 MORE THOUGHT. BUT I'M PRETTY CERTAIN THAT MY RULING IS GOING
6 TO BE WHAT I TENTATIVELY STATED.
7 SO I THINK WE -- THAT COVERS IT FOR TODAY.
8 MR. KEKER: THANK YOU, YOUR HONOR.
9 MR. GREGORY: THANK YOU, YOUR HONOR.
10 MR. COTCHETT: THANK YOU VERY MUCH, YOUR HONOR.
11 (WHEREUPON, THE PROCEEDINGS IN THIS MATTER WERE CONCLUDED.)
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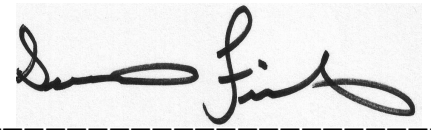
CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED TRANSCRIPTION TO THE BEST OF MY ABILITY.



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SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185 DATED: 1/29/14