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 DIRIDON DEVELOPMENT AUTHORITY,

Plaintiffs and Appellants,

v.

OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association dba 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

MOTION TO TAKE JUDICIAL NOTICE

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I. MOTION TO TAKE JUDICIAL NOTICE

Under Federal Rule of Evidence 201 and in connection with the Answering Brief filed concurrently with this motion, appellees Office of the Commissioner of Baseball d/b/a Major League Baseball and Allan Huber "Bud" Selig (collectively "MLB") move the Court to take judicial notice of two court records from *Stand For San José v. City of San José*, No. 1-11-CV-214196 (Cal. Super. Ct. filed Dec. 2, 2011), No. 1-13-CV-250372 (Cal. Super. Ct. filed July 30, 2013), and a hearing transcript from *Hale v. Brooklyn Baseball Club*, Civ. No. 1294 (N.D. Tex. 1958).

MLB requests judicial notice of the following documents:

Exhibit 1: "Stipulation Regarding Schedule for Pleadings and Certification of the Record in *SFSJII*, and Briefing Schedule in Both Cases; and Order" ("Scheduling Order") in *Stand For San José v. City of San José*, 111-CV-214196 and 113-CV-250372 (Cal. Super. Ct.).

At lines 9–10 on page 1, the Scheduling Order states that the Santa Clara County Superior Court has set the consolidated *Stand for San José* case for trial on August 8, 2014.

Exhibit 2: "Verified Second Amended Petition for Writ of Mandamus and Complaint for Declaratory Relief and Injunctive Relief and for Attorney's Fees" ("Second Amended Complaint") in *Stand For San José v. City of San José*, 111-CV-214196 and 113-CV-250372 (Cal. Super. Ct.).

Paragraph 1 of the Second Amended Complaint specifies the legal grounds upon which Petitioner Stand for San José challenges Respondent San José's purported option agreement with the Athletics Investment Group LLC ("Option Agreement"). These grounds include (1) California Community Redevelopment Law, Health & Safety Code §§ 34161, et seq.; (2) San José Municipal Code § 4.95; (3) the California Environmental Quality Act, Public Resources Code § 21000, et seq.; and (4) Code of Civil Procedure § 526(a).

Exhibit 3: "Court's Comments in Sustaining Defendant's Motions to Dismiss" ("Motion to Dismiss Transcript") in *Hale v. Brooklyn Baseball Club, Inc.*, Civ. No. 1294 (N.D. Tex. 1958).

On pages 2–4, the court states that "radio broadcasting and telecasting of baseball games" is within the scope of the "ordinary business of baseball" for purposes of MLB's exemption from antitrust laws.

II. DISCUSSION

A. The material to be noticed and its relevance to this appeal.

In this action, San José[1] argues that it has not been able to exercise its Option Agreement with the Athletics because MLB has illegally refused to allow

[1] The City of San José is acting as (1) the City itself; (2) the entity responsible for winding up the affairs of the dissolved Redevelopment Agency of the City of San José; and (3) the joint powers authority formed by the city and the former redevelopment agency. Collectively, these are referred to as "San José."

the Athletics to relocate to San José. SJ Op. Br. at 5. The *Stand for San José* Scheduling Order and Second Amended Complaint are relevant to the purported validity of the Option Agreement. The Second Amended Complaint specifies the legal grounds for Stand for San José's challenge of the Option Agreement in previously filed California-state actions. *See* Ex. 2 at ¶ 1. The Scheduling Order specifies the date (August 8, 2014) on which the *Stand for San José* court will decided if the Option Agreement is invalid. *See* Ex. 1 at 1:9–10. If the *Stand for San José* court holds that the Option Agreement is invalid, San José will lack standing for its claims in this action.

The *Hale* Motion to Dismiss Transcript is relevant to the Court's consideration of the antitrust exemption's scope. Because it is not available through traditional legal-research services, MLB offers the *Hale* Motion to Dismiss Transcript here for the Court's convenience. In deciding *Hale v. Brooklyn Baseball Club*, the Northern District of Texas held that the "ordinary business of baseball" includes "radio broadcasting and telecasting of baseball games." Ex. 3 at 2–4. The court's holding directly contradicts San José's assertions that MLB's antitrust exemption is limited to the reserve clause and does not reach issues concerning the location and relocation of teams.

B. Legal authority for taking judicial notice of this material.

Because "[t]he court may take judicial notice at any stage of the proceeding," it may be taken for the first time on appeal. Fed. R. Evid. 201(d); *see Bryant v. Carleson*, 444 F.2d 353, 357 (9th Cir. 1971). Paragraph (b)(2) of Rule 201 states in part that "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." MLB seeks judicial notice of facts—a trial date, the legal grounds for a party's claims and the legal basis for a court's decision—that can be readily determined from the exhibits and whose accuracy cannot be reasonably questioned.

This Court regularly takes judicial notice of facts from court documents. "[T]he most frequent use of judicial notice of ascertainable facts is in noticing the content of court records." *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989). Accordingly, this Court has held that it "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.'" *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992); *cf.* Fed. R. App. P. 32.1(b) (instructing parties to submit a copy of an "opinion, order, judgment, or disposition" unavailable on publicly accessible electronic databases). Records subject to judicial notice on appeal include "the records of an inferior

court in other cases." *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980). MLB seeks judicial notice of documents from proceedings that are directly relevant to the matters before this Court. The *Stand for San José* litigation challenges the validity of the Option Agreement that San José relies upon here. The *Hale* litigation concerned the same exemption to antitrust laws that San José challenges through this action.

Finally, the Court should take judicial notice of the *Stand for San José* court records because those records were created ***after*** the District Court granted MLB's motion to dismiss. Wright and Miller observe that taking judicial notice of a fact outside the appellate record "seems to be favored when the appellate court needs to take account of developments in the case subsequent to proceedings in the trial court." 21B Wright & Miller, *Fed. Prac. & Proc. Evid.* § 5110.1, at 301–02 (2d ed. 2005). Consistent with that principle, this Court has stated that it will take judicial notice of circumstances that arose after an appeal was filed, where those circumstances "may affect" the court's consideration of the issues presented by the appeal. *Bryant*, 444 F.2d at 357. MLB filed its motion to dismiss on August 7, 2013 and its reply in support thereof on September 20, 2013. The *Stand for San José* court entered the Scheduling Order on March 11, 2014 and the plaintiffs filed the Second Amended Complaint on the same day. Thus, MLB could not have included the documents in the record below.

III. CONCLUSION

For these reasons, the Court should grant this motion to take judicial notice.

KEKER & VAN NEST LLP

DATED: April 4, 2014

/s John W. Keker
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Attorneys for Defendants/Appellees
OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as Major League Baseball; and ALLAN HUBER "BUD" SELIG

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2014, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ John W. Keker
John W. Keker

Exhibit 1

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(ENDORSED)
FILED
MAR 11 2014
DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY Sylvia Roman DEPUTY
Courtroom Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

STAND FOR SAN JOSE; EILEEN HANNAN; MICHELLE BRENOT; ROBERT BROWN; KAREN SHIREY; FRED SHIREY; and ROBERT SHIELDS, Petitioners and Plaintiffs, v. CITY OF SAN JOSE; CITY COUNCIL OF THE CITY OF SAN JOSE; REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE; DIRIDON DEVELOPMENT AUTHORITY; DOES 1 through 10, inclusive, Respondents and Defendants.	Case No. 111-CV-214196, related to and consolidated with Case No. 113-CV-250372 STIPULATION REGARDING SCHEDULE FOR PLEADINGS AND CERTIFICATION OF THE RECORD IN *SFSJ II*, AND BRIEFING SCHEDULE IN BOTH CASES; AND [PROPOSED] ORDER Trial Date: August 8, 2014 Trial Time: 9:00 a.m. Dept. 21 Judge: Honorable Joseph Huber
ATHLETICS INVESTMENT GROUP LLC; DOES 11 through 20, inclusive, Real Parties in Interest.	Actions Filed: 12/2/2011; 7/31/13

WHEREAS, on December 2, 2011, Petitioners filed a petition for writ of mandate and complaint for declaratory relief in Case No. 111-CV-214196, and on December 7, 2011, Petitioners filed an amended petition and complaint in such case ("First Petition");

WHEREAS, on July 30, 2013, Petitioners filed a new petition and complaint, Case No. 113-CV-250372 ("Second Petition") challenging the Diridon Development Authority's transfer of the Diridon Property to the Successor Agency subject to the Option Agreement;

WHEREAS, on August 13, 2013, the Court related and consolidated the First and Second Petitions;

WHEREAS, at the Case Management Conference on February 14, 2014, the Court set these consolidated cases for trial on August 8, 2014, at 9:00 a.m.;

WHEREAS, the parties desire to stipulate to a schedule for pleadings and certification of the record on the Second Petition, as well as a schedule for consolidated briefing on the two petitions;

NOW, THEREFORE, Petitioners, Respondents and Real Party, through their undersigned counsel, stipulate as follows:

1. PLEADINGS ON SECOND PETITION.

On March 3, 2014, Petitioners provided a copy of their proposed amended Second Petition (amended to reflect the activities of the Respondents during the LRPMP process) to Respondents and Real Party. Petitioners shall file their amended Second Petition forthwith after this Stipulation and Order is entered. Respondents and Real Party shall respond to the Second Petition by no later than April 2, 2014.

2. SETTLEMENT CONFERENCE.

The parties already participated in a settlement conference on the First Petition in accordance with Public Resources Code § 21167.8 of the California Environmental Quality Act ("CEQA"). Because the Second Petition is closely related to and consolidated with the First Petition, the parties agree that a further settlement conference on the Second Petition would be unnecessary and futile.

3. CERTIFICATION OF RECORD ON SECOND PETITION.

Respondents shall assemble and certify the record on the Second Petition within thirty (30) days after service of the amended Second Petition.

4. MOTIONS CONCERNING RECORD ON SECOND PETITION.

Any party may file a motion to augment the record, correct the record and/or strike documents from the record within 14 days after certification of the record, provided however, that no party shall be prevented from filing a motion, for good cause shown, to augment or correct the record at a later time to include documents obtained by Respondents, Petitioners or Real Party after the filing of this Stipulation.

5. OPENING BRIEF.

(a) Petitioners' opening brief shall be filed and served no later than May 14, 2014.

(b) Petitioner's opening brief shall not exceed fifty (50) pages in length.

6. OPPOSITION BRIEF(S).

(a) Respondents and Real Party shall file and serve their opposition brief(s) no later than ~~June 25, 2014~~. June 18, 2014

(b) The number of pages of the opposition brief(s) filed by Respondents and Real Party shall not exceed eighty (80) pages in total. Respondents and Real Party may, if they elect to do so, file a single joint opposition brief.

7. REPLY BRIEF.

(a) Petitioners shall file and serve a single reply brief by no later than ~~July 23,~~ July 9, 2014 2014.

(b) Petitioners' reply brief shall not exceed thirty (30) pages in length.

8. SERVICE OF PAPERS.

All briefs and supporting papers shall be served as follows: (a) e-mail attachment on the date due for service, and (b) hard-copy form by overnight delivery for arrival no later than on the morning of the day following the date due for service. If copies of record

documents are provided to the court by any party, a copy of those documents shall be served by overnight delivery only.

9. CASE MANAGEMENT CONFERENCE.

In light of the briefing and hearing schedule set forth herein, the parties propose, and the Court finds, that a further Case Management Conference is not necessary in this matter.

10. TRIAL DATE.

The trial of these consolidated actions shall take place on August 8, 2014, at 9:00 a.m., as ordered by this Court at the Case Management Conference on February 14, 2014.

11. MODIFICATIONS TO BRIEFING AND HEARING SCHEDULE.

Consistent with the requirement that CEQA actions be quickly heard and determined, modifications to this schedule shall be made only for good cause shown.

[Signatures on next page]

IT IS SO STIPULATED.

PILLSBURY WINTHROP SHAW PITTMAN LLP
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By _____

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MARIE A. COOPER (SBN 114728)
PERKINS COIE LLP
Attorneys for Real Party in Interest

By _____

IT IS SO ORDERED.

Dated: MAR 10, 2014, 2014.

_____
Judge of the Superior Court
JUDGE JOSEPH H. HUBER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. First Street
San Jose, CA 95113-1090

(ENDORSED)
FILED
MAR 11 2014
DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY
Courtroom Clerk

TO: Ronald E. Vanbuskirk
Pillsbury Winthrop Shaw Pittman
P.O. Box 2824
San Francisco, CA 94126

RE: Stand For San Jose, Et Al Vs City Of San Jose, Et Al
Case Nbr: 1-11-CV-214196

PROOF OF SERVICE

ORDER AFTER TELEPHONIC CONFERENCE

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

Parties/Attorneys of Record:

CC: Stephen L. Kostka , Perkins Coie LLP
Four Embarcadero Center, Suite 2400, San Francisco, CA 94111
Geoffrey L. Robinson , Perkins Coie LLP
Four Embarcadero Center, Suite 2400, San Francisco, CA 94111
Richard Doyle , City Attorney's Office - SJ
200 East Santa Clara St., 16th Floor Tower, San Jose, CA 95113-1905

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 03/11/14. DAVID H. YAMASAKI, Chief Executive Officer/Clerk by Sylvia Roman, Deputy

(ENDORSED)
FILED
MAR 11 2014
DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of Santa Clara County
BY _____ DEPUTY
Courtroom Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

STAND FOR SAN JOSE et al., Petitioners and Plaintiffs, vs. CITY OF SAN JOSE et al., Respondents and Defendants.	Case No.: 1-11-CV-214196, consolidated with Case No. 113-CV-350372 ORDER AFTER TELEPHONIC CONFERENCE

AND RELATED RPI

After conducting a telephonic conference with the parties on March 10, 2014 the following is the REVISED briefing schedule for the Hearing scheduled for August 8, 2014 at 9:00 AM in Department 21. Petitioner's Opening brief shall be filed and served no later than May 14, 2014: Respondents and RPI's Opposition brief shall be filed and served no later than June 18, 2014; Petitioners Reply brief shall be filed and served no later than July 9, 2014.

SO ORDERED.

Dated: March 10, 2014

SANTA CLARA COUNTY SUPERIOR COURT
JOSEPH H. HUBER
JUDGE

Exhibit 2

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ENDORSED

2014 MAR 11 P 1:54

David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California
By _____ Deputy Clerk

J. CAO-NGUYEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

STAND FOR SAN JOSE; EILEEN HANNAN; MICHELLE BRENOT; ROBERT BROWN; KAREN SHIREY; FRED SHIREY; and ROBERT SHIELDS, Petitioners and Plaintiffs, v. CITY OF SAN JOSE; CITY COUNCIL OF THE CITY OF SAN JOSE; SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE; SUCCESSOR AGENCY OVERSIGHT BOARD; DIRIDON DEVELOPMENT AUTHORITY; DOES 1 through 10, inclusive, Respondents and Defendants. ATHLETICS INVESTMENT GROUP LLC; DOES 11 through 20, inclusive, Real Parties in Interest.	Case No. 111-CV-214196; related to and consolidated with Case No. 113-CV-250372 VERIFIED SECOND AMENDED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF AND FOR ATTORNEY'S FEES **[Health & Safety Code §§ 34161, et seq. (Community Redevelopment Law); San Jose Municipal Code § 4.95 (Public Vote for Sports Facility); Pub. Res. Code §§ 21167, 21168, and 21168.5 (California Environmental Quality Act); C.C.P. § 526a (Illegal Sale of Public Property); C.C.P. §§ 1085 and 1094.5]**

FILED BY FAX

Petitioners and Plaintiffs, Stand for San Jose ("SFSJ"), Eileen Hannan, Michelle Brenot, Robert Brown, Karen Shirey, Fred Shirey, and Robert Shields (collectively, "Petitioners"), hereby petition for a writ of mandamus and complain for declaratory and injunctive relief and for attorney's fees against Respondents and Defendants, the City of San Jose ("City"), the City Council of the City of San Jose ("City Council"), the Successor Agency to the Redevelopment Agency of the City of San Jose ("Successor Agency"), the Successor Agency Oversight Board ("Oversight Board"), and the Diridon Development Authority ("DDA") (collectively, "Respondents"), and against Real Party in Interest, Athletics Investment Group LLC ("AIG"), and for their petition and complaint allege as follows:

GENERAL ALLEGATIONS

1. This petition and complaint challenges certain actions taken by Respondents in the period of June 2013 through February 2014, continuing in effect the unlawful encumbrance of certain publicly-owned property with an unenforceable option agreement (the "Option Agreement") that purports to commit the City to sell the certain property to AIG for purposes of a private downtown baseball stadium project (the "Ballpark Project" or "Project"). In taking these actions, Respondents failed to comply with the State Controller's 2013 Asset Transfer Review Report, issued March 21, 2013 (the "State Controller's Report"), and a number of State and local laws, despite their legal duty to comply with that report and such laws, including the following:

(a) The California Community Redevelopment Law, Health & Safety Code §§ 34161, *et seq.* ("Redevelopment Dissolution Law");

(b) San Jose Municipal Code § 4.95 (requiring a public vote before the City participates, by using tax dollars, in developing a sports facility);

(c) The California Environmental Quality Act, Public Resources Code § 21000, *et seq.* ("CEQA"); and

(d) Code of Civil Procedure § 526a (prohibiting the illegal expenditure of public funds, or illegal sale or use of public property).

2. Respondents have pursued a baseball stadium project on public land for a number of years, including the grant to AIG in 2011 of an exclusive Option Agreement to buy six parcels of property in the Diridon Station Area of San Jose (the "Diridon Property" or "Property") at a price that is now more than a 75% discount to fair market value. In refusing to comply with State and local law rendering the Option Agreement unauthorized and unenforceable, Respondents have abused their powers and violated their legal duties.

3. Beginning in or about 2005, the San Jose Redevelopment Agency spent $25 million in tax-increment funds to acquire the various parcels that make up the Diridon Property, and commenced environmental review for a potential ballpark project on the Property. In 2010, the City represented that there would be additional environmental review "when we have a project" and promised a public vote "prior to . . . making any decision as to a potential ballpark."

4. In an effort to avoid State legislation proposed in 2011 to dissolve redevelopment agencies and require sale of property owned by redevelopment agencies such as the Diridon Property for core municipal purposes, the City and the Redevelopment Agency formed the DDA as a joint powers authority and then transferred the Diridon Property to the DDA at no cost. After the Redevelopment Dissolution Law came into effect, the City and others filed a legal challenge in the California Supreme Court. On November 8, 2011, two days before arguments in the Supreme Court, the City Council and the DDA, in joint session, voted to encumber the Diridon Property with the Option Agreement to sell the Property to AIG. By encumbering the Property with an option granted to a private party, Respondents hoped to avoid the re-transfer of the property mandated by the Redevelopment Dissolution Law, even if the Supreme Court upheld the law.

5. Under the Option Agreement, the DDA would sell the Diridon Property to AIG at far less than its market value. The Property, originally acquired for $25 million and appraised at $14 million at the time the Option Agreement was approved, was listed as having a 2013 book value of approximately $29 million in the State Controller's Report.

1 Under the Option Agreement, the Property would be sold to AIG for only $6.9 million for a
2 private ballpark use. Taxing entities that would receive distributions from the Successor
3 Agency upon a legitimate sale of the Property—free from the encumbrance of the Option
4 Agreement—would lose approximately $22 million under the Option Agreement.
5 6. The State Controller's Report concluded that the transfer of the Property to
6 the DDA was unauthorized, and it ordered the City and the DDA to transfer the Property
7 back to the Successor Agency. Failing in their duty to comply with the Redevelopment
8 Dissolution Law and the State Controller's Report, Respondents have now taken actions to
9 transfer less than the full fee interest, and instead have transferred the Property to the
10 Successor Agency "subject" to the Option Agreement. At the June 18, 2013 joint City
11 Council/DDA/Successor Agency meeting, the DDA adopted Resolution No. 111.1, and the
12 Successor Agency adopted Resolution No. 7021, each providing that the Diridon Property
13 be transferred to the Successor Agency "*subject to the terms and provisions of the Option*
14 *Agreement* . . . ." (emphasis added). At that time the City Council also adopted Resolution
15 No. 76738 authorizing the transfer, but did not address the Option Agreement or require the
16 transfer to be unencumbered. Thereafter, on June 27, 2013, the Oversight Board failed in
17 its legal duty to overturn the Successor Agency's acceptance of the Property subject to the
18 Option Agreement. At the August 13, 2013 joint Council/DDA/Successor Agency meeting,
19 the DDA adopted Resolution No. 112.1, and the Successor Agency adopted Resolution No.
20 7022, each providing that 645 Park Avenue, part of the Diridon Property, be transferred to
21 the Successor Agency "*subject to the terms and provisions of the Option Agreement* . . . ."
22 (emphasis added). In addition to violating the Redevelopment Dissolution Law and the
23 State Controller's Report, Respondents undertook no effort at any of these meetings to
24 comply with CEQA or to hold a public vote before taking their actions in purportedly
25 continuing the validity of the Option Agreement for purposes of a Ballpark Project.
26 7. In the course of further actions taken by Respondents in the period following
27 August 2013 and continuing through February 2014, in connection with processing and
28 adopting the Successor Agency's Long Range Property Management Plan ("LRPMP"),

1 Respondents continued to maintain the validity of the Option Agreement in violation of the
2 Redevelopment Dissolution Law and the State Controller's Report, despite their mandatory
3 duty of law to terminate the Option Agreement.

4 8. Accordingly, this petition and complaint seeks a writ of mandate and
5 declaratory relief adjudging that Respondents' transfer of the Diridon Property subject to
6 the Option Agreement was unauthorized, contrary to law, void, and of no legal effect;
7 setting aside Respondents' transfer of the Diridon Property to the extent it remains subject
8 to the Option Agreement; ordering that Respondents transfer the entire fee interest
9 exclusive of and not subject to the Option Agreement, as required under the Redevelopment
10 Dissolution Law; and permanently enjoining Respondents from the sale of the Diridon
11 Property to AIG pursuant to the Option Agreement.

12 **PARTIES**

13 9. Petitioner and Plaintiff SFSJ is an unincorporated coalition, including
14 residents and taxpayers in San Jose and the County of Santa Clara, formed and dedicated to
15 addressing the risks to the environment and financial issues posed by the Ballpark Project.
16 Members of SFSJ reside and/or work in San Jose and Santa Clara County, including the
17 area of the proposed Ballpark Project, and will be affected by the Project's significant
18 environmental impacts. SFSJ's members are beneficially interested in the City's public
19 planning and environmental review processes, and seek to promote the public interest by
20 ensuring that environmental issues critical to taxpayers, jobs, local businesses and
21 neighborhoods are put first as the City evaluates proposed development projects that have
22 the potential to significantly affect the environment and the downtown area. SFSJ and its
23 members seek to ensure that before the Diridon Property is sold to a private party for a
24 ballpark use, the City's elected decision-makers—as well as the voting public—have all of
25 the environmental information required under CEQA and other information necessary to
26 make informed decisions for the sale of public lands and downtown development. SFSJ
27 members are interested as citizens and taxpayers in making sure that San Jose and its
28 agencies protect and promote the public interest by complying with State and local laws,

including CEQA, San Jose Municipal Code § 4.95, and the Redevelopment Dissolution Law. In 2010-2011, SFSJ submitted numerous written and oral comments to Respondents setting forth their environmental and other objections to the Ballpark Project. In June 2013, SFSJ submitted written and oral comments to Respondents setting forth objections to the Successor Agency's determination that the Diridon Property should be accepted subject to the Option Agreement and Respondents' treatment of the Option Agreement as a continuing and enforceable obligation; and urging the Oversight Board to review and overturn the Successor Agency's determination that the Diridon Property be accepted subject to the Option Agreement.

10. Petitioner and Plaintiff Eileen Hannan ("Petitioner Hannan") is a resident, voter, property owner, and taxpayer in the City of San Jose, and seeks to protect her interests and the interests of those similarly situated in San Jose. Petitioner Hannan is employed in San Jose, commutes in and around the City, and uses freeways and roadways on a regular basis that will be impacted by the Ballpark Project. Petitioner Hannan is a member and supporter of SFSJ, with similar interests and concerns as those alleged in paragraph 8 above. Petitioner Hannan is beneficially interested in and affected by the City's planning and environmental review processes, and seeks to promote the public interest by ensuring that environmental issues critical to taxpayers, jobs, local businesses and neighborhoods are considered in accordance with law; and that the City's elected decision-makers, as well as the voting public, have all of the environmental information required under CEQA and other information necessary to make informed decisions for the sale of public lands for downtown development. Petitioner Hannan seeks through this petition and complaint to protect the public interest by ensuring that San Jose and its agencies comply with State and local laws, including CEQA, San Jose Municipal Code § 4.95, and the Redevelopment Dissolution Law.

11. Petitioner and Plaintiff Michelle Brenot ("Petitioner Brenot") is a resident, voter, property owner, and taxpayer in the City of San Jose, and seeks to protect her interests and the interests of those similarly situated in San Jose. Petitioner Brenot lives in

1 downtown San Jose, commutes from and around the City, and uses freeways and roadways
2 on a regular basis that will be impacted by the Ballpark Project. Petitioner Brenot is a
3 member and supporter of SFSJ, with similar interests and concerns as those alleged in
4 paragraph 8 above. Petitioner Brenot is beneficially interested in and affected by the City's
5 planning and environmental review processes, and seeks to promote the public interest by
6 ensuring that environmental issues critical to taxpayers, jobs, local businesses and
7 neighborhoods are considered in accordance with law; and that the City's elected decision-
8 makers, as well as the voting public, have all of the environmental information required
9 under CEQA and other information necessary to make informed decisions for the sale of
10 public lands for downtown development. Petitioner Brenot seeks through this petition and
11 complaint to protect the public interest by ensuring that San Jose and its agencies comply
12 with State and local laws, including CEQA, San Jose Municipal Code § 4.95, and the
13 Redevelopment Dissolution Law.

14 12. Petitioner and Plaintiff Robert Brown ("Petitioner Brown") is a resident of
15 Santa Clara County, residing in Los Gatos, and employed in San Jose in proximity to the
16 proposed Ballpark Project site. Among other things, Petitioner Brown commutes to and
17 around San Jose, and uses freeways and roadways on a regular basis that will be adversely
18 impacted by the Ballpark Project. Petitioner Brown is beneficially interested in and
19 affected by the City's planning and environmental review processes, and seeks to promote
20 the public interest by ensuring that environmental issues critical to taxpayers, jobs, local
21 businesses and neighborhoods are considered in accordance with law; and that the City's
22 elected decision-makers, as well as the voting public, have all of the environmental
23 information required under CEQA and other information necessary to make informed
24 decisions for the sale of public lands for downtown development. Petitioner Brown seeks
25 through this petition and complaint to protect the public interest by ensuring that San Jose
26 and its agencies comply with State and local laws, including CEQA, San Jose Municipal
27 Code § 4.95, and the Redevelopment Dissolution Law.
28

13. Petitioner and Plaintiff Karen Shirey ("Petitioner Karen Shirey") is a resident, voter, property owner, and taxpayer in the City of San Jose, and seeks to protect her interests and the interests of those similarly situated in the City. Petitioner Karen Shirey resides in San Jose, and uses freeways and roadways on a regular basis that will be impacted by the Ballpark Project. Petitioner Karen Shirey is a member and supporter of SFSJ, with similar interests and concerns as those alleged in paragraph 8 above. Petitioner Karen Shirey is beneficially interested in and affected by the City's planning and environmental review processes, and seeks to promote the public interest by ensuring that environmental issues critical to taxpayers, jobs, local businesses and neighborhoods are considered in accordance with law; and that the City's elected decision-makers, as well as the voting public, have all of the environmental information required under CEQA and other information necessary to make informed decisions for the sale of public lands for downtown development. Petitioner Karen Shirey seeks through this petition and complaint to protect the public interest by ensuring that San Jose and its agencies comply with State and local laws, including CEQA, San Jose Municipal Code § 4.95, and the Redevelopment Dissolution Law.

14. Petitioner and Plaintiff Fred Shirey ("Petitioner Fred Shirey") is a resident, voter, property owner, and taxpayer in the City of San Jose, and seeks to protect his interests and the interests of those similarly situated in the City. Petitioner Fred Shirey resides in San Jose, and uses freeways and roadways on a regular basis that will be impacted by the Ballpark Project. Petitioner Fred Shirey is a member and supporter of SFSJ, with similar interests and concerns as those alleged in paragraph 8 above. Petitioner Fred Shirey is beneficially interested in and affected by the City's planning and environmental review processes, and seeks to promote the public interest by ensuring that environmental issues critical to taxpayers, jobs, local businesses and neighborhoods are considered in accordance with law; and that the City's elected decision-makers, as well as the voting public, have all of the environmental information required under CEQA and other information necessary to make informed decisions for the sale of public lands for

1 downtown development. Petitioner Fred Shirey seeks through this petition and complaint
2 to protect the public interest by ensuring that San Jose and its agencies comply with State
3 and local laws, including CEQA, San Jose Municipal Code § 4.95, and the Redevelopment
4 Dissolution Law.

5 15. Petitioner and Plaintiff Robert Shields ("Petitioner Shields") is a resident,
6 voter, property owner, and taxpayer in the City of San Jose, and seeks to protect his
7 interests and the interests of those similarly situated in the City. Petitioner Shields resides
8 in San Jose, and uses freeways and roadways on a regular basis that will be impacted by the
9 Ballpark Project. Petitioner Shields is a member and supporter of SFSJ, with similar
10 interests and concerns as those alleged in paragraph 8 above. Petitioner Shields is
11 beneficially interested in and affected by the City's planning and environmental review
12 processes, and seeks to promote the public interest by ensuring that environmental issues
13 critical to taxpayers, jobs, local businesses and neighborhoods are considered in accordance
14 with law; and that the City's elected decision-makers, as well as the voting public, have all
15 of the environmental information required under CEQA and other information necessary to
16 make informed decisions for the sale of public lands for downtown development. Petitioner
17 Shields seeks through this petition and complaint to protect the public interest by ensuring
18 that San Jose and its agencies comply with State and local laws, including CEQA, San Jose
19 Municipal Code § 4.95, and the Redevelopment Dissolution Law.

20 16. Respondent and Defendant City of San Jose is a charter city organized under
21 the constitution and laws of the State of California. Among other things, the City was
22 identified as the Lead Agency for the Ballpark Project in a Notice of Preparation for the
23 2010 SEIR, dated November 17, 2009, and in a Notice of Determination for approval of the
24 Option Agreement and sale of the Diridon Property for the Ballpark Project, dated
25 November 8, 2011. The City is principally responsible pursuant to CEQA for conducting a
26 legally-sufficient environmental review for the Ballpark Project, including preparation of
27 environmental documents (a) that accurately describe the Project, the environmental
28 baseline, and the potentially significant impacts of the Project; and (b) that evaluate

1 mitigation measures and/or alternatives to lessen or avoid any significant impacts. The
2 City, acting through the City Council and other agencies, is also responsible for approving
3 the Project in reliance on adequate environmental review under CEQA and in compliance
4 with all other applicable State and local laws, including the Redevelopment Dissolution
5 Law and San Jose Municipal Code § 4.95.

6 17. Respondent and Defendant City Council is the duly-elected legislative body
7 of the City charged by law with a number of legal duties in respect to the Ballpark Project,
8 including complying with the requirements of CEQA and the San Jose Municipal Code.
9 The City Council is one of the decision-making agencies within the City for the sale of the
10 Diridon Property to AIG subject to the Option Agreement, and is responsible, in part, for
11 the actions and decisions of Respondents in approving the Ballpark Project at issue herein.

12 18. Respondent and Defendant Successor Agency to the Redevelopment Agency
13 of the City of San Jose is responsible for overseeing the winding down of redevelopment
14 activity at the local level under the Redevelopment Dissolution Law, including managing
15 redevelopment projects currently underway, making payments on enforceable obligations,
16 and disposing of redevelopment assets and properties. On January 24, 2012, pursuant to the
17 Redevelopment Dissolution Law legislation (AB X1 26 as amended by AB 1484), the City
18 of San Jose elected to be the Successor Agency to the Redevelopment Agency of the City
19 of San Jose. The Redevelopment Agency was officially dissolved as of February 1, 2012.

20 19. Respondent and Defendant Oversight Board of the Successor Agency to the
21 Redevelopment Agency of the City of San Jose supervises the work of the Successor
22 Agency. In the exercise of its oversight duties, the Oversight Board is required to ensure
23 that the Successor Agency complies with the Redevelopment Dissolution Law, and has a
24 fiduciary responsibility to the local agencies that would benefit from property tax
25 distributions from the former redevelopment project area.

26 20. Respondent and Defendant DDA is a joint powers authority created by the
27 City and the Redevelopment Agency in March 2011 for the purpose, among others, of
28 holding title to the Diridon Property upon transfer from the Redevelopment Agency in an

effort to avoid the effects of the proposed changes to the Redevelopment Dissolution Law. The DDA was a party to the Option Agreement as approved in joint session with the City Council on November 8, 2011. As heretofore alleged, the Option Agreement granted AIG an option to purchase the Diridon Property from the DDA, subject to certain conditions, including that the Property may be used only for a private ballpark and incidental uses.

21. Petitioners are unaware of the true names of Respondents and Defendants sued as Does 1 through 10, inclusive. Petitioners are informed and believe, and on that basis allege, that Respondents Does 1-10, inclusive, are individuals, entities or agencies with authority to approve and/or with an interest in the Ballpark Project. When the true identities and capacities of these Respondents have been determined, Petitioners will, with leave of Court if necessary, amend this petition and complaint to insert such identities and capacities.

22. Petitioners are informed and believe, and on that basis allege, that Real Party in Interest AIG is an entity associated in some manner with the Oakland Athletics baseball club. Among other things, AIG is the entity to whom the DDA granted the exclusive option to purchase the Diridon Property as alleged herein.

23. Petitioners are unaware of the true names of Real Parties in Interest sued as Does 11 through 20, inclusive. Petitioners are informed and believe, and on that basis allege, that Real Party in Interest Does 11-20, inclusive, are individuals, entities or agencies with authority to approve and/or with an interest in the Ballpark Project. When the true identities and capacities of these Real Parties in Interest have been determined, Petitioners will, with leave of Court if necessary, amend this petition and complaint to insert such identities and capacities.

JURISDICTION AND VENUE

24. This Court has jurisdiction over this proceeding pursuant to Code of Civil Procedure §§ 1085 and 1094.5, Public Resources Code §§ 21168 and 21168.5, and Article VI, § 10 of the California Constitution.

25. Venue is proper in this Court pursuant to Code of Civil Procedure §§ 394 and 395, in that the causes of action alleged herein arose in Santa Clara County, where the Ballpark Project is proposed for development and where Respondents took actions to approve the Project and encumber the Property with the Option Agreement as alleged herein.

BACKGROUND

Petitioners' First Lawsuit Challenging the Original Approval of the Option Agreement

26. On December 2, 2011, Petitioners and Plaintiffs filed a prior lawsuit in this Court (Case No. 111-CV-214196) challenging the actions taken by Respondents in November 2011, in originally approving the Option Agreement and the sale thereunder of the publicly-owned Diridon Property to AIG for the Ballpark Project. A Verified First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief and for Attorney's Fees was filed in that action on December 7, 2011.

27. As alleged in Case No. 111-CV-214916, by approving the Option Agreement, Respondents abused their discretion and failed to comply with law, in that they failed to cure legal deficiencies in the 2007 environmental impact report ("2007 EIR") and the 2010 supplemental environmental impact report ("2010 SEIR"); failed to update those documents to address changed circumstances and significant new information; failed to hold a public vote, as required by Municipal Code § 4.95, before committing to sell public property at a (then) 50% discount for a private ballpark project; and committed an illegal expenditure of public funds and property in violation of CEQA, Municipal Code § 4.95, and the Redevelopment Dissolution Law.

28. The administrative record in Case No. 111-CV-214916 has been prepared and the case remains pending in this Court. However, pursuant to stipulation of the parties and Order of the Court dated June 5, 2013, the briefing schedule in Case No. 111-CV-214916 was stayed pending the outcome of Respondents' re-transfer of the Diridon Property to the Successor Agency pursuant to the State Controller's Report, and the recent

actions of the Successor Agency and the Oversight Board in respect to said re-transfer, which actions are now the subject of the instant petition and complaint. On August 9, 2013, the Court ordered that the November 8, 2013 trial date be vacated and that the instant case and the prior case be consolidated.

The State Controller's Order That Respondents Reverse the Transfer of the Diridon Property and Return it to the Successor Agency

29. Health & Safety Code § 34161 provides that "commencing on the effective date of this part, no agency shall incur new or expand existing monetary or legal obligations except as provided in this part. All of the provisions of this part shall take effect and be operative on the effective date of the act adding this part." The effective date of the act adding Health & Safety Code, division 24, parts 1.8 (Restrictions on Redevelopment Agency Operations) and 1.85 (Dissolution of Redevelopment Agencies and Designation of Successor Agencies) was June 28, 2011. Part 1.8's purpose is to preserve redevelopment agency assets and revenues for use by "local governments <u>to fund core governmental services</u> including police and fire protection services and schools" (Health & Safety Code § 34167(a), emphasis added) that do not include a private ballpark.

30. Commencing on the effective date of the new Redevelopment Dissolution Law, redevelopment agencies were "unauthorized and shall not take any action to incur indebtedness, including . . . [p]ledge or encumber, for any purpose, any of its revenues or assets," which include real property. Health & Safety Code § 34162(a)(6). "Any actions taken that conflict with this section [§ 34162] are void from the outset and shall have no force or effect." *Id.* § 34162(b). As of the same date, an agency further "shall not have the authority to, and shall not . . . [e]nter into contracts with, incur obligations, or make commitments to, any entity, whether governmental, tribal, or private, or any individual or groups of individuals for any purpose"; "[d]ispose of assets" including real property; or "[t]ransfer, assign, vest, or delegate any of its assets." *Id.* § 34163(b), (d), (f). During the same time period, agencies are further prohibited from approving, directing or causing the

approval of any program, project, or expenditure where approval is not required by law and from providing or committing to provide financial assistance. *Id.* § 34164(d), (m).

31. With respect to any transfers of redevelopment agency assets, Health & Safety Code § 34167.5 provides:

> "Commencing on the effective date of the act adding this part, the Controller shall review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency or any other public agency, and the redevelopment agency. If such an asset transfer did occur during that period and the government agency that received the assets is not contractually committed to a third party for the expenditure or encumbrance of those assets, to the extent not prohibited by state and federal law, the Controller shall order the available assets to be returned . . . on or after October 1, 2011, to the successor agency . . . Upon receiving that order from the Controller, an affected local agency shall, as soon as practicable, reverse the transfer and return the applicable assets to the . . . successor agency . . . The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in the furtherance of the Community Redevelopment Law and is thereby unauthorized."

32. In March 2011, the San Jose Redevelopment Agency transferred the Diridon Property to the DDA in violation of these provisions of the Redevelopment Dissolution Law. The DDA then entered into the Option Agreement with AIG as of November 8, 2011, again in violation of the Redevelopment Dissolution Law.

33. These actions by Respondents were subject to the authority and review of the State Controller. On or about March 21, 2013, the Successor Agency received the State Controller's Report concluding the prior transfer of the Diridon Property by the Redevelopment Agency was not an allowable transaction: "Pursuant to H&S Code section 34167.5, a redevelopment agency may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. Those assets should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e). . . ." State Controller's Report at 6.

34. The Controller thus ordered that the Diridon Property be returned to the Successor Agency: "The agencies named [], as recipients of the unallowable asset

1 transfers, are ordered to immediately reverse the transfers and to turn over the assets . . . to
2 the Successor Agency." State Controller's Report at 3 (emphasis added). The Controller
3 rejected Respondents' argument that the Property was timely and "contractually
4 committed" to AIG: "The [Diridon Property assets] were not contractually committed to a
5 third party prior to June 28, 2011. . . . *Ibid.* at 6 (emphasis added). Because the transfer
6 was unauthorized and ordered to be reversed, it was void *ab initio* and never became
7 enforceable or had legal effect. The Controller directed the Successor Agency, upon return
8 of the property, to properly dispose of it in accordance with Health & Safety Code
9 §§ 34177(d), (e) and 34181(a). *Ibid.* at 8, 11.

10 **Respondents' Continued Violation of State and Local Law**

11 35. Notwithstanding the State Controller's Order, and the clear force and effect
12 of the Redevelopment Dissolution Law as alleged above, the agenda for the June 18, 2013
13 Joint City/DDA/Successor Agency meeting recommended that the DDA adopt a resolution
14 authorizing the Executive Director to transfer the Property back to the Successor Agency,
15 with the illegal condition that the Property be "subject to the terms and provisions of the
16 Option Agreement." Agenda at 28.

17 36. On June 18, 2013, the City Council (Resolution No. 76738) and the DDA
18 (Resolution No. 111.1) approved the re-transfer by the DDA of certain properties and assets
19 identified by the State Controller' Report, including the Diridon Property, back to the
20 Successor Agency. However, the DDA resolved that the Property would not be transferred
21 free and clear of the encumbrance of the invalid Option Agreement, but rather "subject to"
22 and encumbered by the Option Agreement, as if the Option Agreement constituted a
23 continuing and binding encumbrance on the Property. The Successor Agency in its
24 resolution mimicked the DDA and authorized the acceptance of the Property "subject to"
25 the terms and provisions of the Option Agreement (Resolution No. 7021). In addition, prior
26 to these actions, Respondents took no action to comply with CEQA or to provide for a
27 public vote, even though their actions constituted separate and additional public agency
28 approvals of the Ballpark Project.

37. On June 27, 2013, the Oversight Board included an agenda item to discuss the asset transfers update report including the re-transfer of the Diridon Property from the DDA to the Successor Agency "subject to" the Option Agreement. Through their counsel, Petitioners appeared at the meeting and submitted written and oral comments in opposition to the re-transfer of the Property subject to the Option Agreement. Despite a mandatory duty under the Redevelopment Dissolution Law and the State Controller's Report to review and reverse the actions of the Successor Agency in accepting the re-transfer of the Property encumbered by the Option Agreement with AIG, the Oversight Board refused to take any action on the re-transfer.

38. On August 13, 2013, the DDA (Resolution No. 112.1) approved the re-transfer of 645 Park Avenue, part of the Diridon Property, back to the Successor Agency. However, the DDA resolved that the Property would not be transferred free and clear of the encumbrance of the invalid Option Agreement, but rather "subject to" and encumbered by the Option Agreement, as if the Option Agreement constituted a continuing and binding encumbrance on the Property. The Successor Agency in its resolution mimicked the DDA and authorized the acceptance of the Property "subject to" the terms and provisions of the Option Agreement (Resolution No. 7022). Through their counsel, Petitioners appeared at the meeting and submitted written comments in opposition to the re-transfer of 645 Park Avenue subject to the Option Agreement. In addition, prior to these actions, Respondents took no action to comply with CEQA or to provide for a public vote, even though their actions constituted separate and additional public agency approvals of the Ballpark Project.

39. On August 30, 2013, the State Department of Finance ("DOF") issued a Finding of Completion to the Successor Agency under Health & Safety Code § 34179.7. Pursuant to Health & Safety Code § 34191.5(b), within six months after receiving a Finding of Completion, the Successor Agency must prepare and submit to the Oversight Board and the DOF a LRPMP addressing the disposition and use of the real properties of the former RDA. Under Health & Safety Code § 34191.5(c)(2) each property of the former RDA is required to be listed in one of four categories: (1) retained for a governmental purpose;

(2) retained to fulfill an enforceable obligation; (3) retained for future development; or (4) for sale. The Successor Agency had originally proposed to retain the Property for governmental use, but abandoned that designation of the Property before the initial draft LRPMP was released. In September 2013, the Successor Agency issued the initial draft LRPMP proposing to retain the Diridon Property to "fulfill an enforceable obligation." On October 10, 2013, the Successor Agency first presented the draft LRPMP to the Oversight Board.

40. Through their counsel, Petitioners submitted a series of letters and appeared at multiple meetings of the Oversight Board, from October 2013 through February 2014, objecting to the listing of the Diridon Property as a property to fulfill an enforceable obligation. Members of the Oversight Board expressed concerns about whether the Option Agreement was enforceable. For example, on January 9, 2014, Board Member Ochoa questioned the validity of the Option Agreement because it was entered into after the Redevelopment Dissolution Law came into effect.

41. Oversight Board members also expressed concerns about the extension of the Option Agreement beyond November 8, 2013. For example, on January 30, 2014, Board Member Snow expressed concern that there was no notice to the Oversight Board of the exercise of the extension. The City Attorney responded that AIG sent a letter to the Successor Agency on September 26, 2013, purporting to extend the Option Agreement for an additional year. Petitioners are informed and believe, and thereon allege, that there is no evidence or information that the Oversight Board considered or consented to the extension. Furthermore, as Petitioners stated in public comments to Respondents, there could be no valid extension of the Option Agreement under the Redevelopment Dissolution Law. *See* infra, paragraph 50.

42. In February 2014, on the eve of the approval of the draft LRPMP by the Oversight Board, the Successor Agency revised the LRPMP to list the Diridon Property as property to be retained for future development, omitting all references to the Option Agreement or its enforceability. On February 13, 2014, the Oversight Board approved the

LRPMP subject to final revision of certain language unrelated to the Diridon Property. On February 25, 2013, Petitioners submitted a letter to the Oversight Board, asking it again to reject the Option Agreement as unenforceable and to list the Diridon Properties as properties for sale in the LRPMP. That same day, the Successor Agency submitted the LRPMP to DOF at the direction of the Oversight Board.

43. Under the Redevelopment Dissolution Law, "[i]f a city...wishes *to retain* any properties or other assets for future redevelopment activities...it must reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the base property tax, as determined pursuant to Section 34188, for the value of the property *retained.*" Health & Safety Code § 34180(f)(1) (emphasis added). The approved LRPMP does not include any compensation agreement with respect to the Diridon Properties that Respondent have retained for future development. In fact, the LRPMP confirms that no compensation agreement has been reached, and Respondents will only "negotiate and execute" such an agreement in connection with the subsequent "transfer of the properties [by] the Successor Agency." The Redevelopment Dissolution Law requires the compensation agreement for the Successor Agency to "retain" the property through the LRPMP, not in connection with some later transfer of the property to a third party at an indefinite future date.

FIRST CAUSE OF ACTION

(Writ of Mandate – Violation of Mandatory Duty Under Redevelopment Law)

44. Petitioners incorporate herein by reference the allegations contained in paragraphs 1 through 43, inclusive.

45. Before the Successor Agency received a Finding of Completion from the DOF under Health & Safety Code § 34179.7, it was required to "[d]ispose of assets and properties of the former redevelopment agency as directed by the oversight board; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of certain assets pursuant to subdivision (a) of Section 34181." Health

1 & Safety Code § 34177(e). Under Health & Safety Code § 34181(a), the Oversight Board
2 "shall direct the successor agency" to "[d]ispose of all assets and properties of the former
3 redevelopment agency." Such disposal "shall be done expeditiously and in a manner aimed
4 at maximizing value." *Id.*

5 46. After the Successor Agency received a Finding of Completion from the DOF
6 under Health & Safety Code § 34179.7, the Successor Agency was required to sell any
7 properties not specifically retained for governmental use, future development or to fulfill an
8 enforceable obligation. Health & Safety Code § 34191.5(c)(2). The Successor Agency also
9 must "expeditiously wind down the affairs of the redevelopment agency" (Health & Safety
10 Code § 34177(h)) and preserve the revenue and assets of the former RDA for core
11 governmental services. *See* Health & Safety Code § 34167(a).

12 47. Furthermore, the Oversight Board was and is required to direct the Successor
13 Agency to "[c]ease performance in connection with and terminate all existing agreements
14 that do not qualify as enforceable obligations." Health & Safety Code § 34181(b). The
15 Option Agreement does not qualify as an enforceable obligation pursuant to the
16 Redevelopment Dissolution Law or any other law as heretofore alleged. *See, e.g.*, Health &
17 Safety Code §§ 34179.5(b)(2) and 34171.

18 48. Both the Successor Agency and the Oversight Board failed to comply with,
19 and have violated, these mandatory duties imposed under the Redevelopment Dissolution
20 Law. The Redevelopment Agency's original transfer of the Diridon Property to the DDA
21 in March 2011, and the subsequent grant of an Option Agreement on the Property by the
22 DDA in November 2011, were unauthorized actions taken in violation of the
23 Redevelopment Dissolution Law. Health & Safety Code § 34167.5. Pursuant to the State
24 Controller's Report and Health & Safety Code § 34167.5, the transfer of the Property to the
25 DDA was void *ab initio* and the DDA had no authority to enter into the Option Agreement.
26 A private party such as AIG obtains no rights in an Option Agreement approved by public
27 agencies contrary to requirements of law. Furthermore, the re-transfer of the Property back
28 to the Successor Agency, purportedly subject to the Option Agreement, fails to fulfill the

primary purpose of the Redevelopment Dissolution Law: to preserve and dispose of redevelopment assets and revenues for use by local governments to fund core government services, such as fire protection, police and schools. Instead, the Option Agreement would help a private party develop and fund a private ballpark project at a price far below fair market value, thwarting the purpose of the Redevelopment Dissolution Law.

49. Accordingly, Respondents have breached a mandatory duty to provide for the transfer and disposition of the Diridon Property without the encumbrance of the Option Agreement. The Successor Agency has a duty to sell the Diridon Property unencumbered by the Option Agreement while the Oversight Board has a continuing duty to direct the Successor Agency to terminate the Option Agreement because it is an unenforceable obligation.

50. In addition, as of November 8, 2013, the Option Agreement expired by its terms. Under Health & Safety Code § 34177.3(a), "Successor agencies shall lack the authority to, and shall not, create new enforceable obligations under the authority of the Community Redevelopment Law (Part 1 (commencing with Section 33000)) or begin new redevelopment work, except in compliance with an enforceable obligation that existed prior to June 28, 2011." To the extent the Successor Agency consented to extension of the Option Agreement, it would have created a new obligation for the Successor Agency post-June 28, 2011 and is thus void. Even if the extension were allowed under the Redevelopment Dissolution Law, whether or not to "consent" to an extension (under section 2(A) of the Option Agreement) was a discretionary act and thus required, among other things, notice and public hearing, compliance with the California Environmental Quality Act, compliance with San Jose Municipal Code § 4.95 (public vote requirement for sports facility), and review and approval by the Oversight Board, and none of these things occurred. Thus, the Option Agreement and the extension should be adjudged invalid and unenforceable, and an injunction should be issued to prevent the sale and transfer of the Diridon Property to AIG under the Option Agreement.

51. Other than the relief sought herein, Petitioners and Plaintiffs lack any plain, speedy, or adequate remedy at law, and their interests will be irreparably harmed if the Diridon Property remains subject to the terms and conditions of the Option Agreement in whole or in part.

SECOND CAUSE OF ACTION

(Writ of Mandate – Violation of Public Vote Requirement, San Jose Municipal Code § 4.95)

52. Petitioners incorporate herein by reference the allegations contained in paragraphs 1 through 51, inclusive.

53. Respondents were required to comply with the public vote requirement under San Jose Municipal Code § 4.95 before acting to keep the Option Agreement in effect as an essential step in the development of the Ballpark Project.

54. Section 4.95 of the San Jose Municipal Code prohibits the use of tax dollars in connection with the building of a sports facility, unless first approved by a majority vote of San Jose voters. San Jose Municipal Code, § 4.95.010.

55. As previously alleged, the Redevelopment Agency began acquiring the Diridon Property in 2005 and, over the next three years, spent more than $25 million in taxpayer funds to acquire these parcels. The Agency completed these acquisitions without any public vote on the pretext that the acquired property could also be used for housing, "a legitimate alternative use" to a ballpark. The Agency also committed to holding a public vote "prior to the City Council making <u>any decision as to a potential ballpark</u>." Board Memoranda, dated Nov. 8, 2005 and Feb. 28, 2006 (emphasis added).

56. Through the Option Agreement, Respondents attempted to foreclose any possibility that the Diridon Property could be used for housing or any other non-ballpark use. Approval of the Option Agreement was manifestly a "decision as to a potential ballpark," as it requires that public property be used only for a baseball stadium.

57. Because the Option Agreement commits the taxpayer-funded Diridon Property to exclusive use as a sports facility, including sale of the Property at a small

fraction of its fair market value, a public vote was required before the Option Agreement could be approved. By re-transferring the Diridon Property still subject to the Option Agreement without a prior public vote, Respondents again failed to obey a mandatory duty required by law. The purported extension of the Option Agreement by the Successor Agency was also in violation of the public vote requirement.

58. Accordingly, the Option Agreement should be adjudged invalid and an injunction should be issued to prevent the sale and transfer of the Diridon Property to AIG pursuant to the Option Agreement.

59. Other than the relief sought herein, Petitioners lack any plain, speedy, or adequate remedy at law, and their interests will be irreparably harmed if the Diridon Property remains subject to the terms and conditions of the Option Agreement in whole or in part.

THIRD CAUSE OF ACTION

(Violation of CEQA, Pub. Res. Code § 21000, *et seq.*)

60. Petitioners incorporate herein by reference the allegations contained in paragraphs 1 through 59, inclusive.

61. To the extent that Respondents were vested with any discretion in the re-transfer of the Diridon property under the requirements of the Redevelopment Dissolution Law and the State Controllers' Report, they were required first to comply with CEQA by preparing and certifying a legally adequate EIR for the Ballpark Project.

62. SFSJ commented in its June 26, 2013 and August 12, 2013 letters to the Oversight Board and Successor Agency that Respondents' actions in re-transferring the Diridon Property to the Successor Agency subject to the Option Agreement required the Successor Agency first to comply with CEQA. However, Respondents' actions and resolutions adopted on June 18, 2013 and August 13, 2013, fail to provide for any compliance with CEQA.

63. In addition, to the extent that Respondents were vested with any discretion in consenting to an extension of the Option Agreement, they were required to first comply with CEQA by preparing and certifying a legally adequate EIR for the Ballpark Project.

64. SFSJ commented in its February 11, 2014 letter to the Oversight Board that Respondents' actions in consenting to an extension of the Option Agreement required the Successor Agency first to comply with CEQA. However, Respondents' actions and resolutions adopted on February 13, 2014 failed to do so.

65. Respondents may not rely on the previous 2007 EIR and 2010 SEIR prepared for the Ballpark Project for any of the above-referenced actions because they are inadequate as a matter of law, as alleged in Case No. 111-CV-214196.

66. SFSJ submitted written and oral comments to the Oversight Board and Successor Agency objecting to Respondents' lack of, and inadequacy of, prior environmental review.

67. Petitioners have provided written notice of the commencement of this action to Respondents, in compliance with CEQA § 21167.5, and have included a copy of that notice and proof of service as Exhibit A hereto.

68. Petitioners have served the Attorney General with a copy of this petition, along with a notice of its filing, in compliance with CEQA § 21167.7, and have included the notice and proof of service as Exhibit B hereto.

69. Petitioners do not have a plain, speedy, or adequate remedy at law and will suffer irreparable injury due to the ensuing environmental damage that will be caused by implementation of the Ballpark Project, and Respondents' violations of CEQA and other laws, unless this Court grants the requested writ of mandate and injunctive relief requiring Respondents to set aside the transfer of the Property subject to the Option Agreement and other actions as alleged herein.

70. By failing to conduct the required environmental review under CEQA, Respondents committed a prejudicial abuse of discretion, failed to proceed in the manner required by law, and failed to support their actions and approvals with substantial evidence.

FOURTH CAUSE OF ACTION

(Violation of C.C.P. § 526a and Common Law Taxpayer Claim — Unauthorized and Illegal Expenditure and Use of Property)

71. Petitioners incorporate herein by reference the allegations contained in paragraphs 1 through 70, inclusive.

72. Code of Civil Procedure § 526a authorizes an action to obtain a judgment, restraining and preventing any illegal expenditure of or injury to public funds or property. The common law also recognizes a taxpayer action on similar grounds.

73. In approving the Option Agreement for sale of the Diridon Property for a fraction of its fair market value, and in retransferring the Diridon Property to the Successor Agency subject to that agreement, Respondents acted unlawfully and in violation of the Redevelopment Dissolution Law, San Jose Municipal Code § 4.95, and CEQA, as heretofore alleged. Accordingly, the Option Agreement for the sale of the Diridon Property to AIG constitutes an unauthorized and illegal expenditure, use and transfer of the Property.

74. The approval of the Option Agreement, and the retransfer of the Diridon Property subject to that agreement, should be set aside and an injunction should be issued to prevent Respondents from carrying out, implementing or consummating the Option Agreement, or from otherwise selling or transferring the Diridon Property to AIG for the Ballpark Project.

75. Other than the relief sought herein, Petitioners lack any plain, speedy, or adequate remedy at law, and Petitioners' interests will be irreparably harmed if the Diridon Property remains subject to the terms and conditions of the Option Agreement in whole or in part.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for judgment as set forth below:

A. For a writ of mandate or peremptory writ issued under seal of this Court and directing Respondents to:

1. Set aside their transfer of the Property to the Successor Agency to the extent that the transfer and Property remain subject to the Option Agreement;
2. Transfer the Property to the Successor Agency free and clear of the Option Agreement;
3. Refrain from granting any further approval for the sale or disposition of the Diridon Property to AIG for use as a ballpark, including encumbering the Property with the Option Agreement, unless and until Respondents comply fully with the requirements of San Jose Municipal Code § 4.95 and CEQA as directed by this Court.

B. For a declaratory judgment stating that Respondents' transfer of the Property subject to the Option Agreement is void, invalid, and of no legal effect.

C. For entry of a preliminary and/or permanent injunction prohibiting Respondents from carrying out, implementing or consummating the Option Agreement, and prohibiting Respondents from otherwise selling or transferring the Diridon Property to AIG for the Ballpark Project.

D. For an award to Petitioners' of their fees and costs, including reasonable attorneys' fees, as authorized by Code of Civil Procedure § 1021.5, and any other applicable provisions of law.

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E. For such other legal and equitable relief as this Court deems appropriate and just.

Dated: March 3, 2014.

PILLSBURY WINTHROP SHAW PITTMAN LLP
RONALD E. VAN BUSKIRK
BLAINE I. GREEN
MARNE S. SUSSMAN
Four Embarcadero Center, 22nd Floor
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By _____
Ronald E. Van Buskirk
Attorneys for Petitioners and Plaintiffs,
STAND FOR SAN JOSE, EILEEN HANNAN, MICHELLE BRENOT, ROBERT BROWN, KAREN SHIREY, FRED SHIREY, and ROBERT SHIELDS

VERIFICATION

I, Eileen M. Hannan, declare:

I am a resident, voter, taxpayer, and property owner in the City of San Jose, and a member and supporter of Stand for San Jose. I have read the foregoing SECOND AMENDED VERIFIED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF AND FOR ATTORNEY'S FEES and know its contents, and state that the matters alleged in the petition and complaint are true to the best of my personal knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28 day of February, 2014, at San Jose, California.

Eileen M. Hannan

Eileen Hannan

Case No. 111-CV-214196; related to and consolidated with Case No. 113-CV-250372

PROOF OF SERVICE BY MAIL

I, Rita Breaux, the undersigned, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in the City of San Francisco, California.

2. My business address is Four Embarcadero Center, 22nd Floor, San Francisco, California 94111. My mailing address is P.O. Box 2824, San Francisco, California 94126.

3. I am familiar with Pillsbury Winthrop Shaw Pittman LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service; in the ordinary course of business, correspondence placed in interoffice mail is deposited with the United States Postal Service with first class postage thereon fully prepaid on the same day it is placed for collection and mailing.

4. On March 11, 2014, at Four Embarcadero Center, 22nd Floor, San Francisco, California, I served a true copy of the attached document titled exactly **VERIFIED SECOND AMENDED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF AND FOR ATTORNEY'S FEES** by placing it in an addressed, sealed envelope clearly labeled to identify the person being served at the address shown below and placed in interoffice mail for collection and deposit in the United States Postal Service on that date following ordinary business practices:

Nora Frimann, Esq.
Ardell Johnson, Esq.
Office of the City Attorney
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113

Geoff L. Robinson, Esq.
Perkins Coie LLP
Four Embarcadero Center
Suite 2400
San Francisco, CA 94111

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of March, 2014, at San Francisco, California.

Rita Breaux

Exhibit 3

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF TEXAS

WICHITA FALLS DIVISION

JOE HALE, Independently, and d/b/a WICHITA FALLS BASEBALL CLUB, Plaintiffs, vs. BROOKLYN BASEBALL CLUB, INC., et al, Defendants	CIVIL ACTION NO. 1294

COURT'S COMMENTS IN SUSTAINING DEFENDANTS' MOTIONS TO DISMISS

THE COURT: Well, of course, the beginning point in coming to a decision about these motions to dismiss is found in the baseball case decided by the Supreme Court of the United States in 1922. And, as I have already indicated, it seems inept, to me, to say that the court granted an exemption to baseball, since that term I would take to mean a dispensation, so to speak, from some liability or obligation that would otherwise be upon the person exempted. And, instead, I think the import of the decision in the case was simply to hold that organized baseball of that day, at least, was not trade or commerce and that the business consequently simply was not subject to the antitrust law, not that it was exempted from it but that it just didn't fall in its nature within the bounds of the statute.

Then the next step is to reach the Toolson group of cases which came along 30 years later and by that time, of course, the

world of radio broadcasting and telecasting dawned on the world and had become a factor in the conduct of the baseball business. My recollection is that in the dissenting opinion filed by two of the justices in that case it was pointed out that when the year 1950 had come around on the calendar, that the revenue from radio and television of baseball games had grown to the point where it aggregated some 10 1/2 percent of the total receipts from the baseball business and that was one of the principal points urged by those two dissenting justices in explaining why they could not consent to the ruling that was being made by the majority.

And, so, there can be no shadow of a doubt that the spotlight was put right squarely on this source of revenue -- the income from the sale of radio and television broadcasting rights of baseball games. That was certainly within the mind and thinking of every member of the Court. Two of them reacted one way and the other seven another way.

But the significance of it to me is that there is not any true novelty, as I see it, such as argued by plaintiffs' counsel, to the effect that this is the first case to present the matter squarely from the standpoint of monopolistic restraint of radio broadcasting and telecasting of baseball games. True enough, the matter was not cast in that particular line of discussion in the dissenting opinion but that opinion did point out how the popularity of these media of broadcasting had risen and that the revenue from it had grown at a remarkably mounting rate. And anyone could tell without having to read any crystal ball that the picture in 1950 was certainly only a beginning, so to speak; that this thing was

going to flourish and grow by leaps and bounds, as it has, and so much so that the plaintiff alleges in his pleading in this case that that particular source of revenue has now come to be, anyway, 25 percent of the gross income and receipts of organized baseball.

There could hardly have been any question in anyone's mind that this was the destined turn of events and that said great market was going to be enjoyed by organized baseball. And if such development would be a manifestation of a violation of the anti-trust Act, the Supreme Court could not have missed the implication of things at the time of the Toolson decision.

It seems further to me that plaintiffs' argument tries to set aside in a somewhat detached way the enterprise of broadcasting and telecasting from the traditional aspect of baseball when it was played before spectators present. But I think that it is certainly clear beyond any sort of question that what the the plaintiff was talking about is that he claims to have been stymied in his desires and aspirations to participate in interstate telecasting and broadcasting of baseball games.

The telecasting simply lifts the horizon, so to speak, and brings in another set of viewers of the same identical game that those present in the grandstand are seeing at the same time, ordinarily, and I believe it's straining realities to suggest that this television business has become a new facet of activity that you can look at apart from the ordinary business of baseball; and I can't follow that because there couldn't be such broadcasting except for the old-fashioned baseball game being played somewhere --

the very gist and essence of the baseball business.

Now, in this Toolson case the Supreme Court, acting through the seven-justice majority of the Court, did not uphold the dismissal of the suits on the part of those three complainants (including the owner of the team at El Paso) because the Court thought that the original baseball decision viewed in the context of 30 years later was right but, rather, because they thought it would be wrong to open the door to the injustice and the many impacts that would result retroactively if the Court at that time, acting within the limits of the judicial authority, should cast aside the original baseball decision. And, accordingly, with that made perfectly clear, the Court took the course of saying in effect that they would still accept that original ruling which had the accumulation of time behind it and the many investments and commitments of one kind and another made on the faith of the ruling and that the remedy was not in the courts and, instead, that those having such interests should seek recourse in Congress where proper legislation might be initiated and committee hearings held and the question thoroughly canvassed from every direction to see what should be done in justice to all concerned.

And, of course, any remedial statute would be prospective in nature, contrary to what it would have to be in any litigated case which would relate to something already passed. And to uproot an anchor of this sort in a field of organized enterprise retrospectively would not be as seemly and reasonable as for the problem to be dealt with in the legislative branch of the government.

If I read these decisions right, that is the position of the Supreme Court on this somewhat vexing question.

In reading the Radovich case, I get that impression reinforced. And not only that, but from the standpoint of what I should do, it seems to me that the Supreme Court of this country in the Radovich case has committed that Court explicitly and definitely to the proposition that the remedy is in the Congress and that the Supreme Court intends to let this decision rest, the original decision rest, as far as it is concerned, limited at the same time to the very narrow focus of the baseball business. But to that extent it will stay until and if it is changed by specific legislation.

Looking at the whole history of this thing, I think that my course is clear and that these motions to dismiss so far as the antitrust aspect of the plaintiffs' case is concerned should be sustained.

The plaintiff of course has his right of appeal and no one can find fault if an appeal is taken.

My own conclusion, however, is that these motions are well taken.

All right. Now, I think that renders most of the other motions moot but there may be some of them that still call for attention. If the record isn't already clear that the two individual plaintiffs (defendants) are out of the case, they will be dismissed.

MR.CARRRINGTON: May I interrupt there, if the Court please? Though there has been reference in the record to two individuals,

the complaint is against Mr. Frick, who is one individual, and the other complaint is against an unincorporated association, an individual for it having made an affidavit. And there was only one individual complained of as an individual and the other is an unincorporated association, I believe.

THE COURT: Yes, the unincorporated association will also be dismissed. The very evolution of the pleadings in the case may have taken care of all of that. I am just saying that if it does seem desirable that they should be dismissed expressly at this time, that order will be made.

So far as the Macon Club is concerned, I would not be inclined to dismiss that defendant.

MR. CARRINGTON: All right, may I be heard a moment on that or not?

THE COURT: Yes.

MR. CARRINGTON: It was a Georgia corporation that has been dissolved. The dissolution was several months before the institution of this suit. The only service on it on this cause of action, not the antitrust, but on an alleged breach of contract, common law cause of action, was on a man who never was an officer of that corporation but had been its attorney; that as a dissolved corporation perhaps could be sued; I have no doubt that it could be sued (although I do not know the details of Georgia law) in accordance with the terms of Georgia law in Georgia. But it is not a corporation that at the time of this suit is or could be in this district. It was not any entity that existed at that time and was in this district at that time.

It would have to be sued on a common law cause of action, there being no alleged diversity nor allegations to make it proper, anything other than the antitrust --

THE COURT: Well, let me interrupt there. It's not tied in at all, now that you refresh my memory, in the antitrust part of this lawsuit.

MR. CARRINGTON: Yes. It was one of the chief defendants. The only contract that Mr. Hale had, as a working agreement under which he could get from other professional teams his players, was a working agreement with the Macon Dodgers, which is now dissolved. It was a defendant in the antitrust litigation.

Now, the Macon Dodgers contract is attached to the complaint. The complaint on a breach of contract, however, is not on that contract. It is a contract as of a different date. It is not stated whether it is in writing. The Macon Dodgers contract became effective at the beginning of the baseball season of 1956 (I am telling you what the pleading shows) and the alleged contract, breach of which is now left in this case, is alleged to have been entered into by Mr. Hale in June 1956. The original complaint says that that contract was entered into by all of the defendants except Mr. Frick. The defendants at that time were the National League (that unincorporated association), the Brooklyn Dodgers (the Los Angeles Club, which are one in the same) and the Macon Dodgers.

The second amended complaint says that the contract was with Los Angeles and it alone. Now that's the one that is the last one.

THE COURT: Well, that's the one that is last. I recall a brief that you presented previously contending that this Macon Club corporation was now dead by dissolution and couldn't be sued for antitrust violation.

MR. CARRINGTON: No, my argument on the Macon Dodgers motion is that a suit against them could not be maintained because of course, it was not doing business or transacting business in Texas at the time this suit was filed. That's the memorandum that we have here for it. And it's a separate memorandum and was filed on May 19. But that is an immaterial thing on the question of venue as to the antitrust because all the antitrust is out of the case.

Now we have this common law cause of action which under the second amended complaint is said to be based on a contract dated in June of 1956, entered into between Mr. Hale and the Los Angeles Dodgers and it is said, without saying who, that the defendants breached that contract.

Now the Macon Dodgers are not named as a defendant in that second amended complaint. For that reason, for the reason that this is a common law cause of action with a foreign corporation without anybody here to serve --

THE COURT: Well, if it's not named in the second amended complaint, it seems to me that they go out by implied dismissal.

MR. CARRINGTON: That's what I thought. That's exactly what I thought. So that will dispose of that.

All right, that disposes of the Macon Dodgers?

MR. CASTLEDINE: (Nods head up and down).

MR. CARRINGTON: I thought that would be agreed.

Shall I speak as to the other defendants?

THE COURT: Now, I do not have in mind now to make any ruling on this question of venue. The way I see it is, if the plaintiff appeals this case and the outcome is a holding by the appellate court that he states a proper cause of action in his pleading and that it should be tried on the merits, then I think you should be entitled to pick up on the venue question where we leave off today.

MR. CARRINGTON: As to the antitrust action, I am in complete accord. Of course, that's the proper approach. We have left a cause of action, not for the million dollars, or so, but for $12,000 for breach of a contract that is alleged, dated in June, 1956, between Mr. Hale and the Los Angeles Dodgers.

THE COURT: Well, I don't know how they could get extraterritorial service.

MR. CARRINGTON: That's exactly the point. And lack of jurisdiction of the person on a common law cause of action as to all of these defendants entitles them to dismissal of that common law action.

THE COURT: Do you know of any theory on which you could get extraterritorial service?

MR. CASTLEDINE: No, sir.

THE COURT: On that claim?

MR. CASTLEDINE: No, sir, other than this: I was proceeding on this idea that where there is more than one cause of action, that you can bring in -- that you can serve -- in other

words, to give complete relief and there is more than one cause of action, that you are permitted to bring in under that theory. That's where I was proceeding under, Your Honor, the theory of legal service.

THE COURT: They have cited some cases which they said are to the contrary. Now I didn't read them. It just seemed to me that you couldn't do it. Did you read those cases?

MR. CASTLEDINE: No, sir.

THE COURT: Well, do they definitely hold what you claim?

MR. CARRINGTON: Yes, sir, undebatably, and there is no case to the contrary.

THE COURT: It seems sound to me.

Well, then the dismissal will include that breach of contract branch of the plaintiffs' complaint also, on the ground that no personal jurisdiction has been obtained on the defendant or defendants.

Now, is there anything more now?

MR. CARRINGTON: As I understand it, that completely disposes of the case and a final decree can be entered with the separate determinations of each of the cause of actions the Court has announced.

Mr. Sloman has mentioned two situations to me. And I think what I have said is correct. I better think out loud with the Court, if I may a minute. The Yankees, of the 16 clubs, are the only one that's a partnership. There is no jurisdiction over the person of that partnership by extraterritorial process and, therefore, the order that the Court is disposed to make on the common law cause of action as to it, as well as to that partnership, as

well as the corporation, is correct and, therefore, they need not have any special treatment, although there is a different ground with the same result, as to the Yankees. And they are out in the antitrust. All of them are out on the antitrust.

THE COURT: Could you sustain extraterritorial service against the partners any more than you could against the corporation?

MR. CARRINGTON: That's exactly right. And it's just a different reason for the same result.

Now I have the last one, and I think what we have said is exactly right. The Milwaukee club has never been named as a defendant, as it sees it. It has filed a motion stating that. And the process upon it does not purport to show -- the process of the Marshal who served it up in Milwaukee does not purport to show service upon the defendant that is purported to be named in this complaint. There is no process over the person -- there is no jurisdiction over the person of that additional party that has appeared here. The 16th owner of one of the major league teams, since it has not been named in the complaint, is not a party to the complaint but was served and it has filed a motion that there is no jurisdiction over the person and the same disposition that has been made as to all of the others is proper as to it and I didn't think it was necessary to mention the different reason for the same result as to Milwaukee, as well as the Yankees.

THE COURT: Let me see now; so far as the jurisdiction of the court is concerned, I seem to recall that there was a point made to the effect that this defendant or this company you are

talking about has got "Milwaukee" on the end of the name -- is that the one you are talking about?

MR. CARRINGTON: Is that the only difference? I think there may be some other difference in the name. But it is a question of name, yes, sir.

THE COURT: Well, that's the only difference, isn't it?

MR. CARRINGTON: Yes, but the defendant, at any rate, is a corporation. No jurisdiction of it has been had, even if that motion isn't any good, because it's a foreign corporation on which a good process could not be had on it, anymore than any of these other corporate defendants on the common law cause of action.

THE COURT: Yes, that would be true. I did want to make it clear that I wasn't very strongly interested, so far as the misnomer angle was concerned. I didn't want to be straining any such point.

MR. CARRINGTON: At any rate, it has filed a motion. It is good for a different reason than the misnomer. And therefore, I urge for it, too, the same order be had so we may have a final judgment.

THE COURT: You mean as to the common law cause of action?

MR. CARRINGTON: Yes, sir, talking about the common law cause of action. Now, it is dismissed also -- everybody is dismissed as to the antitrust.

THE COURT: Yes.

MR. CARRINGTON: That's right.

THE COURT: Let me say before we part company that there was such a deluge of motions in this case that there may still be

some loose ends hanging out that have eluded the recollection of all of us; and if so, of course there will be no impediment to getting things of that sort worked out in settling finally the orders to be entered in the suit.

* * *

CERTIFICATE

I, Vincent G. Meyer, official court reporter of said court, certify that the above and foregoing 14 pages constitute a full, true and correct transcript of the Court's comments and colloquy contained herein, had in the captioned numbered cause, at Amarillo Texas, on Friday, September 19, 1958.

Vincent G. Meyer
OFFICIAL COURT REPORTER