

Case No. 14-15139

**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

Honorable Ronald M. Whyte, Presiding, Case No. 5:13-cv-02787-RMW

**OPPOSITION TO PLAINTIFFS’/APPELLANTS’ MOTION TO
EXPEDITE BRIEFING AND HEARING ON APPEAL**

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I. INTRODUCTION

Plaintiffs/Appellants City of San José, City of San José as Successor Agency to the Redevelopment Agency of the City of San José, and the San José Diridon Development Authority (collectively “Appellants” or “San José”) made no previous effort to expedite resolution of this dispute and there is no basis to do so now. Indeed nothing material has changed except that San José’s claims were dismissed by the District Court. Accordingly, this Court should reject San José’s sudden request to expedite this appeal.

Contrary to San José’s assertions, the legal issues in this appeal do not present a matter of public importance requiring expedited treatment. Simply put, San José is seeking to undo nearly a century of Supreme Court precedent holding that the business of baseball is exempt from the antitrust laws. In its motion, San José merely attempts to manufacture a sense of urgency out of its long-standing parochial interest in obtaining a Major League Baseball club.

San José makes no showing that it will suffer irreparable harm as a result of the expiration of the purported Option Agreement during the pendency of this appeal. The Option Agreement is not an agreement for the Oakland Athletics baseball club (the “Athletics”) to relocate to San José. Rather, the Option Agreement is an invalid contract between San José and the Athletics that purports to give the Athletics an option to buy at a discount only some of the parcels of land

the club would need to build a new stadium. San José will not suffer any harm if the Option Agreement expires. Indeed, the harm that San José alleges might occur is purely speculative and, in any event, financially compensable.

Finally, it is pure fiction that the antitrust exemption is the only obstacle to San José becoming the home of the Athletics. In the unlikely event that San José succeeds in a reversal of the exemption, the relocation rules of the Office of the Commissioner of Baseball d/b/a Major League Baseball (“MLB”) would have to be assessed under the antitrust laws. Further, as Judge Whyte observed, the relocation of the Athletics to San José “depends on an assumption that future events will take place, including that (1) the A’s choose to make the move and exercise the Option Agreement; (2) the City can legally perform the Option Agreement; and (3) the A’s can obtain financing, regulatory approvals, and ultimately build the stadium.” Declaration of Philip L. Gregory, Exhibit C (Order) at 18. As a practical matter, it would be virtually impossible that San José’s desired result—for the Athletics to exercise their purported option under the Option Agreement and relocate to San José—could occur by November, 2014.

For these reasons, and as further demonstrated below, San José’s motion should be denied.

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II. ARGUMENT

A. San José Has Acted Inconsistently With a Need to Expedite This Appeal

There is nothing new about San José’s interest in hosting the Athletics— San José has expressed this interest for approximately a decade. Compl. at ¶¶ 67-68. Since the Athletics first began exploring relocation to San José, MLB has assisted the club and has exercised its right to assess the club’s relocation proposal according to established internal rules and procedures. As Judge Whyte recognized, “it is within MLB’s authority to decide” whether it “ultimately approves or denies the relocation request.” Declaration of Philip L. Gregory, Exhibit C, Order at 25. MLB has declined the Athletics’ proposal to relocate to San José.

San José has not made serious efforts to expedite the adjudication of its claims in the past. San José first commenced this litigation nineteen months after the execution of the Option Agreement. At that time, it did not move for a temporary restraining order or a preliminary injunction. *See* Declaration of John Keker (“Keker Decl.”), Exhibit 1, District Court docket. Once the trial court dismissed San José’s antitrust and unfair competition claims in its October 11, 2013 order, San José did not dismiss its two remaining state claims in order to take an immediate appeal. *Id.* To the contrary, San José argued that the District Court

should keep the state claims as a matter of supplemental jurisdiction.¹ See Keker Decl., Exhibit 2, Supplemental Joint Case Management Statement at 16-17 (Dec. 6, 2013). Finally, after Judgment was entered on January 3, 2014, San José waited twenty days to file its notice of appeal and then waited nearly a week to seek expedited treatment of the appeal. Keker Decl., Exhibit 3 (Judgment) and Exhibit 4 (Notice of Appeal). San José’s conduct is flatly inconsistent with its current demand to expedite this appeal. *See Nader v. Land*, 115 F. App’x 804, 806 (6th Cir. 2004) (holding that expedited appeal was not warranted “where the appellants have delayed such a long time for no stated or apparent reason”).

Further, San José fails to mention in its motion that the legal validity of the Option Agreement and the underlying environmental qualifications for the subject land have been challenged in a more than two-year-old state court proceeding. *See* Compl. at ¶ 80. In direct contradiction with its position here, San José has repeatedly delayed those state court proceedings. For example, San José continues to propose that the court suspend preparation of the record and defer setting a schedule for briefing and trial. *See* Keker Decl., Exhibit 5, Status Report for Case Management Conference at 2, 3-4, *Stand for San José v. City of San José*, Nos. 111-CV-214196, 113-CV-250372 (Cal. Super. Ct. Santa Clara Dec. 16, 2013).

¹ San José has since refiled those claims in Santa Cruz Superior Court. *City of San José v. Office of the Commissioner of Baseball*, No. CISCV178546 (Cal. Super. Ct. Santa Cruz filed Jan. 23, 2014).

San José's conduct demonstrates that it has no genuine need to expedite this appeal. To the contrary, all of the purported justifications San José has proffered are artificial and unwarranted.

B. No Legal Basis Exists to Expedite This Appeal

To be entitled to expedition under Circuit Local Rule 27-12, San José is required to demonstrate that absent expedited treatment, irreparable harm may occur or its appeal may become moot. It has not satisfied this requirement, and cannot do so.

1. San José's Parochial Interest in Hosting a Major League Baseball Club Does Not Warrant Expedited Review of its Challenge to Professional Baseball's Antitrust Exemption

San José attempts to characterize professional baseball's antitrust exemption as resting entirely on a single 1922 Supreme Court opinion and on the notion that professional baseball is not involved in interstate commerce. Mot. at 2-3, 10-11. This is a gross mischaracterization. The exemption is a nearly century-old policy based upon Congressional intent and *stare decisis*, which the Supreme Court has reaffirmed no fewer than six times since its 1922 opinion in *Fed. Baseball Club of Balt., Inc. v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200 (1922).² See

² San José's characterization of the exemption as resting upon a misconception of whether professional baseball is involved in interstate commerce is equally disingenuous. The Supreme Court expressly recognized in 1972 that "[p]rofessional baseball is a business and it is engaged in interstate commerce," but nonetheless reaffirmed the exemption in deference to Congress's intent not to

Flood v. Kuhn, 407 U.S. 258, 285 (1972); *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953); *see also Haywood v. Nat'l Basketball Ass'n*, 401 U.S. 1204, 1205-06 (1971); *Radovich v. Nat'l Football League*, 348 U.S. 445, 451-52 (1957); *United States v. Int'l Boxing Club*, 238 U.S. 236, 241-42 (1955); *United States v. Shubert*, 348 U.S. 222, 230 (1955). It has also been repeatedly upheld by every Circuit Court to consider it, including the Ninth Circuit,³ as well as the vast majority of District Courts and state courts.⁴

As the Supreme Court recognized in 1953, “The business [of baseball] has thus been left for thirty [now over ninety] years to develop, on the understanding that it was not subject to existing antitrust legislation.” *Toolson*, 346 U.S. at 357.

regulate professional baseball and as a matter of *stare decisis*. *Flood v. Kuhn*, 407 U.S. 258, 282, 283-85 (1972).

³ *See Portland Baseball Club, Inc. v. Balt. Baseball Club, Inc.*, 282 F.2d 680 (9th Cir. 1960); *Portland Baseball Club, Inc. v. Kuhn*, 368 F. Supp. 1004, 1008 (D. Or. 1971), *aff'd* 491 F.2d 1101, 1103 (9th Cir. 1974); *see also Major League Baseball v. Crist*, 331 F.3d 1177, 1183 (11th Cir. 2003); *Prof'l Baseball Sch. & Clubs, Inc. v. Kuhn*, 693 F.2d 1085, 1085-86 (11th Cir. 1982); *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 541 (7th Cir. 1978); *Salerno v. Am. League of Prof'l Baseball Clubs*, 429 F.2d 1003, 1005 (2d Cir. 1970); *Triple-A Baseball Club Ass'n v. Ne. Baseball, Inc.*, 832 F.2d 214, 216 n.1 (1st Cir. 1987).

⁴ *See, e.g., Major League Baseball v. Butterworth*, 181 F. Supp. 2d 1316, 1324 (N.D. Fla. 2001); *Morsani v. Major League Baseball*, 79 F. Supp. 2d 1331, 1335 n.12 (M.D. Fla. 1999); *McCoy v. Major League Baseball*, 911 F. Supp. 454, 457 (W.D. Wash. 1995); *New Orleans Pelicans Baseball, Inc. v. Nat'l Ass'n of Prof'l Baseball Leagues*, No. 93-253, 1994 U.S. Dist. LEXIS 21468, at *28 (E.D. La. Mar. 1, 1994); *Hale v. Brooklyn Baseball Club, Inc.*, No. 1294 (N.D. Tex. Sept. 19, 1958); *Niemiec v. Seattle Rainier Baseball Club*, 67 F. Supp. 705, 712 (W.D. Wash. 1946); *Minn. Twins P'ship v. State*, 592 N.W.2d 847, 854 (Minn. 1999); *Wis. v. Milwaukee Braves, Inc.*, 31 Wis. 2d 699, 730-32 (Wis. 1966).

San José seeks a reversal of this long-standing and repeatedly reaffirmed policy, and therefore this Court should proceed with deliberateness and care, and not according to the unwarranted accelerated schedule San José proposes.

Further, the remedy San José hopes for is not properly available from any court; “the remedy, if any is indicated, is for congressional, and not judicial, action.” *Flood*, 407 U.S. at 284-85, *see also Portland Baseball Club, Inc. v. Balt. Baseball Club, Inc.*, 282 F.2d 680 (9th Cir. 1960) (“if professional baseball is to be brought within the pale of federal antitrust laws, Congress must do it.”). San José refers to the supposedly “antiquated nature” of baseball’s antitrust exemption, but even the Supreme Court has held that “[i]f there is any inconsistency or illogic in [the exemption], it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not by this Court.” *Flood*, 407 U.S. at 284.⁵

2. The Expiration of the Purported Option Agreement Does Not Provide Good Cause to Expedite the Appeal

San José does not, and cannot, identify any irreparable harm that it would suffer if the purported Option Agreement expires during the pendency of the appeal. San José will suffer no injury at all, much less irreparable harm, from

⁵ Nor is such a reversal likely to occur. As the District Court correctly observed, Congressional action since the *Flood* decision has only “provide[d] further support for the Court's holding in *Flood* that Congress does not intend to change the longstanding antitrust exemption for ‘the business of baseball’ with respect to franchise relocation issues.” Order at 17.

pursuing its appeal on a normal schedule. All the harm San José claims it will suffer is purely speculative, and in any event could be compensated financially.

San José’s own description of its potential injury is admittedly speculative:

After the expiration of the current Option Agreement in November 2014, the City of San José *may not* be able to put together *the same option package* as set forth in the *current* Option Agreement, and the *current opportunity* for successfully relocating the Athletics from Oakland to San José will be lost....

Mot. at 6 (emphasis added).⁶ In other words, San José acknowledges the possibility of a new agreement, and therefore the harm is not irreparable. Such “[s]peculative injury cannot be the basis for a finding of irreparable harm.”

Solidus Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations, Inc.), 502 F.3d 1086, 1098 (9th Cir. 2007) (citing *Goldie’s Bookstore, Inc. v. Super. Ct.*, 739 F.2d 466, 472 (9th Cir. 1984)).

The Option Agreement is not, as San José suggests, an agreement for the Athletics to relocate to San José. Motion 1; Gregory Decl. Ex. B (the “Option Agreement”). Instead, it is merely an agreement to sell some, but not all, parcels of land on which a ballpark *could* be built by the Athletics.⁷ *Id.* Even if the

⁶ Judge Whyte recognized that San José’s allegation of injury was purely speculative. He determined that they failed to allege a cognizable injury to support a finding of standing under section 4 of the Clayton Act, as the alleged economic injury “has not yet occurred, and depends on an assumption that future events will take place” Order at 18.

⁷ Notwithstanding San José’s claim in its Motion to Expedite that it would partner with the Athletics to build the ballpark, a city resolution adopted by San José

Athletics decided to execute the option—it is the Athletics’ option, not San José’s—the team would still not be ready to relocate. The team’s ability to relocate to San José would depend on, among many other things, its ability to obtain additional parcels of land not owned by San José and to construct a ballpark without any public funds. In other words, San Jose is entirely incorrect when it suggests that MLB’s actions are solely responsible for its inability to induce a team to relocate and this Court can somehow prevent irreparable harm by rushing this appeal. Any alleged injury potentially suffered by San José due to the expiration of the Option Agreement is therefore far too speculative and remote to support a finding of irreparable harm.

Furthermore, if any form of injury to San José actually were to occur, it would be capable of monetary compensation and thus would not irreparable. *L.A. Mem’l Coliseum Comm’n v. Nat’l Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980) (holding that the Coliseum Commission’s “lost revenues due to its failure to acquire an NFL team” was “monetary injury . . . not normally considered irreparable”); *see also Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991) (“Economic injury alone does not support a finding of irreparable harm.”). Even if the Option Agreement lapses and

incorporated into the Option Agreement expressly forbids such cooperation in the construction, operation, or maintenance of a ballpark in San José. Gregory Decl., Exhibit B, Option Agreement, Ex. C at ¶¶ 3-5.

San José is unable to put together a similar option package, any potential harm suffered from the mere loss of a contract is also not irreparable. *Big Country Foods, Inc. v. Bd. of Educ.*, 868 F.2d 1085, 1088 (9th Cir. 1989); *CFNR Operating Co. v. City of Am. Canyon*, 282 F. Supp. 2d 1114, 1119 (N.D. Cal. 2003) (“potential harm from lost contracts and revenues . . . does not constitute irreparable injury”).

In addition, the purported Option Agreement is not a valid contract because it was entered into in contravention of state law. *See* Cal. Health & Safety Code §§ 34162, 34167.5. The validity of the Option Agreement will be the subject of San José’s state court action against MLB, and is currently the subject of the *Stand for San José* litigation, which, as stated above and directly contrary to its position here, San José has repeatedly delayed and which has been pending for over two years. *See Stand for San José v. City of San José*, No. 111-CV-214196 (Cal. Super. Ct. Santa Clara filed Dec. 2, 2011); *City of San José v. Office of the Commissioner of Baseball*, No. CISCV178546 (Cal. Super. Ct. Santa Cruz filed Jan. 23, 2014). The expiration of this legally invalid agreement cannot possibly provide the basis for expediting the schedule of this appeal.

Finally, given San José’s belated bid for expedited treatment, the briefing schedule San José proposes would not achieve the result it purportedly seeks: for the Athletics to “be permitted to exercise the option set forth in the Option

Agreement” prior to November 8, 2014. Mot. at 9. Even if San José were to succeed on this appeal, the case would be subject to MLB’s right to seek review by the Supreme Court. And, even if San José actually succeeded in obtaining a reversal of professional baseball’s nearly century-old antitrust exemption, this Court has held that the relocation rules of professional sports leagues can be facially valid. See *Nat’l Basketball Ass’n v. SDC Basketball Club, Inc.*, 815 F.2d 562, 568 (9th Cir. 1987); *L.A. Mem’l Coliseum Comm’n v. Nat’l Football League*, 726 F.2d 1381, 1398 (9th Cir. 1984). Thus, even after Supreme Court review, the case would be remanded for further proceedings on the merits—including the validity of MLB’s relocation rules under the antitrust laws. It is virtually impossible that all of this could be accomplished by November, 2014, even if that date were meaningful.

The expiration of the purported Option Agreement, therefore, does not constitute good cause to expedite the appeal.

3. Expedited Treatment is not Warranted Under 28 USC § 1657

San José seeks to rely on 28 USC § 1657 for the faulty proposition that this case warrants priority treatment because “[t]his appeal relates to a purely federal question.” Mot. at 10. First, Section 1657 provides for priority in the order in which qualifying cases are heard, not for expedited briefing schedules. 28 U.S.C. § 1657 (“[E]ach court of the United States shall determine the order in which civil

actions are heard and determined”); *see also* Cir. R. 34-3. To obtain priority under Section 1657, San José must still make a showing of good cause for expedition under Circuit Rule 27-12. Cir. R. 34-3. As described above, San José has utterly failed to make that showing. Moreover, simply because a court has federal question jurisdiction does not mean that priority treatment of an appeal is warranted. Section 1657 applies where, “‘good cause’ is shown if a *right* under the Constitution of the United States or a Federal Statute ... would be maintained in a factual context that indicates that a request for expedited consideration has merit.” 28 U.S.C. § 1657(a) (emphasis added). San José identifies no existing federal right—either constitutional or statutory—that it risks losing during the pendency of the appeal. The mere fact that the case arises under a federal statute does not, alone, provide good cause for priority, much less expedited treatment.

III. CONCLUSION

For the foregoing reasons, Appellants’ Motion to Expedite Briefing and Hearing on Appeal should be denied.

Respectfully submitted,

DATED: February 5, 2014

KEKER & VAN NEST LLP

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9th Circuit Case Number(s) 14-15139

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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.

Signature (use "s/" format) /s/ Roseann Cirelli

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**IN THE UNITED STATES COURT OF APPEALS
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**CITY OF SAN JOSÉ; CITY OF SAN JOSÉ AS SUCCESSOR
AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF
SAN JOSÉ; and THE SAN JOSÉ DIRIDON
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Plaintiffs and Appellants,

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**OFFICE OF THE COMMISSIONER OF BASEBALL, an
unincorporated association doing business as Major League Baseball;
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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

**DECLARATION OF JOHN W. KEKER IN SUPPORT OF OPPOSITION TO MOTION
TO EXPEDITE BRIEFING AND HEARING ON APPEAL**

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I, JOHN W. KEKER, declare and state:

1. I am an attorney licensed to practice law in the State of California and a partner at the law firm of Keker & Van Nest LLP, counsel for Defendants/Appellees Office of the Commissioner of Baseball, an unincorporated association doing business as Major League Baseball, and Allan Huber “Bud” Selig, in the above-captioned action.

2. I have knowledge of the facts set forth herein, and if called upon to testify as a witness thereto, I could do so competently under oath.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the District Court docket in this matter as of February 4, 2014.

4. Attached hereto as **Exhibit 2** is a true and correct copy of the Supplemental Joint Case Management Conference Statement, filed in this matter on December 6, 2013, Dkt. No. 47.

5. Attached hereto as **Exhibit 3** is a true and correct copy of the District Court’s January 3, 2014 Judgment in this matter, Dkt. No. 52.

6. Attached hereto as **Exhibit 4** is a true and correct copy of the Notice of Appeal of Plaintiffs in this matter, Dkt. No. 53.

7. Attached hereto as **Exhibit 5** is a true and correct copy of the City of San José’s Status Report for Case Management Conference filed on December 16,

2013 in *Stand for San José v. City of San José*, Nos. 111-CV-214196, 113-CV-250372 (Cal. Super. Ct. Santa Clara Dec. 16, 2013).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 5, 2014 in San Francisco, California.

/s/ John W. Keke

JOHN W. KEKER

9th Circuit Case Number(s) 14-15139

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CERTIFICATE OF SERVICE

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I hereby certify that 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 on (date) Feb 5, 2014 .

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.

Signature (use "s/" format) /s/ Roseann Cirelli

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that 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 on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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Signature (use "s/" format)

[Empty box for signature]

EXHIBIT 1

**U.S. District Court
California Northern District (San Jose)
CIVIL DOCKET FOR CASE #: 5:13-cv-02787-RMW**

City of San Jose et al v. Office of the Commissioner of Baseball
et al

Assigned to: Hon. Ronald M. Whyte
Referred to: Magistrate Judge Howard R. Lloyd
Cause: 15:1 Antitrust Litigation

Date Filed: 06/18/2013
Date Terminated: 01/07/2014
Jury Demand: Plaintiff
Nature of Suit: 410 Anti-Trust
Jurisdiction: Federal Question

Plaintiff

City of San Jose

represented by **Joseph W. Cotchett**
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Plaintiff

**City of San Jose as Successor Agency to
the Redevelopment Agency of the City
of San Jose**

represented by **Joseph W. Cotchett**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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Philip Lawrence Gregory
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Plaintiff

**The San Jose Diridon Development
Authority**

represented by **Joseph W. Cotchett**
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Philip Lawrence Gregory
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V.

Defendant

Office of the Commissioner of Baseball
*an unincorporated association doing
business as Major League Baseball*

represented by **Bradley I Ruskin**
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Defendant

Allan Huber "Bud" Selig

represented by **Bradley I Ruskin**
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Thomas Edward Gorman
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Date Filed	#	Docket Text
06/18/2013	<u>1</u>	COMPLAINT against Office of the Commissioner of Baseball, Allan Huber "Bud" Selig., Summons issued., Jury demand (Filing fee \$ 400, receipt number 54611013770). Filed by City of San Jose as Successor Agency to the Redevelopment Agency of the City of San Jose, City of San Jose, The San Jose Diridon Development Authority. (dhmS, COURT STAFF) (OVERSIZED DOCUMENT (Filed on 6/18/2013) Modified on 7/9/2013 (bwS, COURT STAFF). (bwS, COURT STAFF). (Additional attachment(s) added on 9/11/2013: # <u>1</u> Civil Cover Sheet) (bwS, COURT STAFF). (Entered: 06/18/2013)
06/18/2013	<u>2</u>	Summons Issued as to Office of the Commissioner of Baseball. (dhmS, COURT STAFF) (Filed on 6/18/2013) (Entered: 06/18/2013)
06/18/2013	<u>3</u>	Summons Issued as to Allan Huber "Bud" Selig. (dhmS, COURT STAFF) (Filed on 6/18/2013) (Entered: 06/18/2013)
06/18/2013	<u>4</u>	ADR SCHEDULING ORDER: Case Management Statement due by 9/10/2013. Case Management Conference set for 9/17/2013 01:30 PM in Courtroom 2, 5th Floor, San Jose. (Attachments: # <u>1</u> Standing Order)(dhmS, COURT STAFF) (Filed on 6/18/2013) (Entered: 06/18/2013)
06/18/2013		CASE DESIGNATED for Electronic Filing. (dhmS, COURT STAFF) (Filed on 6/18/2013) (Entered: 06/18/2013)
07/01/2013	<u>5</u>	CERTIFICATE OF SERVICE by City of San Jose, City of San Jose as Successor Agency to the Redevelopment Agency of the City of San Jose, The San Jose Diridon Development Authority. SUMMONS Executed. Office of the Commissioner of Baseball served on 6/21/2013, answer due 7/12/2013; Allan Huber "Bud" Selig served on 6/21/2013, answer due 7/12/2013. (Murphy, Anne Marie) (Filed on 7/1/2013) Modified on 7/2/2013 incorrect event type selected when posting document (dhmS, COURT STAFF). (Entered: 07/01/2013)
07/03/2013	<u>6</u>	NOTICE of Appearance by John Watkins Kecker (Keker, John) (Filed on 7/3/2013) (Entered: 07/03/2013)
07/03/2013	<u>7</u>	Corporate Disclosure Statement under Rule 7.1 by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig. (Keker, John) (Filed on 7/3/2013) Modified text on 7/8/2013 (dhmS, COURT STAFF). (Entered: 07/03/2013)
07/03/2013	<u>8</u>	NOTICE of Appearance by Scott P. Cooper (Cooper, Scott) (Filed on 7/3/2013) (Entered: 07/03/2013)
07/03/2013	<u>9</u>	Certification of Interested Entities under Civil Local Rule 3-16 by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig. (Keker, John) (Filed on 7/3/2013) Modified text on 7/8/2013 (dhmS, COURT STAFF). (Entered: 07/03/2013)
07/03/2013	<u>10</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig.. (Keker, John) (Filed on 7/3/2013) (Entered: 07/03/2013)
07/03/2013	<u>11</u>	Application for admission of attorney Bradley I Ruskin for leave to appear in Pro Hac Vice; (Proposed) Order (Filing fee \$ 305, receipt number 0971-7824502.) filed by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig. (Cooper, Scott) (Filed on 7/3/2013) Modified on 7/9/2013 (bwS, COURT STAFF). (Entered: 07/03/2013)
07/03/2013	<u>12</u>	NOTICE of Appearance by Sarah Kroll-Rosenbaum (Kroll-Rosenbaum, Sarah) (Filed on 7/3/2013) (Entered: 07/03/2013)
07/03/2013	<u>13</u>	NOTICE of Appearance by Paula Lenore Blizzard (Blizzard, Paula) (Filed on 7/3/2013) (Entered: 07/03/2013)
07/03/2013	<u>14</u>	NOTICE of Appearance by Jennifer Lynn Roche (Roche, Jennifer) (Filed on 7/3/2013) (Entered: 07/03/2013)
07/03/2013	<u>15</u>	NOTICE of Appearance by Thomas Edward Gorman (Gorman, Thomas) (Filed on 7/3/2013) (Entered: 07/03/2013)

07/03/2013	<u>16</u>	NOTICE of Appearance by Shawn Scott Ledingham, Jr (Ledingham, Shawn) (Filed on 7/3/2013) (Entered: 07/03/2013)
07/03/2013	<u>17</u>	CERTIFICATE OF SERVICE by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig re <u>11</u> MOTION for leave to appear in Pro Hac Vice <i>Bradley I. Ruskin</i> (Filing fee \$ 305, receipt number 0971-7824502.), <u>8</u> Notice of Appearance, <u>14</u> Notice of Appearance, <u>12</u> Notice of Appearance, <u>16</u> Notice of Appearance (Ledingham, Shawn) (Filed on 7/3/2013) (Entered: 07/03/2013)
07/08/2013	<u>18</u>	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (pmc, COURT STAFF) (Filed on 7/8/2013) (Entered: 07/08/2013)
07/09/2013	<u>19</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Ronald M. Whyte for all further proceedings and Magistrate Judge Howard R. Lloyd for all discovery matters. Signed by The Executive Committee on 7/9/2013. (gmS,) (Filed on 7/9/2013) (Entered: 07/09/2013)
07/09/2013	<u>20</u>	CLERKS NOTICE re: Failure to E-File and/or Failure to Register as an E-Filer On June 18, 2013, counsel for Plaintiffs filed a complaint and exhibits 1-34 manually, on paper. This case has been designated for electronic filing, pursuant to Local Rule 5-4 and General Order 45. The above mentioned paper document has been filed and docketed. However, General Order 45 provides at Section III that cases assigned to judges who participate in the e-filing program shall be presumptively designated as e-filing cases. Therefore, counsel for plaintiffs should submit the complaint and exhibits, in PDF format within 10 days, as an attachment in an e-mail message directed to the judges chamber's "PDF" email box listed at http://ecf.cand.uscourts.gov (bwS, COURT STAFF) (Filed on 7/9/2013) (Entered: 07/09/2013)
07/09/2013		Remarks: Clerk mailed Pacer Registration forms to attorneys of record who were not electronically notified of filing. (bwS, COURT STAFF) (Filed on 7/9/2013) (Entered: 07/09/2013)
07/09/2013		CASE DESIGNATED for Electronic Filing. (bwS, COURT STAFF) (Filed on 7/9/2013) (Entered: 07/09/2013)
07/10/2013	<u>21</u>	STIPULATION re Service and Extension of Time to Respond to Complaint re <u>1</u> filed by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig. (Cooper, Scott) (Filed on 7/10/2013) Modified on 7/11/2013 (bwS, COURT STAFF). (Entered: 07/10/2013)
07/22/2013	<u>22</u>	CLERKS NOTICE OF SETTING CASE MANAGEMENT CONFERENCE: Case Management Statement due by 9/13/2013. Case Management Conference set for 9/20/2013 10:30 AM in Courtroom 6, 4th Floor, San Jose. *** This is a text only docket entry, there is no document associated with this notice. *** (jg, COURT STAFF) (Filed on 7/22/2013) (Entered: 07/22/2013)
07/31/2013	<u>23</u>	STIPULATION and PROPOSED ORDER Re Briefing Schedule and Continuance of Case Management Conference filed by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig. (Keker, John) (Filed on 7/31/2013) Modified on 7/31/2013 (bwS, COURT STAFF). (Entered: 07/31/2013)
08/06/2013	<u>24</u>	ORDER by Judge Ronald M. Whyte Granting <u>11</u> Motion for Pro Hac Vice for Attorney Bradley I. Ruskin. (jg, COURT STAFF) (Filed on 8/6/2013) (Entered: 08/06/2013)
08/07/2013	<u>25</u>	MOTION TO DISMISS PLAINTIFFS COMPLAINT UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) filed by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig. Motion Hearing set for 10/4/2013 09:00 AM in Courtroom 6, 4th Floor, San Jose before Hon. Ronald M. Whyte. Responses due by 8/21/2013. Replies due by 8/28/2013. (Attachments: # <u>1</u> (Proposed) Order) (Keker, John) (Filed on 8/7/2013) Text modified on 8/8/2013 (bw, COURT STAFF). (Entered: 08/07/2013)
08/07/2013	<u>26</u>	REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS COMPLAINT re <u>25</u> filed by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig. (Attachments: # <u>1</u> Exhibit-A, # <u>2</u> Exhibit-B, # <u>3</u> Exhibit-C, # <u>4</u> Exhibit-D, # <u>5</u> Exhibit-E, # <u>6</u> (Proposed) Order) (Keker, John)

		(Filed on 8/7/2013) Text modified on 8/7/2013 (fff, COURT STAFF). (Entered: 08/07/2013)
08/07/2013	<u>27</u>	STIPULATION AND ORDER <u>23</u> Re: Briefing Schedule and Continuance of Case Management Conference. Set/Reset Deadlines as to Case Management Conference set for 10/4/2013 10:30 AM in Courtroom 6, 4th Floor, San Jose. Signed by Judge Ronald M. Whyte on 8/7/13. (jg, COURT STAFF) (Filed on 8/7/2013) (Entered: 08/07/2013)
09/06/2013	<u>28</u>	MEMORANDUM OF POINTS AND AUTHORITIES OF PLAINTIFFS IN OPPOSITION TO DEFENDANTS MOTION TO DISMISS PLAINTIFFS COMPLAINT UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) Hearing re <u>25</u> filed by City of San Jose, City of San Jose as Successor Agency to the Redevelopment Agency of the City of San Jose, The San Jose Diridon Development Authority. (Attachments: # <u>1</u> (Proposed) Order DENYING DEFENDANTS MOTION TO DISMISS AND REQUEST FOR JUDICIAL NOTICE)(Gregory, Philip) (Filed on 9/6/2013) Modified on 9/9/2013 (bw, COURT STAFF). (Entered: 09/06/2013)
09/06/2013	<u>29</u>	MEMORANDUM OF POINTS AND AUTHORITIES OF PLAINTIFFS IN OPPOSITION TO DEFENDANTS REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS COMPLAINT re <u>28</u> by City of San Jose, City of San Jose as Successor Agency to the Redevelopment Agency of the City of San Jose, The San Jose Diridon Development Authority. (Gregory, Philip) (Filed on 9/6/2013) Modified on 9/9/2013 (bw, COURT STAFF). (Entered: 09/06/2013)
09/06/2013	<u>30</u>	DECLARATION OF EXPERT WITNESS ROGER G. NOLL IN SUPPORT OF PLAINTIFFS OPPOSITION TO DEFENDANTS MOTION TO DISMISS PLAINTIFFS COMPLAINT UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) re <u>28</u> filed by City of San Jose, City of San Jose as Successor Agency to the Redevelopment Agency of the City of San Jose, The San Jose Diridon Development Authority. (Gregory, Philip) (Filed on 9/6/2013) Modified on 9/9/2013 (bwS, COURT STAFF). (Entered: 09/06/2013)
09/12/2013	<u>31</u>	Joint Stipulation and (PROPOSED) ORDER to Extend ADR Deadline filed by City of San Jose, City of San Jose as Successor Agency to the Redevelopment Agency of the City of San Jose, Office of the Commissioner of Baseball, Allan Huber "Bud" Selig, The San Jose Diridon Development Authority. (Keker, John) (Filed on 9/12/2013) Text modified on 9/13/2013 conforming to posted document caption (bwS, COURT STAFF). (Entered: 09/12/2013)
09/13/2013	<u>32</u>	ADR Certification by Parties and Counsel (ADR L.R. 3-5 b) of discussion of ADR options (Keker, John) (Filed on 9/13/2013) Modified on 9/16/2013 (bwS, COURT STAFF). (Entered: 09/13/2013)
09/13/2013	<u>33</u>	ADR Certification vy Parties and Counsel (ADR L.R. 3-5 b) of discussion of ADR options (Gregory, Philip) (Filed on 9/13/2013) Modified on 9/16/2013 (bwS, COURT STAFF). (Entered: 09/13/2013)
09/18/2013	<u>34</u>	JOINT STIPULATION AND ORDER <u>31</u> to Extend ADR Deadline. Signed by Judge Ronald M. Whyte on 9/18/13. (jgS, COURT STAFF) (Filed on 9/18/2013) (Entered: 09/18/2013)
09/20/2013	<u>35</u>	REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS COMPLAINT UNDER FED. R. CIV. P.12(B)(6) re <u>25</u> filed by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig. (Attachments: # <u>1</u> Declaration of John Keker, # <u>2</u> Exhibit-A) (Keker, John) (Filed on 9/20/2013) Modified on 9/23/2013 (bw, COURT STAFF). (Entered: 09/20/2013)
09/20/2013	<u>36</u>	Reply in Support of Request for Judicial Notice in Support of Motion to Dismiss Plaintiff's Complaint re <u>25</u> filed by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig. (Keker, John) (Filed on 9/20/2013) Modified on 9/23/2013 (bw, COURT STAFF). (Entered: 09/20/2013)
09/27/2013	<u>37</u>	Joint Case Management Statement & [Proposed] Order filed by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig. (Keker, John) (Filed on

		9/27/2013) Modified on 10/1/2013 (bwS, COURT STAFF). (Entered: 09/27/2013)
10/04/2013	<u>38</u>	Minute Entry: Motion Hearing held on 10/4/2013 before Ronald M. Whyte (Date Filed: 10/4/2013) re <u>25</u> MOTION to Dismiss filed by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig. (Court Reporter Summer Fisher.) (jgS, COURT STAFF) (Date Filed: 10/4/2013) (Entered: 10/07/2013)
10/07/2013	<u>39</u>	TRANSCRIPT ORDER by City of San Jose, City of San Jose as Successor Agency to the Redevelopment Agency of the City of San Jose, The San Jose Diridon Development Authority for Court Reporter Summer Fisher. (Murphy, Anne Marie) (Filed on 10/7/2013) (Entered: 10/07/2013)
10/09/2013	<u>40</u>	Transcript of Proceedings held on 10/04/13, before Judge Ronald M. Whyte. Court Reporter/Transcriber Summer Fisher, Telephone number 408-288-6150 summer_fisher@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 1/7/2014. (Related documents(s) <u>39</u>) (Fisher, Summer) (Filed on 10/9/2013) (Entered: 10/09/2013)
10/11/2013	<u>41</u>	Order by Hon. Ronald M. Whyte granting in part and denying in part <u>25</u> Motion to Dismiss (rmwlc1, COURT STAFF) (Filed on 10/11/2013) (Entered: 10/11/2013)
10/16/2013	<u>42</u>	TRANSCRIPT ORDER by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig for Court Reporter Summer Fisher. (Ledingham, Shawn) (Filed on 10/16/2013) (Entered: 10/16/2013)
10/21/2013	<u>43</u>	STIPULATION and (PROPOSED) ORDER Regarding the Deadline for Filing an Answer filed by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig. (Keker, John) (Filed on 10/21/2013) Modified on 10/22/2013 (bwS, COURT STAFF). (Entered: 10/21/2013)
11/08/2013	<u>44</u>	Order setting initial case management conference. Signed by Judge Whyte on 11/8/13. (rmwlc2, COURT STAFF) (Filed on 11/8/2013) (Entered: 11/08/2013)
11/12/2013	<u>45</u>	Joint STIPULATION and (PROPOSED) ORDER o Further Extend ADR Deadline filed by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig. (Keker, John) (Filed on 11/12/2013) Text modified on 11/13/2013 (bwS, COURT STAFF). (Entered: 11/12/2013)
11/19/2013		Set/Reset Hearing Case Management Conference set for 12/13/2013 10:30 AM in Courtroom 6, 4th Floor, San Jose. (jgS, COURT STAFF) (Filed on 11/19/2013) (Entered: 11/19/2013)
11/26/2013	<u>46</u>	Answer to Complaint re <u>1</u> filed by Commissioner of Baseball, Allan Huber "Bud" Selig. (Keker, John) (Filed on 11/26/2013) Linkage added on 11/29/2013 (bw, COURT STAFF). (Entered: 11/26/2013)
12/06/2013	<u>47</u>	SUPPLEMENTAL JOINT CASE MANAGEMENT STATEMENT and [Proposed] Order filed by Office of the Commissioner of Baseball, Allan Huber "Bud" Selig. (Keker, John) (Filed on 12/6/2013) Modified on 12/10/2013 (bwS, COURT STAFF). (Entered: 12/06/2013)
12/11/2013	<u>48</u>	STIPULATION AND ORDER <u>43</u> Re: the Deadline for Filing Answer. Signed by Judge Ronald M. Whyte on 11/25/13. (jgS, COURT STAFF) (Filed on 12/11/2013) (Entered: 12/11/2013)
12/11/2013	<u>49</u>	STIPULATION AND ORDER <u>45</u> to Further Extend ADR Deadline. Signed by Judge Ronald M. Whyte on 12/11/13. (jgS, COURT STAFF) (Filed on 12/11/2013) (Entered: 12/11/2013)
12/11/2013	<u>50</u>	NOTICE of Appearance of Robert Adam Lauridsen filed by Office of the Commissioner of Baseball (Lauridsen, Robert) (Filed on 12/11/2013) Modified on 12/17/2013 (bwS, COURT STAFF). (Entered: 12/11/2013)

12/13/2013	<u>58</u>	Minute Entry: Case Management Conference held on 12/13/2013 before Ronald M. Whyte (Date Filed: 12/13/2013). (Court Reporter Summer Fisher.) (jgS, COURT STAFF) (Date Filed: 12/13/2013) Modified on 1/27/2014 (jgS, COURT STAFF). (Entered: 01/27/2014)
12/27/2013	<u>51</u>	ORDER Declining to Retain Supplemental Jurisdiction of State Law Claims. Signed by Judge Ronald M. Whyte on 12/27/13. (rmwlc1, COURT STAFF) (Filed on 12/27/2013) (Entered: 12/27/2013)
01/03/2014	<u>52</u>	JUDGMENT. Signed by Judge Ronald M. Whyte on 1/3/14. (rmwlc1, COURT STAFF) (Filed on 1/3/2014) (Entered: 01/03/2014)
01/23/2014	<u>53</u>	NOTICE OF APPEAL OF PLAINTIFFS re <u>52</u> (Filing fee not paid) by City of San Jose, City of San Jose as Successor Agency to the Redevelopment Agency of the City of San Jose, The San Jose Diridon Development Authority (Gregory, Philip) (Filed on 1/23/2014) Text Modified on 1/23/2014; incorrect event type used when posting Appeal (bwS, COURT STAFF). (Entered: 01/23/2014)
01/23/2014	<u>54</u>	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals (Attachments: # <u>1</u> Certified Copy of Notice of Appeal re {53}, # <u>2</u> Certified Copy of Judgment re <u>52</u>) (bwS, COURT STAFF) (Filed on 1/23/2014) (Additional attachment(s) added on 1/23/2014: # <u>3</u> Certiied Copyof Docket Sheet) (bwS, COURT STAFF). (Entered: 01/23/2014)
01/23/2014	<u>55</u>	CLERK'S NOTICE Fee Past Due Notice. A notice of appeal was filed with this Court on 1/23/2014 and the docketing fee of \$505.00 has not been received. Please forward the above referenced fee to this office immediately. The check is to be made payable to "CLERK, U.S. DISTRICT COURT." (bwS, COURT STAFF) (Filed on 1/23/2014) (Entered: 01/23/2014)
01/24/2014	<u>56</u>	Receipt re filing fee due for Appeal <u>53</u> Receipt #54611014471 from Cotchett, Pitre & McCarthy, LLP. (bwS, COURT STAFF) (Filed on 1/24/2014) (Entered: 01/24/2014)
01/27/2014	<u>57</u>	USCA Scheduling Order re <u>53</u> The schedule is set as follows: Mediation Questionnaire due on 02/03/2014. Transcript ordered by 02/24/2014. Transcript due 03/24/2014. Appellants City of San Jose, City of San Jose as Successor Agency to the Redevelopment Agency of the City of San Jose and The San Jose Diridon Development Authority opening brief due 05/05/2014. Appellees Office of the Commissioner of Baseball and Allan Huber Selig answering brief due 06/04/2014. Appellant's optional reply brief is due 14 days after service of the answering brief. (bwS, COURT STAFF) (Filed on 1/27/2014) (Entered: 01/27/2014)
01/27/2014	<u>59</u>	TRANSCRIPT ORDER by City of San Jose, City of San Jose as Successor Agency to the Redevelopment Agency of the City of San Jose, The San Jose Diridon Development Authority for Court Reporter Summer Fisher. (Murphy, Anne Marie) (Filed on 1/27/2014) (Entered: 01/27/2014)
01/27/2014	<u>60</u>	Transcript Designation Form re <u>54</u> Transmission of Notice of Appeal and Docket Sheet to USCA, Transcript due by 2/24/2014. (Gregory, Philip) (Filed on 1/27/2014) (Entered: 01/27/2014)
01/27/2014		USCA Case Number 14-15139 re <u>53</u> (bw, COURT STAFF) (Filed on 1/27/2014) (Entered: 01/28/2014)
01/29/2014	<u>61</u>	Transcript of Proceedings held on 12/13/13, before Judge Ronald M. Whyte. Court Reporter/Transcriber Summer Fisher, Telephone number 408-288-6150 summer_fisher@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 4/29/2014. (Related documents(s) <u>59</u>) (Fisher, Summer) (Filed on 1/29/2014) (Entered: 01/29/2014)

EXHIBIT 2

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 OF BASEBALL, an unincorporated association doing business as
 Major League Baseball; and ALLAN HUBER "BUD" SELIG

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA / SAN JOSE DIVISION

19	CITY OF SAN JOSE; CITY OF SAN JOSE)	Case Number: 13-CV-02787-RMW
20	AS SUCCESSOR AGENCY TO THE)	
21	REDEVELOPMENT AGENCY OF THE)	
22	CITY OF SAN JOSE; and THE SAN JOSE)	SUPPLEMENTAL JOINT CASE
23	DIRIDON DEVELOPMENT)	MANAGEMENT STATEMENT &
24	AUTHORITY,)	[PROPOSED] ORDER
25	Plaintiffs,)	
26	v.)	
27	OFFICE OF THE COMMISSIONER OF)	
28	BASEBALL, an unincorporated association)	
	doing business as Major League Baseball; and)	
	ALLAN HUBER "BUD" SELIG,)	
	Defendants.)	

1 The parties to the above-entitled action jointly submit this Joint Supplemental Case
2 Management Statement pursuant to the Standing Order for All Judges of the Northern District
3 of California dated July 1, 2011 and Civil Local Rule 16-9.

4 **A. CIVIL LOCAL RULE 16-9 STATEMENT**

5 The following progress or changes have occurred since the last Case Management
6 Statement was filed on September 27, 2013:

7 **1. Jurisdiction**

8 All Defendants have been served. Jurisdiction should be exercised on the basis
9 discussed in Section B(1).

10 **2. Facts**

11 Plaintiffs: This action arises from the alleged conspiracy by Major League Baseball
12 (“MLB”) to control the location and relocation of major league professional baseball clubs
13 under the guise of a broad “antitrust exemption” applied to every aspect of the business of
14 baseball. Specifically, MLB has prevented the Athletics Baseball Club from moving to and
15 building a stadium in San José. Defendants have violated California law and interfered with a
16 contract between Plaintiffs and the Athletics Club.

17 1. There are 30 MLB Clubs, all competing in regularly scheduled games. Baseball
18 is big business with combined 2012 annual revenues of **\$7.5 billion**. Baseball may have started
19 as a local affair, but modern baseball squarely involves interstate commerce. MLB Clubs ply
20 their wares nationwide; games are broadcast throughout the country on satellite TV and radio, as
21 well as cable channels; and MLB Clubs have fan bases that span from coast to coast.

22 2. Plaintiffs are the CITY OF SAN JOSÉ, both in its capacity as a California
23 municipal corporation and as the Successor Agency to the Redevelopment Agency of the City of
24 San José, and SAN JOSÉ DIRIDON DEVELOPMENT AUTHORITY, a joint powers
25 association comprised of the City of San José and the former Redevelopment
26 Agency. Defendants are THE OFFICE OF THE COMMISSIONER OF BASEBALL d/b/a
27 MAJOR LEAGUE BASEBALL (“MLB”), an unincorporated association of the thirty Major
28

1 League Baseball Clubs (the “Clubs”), and ALLAN HUBER “BUD” SELIG, the Commissioner
2 of Major League Baseball.

3 3. At issue in this case is Defendants' unlawful restraint of the move by the Athletics
4 from Oakland to San José. Through the alleged MLB Constitution, MLB and the Clubs have
5 adopted agreements governing all aspects of major league men’s professional baseball. The
6 rules in the MLB Constitution are vertical agreements between MLB and the Clubs and
7 horizontal agreements between the Clubs. Each Club that is a member of MLB is a separate and
8 independent business with a separate and independent owner, exercising significant autonomy in
9 its business operations. While the Clubs cooperate to schedule and produce baseball games and
10 facilitate competition on the field, the Clubs compete off the field in the sale of tickets,
11 sponsorships, merchandise, and concessions. The Clubs also compete in the developing,
12 licensing, and marketing of their respective trademarks for various purposes and set their own
13 prices for the sale of tickets for attending games at their stadiums.

14 4. The relevant product market is the provision of major league men’s professional
15 baseball contests, including the sale of land for the construction of professional baseball
16 stadiums. The relevant geographic market for the provision of major league men’s professional
17 baseball is the United States and Canada, where the MLB Clubs are located and where MLB
18 Clubs play games. Various geographic submarkets also exist, defined as operating territories in
19 Article VIII, Section 8 of the alleged MLB Constitution. A copy of the prior version of the MLB
20 Constitution is attached to the Complaint as **Exhibit 4**. MLB exercises monopoly power (the
21 ability to control prices and exclude competition) in these markets as it is the only provider of
22 major league men’s professional baseball in the United States and Canada.

23 5. The Athletics are a Major League Baseball Club based in Oakland, CA. The
24 Athletics, popularly known as “the A’s,” are a member of the Western Division of MLB’s
25 American League. The Athletics Club is one of the most economically disadvantaged MLB
26 teams. The Athletics play their games in an old stadium, O.co Coliseum, also commonly known
27 as the Oakland Coliseum.

1 6. The San Francisco Giants are a Major League Baseball Club based in
2 San Francisco, CA, playing in the National League West Division. The home of the Giants is
3 AT&T Park, widely-acclaimed as one of the best ballparks in MLB.

4 7. Ten years ago, the Athletics decided to build a new stadium. After failing in their
5 efforts for a new ballpark in Oakland, the Athletics attempted to build CISCO Field in Fremont,
6 CA, with the support of MLB. When the Fremont City Council would not approve the stadium,
7 Commissioner Selig wrote the A's managing partner, Lew Wolff, stating the Athletics had the
8 right to "discuss a ballpark with other communities," *e.g.*, San José. Plaintiffs then commenced
9 discussions for a stadium deal with the Athletics. The Giants immediately interceded to prevent
10 the Athletics from moving to San José. In March 2009, Commissioner Selig appointed a special
11 Relocation Committee to evaluate the Bay Area territorial issues. As the years have dragged on,
12 the MLB Relocation Committee's activities have remained shrouded in secrecy and the
13 Committee has issued no formal report.

14 8. Article VIII, Section 8 of the prior MLB Constitution provides in part: "No
15 franchise shall be granted for an operating territory within the operating territory of a member
16 without the written consent of such member." The purpose and effect of this provision is to
17 unreasonably restrain trade by granting *de facto* exclusive territories to the MLB Clubs and
18 allowing MLB Clubs to protect their respective monopolies by preventing new team entry into
19 operating territories previously assigned to an MLB Club. Because of this provision in the prior
20 MLB Constitution, relocation of the Athletics to San José would place the Club within the
21 "operating territory" of the Giants Club and therefore subject to application of Article VIII,
22 Section 8 of the MLB Constitution.

23 9. The San José City Council reviewed and unanimously approved an environmental
24 impact study ("EIS") for a stadium. Upon approval of the EIS, San José Mayor Chuck Reed
25 called for a public vote on whether the Athletics could purchase land and build the stadium.
26 However, *at Commissioner Selig's request*, Mayor Reed delayed the vote pending the MLB
27 Relocation Committee's determination of the A's-Giants territorial dispute.

1 10. On November 8, 2011, Plaintiffs executed an option agreement with the Athletics
2 Investment Group (the “Option Agreement”). A copy of the Option Agreement is attached to the
3 Complaint as **Exhibit 3**. The Option Agreement permits the Athletics to purchase six parcels
4 located in Downtown San José to build a new stadium for \$6,975,227 (the “San José Stadium
5 Property”). In exchange for the option to purchase the San José Stadium Property, the Athletics
6 agreed to pay \$50,000, with the authority to extend the option term by one year for an additional
7 \$25,000. Further, the Athletics agreed to negotiate in good faith for a Purchase Agreement for
8 the San José Stadium Property.

9 11. While the Athletics informed San José of their desire to exercise the option and
10 move the Club to San José, MLB has said it will oppose and prevent the relocation. MLB
11 intends to effect this conspiracy by using various provisions in its Constitution that unlawfully
12 restrict and constrain the transfer and relocation of Clubs. Thus, Defendants are interfering with
13 and preventing the Athletics from relocating to San José. In addition to interfering with the
14 existing Option Agreement, Defendants are interfering with negotiation of a Purchase Agreement
15 (as provided for in the Option Agreement).

16 12. Taken together, these provisions unduly and unlawfully restrict the ability of
17 MLB Clubs to relocate. Moreover, even if MLB could proffer pro-competitive justifications for
18 these provisions, their application to block the Athletics proposed relocation to San José,
19 California, is unreasonable and anticompetitive.

20 13. Plaintiffs have suffered and will continue to suffer millions of dollars in harm
21 due to Defendants’ refusal to permit the Athletics to move to San José. Specifically, Plaintiffs
22 have suffered direct injury to their commercial interests in the area of the San José Stadium
23 Property, all directly attributable to Defendants’ conduct.

24 14. Defendants assert that this Court should take action based on a June 17, 2013
25 letter from Defendant Bud Selig. Defendants have failed to provide this letter to Plaintiffs or to
26 this Court. Therefore, this Court should refuse to take any steps based on the letter.

1 15. In fact, Defendants’ sections of this CMC Statement are filled with Assertions of
2 fact. This Court should order immediate commencement of discovery so that these “facts” (and
3 others) surrounding the Athletics proposed move to San Jose and their reasons for entering into
4 (and then not exercising) the Option Agreement may be explored.

5 Defendants: Plaintiffs’ description above of purportedly relevant facts entirely ignores
6 the Court’s October 11, 2013 Order Granting-in-Part and Denying-in-Part Defendants’ Motion to
7 Dismiss (“MTD Order”) dismissing all of the antitrust and Unfair Competition Law claims and
8 eliminating all of the damages purportedly resulting from MLB’s alleged refusal to allow the
9 Athletics to relocate to San Jose. In the MTD Order, the Court expressly held that “it is within
10 MLB’s authority to decide” whether to approve or deny the Athletics’ relocation request.
11 Dkt. 41 at 25:21–22.

12 In fact, **MLB denied the Athletics’ relocation request on June 17, 2013**, one day
13 before this lawsuit was filed. On that date, Commissioner Selig formally notified the Athletics’
14 ownership that he was not satisfied with the club’s relocation proposal.¹ The sole basis of
15 Plaintiffs’ only claims that remain after the MTD Order—the purported failure of MLB to render
16 a decision within the initial two-year term of the Option Agreement—is therefore meritless.

17 Moreover, there was no time limit on MLB’s decision-making process regarding the
18 Athletics’ relocation request. The communication on which Plaintiffs rely for the assertion that
19 the Commissioner impliedly promised to render a decision within the term of the Option
20 Agreement was a letter dated February 16, 2010, almost two years before Plaintiffs entered into
21 the Option Agreement. Nothing in the Commissioner’s letter made any representation about the
22 timing of any decision. Instead, it stated that a public referendum on the construction of a
23 baseball stadium at that point would be “premature” and urged the City to “refrain from any
24 public or official action that would suggest an endorsement by me or Major League Baseball of
25 the relocation of the A’s to San Jose” when no decision allowing the relocation had been made.
26 Moreover, the City could not reasonably have relied on any purported statement in the February

27 ¹ Defendants offered to provide Plaintiffs with a copy of the June 17, 2013 letter upon entry of an appropriate
28 protective order in this action.

1 2010 letter for the proposition that a decision would soon be forthcoming. It entered into the
2 Option Agreement 21 months after the letter and no decision had been made or appeared
3 imminent. Plaintiffs did not rely on any express or implied representation that a decision would
4 be rendered on the Athletics' relocation request in any particular time period, much less within
5 two years of the City's entry into the Option Agreement.

6 Even assuming MLB were somehow obligated to make a decision in a set period of
7 time, MLB's decision regarding the Athletics' relocation request was timely. This Court's
8 MTD Order suggested that it was "reasonable to infer that the A's and the City entered into the
9 Option Agreement with the understanding that MLB would return a relocation decision within
10 the two year term of the contract." As discussed above, the Commissioner issued his final
11 decision 19 months after San Jose entered into the Option Agreement.

12 Plaintiffs' interference claims also fail because the Option Agreement is legally invalid
13 for multiple reasons and is not a valid predicate for an interference claim. First, the land that is
14 the subject of the Option Agreement was improperly transferred and encumbered in violation of
15 Cal. Health and Safety Code Section 34161 *et seq.*, which mandated the dissolution of California
16 RDAs, prohibited the sale or encumbrance of RDA assets, and declared "unauthorized" any
17 transfer of assets from an RDA to a government agency after January 1, 2011. One such
18 unauthorized transfer was the March 8, 2011 transfer of almost \$30 million in RDA assets,
19 including the Ballpark Parcels, from the San Jose RDA to a newly created joint-powers
20 authority, the Diridon JPA. The purported encumbrance of the Ballpark Parcels by the City and
21 the RDA in entering into the Option Agreement is declared "void from the outset" by the statute.

22 In March 2013, the State Controller's Office issued its Asset Transfer Review Report of
23 the San Jose RDA, finding that the San Jose RDA made "unallowable asset transfers" to the
24 Diridon JPA on March 8, 2011, including the transfer of the Ballpark Parcels. The Controller
25 ordered the City to reverse the transfer of those assets and return them to the Successor Agency
26 to be disposed of expeditiously and in a manner aimed at maximizing value.

27 Two other grounds on which the Option Agreement may be legally invalid are alleged by
28 the petitioner in the action entitled *Stand for San Jose, et al., v. City of San Jose*, Case Nos. 111-

1 cv-214196 and 113-cv-250372, two consolidated cases pending before Judge Huber in the
2 California Superior Court for Santa Clara County: (1) the Option Agreement was predicated
3 upon a defective Environmental Impact Report that failed to comply with the requirements of the
4 California Environmental Quality Act; and, (2) the City's failure to conduct a public vote prior to
5 entering into the Option Agreement violated San Jose Municipal Code 4.95.010.

6 If the Option Agreement is legally invalid under any of the three grounds described
7 above, it may not be the basis of any claim against Defendants, and the remaining state law
8 claims must be dismissed.

9 **3. Legal Issues**

10 Plaintiffs: Plaintiffs are governmental entities suffering cognizable injuries under the
11 Sherman Act and the Cartwright Act, as well as violations of California law. MLB's actions
12 have placed restraints on the purchase, sale, transfer, and relocation of Major League Baseball
13 Clubs generally, and of the Athletics, specifically, including the sale of land for the construction
14 of baseball stadiums. This action was originally filed alleging the following: violation of
15 California's Unfair Competition Law, Tortious Interference with Contractual Advantage,
16 Tortious Interference with Prospective Economic Advantage, violations of the Sherman Act, and
17 violations of California's Cartwright Act. By Order dated **October 11, 2013** the Court dismissed
18 the claims for violations of the Sherman and Cartwright Acts and the unfair competition claim.
19 The following legal issues are presented:

20 1. Plaintiffs have entered into an Option Agreement with the Athletics Investment
21 Group, LLC, the California limited partnership that owns and operates the Athletics Club.
22 Whether Defendants have interfered with this contract by refusing to allow the Athletics to
23 relocate to San José.

24 2. Whether Defendants were aware of the existence of the Option Agreement and
25 were also aware that, through the Option Agreement, Plaintiffs were the direct and principal
26 beneficiaries of significant rights with respect to relocating the Oakland Athletics Club to
27 San José.

1 3. Whether Defendants knew Plaintiffs had an existing economic relationship with
2 the Oakland Athletics Club and that the relationship included future economic benefits for
3 Plaintiffs.

4 4. Whether Defendants intentionally and wrongfully interfered with Plaintiffs'
5 economic relationship with the Athletics by blocking relocation of the Athletics to San José.

6 5. Whether, Defendants created the MLB Relocation Committee and intentionally
7 engaged in tactics delaying any decision of the MLB Relocation Committee for over four
8 years, all the while knowing that such activity would interfere or was substantially certain to
9 interfere with the Option Agreement.

10 6. Whether, were it not for Defendants' wrongful scheme to block relocation of the
11 Oakland Athletics Club to San José, Plaintiffs' economic relationship with the Oakland
12 Athletics Club would have continued forward for the duration of the Option Agreement and
13 for the foreseeable future.

14 7. Whether, as a direct and proximate result of Defendants' actions, the economic
15 relationship between the Oakland Athletics Club and Plaintiffs was in fact disrupted.

16 8. Whether as a direct and proximate result of Defendants' wrongful actions, the
17 contractual relationship between the Oakland Athletics Club and Plaintiffs was disrupted.

18 9. Whether as a direct and proximate result of Defendants' wrongful actions,
19 performance under the Option Agreement and negotiation of a Purchase Agreement pursuant
20 to the Option Agreement were in fact disrupted.

21 10. Whether Defendants' actions in interfering with Plaintiffs' economic relationship
22 with the Oakland Athletics Club were wrongful.

23 11. Whether Plaintiffs' state law claims are preempted by a purported "antitrust
24 exemption."

25 12. Whether, as a result of the wrongful actions of Defendants, Plaintiffs have been
26 damaged.

27 13. Whether the aforementioned acts of Defendants were willful, oppressive, and/or
28

1 malicious, entitling Plaintiffs to punitive damages under California law.

2 14. Defendants assert that this Court should take action based on a June 17, 2013
3 letter from Defendant Bud Selig. Defendants have failed to provide this letter to Plaintiffs or
4 to this Court. Therefore, this Court should refuse to take any steps based on the letter.

5 15. In fact, Defendants' sections of this CMC Statement are filled with Assertions of
6 fact. This Court should order immediate commencement of discovery so that these "facts"
7 (and others) surrounding the Athletics proposed move to San Jose and their reasons for
8 entering into (and then not exercising) the Option Agreement may be explored.

9 Defendants: Plaintiffs' list of purported legal issues, like their factual issues, ignores the
10 Court's MTD Order and its determination that MLB was entitled to accept or deny the Athletics'
11 relocation request. Dkt. 41 at 25:21–22. All of Plaintiffs' purported legal issues related to
12 MLB's alleged refusal to allow the relocation are resolved by the MTD Order.

13 Plaintiffs' remaining state law interference claims fail for at least the following legal
14 reasons:

15 The Option Agreement is invalid as a matter of law and therefore it cannot form the basis
16 of Plaintiffs' remaining claims. *See Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d
17 1118, 1126 (1990) ("[A] plaintiff must plead ... a valid contract between plaintiff and a third
18 party.").

19 No legal basis exists for San Jose to assume that MLB would return a decision regarding
20 the Athletics' relocation within two years of the A's and San Jose entering the Option
21 Agreement. MLB had no duty or obligation to do so.

22 Plaintiffs' interference claims also cannot be predicated on the purported breach of an
23 alleged representation by the Defendants that they would make a relocation decision "within two
24 years" because, if such a representation had been made, any legal duty to the City it theoretically
25 could have created would have been direct by the Defendants to the City. A direct duty between
26 the Defendants and San Jose would make the Defendants not a legal stranger to the Option
27 Agreement, and therefore render them legally incapable of interfering with it.

1 Plaintiffs' claim of interference with contract cannot be the predicate for a claim for
2 interference with prospective economic advantage because it does not constitute wrongful
3 conduct "by some measure beyond the fact of the interference itself." *Della Penna v. Toyota*
4 *Motor Sales, USA, Inc.*, 11 Cal. 4th 376, 393 (1995).

5 Plaintiffs' claims fail because Plaintiffs have suffered no injury as a result of any
6 wrongful conduct by MLB.

7 **4. Motions/ Scheduling**

8 Plaintiffs: Provided the Court agrees with Plaintiffs' arguments stated above in Section
9 A (2) (no reason to delay final judgment), Plaintiffs intend to pursue appellate review of the
10 dismissal of the antitrust and unfair competition claims. As previously stated, this case presents
11 significant legal issues, including antitrust questions that are ripe for consideration by the U.S.
12 Supreme Court.

13 Defendants assert that this Court should take action based on a June 17, 2013 letter from
14 Defendant Bud Selig. Defendants have failed to provide this letter to Plaintiffs or to this Court.
15 Therefore, this Court should refuse to take any steps based on the letter.

16 In fact, Defendants' sections of this CMC Statement are filled with Assertions of fact.
17 This Court should order immediate commencement of discovery so that these "facts" (and
18 others) surrounding the Athletics proposed move to San Jose and their reasons for entering into
19 (and then not exercising) the Option Agreement may be explored.

20 Defendants: Defendants believe it is appropriate for the Court to temporarily stay this
21 action to allow time for the legal invalidity and unenforceability of the Option Agreement to be
22 decided in connection with the *Stand for San Jose* cases in the California State Court and before
23 the California Department of Finance. More specifically, Petitioners in *Stand for San Jose*
24 challenge, among other things, the transfer of certain real property, including the Ballpark
25 Parcels, to the Diridon JPA and the City's approval of the Option Agreement which purports to
26 encumber that land. The Option Agreement is also the subject of a long-range property
27 management plan which requires approval by the California Department of Finance. Petitioners
28

1 in the *Stand for San Jose* litigation contend that the Option Agreement must be rejected because
2 it is not a legally enforceable obligation.

3 In the *Stand for San Jose* cases, San Jose recently sought and obtained a stay pending a
4 determination by the California Department of Finance regarding the Option Agreement's
5 validity and enforceability. The first of the *Stand for San Jose* cases was scheduled for a
6 November 8, 2013 trial. However, San Jose itself successfully argued there that those cases
7 should be stayed pending a California Department of Finance review of the City's property
8 management plan, because the Department could determine that the Option Agreement is in
9 violation of Cal. Health and Safety Code Section 31463. Such a ruling would render the Option
10 Agreement legally invalid and unenforceable, thereby mooting the *Stand for San Jose* litigation.
11 Judge Huber was persuaded by San Jose's argument and temporarily stayed the consolidated
12 action, setting another CMC for December 20, 2013 to obtain a status report on the Oversight
13 Board's review of the property management plan. A determination in the *Stand for San Jose*
14 actions that the Option Agreement is legally invalid and unenforceable would be binding on
15 Plaintiffs here under the doctrine of collateral estoppel, thereby requiring dismissal of the
16 remaining claims in this action.

17 As a result, Defendants recommend that this action be stayed temporarily and that the
18 Court set a Case Management Conference for March 2014, at which time the parties will report
19 on the status of the *Stand for San Jose* litigation. If the Option Agreement is held to be legally
20 invalid and unenforceable, the remaining state law claims in this action must be dismissed.

21 If the Option Agreement is not promptly determined to be legally invalid and
22 unenforceable by the Department of Finance and/or the Superior Court in the *Stand for San Jose*
23 litigation, Defendants expect to file an early motion for summary judgment to eliminate
24 Plaintiffs' remaining claims. The motion will be made on at least the grounds that: 1. Plaintiffs'
25 interference claims fail because the Commissioner made a determination on the Athletics'
26 request to relocate to San Jose within the initial two-year term of the Option Agreement; 2. the
27 Option Agreement on which the claims are based is legally invalid and unenforceable; and, 3. in
28

1 any event, Plaintiffs are unable to identify any damages purportedly caused by MLB's alleged
2 delay in rendering its relocation decision. This motion can be made without any need for
3 discovery since all facts relevant to the motion are already known to all of the parties.

4 **7. Disclosures**

5 The parties previously agreed by stipulation that they would serve their respective initial
6 disclosures under Fed. R. Civ. P. 26(a)(1) thirty days after final determination of any motion to
7 dismiss. Pursuant to the stipulation, Defendants served initial disclosures under Fed. R. Civ. P.
8 26(a)(1) on November 12, 2013. Plaintiffs have failed to serve their initial disclosures in
9 violation of the Parties' stipulation and Rule 26.

10 **8. Discovery**

11 The parties have agreed to stay formal discovery until a case management conference is
12 held.

13 Plaintiffs: Plaintiffs intend to proceed promptly with discovery now that the Motion to
14 Dismiss has been decided and Defendants have filed their answer. Defendants assert that this
15 Court should take action based on a June 17, 2013 letter from Defendant Bud Selig. Defendants
16 have failed to provide this letter to Plaintiffs or to this Court. Therefore, this Court should
17 refuse to take any steps based on the letter. In fact, Defendants' sections of this CMC Statement
18 are filled with Assertions of fact. This Court should order immediate commencement of
19 discovery so that these "facts" (and others) surrounding the Athletics proposed move to San
20 Jose and their reasons for entering into (and then not exercising) the Option Agreement may be
21 explored. On October 22, 2013, Plaintiffs informed Defendants they would not agree to a
22 Protective Order.

23 Defendants: As stated above, Defendants believe proceedings in this action, including
24 discovery, should be stayed (consistent with the position taken by the City itself) to give the
25 Department of Finance and/or the Superior Court in the *Stand for San Jose* litigation a
26 reasonable amount of time to determine whether the Option Agreement is legally invalid and
27 unenforceable.

1 In the meantime, Defendants believe that entry of a protective order governing the use of
2 confidential information is appropriate in this case. On October 22, 2013, Defendants told
3 Plaintiffs they would provide them with a copy of the June 17, 2013 letter upon entry of a
4 protective order. Plaintiffs agreed to provide comments on a draft protective order stipulation,
5 which Defendants provided to Plaintiffs on November 14, 2013. Plaintiffs informed Defendants
6 that they would respond to the draft protective order, but have not yet done so.

7 **11. Relief**

8 Plaintiffs: By their Complaint, Plaintiffs seek the following relief:

- 9 A. Plaintiffs be awarded actual damages on pendent claims;
10 B. Plaintiffs be awarded punitive damages on pendent claims; and,
11 C. Plaintiffs be awarded pre-judgment and post-judgment interest at the highest legal
12 rate from and after the date of service of this Complaint to the extent provided by law.

13 Defendants: Plaintiffs are not entitled to any relief. Without waiving their right to seek
14 relief at a later date, Defendants do not currently anticipate filing any counterclaims.

15 **12. Settlement and ADR**

16 Plaintiffs: On September 18, 2013, the Court approved the parties' stipulation agreeing
17 to extend the deadline to file a Stipulation to ADR Process or Notice of Need for ADR
18 Telephone Conference until 30 days after the Court rules on any Motion to Dismiss.

19 Defendants: The parties filed a joint stipulation on November 12, 2013 regarding a
20 further extension of the ADR deadline. Given the nature of the claims in this action,
21 Defendants believe that settlement is unlikely and any settlement procedure should be deferred.
22 If and when any settlement procedure occurs, Defendants believe that a settlement conference
23 with one of the District Court's judicial officers would be appropriate.

24 **16. Expedited Trial Procedure**

25 Plaintiffs: Plaintiffs believe there will be sufficient time for discovery if trial is
26 scheduled for June 2014.

27 Defendants: Defendants do not believe this is the type of case that can or should be
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1 handled pursuant to expedited trial procedures.

2 **17. Scheduling**

3 Plaintiffs: Plaintiffs have waited more than four years for Defendants to approve
4 relocation of the Athletics Club to San José. Defendants have failed to take any steps to permit
5 relocation of the Athletics. Because Defendants have failed to act, Plaintiffs were forced to file
6 this Complaint. Plaintiffs believe there will be sufficient time for discovery if trial is scheduled
7 for June 2014.

8 Defendants assert that this Court should take action based on a June 17, 2013 letter from
9 Defendant Bud Selig. Defendants have failed to provide this letter to Plaintiffs or to this Court.
10 Therefore, this Court should refuse to take any steps based on the letter. In fact, Defendants'
11 sections of this CMC Statement are filled with Assertions of fact. This Court should order
12 immediate commencement of discovery so that these "facts" (and others) surrounding the
13 Athletics proposed move to San Jose and their reasons for entering into (and then not
14 exercising) the Option Agreement may be explored.

15 Defendants: MLB denied the Athletics' relocation request on June 17, 2013. The sole
16 remedy to which Plaintiffs could legally be entitled if their remaining claims had merit, and if
17 they had suffered any damages—neither of which is the case—would be money damages.
18 There is no basis for this action to be handled on an expedited schedule.

19 Also, as discussed in Section A(4), Defendants believe it is appropriate for the Court to
20 temporarily stay this action to allow time for the legal invalidity and unenforceability of the
21 Option Agreement to be decided in connection with the *Stand for San Jose* cases in the
22 California State Court and before the California Department of Finance. Defendants therefore
23 believe that it is premature to set a trial date.

24 **18. Trial**

25 Plaintiffs: Plaintiffs believe there will be sufficient time for discovery to be ready for
26 trial in June 2014. Trial should take ten (10) days.

27 Defendants: Defendants believe that it is premature to estimate the length of trial, if one
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1 becomes necessary.

2 **B. QUESTIONS POSED BY NOVEMBER 8, 2013 ORDER**

3 For ease of reference the Parties have included each of the three questions posed by the
4 November 8, 2013 Order, followed by a summary of their respective positions:

5 **(1) Since the federal claim has been dismissed, should the court retain supplemental**
6 **jurisdiction of the two surviving state law claims?**

7 Plaintiffs: Yes. This Court has wide discretion to retain supplemental jurisdiction of the
8 two surviving state law claims. As stated in *United Mine Workers of America v. Gibbs*, the
9 seminal case on pendent jurisdiction, federal courts have “a wide ranging power” to decide state
10 law claims in cases that also present federal questions.” 383 U.S. 715, 726 (1966). The power to
11 hear pendent state law claims is discretionary. *Id.* The Court in *Gibbs* articulated the following
12 circumstances under which state claims may be dismissed:

- 13 1. If the federal claims are dismissed prior to trial;
- 14 2. If it appears that the state issues substantially predominate, whether in terms of
15 proof, of the scope of the issues raised, or of the comprehensiveness of the
16 remedies sought; and
- 17 3. If separation of the state and federal claims is justified by reasons independent of
18 jurisdictional considerations, such as the likelihood of jury confusion.

19 *Id.* With respect to the first factor (dismissal of the federal claims before trial), **dismissal of**
20 **supplemental claims is not required on dismissal of federal claims.** The Supreme Court has
21 made clear that the three situations noted in *Gibbs* “do [] not establish a mandatory rule to be
22 applied inflexibly in all cases. *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988).
23 To the contrary, a federal court “does have the power to hear [state] claims ... even after the
24 basis for ... jurisdiction is dropped from the proceedings.” *Harrell v. 20th Century Ins. Co.*, 934
25 F.2d 203, 205 (9th Cir. 1991). *Harrell* dealt with removal jurisdiction, and not original
26 jurisdiction; however, the applicable principal is the same.

27 Regardless of when federal claims are dismissed, leaving only state law causes of action,
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1 it must be emphasized that there is no single factor that is dispositive to the issue of whether to
2 exercise jurisdiction. A district court must consider all the factors under the circumstances of a
3 given case. *Carnegie-Mellon*, 484 U.S. at 350; *Parker & Parsley Petroleum Co. v. Dresser*
4 *Indus.*, 972 F.2d 580 (5th Cir. 1992).

5 In its discretion, “a federal court should consider and weigh in each case, and at every
6 stage in the litigation, the values of **judicial economy, convenience, fairness, and comity** in
7 order to decide whether to exercise jurisdiction over a case brought in that court involving
8 pendent state law claims.” *Gibbs*, 383 U.S. at 726. (Emphasis added.)

9 Here, this Court has already expended significant resources on the case in connection
10 with a thoroughly briefed Motion to Dismiss proceeding. This Court is familiar with the facts of
11 the case. The Court has issued a detailed ruling. Further, if this Court were not to retain
12 jurisdiction, it would inevitably result in parallel state and federal court proceedings, as the
13 antitrust issues would wend their way through the appellate process while a new state proceeding
14 was initiated to deal with the state law claims. Such parallel proceedings could result in
15 conflicting rulings and would amount to an enormous waste of judicial resources.

16 Defendants: Yes. Defendants agree with Plaintiffs that the Court should retain
17 supplemental jurisdiction. Defendants provide the following additional information expanding
18 on the points addressed by the Plaintiffs above.

19 First, dismissing Plaintiffs’ state law claims would waste judicial resources by requiring
20 the re-filing of the claims in a new venue unfamiliar with the facts of the case. *See Munger v.*
21 *City of Glasgow Police Dep’t*, 227 F. 3d 1082, 1089 n.4 (9th Cir. 2000) (holding that court did
22 not abuse discretion in declining to dismiss state law claims “based on the same factual
23 allegations as the federal claims” because “the district court was fully familiar with the record”).
24 A re-filed case concerning the remaining interference claims in this action would not proceed
25 before the same judge presiding over the *Stand for San Jose* action, or even in Santa Clara
26 County, because the California Code of Civil Procedure provides for transfer of any state court
27 litigation brought by San Jose to a venue outside of Santa Clara County. *See Cal. Civ. Pro. Code*
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1 § 394(a) (requiring transfer of case brought by a city or county to a city or county other than the
2 plaintiff's home county upon defendant's motion).² The end result of dismissing Plaintiffs'
3 remaining state law claims will be the simultaneous litigation of related (and potentially
4 identical) factual issues in *three* separate forums: (1) Plaintiffs' appeal of the Court's antitrust
5 claims decision in the Ninth Circuit, (2) the *Stand for San Jose* claims in Santa Clara county, and
6 (3) Plaintiffs' remaining state law claims in some county other than Santa Clara. That would be
7 wasteful and inefficient.

8 Second, as Plaintiffs agree, simultaneous litigation across different forums threatens
9 fairness by increasing the risk of inconsistent rulings. *Cf. Montes v. Rafalowski*, C-09-00976
10 RMW, 2012 WL 5292290, at *2 (N.D. Cal. Nov. 2, 2012) (declining to dismiss state law claims
11 due to the risk of unnecessary, duplicative expenditure of judicial resources and the risk of
12 inconsistent rulings). This Court is best situated to determine Plaintiffs' claims in a consistent
13 manner.

14 Third, under MLB's proposed stay pending a decision on the legal invalidity and
15 unenforceability of the Option Agreement in *Stand for San Jose* or by the Department of
16 Finance, this Court may never need to reach the merits of Plaintiffs' state law claims if the
17 underlying Option Agreement is held to be invalid. Regardless, San Jose has not identified any
18 novel or complex issues of state law that would raise comity concerns regarding this Court's
19 adjudication of its tort claims. *See Montes*, 2012 WL 5292290, at *3 (holding that state court
20 interest in developing case law regarding claims brought against state employees does not raise
21 comity concerns sufficient to justify dismissal).

22 Fourth, litigating the case outside of Santa Clara County will be less convenient for
23 Plaintiffs and potentially MLB, depending upon where the case is assigned.

24
25 ² California Code of Civil Procedure Section 394(a) is designed to prevent local bias in actions by government
26 plaintiffs against out-of-county defendants. *Westinghouse v. Super. Ct.*, 17 Cal. 3d 259, 271 (1976). MLB is
27 entitled to Section 394's protection from litigation in a county where there may be a "substantial risk of prejudice in
28 favor of a local government entity." *Id.* The statute's mandatory transfer provisions do not apply where, as in the
Stand for San Jose litigation, the city is the defendant—not the plaintiff—in the action. *See* Cal. Civ. Proc. Code §
394(a).

1 (2) If the Court retains jurisdiction of the state law claims, should the court
2 “expressly determine[] that there is no just reason to delay” entry of final judgment on the
3 federal claim and state law claims that have been dismissed and enter final judgment on
4 those claims pursuant to Federal Rule of Civil Procedure 54(b)?

5 Plaintiffs: Yes. At issue in this case is the scope of MLB’s exemption from antitrust
6 laws. The scope of baseball’s exemption is the single most closely watched and debated issue in
7 the field of antitrust law. Plaintiffs believe it is an issue ripe for consideration by the U.S.
8 Supreme Court. There is no compelling reason for the Court to delay entry of final judgment on
9 the dismissed claims.

10 The U.S. Supreme Court has outlined a two-step analysis to be conducted in deciding
11 Rule 54(b) matters. First, a district court must “determine that it is dealing with a ‘final
12 judgment,’” i.e., “a decision upon a cognizable claim for relief” that is “‘an ultimate disposition
13 of an individual claim entered in the course of a multiple claims action.’” *Curtiss-Wright Corp.*
14 *v. General Elec. Co.*, 446 U.S. 1 (1980)(quoting, *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427
15 (1956).

16 Second, a district court, in its “sound judicial discretion,” must determine whether there is
17 any just reason for delay in entering judgment. *Id.* In deciding whether there are just reasons for
18 delay, a district court “must take into account judicial administrative interests as well as the
19 equities involved,” and **may consider “such factors as whether the claims under review were
20 separable from the others remaining to be adjudicated and whether the nature of the
21 claims already determined was such that no appellate court would have to decide the same
22 issues more than once even if there were subsequent appeals.”** *Id.*

23 Here, the equities dictate that consideration of Plaintiffs’ dismissed antitrust (and other
24 claims) should proceed through the appellate process without delay.

25 Defendants: No. Rule 54(b) certification is inappropriate when it “effectively severs trial
26 on different theories of adverse treatment arising out of the same factual relationship. . . . The
27 greater the overlap the greater the chance that this court will have to revisit the same facts—spun
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1 only slightly differently—in a successive appeal.” *Wood v. GCC Bend, LLC*, 422 F.3d 873, 880-
2 81 (9th Cir. 2005).

3 Here, no justification exists for entering judgment pursuant to Rule 54(b), and Plaintiffs
4 have failed to make the required specific showing that there is a pressing need for an early and
5 separate judgment. Far from it, Plaintiffs’ incorrect and conclusory statement that “the equities
6 dictate” that their dismissed claims “should proceed through the appellate process without
7 delay” is no more than an empty assertion. And, it is contradicted by the position they
8 (correctly) take in response to the Court’s first question that allowing simultaneous appellate
9 and trial court proceedings on the dismissed and remaining claims “could result in conflicting
10 rulings and would amount to an enormous waste of judicial resources.” Plaintiffs’ tactical
11 desire for a Rule 54(b) appeal of the antitrust claims does not justify burdening the justice
12 system or the parties with wasteful and potentially conflicting parallel proceedings.

13 The Court should not certify the dismissed claims for immediate appeal for the
14 following reasons. First, Rule 54(b) certification would not streamline the case or promote
15 judicial economy for the trial court. One of Plaintiffs’ remaining two claims, tortious
16 interference with prospective economic advantage, is predicated upon two purported wrongful
17 acts—alleged antitrust violations and alleged interference with contract. Entering judgment on
18 the antitrust predicate and allowing that issue to proceed on appeal while the other potential
19 predicate for that cause of action proceeds in this court would be an inefficient use of the
20 resources of the Court and the parties. Dismissing the state law claims would not cure these
21 inefficiencies. As discussed above, it would only shift the burden to another court and risk
22 inconsistent results.

23 Second, Rule 54(b) certification would be inefficient for the Ninth Circuit. Plaintiffs’
24 antitrust claims are simply “different theories of adverse treatment arising out of the same
25 factual relationship” as the remaining state law claims among the same parties. *Wood*, 422 F.3d
26 at 880-81. For example, the question of whether Plaintiffs have been damaged by MLB’s
27 alleged conduct could be litigated as part of both an antitrust appeal and the remaining state law
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1 claims. Piecemeal appeals would force the Ninth Circuit to litigate the same issues, “spun only
2 slightly differently,” on successive appeals. *Id.*

3 Finally, subsequent findings could eliminate the need to reach the antitrust issues,
4 rendering a separate Rule 54(b) appeal unnecessary. For example, if no valid Option
5 Agreement exists, San Jose lacks antitrust standing and also loses the contract or economic
6 relationship that is a prerequisite to its remaining state law claims.

7 **Question 3: If plaintiff were to prevail on either of its two remaining state**
8 **interference claims, how would damages be computed? The court is not looking for a**
9 **specific figure but rather the methodology that would be used to calculate damages.**

10 Plaintiffs: Attached to Plaintiffs’ Complaint is a 2009 Economic Impact Analysis
11 prepared by Conventions Sports and Leisure International (“CSL”) for the San José
12 Redevelopment Agency, which detailed the economic benefits of the proposed Athletics
13 stadium in San José (“CSL Study”) (*See, Exhibit 1* to the Complaint). The CSL Study provided
14 independent and conservative estimates of the quantifiable impacts that would be generated by
15 an Athletics stadium in San José.

16 Plaintiffs have recently retained Roger G. Noll, Professor Emeritus of Economics at
17 Stanford University and a Senior Fellow at the Stanford Institute for Economic Policy Research,
18 who has done an analysis. Plaintiff’s expert has not finalized his analysis of the damages at this
19 point; however, without waiving Plaintiffs’ ability to present expert opinion testimony at a later
20 date, Plaintiffs suggest that the following are appropriate measures of damages:

- 21 1. Lost tax revenue from ticket taxes, which is composed of the following:
 - 22 (a) Revenue from residents derived from the incremental tax rate on the
23 amount spent on tickets over other spending;
 - 24 (b) Revenue from non-residents based on the full amount spent;
- 25 2. Lost tax revenue from taxes related to baseball expenditures by non-residents;
- 26 3. Revenue directly from the Athletics;
- 27 4. Multiplier effects on (1)-(3). A sports team generates economic growth that the
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1 city will benefit from in higher tax revenues from increased business activity and
2 rising property values; and,

3 5. Payment of the purchase price under the Option Agreement (Exhibit 3 to
4 Plaintiffs' Complaint).

5 This is a preliminary structure for analyzing damages to the Plaintiffs. Plaintiffs intend
6 to offer expert testimony on these damages issues.

7 Defendants: Plaintiffs have no credible methodology to compute damages. San Jose
8 alleged almost a dozen different damages theories in its Complaint, but all of them fail in light
9 of this Court's MTD Order and the undisputed facts.

10 San Jose's Complaint recited 11 different damages theories (see ¶¶ 140–150), but every
11 single one was based on the false premise that San Jose is entitled to a Major League Baseball
12 club (for example, San Jose claimed damages from lost stadium-construction jobs). San Jose
13 repeats many of these claims in its statement above, arguing that it will seek speculative
14 damages based on lost ticket taxes, "baseball expenditures," and "economic growth" from a
15 "sports team." But this Court expressly held that "it is within MLB's authority to decide"
16 whether to approve or deny the Athletics' relocation request. Dkt. 41 at 25:21–22. Since MLB
17 has discretion to deny the relocation request, and since MLB *did* deny the relocation request,
18 San Jose cannot bring a claim based on any of those speculative damages theories. Even San
19 Jose's claim for the "purchase price under the Option Agreement" must fail. The Option
20 Agreement expressly states that the land can only be purchased "provided the use of the
21 Property is restricted . . . for use as a Major League Baseball park." Op. Agmt. § 3.B. Since
22 MLB has denied the Athletics' relocation request—and since this Court has held that MLB has
23 the right to deny the relocation request—no damages can result from the fact that the Property
24 cannot be used by the Athletics to build a "Major League Baseball park."

25 Significantly, Plaintiffs have not identified any damages that they claim to have suffered
26 in connection with the one remaining theory on which their interference claims are premised—
27 MLB's supposed delay in rendering its relocation decision.

1
2 DATED: December 6, 2013

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3
4 By: /s/ Joseph W. Cotchett

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13 SUCCESSOR AGENCY TO THE
14 REDEVELOPMENT AGENCY OF THE CITY OF
15 SAN JOSE; and THE SAN JOSE DIRIDON
16 DEVELOPMENT AUTHORITY

17
18 DATED: December 6, 2013

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

CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

Hon. Ronald M. Whyte
UNITED STATES DISTRICT JUDGE

EXHIBIT 3

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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

Plaintiffs,

v.

OFFICE OF THE COMMISSIONER OF
BASEBALL, an unincorporated association
doing business as Major League Baseball; and
ALLAN HUBER “BUD” SELIG,

Defendants.

Case No. C-13-02787 RMW

JUDGMENT

On October 11, 2013 the court issued its order dismissing Plaintiff City of San Jose *et al.*'s Sherman Act claim and its state law claims for violation of the Cartwright Act and for unfair competition. On December 27, 2013 the court dismissed without prejudice to refile in the appropriate state court the two remaining state law claims. Therefore,

IT IS HEREBY ORDERED that judgment be entered in favor of defendants Office of the Commissioner of Baseball, an unincorporated association doing business as Major League Baseball, and Allan Huber “Bud” Selig and against plaintiffs City of San Jose; City of San Jose as successor

1 agency to the Redevelopment Agency of the City of San Jose; and the San Jose Diridon
2 Development Authority and that plaintiffs are entitled to no relief by way of their complaint.

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5 Dated: January 3, 2014

Ronald M. Whyte
RONALD M. WHYTE
United States District Judge

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United States District Court
For the Northern District of California

EXHIBIT 4

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11 *Attorneys for Plaintiffs the City of San José; the City of San José,*
 12 *as successor agency to the Redevelopment Agency of the City of*
 13 *San José; and the San José Diridon Development Authority*

14 **IN THE UNITED STATES DISTRICT COURT**
 15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 16 **SAN JOSÉ DIVISION**

17 **CITY OF SAN JOSÉ; CITY OF SAN**
 18 **JOSÉ AS SUCCESSOR AGENCY TO**
 19 **THE REDEVELOPMENT AGENCY OF**
 20 **THE CITY OF SAN JOSÉ; and THE SAN**
 21 **JOSÉ DIRIDON DEVELOPMENT**
 22 **AUTHORITY,**

21 Plaintiffs,

23 v.

24 **OFFICE OF THE COMMISSIONER OF**
 25 **BASEBALL**, an unincorporated association
 26 doing business as Major League Baseball; and
 27 **ALLAN HUBER “BUD” SELIG,**

27 Defendants.

Case No. 13-CV-02787-RMW

NOTICE OF APPEAL OF PLAINTIFFS

Judge: Hon. Ronald M. Whyte

Complaint Filed: June 18, 2013

1 NOTICE IS HEREBY GIVEN that, pursuant to Federal Rules of Appellate Procedure 3
2 and 4, to the extent it is appealable, Plaintiffs City of San José, City of San José as Successor
3 Agency to the Redevelopment Agency of the City of San José, and the San José Diridon
4 Development Authority (collectively "Plaintiffs") appeal to the United States Court of Appeals
5 for the Ninth Circuit from (1) this Court's Judgment [Docket No. 52] (entered on January 3,
6 2014); and (2) this Court's Order Granting-In-Part and Denying-In-Part Defendants' Motion to
7 Dismiss Plaintiffs' Complaint Under Federal Rule Of Civil Procedure 12(b)(6) [Docket No. 41]
8 (entered on October 11, 2013).

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Dated: January 23, 2014

COTCHETT, PITRE & McCARTHY, LLP

By: /s/ Philip L. Gregory
PHILIP L. GREGORY

*Attorneys for Plaintiffs the City of San José;
the City of San José, as successor agency to
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EXHIBIT 5

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24 Athletics Investment Group LLC

25 SUPERIOR COURT OF THE STATE OF CALIFORNIA
26 COUNTY OF SANTA CLARA

27 STAND FOR SAN JOSÉ, et al.,

28 Petitioners and
Plaintiffs,

v.

CITY OF SAN JOSÉ, et al.,

Respondents and
Defendants.

ATHLETICS INVESTMENT GROUP
LLC, et al.,

Real Parties In
Interest.

FILED

DEC 16 2013

CLERK OF COURT
R. Mahara

By Fax

Consolidated Actions
Nos. 111-CV-214196; 113-CV-250372

**STATUS REPORT FOR CASE
MANAGEMENT CONFERENCE**

Date: December 20, 2013
Time: 9:00 a.m.
Dept.: 21
Judge: Honorable Joseph Huber

Actions Filed 12/2/2011; 7/31/13

1 Pursuant to the direction of the Court at the October 11, 2013, Case Management
2 Conference, Respondents submit this Status Report for Case Management Conference.

3 **A. Background.**

4 This action challenges approvals granted by Respondents with regard to an Option
5 Agreement between the Diridon Development Authority (“DDA”) and Athletics Investment
6 Group LLC (“A’s”) on certain downtown property (“Diridon Property”) for purposes of a
7 downtown ballpark project. Petitioner alleges violations of CEQA, San José Municipal Code
8 provisions relating to voter approval, Code of Civil Procedure section 526a, and the 2012
9 Redevelopment Law.

10 On March 21, 2013, the California State Controller concluded that certain asset transfers
11 by the former San Jose Redevelopment Agency -- including transfer of the Diridon Property to
12 the DDA -- were not in compliance with the Redevelopment Law and ordered the assets returned
13 to the Successor Agency. Because it was uncertain what action Respondents would take in
14 response to the Controller’s order, how that action would affect the Option Agreement, whether
15 necessary approvals for that action would be obtained by the Oversight Board for the Successor
16 Agency, the Department of Finance and other agencies, and whether any of these actions might
17 cause all or part of this case to become moot, the parties agreed to suspend the briefing schedule
18 pending further developments. The parties submitted, and the Court signed, a Stipulation and
19 Order vacating the briefing schedule and setting a further Case Management Conference.

20 **B. Transfer of Diridon Property and Filing of Second Action.**

21 On June 18, 2013, the Diridon Property was transferred by the DDA to and accepted by
22 the Successor Agency subject to the terms of the Option Agreement. On July 31, 2013, Stand for
23 San José filed a second action (Action No. 113-CV-250372 [“Stand II”]) challenging the transfer
24 of the Diridon Property subject to “the encumbrance of the Option Agreement.”

25 At the August 9, 2013 Case Management Conference, counsel informed the Court that the
26 Diridon Property would likely be included in a Long-Range Property Management Plan under
27 Health and Safety Code § 34191.5 describing the disposition of the Diridon Property, and that this
28 plan would be submitted for approval by the Oversight Board and Department of Finance.

1 Because such decisions could render some or all of the causes of action alleged in the case moot,
2 counsel for both parties recommended that the November 8, 2013 trial date be vacated and the
3 matter continued to a further Case Management Conference pending the outcome of further
4 proceedings relating to the property transfer. The Court vacated the trial date and set the matter
5 for a further Case Management Conference on October 11, 2013.

6 **C. Status of Long-Range Property Management Plan and Diridon Property**
7 **Transfer.**

8 As reported at the October 11th Case Management Conference, the proposed Long-Range
9 Property Management Plan (LRPMP) was originally presented to the Oversight Board on October
10 10, 2013. As presented, the LRPMP showed the Diridon Property as being held subject to the
11 Option Agreement as an enforceable obligation under the Redevelopment Law. At the October
12 10 meeting, Oversight Board members indicated that they needed additional time to review the
13 Plan and the properties before taking action on it, and wanted to inspect several of the properties
14 before further considering the LRPMP.

15 At its October 24th meeting, the Oversight Board conducted an inspection of a number of
16 the properties subject to the LRPMP, including the Diridon parcels at Montgomery and Autumn
17 Streets. No action was taken on the Plan. Since that time, Successor Agency staff has been
18 actively working to prepare the LRPMP and bring it forward to the Successor Agency and the
19 Oversight Board. Staff plans to present a draft on January 9 to the Oversight Board and on
20 January 14th to the Successor Agency Board. After receiving direction from both Boards, it
21 anticipates finalizing the LRPMP and presenting it to the Oversight Board for final approval at its
22 meeting on January 30, 2013.

23 The currently projected schedule for approval of the LRPMP is some 60 days beyond
24 what was anticipated in October. However, contrary to what Petitioner contends in its latest Case
25 Management Conference Statement (that “[r]espondents have taken no action on the Long-Range
26 Property Management Plan” in the last two months), the Oversight Board has been reviewing the
27 subject properties and conducting the due diligence necessary in its judgment to make a final
28 decision on the Plan. The LRPMP is a substantial undertaking -- the original draft was over 200

1 pages and addressed 90 properties. Because of the Successor Agency's financial position, there
2 are only a small number of Successor Agency staff devoted solely to Successor Agency work,
3 most of whom are doing finance-related work. A single Successor Agency staff member has
4 been preparing the draft LRPMP in addition to other work. The LRPMP parcels have now been
5 consolidated into separate sites that the Successor Agency anticipates selling or developing
6 together, and staff has revised the LRPMP so that it is approximately 70 pages at this time.
7 Because of the breadth of the Plan, it appears unlikely that the two Boards will make a final
8 decision on the Plan at their January 9th and 14th meetings. Rather, it is anticipated that they will
9 review the Plan, considering any public comment received, and that the Oversight Board will
10 make a final decision at its January 30th meeting.

11 The deadline for submittal of the approved Plan to the Department of Finance is March 1,
12 2014. There is no specific deadline for the Department's action on the Plan. Rather, the
13 Department has indicated that it will conduct the review of the plans as they are submitted on a
14 flow basis. The Department's approval or objection to the LRPMP will be communicated via a
15 letter to the Successor Agency.

16 **D. Proposed Course of Action.**

17 While it now appears likely that the Oversight Board will take final action on the Long-
18 Range Property Management Plan in late-January (and, in any event, before the March 1, 2014,
19 deadline), there is still uncertainty as to when the Department of Finance will act on the Plan, and
20 whether both the Oversight Board and the Department of Finance will approve the Diridon
21 Property being held subject to the Option Agreement as an enforceable obligation. Because the
22 outcome of this process remains uncertain, and because certain outcomes could result in this
23 consolidated action becoming moot, Respondents recommend that the Court set this matter for a
24 further Case Management Conference in late February or early March 2014.

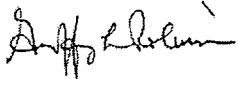
25 In its latest Case Management Conference Statement, plaintiff complains that no action
26 has occurred on preparation and certification of the record of proceedings in the Stand II case.
27 However, at the last Case Management Conference, Respondents suggested that it did not make
28 sense to spend time and money preparing that record because it remained a moving target -- with

1 additional agendas, minutes, reports, transcripts and other documents to be added each time the
2 Successor Agency or Oversight Board considered the Plan -- and also that there remained a
3 possibility the action would become moot. Accordingly, Respondents proposed that preparation
4 of the record be suspended pending a further report at the next Case Management Conference.
5 The Court agreed, and the situation has not changed in a way that would now warrant preparing
6 the record.

7 DATED: December 16, 2013

PERKINS COIE LLP

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By: 

Geoffrey L. Robinson
Attorneys for Real Party in Interest
Athletics Investment Group, LLC

PROOF OF SERVICE BY MAIL

DEC 16 2013

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I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Four Embarcadero Center, Suite 2400, San Francisco, California 94111-4131. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On December 16, 2013, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

STATUS REPORT FOR CASE MANAGEMENT CONFERENCE

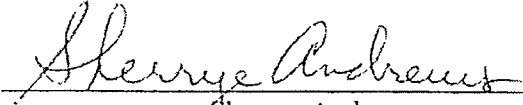
in a sealed envelope, postage fully paid, addressed as follows:

Ronald E. Van Buskirk, Esq.
Pillsbury, Winthrop, Shaw, Pittman, LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 16, 2013, at San Francisco, California.


Sherrye Andrews