No. 14-____

In The
Supreme Court of the United States

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,

Petitioners,

v.

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

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether professional baseball is exempt from antitrust law in matters relating to franchise relocation.

LIST OF PARTIES

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, the City of San José, the City of San José as Successor Agency to the Redevelopment Agency of San José, and the San José Diridon Development Authority, respectfully petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Ninth Circuit is reported at 776 F.3d 686 (9th Cir. 2015). App. 1a. The opinion of the U.S. District Court for the Northern District of California is unreported. App. 13a.

JURISDICTION

The judgment of the U.S. Court of Appeals for the Ninth Circuit was entered on January 15, 2015. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1 and 2, are reproduced at App. 60a. The Curt Flood Act of 1998, 15 U.S.C. § 26b, is reproduced at App. 61a.

STATEMENT

Professional baseball's antitrust exemption is a relic from another era, the last vestige of a time when "interstate commerce" meant something much narrower than it does today. The exemption would be tolerable if it were merely a harmless curio, like a quill pen or antique furniture. But today it is far from harmless. In recent years, Major League Baseball[1] has been wielding its unique exemption in a range of activities far wider than anyone could have contemplated in 1972, when the Court last reaffirmed the exemption. The exemption is causing ever-increasing harm to baseball fans and their local communities.

Congress did not exempt baseball from the coverage of the antitrust laws. This Court did. *Federal Base Ball Club of Baltimore, Inc. v. National League of Professional Base Ball Clubs*, 259 U.S. 200 (1922). The Court reaffirmed the exemption in *Toolson v. New York Yankees*, 346 U.S. 356 (1953), and again in *Flood v. Kuhn*, 407 U.S. 258 (1972). The latter two cases rested entirely on *stare decisis*.

As the Court explained in *Flood*, baseball's exemption is "an anomaly" and "an aberration" marked by "inconsistency and illogic." *Id.* at 282, 284. Major League Baseball is the only professional sport with such an exemption, even though its business model is identical in all relevant respects to that of

[1] For convenience, Respondents will be referred to as Major League Baseball or MLB, and Petitioners as San José.

the other professional team sports. The Court acknowledged that if the question of the Sherman Act's applicability to baseball were being decided for the first time, baseball would not be exempt, because "[p]rofessional baseball is a business and it is engaged in interstate commerce." *Id.* at 282. Yet *Flood* held that all the normal tools of statutory interpretation were outweighed by *stare decisis*, for two reasons.

The first reason was the reliance interest of the owners of professional baseball clubs. *Flood* was a challenge to the then-existing "reserve system," *id.* at 259, which bound players to their clubs for life and prevented them from selling their services to the highest bidder. If the reserve system had been deemed an antitrust violation, the club owners would have faced the prospect of paying treble damages, for conduct that had been lawful when it took place, to all the players whose salaries had been depressed by the lack of competition among clubs to hire players. The value of baseball clubs might have plummeted, after the owners had made irrevocable investments, because player payrolls would have become much higher. The *Flood* Court accordingly expressed "concern about the confusion and the retroactivity problems that inevitably would result with a judicial overturning of" the exemption. *Id.* at 283. For this reason, the Court declared its "preference that if any change is to be made, it come by legislative action that, by its nature, is only prospective in operation." *Id.*

The second reason for *Flood*'s reaffirmation of the exemption was that Congress had not amended the antitrust laws to remove it. The Court construed Congress's inaction as acquiescence in the exemption's continued existence. Congress had exhibited "something other than mere congressional silence and passivity" in response to the baseball decisions, the Court reasoned. *Id.* Rather, "Congress, by its positive inaction, has . . . clearly evinced a desire not to disapprove them legislatively." *Id.* at 283-84.

Forty-three years later, both of these justifications have evaporated. The baseball business today is very different from the baseball business of 1972 – so different that the club owners can no longer claim a genuine reliance interest in the antitrust exemption. Instead, the MLB owners are claiming the shelter of the exemption for activities the Court never contemplated in *Flood*. The surrounding legal environment today is also very different from that of 1972. It is no longer plausible to impute to Congress an unspoken desire to immunize baseball from antitrust scrutiny. The time has come to put an end to baseball's Court-created antitrust exemption, or at the very least to confine the exemption to its original context.

A. The antitrust exemption.

The thirty clubs that make up Major League Baseball are separately-owned businesses. They compete on the field, and they also compete in the marketplace – in the labor market to hire the best

players and coaches, in the sale of team-branded merchandise, *see American Needle, Inc. v. National Football League*, 560 U.S. 183 (2010), and in the sale of tickets to attend games. Although clubs may need to cooperate on matters like game schedules and playing rules, they are fierce competitors for the allegiance of fans. *See id.* at 196. One way they compete for fans is by periodically building new stadiums with up-to-date amenities in convenient locations.

MLB's thirty clubs are organized into two leagues, the National League, founded in 1876, and the American League, which took its modern form in 1901. Almost from the beginning, both leagues required player contracts to include what became known as the reserve clause, a mandatory contract term giving the club an option to renew the player's contract for the following season. Once renewed, the next year's contract included a similar clause for the year after, and so on for the remainder of a player's career. The clubs were under no similar obligation to the players. A player could be fired at any time or sold or traded to another club without his consent. The purpose and effect of this reserve system were to reduce player salaries by preventing players from offering their services to the highest bidder. The reserve system would remain a fundamental feature of the baseball business until 1975, three years after *Flood v. Kuhn*.

1. The Court creates the exemption.

In *Federal Baseball Club*, the Court determined that under the then-prevailing narrow definition of "interstate commerce," professional baseball was not governed by the Sherman Act because it was not a form of interstate commerce. *Federal Baseball Club*, 259 U.S. at 208-09.

The conventional view of interstate commerce changed dramatically over the next three decades. *See, e.g.*, *Wickard v. Filburn*, 317 U.S. 111 (1942). By the time the issue returned to the Court in *Toolson*, a challenge to the reserve system brought by players who wished to change clubs, there was no doubt that professional baseball would be classified as interstate commerce if the issue were arising for the first time. The only question was whether to overrule *Federal Baseball Club*. In a one-paragraph per curiam opinion, the Court declined to do so, for two reasons. First, the Court determined that Congress had acquiesced through inaction: "Congress has had [*Federal Baseball Club*] under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect." *Toolson*, 346 U.S. at 357. Second, the Court found that the owners of baseball clubs had relied on the reserve system in making investments: "The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation." *Id.* The Court concluded that the question was best left for Congress, which could apply antitrust law prospectively. "The present cases ask us to overrule

[*Federal Baseball Club*] and, with retrospective effect, hold the legislation applicable," the Court explained. "We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation." *Id.*

In *Toolson*, the Court did modify one aspect of *Federal Baseball Club*. *Federal Baseball Club* had held that baseball was not interstate commerce, which meant that Congress could not subject baseball to antitrust law even if it wanted to. In *Toolson*, by contrast, the Court held that baseball was not governed by antitrust law because "Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." *Id.* Before *Toolson*, Congress had no power to extend the Sherman Act to baseball. After *Toolson*, Congress did have that power, but was deemed to have chosen not to exercise it.

Within a few years of *Toolson*, the Court held that professional boxing and football were both governed by the Sherman Act, on the ground that both professional sports were forms of interstate commerce under the modern definition of the term. *United States v. International Boxing Club of New York, Inc.*, 348 U.S. 236 (1955); *Radovich v. National Football League*, 352 U.S. 445 (1957). The Court determined that neither boxing promoters nor the owners of football clubs could claim the same reliance interest as the owners of baseball clubs. The Court observed:

> In Toolson we continued to hold the umbrella over baseball that was placed there some 31 years earlier by Federal Base Ball. The Court did this because it was concluded that more harm would be done in overruling Federal Base Ball than in upholding a ruling which at best was of dubious validity. Vast efforts had gone into the development and organization of baseball since that decision and enormous capital had been invested in reliance on its permanence. Congress had chosen to make no change. All this, combined with the flood of litigation that would follow its repudiation, the harassment that would ensue, and the retroactive effect of such a decision, led the Court to the practical result that it should sustain the unequivocal line of authority reaching over many years.

Radovich, 352 U.S. at 450-51.

The Court acknowledged the incongruity in treating baseball and football differently, when the two sports had virtually identical business models. "If this ruling is unrealistic, inconsistent, or illogical," the Court reasoned, it was because baseball had relied on an exemption while football had not. "[W]ere we considering the question of baseball for the first time upon a clean slate we would have no doubts," the Court continued.

> But Federal Base Ball held the business of baseball outside the scope of the Act. No other business claiming the coverage of those cases has such an adjudication. We, therefore,

> conclude that the orderly way to eliminate error or discrimination, if any there be, is by legislation and not by court decision. . . . The whole scope of congressional action would be known long in advance and effective dates for the legislation could be set in the future without the injustices of retroactivity and surprise which might follow court action.

Id. at 452. Since *Radovich*, baseball has been the only sport that enjoys an antitrust exemption.

The Court faced this issue most recently in *Flood*, another challenge to the reserve system brought by a player who wished to change clubs. As in *Toolson*, the Court grounded its decision on the reliance interest of club owners and on the view that Congress had acquiesced in the exemption by failing to act. In *Flood* the Court explained that *Toolson* had rested on four bases:

> (a) Congressional awareness for three decades of the Court's ruling in *Federal Baseball*, coupled with congressional inaction. (b) The fact that baseball was left alone to develop for that period upon the understanding that the reserve system was not subject to existing federal antitrust laws. (c) A reluctance to overrule *Federal Baseball* with consequent retroactive effect. (d) A professed desire that any needed remedy be provided by legislation rather than by court decree.

Id. at 273-74. The Court determined that because these considerations were then still present, the

Court would not withdraw "from the conclusion as to congressional intent made in *Toolson* and from the concerns as to retrospectivity therein expressed." *Id.* at 284.

2. The baseball business changes.

The baseball business underwent dramatic change soon after *Flood*. In 1975, in the landmark Messersmith-McNally case, an arbitration panel interpreted the reserve clause to bind a player to his club for only one year after the expiration of his contract, not for the player's entire career. *In re the Twelve Clubs Comprising the Nat'l League of Professional Baseball Clubs*, 66 Lab. Arb. Rep. 101 (1975). Soon thereafter MLB and the players' union reached a collective bargaining agreement that included a reserve clause applicable only to players in the first six years of their careers. After six years of service, players could become free agents and sell their services to the highest bidder, just like workers in most industries. This provision, with minor changes, has remained part of all subsequent collective bargaining agreements through the present. The old career-long reserve system, the object of antitrust attack in *Toolson* and *Flood*, was gone.

The other professional team sports also adopted, likewise through collective bargaining, reserve clauses limited to a player's early career, with free agency thereafter. The Court held that such arrangements were immune from antitrust scrutiny, not because of

any exemption unique to sports or to baseball, but because they fell within the nonstatutory labor exemption applicable to collective bargaining. *See Brown v. Pro Football, Inc.*, 518 U.S. 231 (1996). The terms of employment of MLB players thus no longer relied on the shelter of baseball's unique antitrust exemption. They relied on the shelter of the nonstatutory labor exemption instead.

Meanwhile, several lower courts found baseball's antitrust exemption inapplicable to matters other than the reserve system. A District Court held that the exemption does not shield baseball from antitrust scrutiny for its relations with non-player employees such as umpires. *Postema v. National League of Professional Baseball Clubs*, 799 F. Supp. 1475 (S.D.N.Y. 1992), *rev'd on other grounds*, 998 F.2d 60 (2d Cir. 1993). Another District Court determined that the exemption does not shield baseball from antitrust scrutiny in matters relating to franchise relocation. *Piazza v. Major League Baseball*, 831 F. Supp. 420, 438 (E.D. Pa. 1993). The Florida Supreme Court likewise held that baseball is not exempt in matters regarding franchise relocation. *Butterworth v. National League of Professional Baseball Clubs*, 644 So. 2d 1021, 1025 (Fla. 1994). But other lower courts held that the exemption *does* apply to matters other than the reserve system, including franchise relocation. *Professional Baseball Schools and Clubs, Inc. v. Kuhn*, 693 F.2d 1085, 1086 (11th Cir. 1982); *Charles O. Finley & Co., Inc. v. Kuhn*, 569 F.2d 527, 541 (7th Cir. 1978), *cert. denied*, 439 U.S.

876 (1978); *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101, 1103 (9th Cir. 1974); *McCoy v. Major League Baseball*, 911 F. Supp. 454, 457 (W.D. Wash. 1995); *New Orleans Pelicans Baseball, Inc. v. National Ass'n of Professional Baseball Leagues, Inc.*, 1994 WL 631144, *9 (E.D. La. 1994).

Thus by the mid-1990s, baseball's antitrust exemption was no longer relevant to collectively-bargained major league player contracts, and there was considerable uncertainty about whether it applied to franchise relocation.

3. Congress enacts the Curt Flood Act.

This was the backdrop for Congress's sole piece of legislation in this area, the Curt Flood Act of 1998. In the collective bargaining agreement that went into effect in 1997, the players and the owners agreed to ask Congress for a law that would provide that "Major League Baseball Players are covered under the antitrust laws" just like other professional athletes, "along with a provision that makes it clear that the passage of that bill does not change the application of the antitrust laws in any other context." S. Rep. No. 118, 105th Cong., 1st Sess. 3-4 (1997). The players had just completed a lengthy strike after the expiration of the previous collective bargaining agreement. *See Silverman v. Major League Baseball Player Relations Comm.*, 880 F. Supp. 246 (S.D.N.Y. 1995), *aff'd*, 67 F.3d 1054 (2d Cir. 1995). They wanted such a law in order to deter the club owners from unilaterally

imposing terms of employment, like the old reserve clause, in the event another collective bargaining agreement expired. Marianne McGettigan, *The Curt Flood Act of 1998: The Players' Perspective*, 9 Marq. Sports L.J. 379, 380-81 (1999). The owners were willing to accept this change, so long as the law would not "affect the applicability or inapplicability of the antitrust laws in any other manner or context." S. Rep. No. 118 at 2.

The Flood Act accordingly declares that matters "relating to or affecting employment of major league baseball players . . . are subject to the antitrust laws." 15 U.S.C. § 26b(a). But the Act specifies that it takes no position on whether baseball is governed by, or exempt from, the antitrust laws in any other respect. It provides: "This section does not create, permit or imply a cause of action by which to challenge under the antitrust laws," § 26b(b), a wide variety of other baseball-related matters, including those "relating to or affecting franchise expansion, location or relocation," § 26b(b)(3). As Senator Hatch, one of the Act's sponsors, explained, the Act "is absolutely neutral with respect to the state of the antitrust laws between all entities and in all circumstances other than in the area of employment as between major league owners and players." 144 Cong. Rec. 18175 (1998).

Congress recognized that strict neutrality between the applicability and non-applicability of antitrust law was especially important regarding franchise relocation, because of the split among the lower courts and the existence of pending cases

raising the question. As Senator Wellstone noted, in addition to the *Butterworth* and *Piazza* cases from Florida and Pennsylvania, *supra*, there was also a pending case in Minnesota in which a state court had held that the exemption does not apply to franchise relocation. 144 Cong. Rec. 18459 (1998). "It is my understanding," Wellstone explained, that the Flood Act "will have no effect on the courts' ultimate resolution of the scope of the antitrust exemption on matters beyond those related to owner-player relations at the major league level." *Id.* Senator Leahy confirmed that the Flood Act "has no impact on the recent decisions in federal and state courts in Florida, Pennsylvania and Minnesota." *Id.* Senator Hatch likewise emphasized that the Act "affects no pending or decided cases except to the extent a court would consider exempting major league clubs from the antitrust laws in their dealings with major league players." 144 Cong. Rec. 18175 (1998).

The dissenting members of the Senate Judiciary Committee opposed the Flood Act in part because of its neutrality with respect to whether the exemption applies to franchise relocation. They wanted the Flood Act to state that baseball was exempt from antitrust law in such matters, so that MLB would be able to bar clubs from changing cities. Without such a provision, they complained, "[t]his legislation continues to leave fans vulnerable to major league franchise relocations." S. Rep. No. 118 at 9.

4. MLB uses its exemption in ways unforeseen in *Flood*.

The Court created and reaffirmed baseball's antitrust exemption during an era in which the baseball business consisted largely of hiring players and selling tickets. The limited scope of the baseball business necessarily limited the scope of the antitrust exemption. Since 1972, however, MLB has claimed an ever-greater reach for the exemption in two ways that could not have been foreseen by the *Flood* Court.

First, when *Flood* was decided in 1972, it was scarcely imaginable that MLB would use its antitrust exemption so aggressively to prevent clubs from moving to cities where they would attract more fans and be more commercially successful. The previous two decades had seen precisely the opposite – there had been ten franchise relocations in twenty years, all in the expectation of finding more fans.[2] In the forty-three years since *Flood*, by contrast, MLB has allowed only one club to move: In 2005 the Montreal Expos became the Washington Nationals. During that

[2] In 1953 the Boston Braves moved to Milwaukee. In 1954 the St. Louis Browns moved to Baltimore and became the Orioles. In 1955 the A's moved to Kansas City. In 1958 the Brooklyn Dodgers moved to Los Angeles and the New York Giants moved to San Francisco. In 1961 the Washington Senators moved to Minneapolis and became the Twins. In 1966 the Braves moved to Atlanta. In 1968 the A's moved to Oakland. In 1970 the Seattle Pilots moved to Milwaukee and became the Brewers. In 1972 the new Washington Senators moved to Dallas and became the Rangers.

same period, the other three major professional team sports have seen a total of twenty-four moves. MLB's chief legal officer, testifying before Congress in 2002, explained that MLB's unparalleled record of barring clubs from moving "most certainly would not have been possible without the antitrust exemption." *The Application of Federal Antitrust Laws to Major League Baseball: Hearing Before the Senate Comm. on the Judiciary*, 107th Cong., 2d Sess. 24 (2002).

Second, when *Flood* was decided, it was generally understood – and had been for a long time – that baseball's antitrust exemption did not extend to broadcasting. In the 1940s, when the clubs tried to carve up the country into broadcast territories and ban clubs from broadcasting games into other clubs' territories, the Justice Department's Antitrust Division forced the removal of the restriction as an unreasonable restraint on the broadcast of games. Department of Justice, Press Release, Oct. 27, 1949, reproduced in *Broadcasting and Televising Baseball Games: Hearings Before a Subcomm. of the Senate Comm. on Interstate and Foreign Commerce*, 83d Cong., 1st Sess. 14 (1953). In 1953, the clubs asked if the Antitrust Division would approve a proposal for the clubs to pool television rights and sell them to a television network for a nationwide "Game of the Week." The Antitrust Division refused to give its approval, and the proposal was withdrawn. *Organized Professional Team Sports: Hearings Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. of the Judiciary*, 85th Cong., 2d Sess. 692

(1958). On neither occasion did the clubs even claim that the antitrust exemption extended to broadcasting. Indeed, in the Sports Broadcasting Act of 1961, Congress explicitly provided an antitrust exemption for baseball clubs to pool their over-the-air television rights and sell them as a single package. 75 Stat. 732 (1961), § 1, now codified at 15 U.S.C. § 1291. This explicit statutory exemption would have been superfluous if baseball's antitrust exemption already included broadcasting.

With the development of new media, however, MLB now claims the shelter of its antitrust exemption for actions that would not have been understood as protected by the exemption when *Flood* was decided. For cable and satellite television, Internet streaming, and mobile device broadcasts, MLB now carves the nation into broadcast territories exactly as it once tried to do for over-the-air television, to force customers to purchase premium subscription packages at monopoly prices if they wish to watch clubs in any territory but their own. A fan of the Boston Red Sox who lives outside of New England and wishes to watch only Red Sox games, for example, cannot buy Red Sox games without also buying the games of every other club. *See* Nathan M. Hennagin, *Blackout or Blackmail? How* Garber v. MLB *Will Shed Light on Major League Baseball's Broadcasting Cartel*, 8 Brook. J. Corp. Fin. & Com. L. 158, 172-75 (2013). MLB contends that this scheme is immune from antitrust scrutiny because of its exemption. Corrected Memorandum of Law in Support of the MLB Defendants' Motion for Summary Judgment, *Garber v.*

Office of the Comm'r of Baseball, No. 12-cv-3704 (S.D.N.Y., filed Apr. 22, 2014), at 9-12.

In the even newer market of interactive media, which encompasses everything from fantasy games to data analysis to ticket-selling, the thirty MLB clubs, believing themselves protected by the antitrust exemption, have pooled their rights into a firm called MLB Advanced Media. *Forbes* magazine calls MLB Advanced Media "the biggest media company you've never heard of" and estimates that it is already worth more than $5 billion. According to *Forbes*, MLB Advanced Media "has positioned itself perfectly in a world surrounded by the likes of Netflix and Hulu." Maury Brown, *The Biggest Media Company You've Never Heard Of*, Forbes, July 7, 2014, http://onforb.es/1lND1zB.

The baseball business today looks very different from the baseball business that existed in 1972, when *Flood* was decided. As a result, the antitrust exemption that MLB claims today is much broader than the exemption contemplated in *Flood*.

B. Facts and proceedings below.

The Oakland A's began as the Philadelphia Athletics, one of the charter members of the American League. By mid-century the A's were one of the worst-performing clubs, both on the field and at the box office. In 1954, the club's last year in Philadelphia, average attendance was dead last in the American League, and less than half that of the National

League's Philadelphia Phillies, with whom the A's had to share the local market. In 1955 the A's moved to Kansas City and attendance improved. But long-term commercial success proved as elusive in Kansas City as it had been in Philadelphia. In 1968 the A's moved on to Oakland, which was part of a much larger metropolitan area, and which had built a brand new stadium, the Oakland-Alameda County Coliseum.

1. MLB blocks the A's from moving to San José.

For a time the A's enjoyed considerable success in Oakland. They won three consecutive World Series from 1972-74 and then appeared in three more from 1988-90, during which period the A's had the second-highest attendance in the American League. Since then, however, attendance has plummeted. In the last two decades the A's have been one of the worst-drawing MLB clubs, even in years when the club has played well on the field. Part of the problem is that the stadium has deteriorated to an abysmal state, including well-publicized leakages of raw sewage. Another issue is that the demographic and financial center of gravity in the Bay Area has shifted southward to San José and the surrounding Silicon Valley. (San José is now the tenth-most populous city in the country; Oakland is forty-fifth.) Finally, the A's have to compete with a rival just a few miles away, the San Francisco Giants.

Competition with the Giants is at the root of the current dispute. Under the Major League Constitution, MLB's governing document, each club is assigned an "operating territory" within which it must play its home games. A club may not move to a location outside its operating territory without the consent of three-fourths of the clubs. App. 3a. The A's' operating territory is defined in the MLB Constitution as Alameda and Contra Costa Counties. Santa Clara County, where San José is located, is one of several counties that make up the Giants' operating territory. App. 2a. (Unlike in New York, Los Angeles, and Chicago, where the two local clubs share their operating territories, the A's' and the Giants' territories do not overlap at all.)

San José became part of the Giants' operating territory when the Giants attempted to move to the San José area in the late 1980s and early 1990s. Such a move would have been outside the Giants' operating territory, which at the time did not include Santa Clara County. Over a handshake, the owner of the A's consented to add Santa Clara County to the Giants' territory, to help the Giants move. In the end, the Giants never did move to San José, because the San José voters rejected ballot measures for a taxpayer-funded stadium. The Giants obtained private financing for a new stadium in San Francisco, now called AT&T Park. But Santa Clara County remained part of the Giants' territory in the MLB Constitution.

The opening of AT&T Park made it even harder for the A's to compete with the Giants for fans. In

recent years, the Giants have attracted approximately twice as many fans to their games as have the A's. The Giants are always near the top of MLB's attendance list; the A's are always near the bottom. The Giants are able to maintain a player payroll twice that of the A's. The A's have accordingly been trying to build a new stadium in the Bay Area for some time. For several years, the A's explored possibilities in Oakland and in Fremont, but these efforts were unsuccessful.

Since 2009 the A's have focused attention on San José. San José has reached an option agreement with the A's to purchase land where the stadium would be located. San José has prepared an Environmental Impact Report. It has undertaken a thorough economic analysis that shows the benefits to the local economy in terms of consumer spending and jobs, as well as the benefits to the city in terms of tax revenue. San José has taken all the necessary steps preliminary to the construction of a stadium. In 2009 the A's asked MLB for permission to move to San José. MLB appointed a commission, ostensibly to study the question. But nothing happened. San José waited for four years while MLB stalled in order to prevent the A's from moving. App. 3a.

There is no apparent business justification for blocking the A's from moving to San José, except to protect the Giants from competition. The Giants and the A's both have many fans in the San José area. The Giants have an incentive to avoid losing these fans to the A's, should the A's become San José's local club.

In 2013, after enduring four years of delay, San José filed this lawsuit, which alleges that MLB's refusal to allow the A's to move to San José violates sections 1 and 2 of the Sherman Act and various provisions of California state law.

2. The lower courts find San José's suit barred by the antitrust exemption.

The District Court granted MLB's motion to dismiss the Sherman Act claims on the ground that they are barred by baseball's antitrust exemption. App. 26a-41a.[3] The court recognized that the exemption "makes little sense given the heavily interstate nature of the 'business of baseball' today." App. 38a. But the court acknowledged it was "bound by the Supreme Court's holdings, and cannot conclude today that those holdings are limited to the reserve clause." App. 38a.

The Court of Appeals affirmed. The court recognized that the exemption is "one of federal law's most

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[3] In aspects of its decision not relevant to this petition, the District Court: (1) declined to decide whether San José has antitrust standing to seek injunctive relief under 15 U.S.C. § 26, App. 46a; (2) found that San José lacks antitrust standing to seek damages under 15 U.S.C. § 15(a), App. 43a; and (3) dismissed some of San José's state law claims, App. 46a-50a. The District Court later dismissed the remaining state law claims without prejudice to refiling those claims in state court. App. 58a. The Court of Appeals affirmed the dismissal of the state law claims, App. 11a-12a, but found no need to consider the issues of antitrust standing, App. 12a n.5.

enduring anomalies," App. 2a, but one the court was powerless to change. "The scope of the Supreme Court's holding in *Flood* plainly extends to questions of franchise relocation," the Court of Appeals concluded. "San Jose is, at bottom, asking us to deem *Flood* wrongly decided, and that we cannot do. Only Congress and the Supreme Court are empowered to question *Flood*'s continued vitality." App. 12a.

REASONS FOR GRANTING THE WRIT

Professional baseball's antitrust exemption no longer serves the purpose for which it was created and reaffirmed. The Court made very clear in *Toolson*, *Radovich*, and *Flood* that the point of the exemption was to protect the reliance interest of club owners, who would have faced crushing retroactive liability and the loss of irrevocable investments if the Court had opened the reserve system to antitrust scrutiny. The Court was able to justify protecting the club owners by citing Congress's silence as evidence of Congress's approval.

The club owners no longer have any such reliance interest. The reserve system is dead and gone. Rather than protecting the owners from the unfair surprise of retroactive liability, the antitrust exemption has become a sword the owners wield as they move into new markets like Internet streaming and interactive media.

Meanwhile, one can no longer plausibly argue that Congress has silently acquiesced in the exemption through its inaction. Congress has spoken. In the Curt Flood Act, Congress explicitly declared its strict neutrality as to whether there even *is* an exemption for matters other than major league player contracts. Rather than acquiescing in the exemption, Congress has deliberately chosen neither to acquiesce in nor to reject the exemption. The two pillars that once supported the antitrust exemption – reliance and implied congressional acquiescence – have thus both crumbled away. The time has come for the Court to abolish the exemption it created long ago, when the facts and the legal environment were both very different.

At the very least, the Court should clarify the exemption's scope, a question the Court has never considered and one on which the lower courts are divided. In some courts, the exemption is confined to the reserve system, the context in which this Court created and reaffirmed it. In other courts, the exemption protects MLB from antitrust scrutiny in every aspect of the business of baseball, a business that is now much larger and more multifaceted than it was when *Flood* was decided. Restrictions on franchise relocation – not to mention restrictions on digital media – were never contemplated in *Toolson* or *Flood*. These decisions did not give MLB an unfettered license to create new realms of antitrust immunity, like Midas, in whatever lines of business it touches.

I. Baseball's antitrust exemption should be abolished, because its two justifications – the reliance interest of club owners and congressional acquiescence through silence – have ceased to exist.

A judge-created legal doctrine universally recognized as "an anomaly" and "an aberration," *Flood*, 407 U.S. at 282, should survive only so long as it serves the purpose for which it was created. The Court exempted professional baseball from antitrust law to protect the reliance interest of club owners, but the exemption no longer protects their reliance interest. The Court found legislative warrant for the exemption in Congress's silence, but Congress is no longer silent. MLB's antitrust exemption has outlived its justifications. It is bad enough for a judge-made rule to survive just because it is old. "It is still more revolting," as the author of the Court's opinion in *Federal Baseball Club* once remarked, "if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past." Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 Harv. L. Rev. 457, 469 (1897).

A. The owners of baseball clubs can no longer claim a reliance interest in the antitrust exemption.

The Court exempted professional baseball from antitrust law to protect the club owners' reliance interest in the reserve system. As the Court made clear in *Radovich*, "[t]he Court did this because it was

concluded that more harm would be done in overruling Federal Base Ball than in upholding a ruling which at best was of dubious validity. Vast efforts had gone into the development and organization of baseball since that decision and enormous capital had been invested in reliance on its permanence." *Radovich*, 352 U.S. at 450. The owners had relied on the reserve system to reduce player salaries since the nineteenth century. If a court had found the reserve system inconsistent with antitrust law, the owners would have been liable for treble damages to thousands of baseball players – all the players whose salaries had been depressed over the course of their careers – for a practice that had been lawful at the time it occurred. Moreover, player salaries made up the greatest share of a club's expenses. If the owners had suddenly been required to pay competitive salaries, expenses would have risen sharply without any corresponding rise in revenues. The value of clubs would have plummeted, after the owners had made irrevocable investments. This was why the Court expressed a preference for legislation from Congress, which had the power to apply antitrust law prospectively only, and even to phase it in slowly so as not to upset the settled expectations of club owners. As the Court explained, "[t]he whole scope of congressional action would be known long in advance and effective dates for the legislation could be set in the future without the injustice of retroactivity and surprise which might follow court action." *Id.* at 452.

In *Flood*, the Court continued to protect the club owners' reliance interest in the reserve system. The Court again worried about "the confusion and the retroactivity problems that inevitably would result with a judicial overturning" of the exemption and the resulting application of antitrust law to the reserve system. *Flood*, 407 U.S. at 283. The Court reiterated its preference "that if any change is to be made, it come by legislative action that, by its nature, is only prospective in operation." *Id.*

The reserve system no longer exists. The terms of player contracts are now settled by collective bargaining and are exempt from antitrust law by virtue of the non-statutory labor exemption, a doctrine that existed only in embryonic form when *Flood* was decided. In the absence of a collective bargaining agreement, the terms of player contracts are now governed by antitrust law, due to the Curt Flood Act. The antitrust exemption reaffirmed in *Toolson* and *Flood* no longer has anything to do with the employment terms of major league players.

The club owners thus no longer have a reliance interest in the exemption's continued existence. At the time *Flood* was decided, the owners could truthfully say that they would never have invested so much money in their clubs had they expected that the reserve system would be opened to antitrust scrutiny. In fact, they *did* say that: When the District Court heard evidence in *Flood*, much of the defense case consisted of the testimony of club owners that they relied on the exemption when purchasing their clubs.

Appendix, *Flood v. Kuhn*, 291-94, 302-04. The owners could not truthfully provide the same testimony today. No club owner could plausibly say: "I would never have invested in my club if I knew I would be unable to collude with the owners of other clubs to force one club to remain in a shabby old stadium rather than moving to a more profitable location."

Unlike in 1972, the value of a baseball club does not rely on the existence of an antitrust exemption. There is no exemption for football, basketball, or hockey, yet these sports are prospering, just like baseball. W.R. Hambrecht & Co., *The U.S. Professional Sports Market & Franchise Value Report 2012*, at 21, https://www.wrhambrecht.com/wp-content/uploads/2013/09/SportsMarketReport_2012. pdf.

Antitrust law has also changed since *Flood*, in a way that further undermines any claim of a reliance interest. When *Flood* was decided, horizontal restraints were considered per se antitrust violations. *United States v. Topco Assocs., Inc.*, 405 U.S. 596 (1972). Baseball club owners had reason to fear that even procompetitive arrangements would fall under the axe of antitrust law. Since then, however, the Court has made clear that horizontal restraints in sports leagues are governed by the rule of reason. *National Collegiate Athletic Ass'n v. Board of Regents*, 468 U.S. 85, 100-02 (1984). Now the owners have much less reason to fear antitrust scrutiny.

B. It is no longer plausible to impute to Congress an unspoken intent to exempt baseball from antitrust law.

In *Toolson* and *Flood* the Court was well aware that baseball's antitrust exemption is impossible to square with the text of the Sherman Act. The Court took solace in the fact that Congress had known of the exemption for decades but had not legislated in the field. The Court interpreted the absence of legislation as acquiescence. *Toolson*, 346 U.S. at 357; *Flood*, 407 U.S. at 283-84. This conclusion is no longer tenable, for two reasons. First, Congress has now spoken, in the Curt Flood Act. Second, there have been important changes since *Flood* in the way the Court interprets legislative silence.

Even if Congress's silence were generally a trustworthy guide to Congress's intent, it would be an inappropriate guide here, because Congress has spoken. In the Curt Flood Act of 1998, Congress declared that with respect to matters other than the employment of major league players, it would take no position – neither acquiescence nor disapproval – on whether baseball was exempt from antitrust law. The Flood Act was carefully worded to be equally satisfactory to the players' union and the club owners. It deliberately refrains from expressing any view, one way or the other, as to whether the Sherman Act governs baseball. Rather, it states: "No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct" other than the employment of major league

players. 15 U.S.C. § 26b(b). The Flood Act further provides: "This section" – i.e., the Flood Act itself – "does not create, permit or imply a cause of action under the antitrust laws." *Id.* The Flood Act intentionally says nothing about whether any other sections of Title 15, including sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, permit a cause of action against MLB. As one of the participants in the negotiations that gave rise to the Flood Act explains, "Congress did not intend to address the question of to what extent baseball's antitrust exemption continues to exist. Indeed, Congress went out of its way to make sure that it was *not* speaking to that issue." Steven A. Fehr, *The Curt Flood Act and Its Effect on the Future of the Baseball Antitrust Exemption*, Antitrust, Spring 2000, at 25, 29.

We no longer have congressional acquiescence through silence, because we no longer have either acquiescence or silence. Congress has now spoken. It has chosen its words carefully, to avoid any inference of acquiescence.

In any event, the Court no longer accepts mere silence as evidence of Congress's intent. Forty-three years ago, when *Flood* was decided, the Court routinely interpreted silence as acquiescence. Those days are gone. *See, e.g.*, *Alexander v. Sandoval*, 532 U.S. 275, 292 (2001); *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 186-87 (1994). In recent years, the Court has recognized that "Congress takes no governmental action except by legislation," and that what was formerly called

acquiescence through silence "should more appropriately be called Congress's failure to express any opinion." *Rapanos v. United States*, 547 U.S. 715, 750 (2006) (plurality opinion). *See also Johnson v. Transportation Agency, Santa Clara Cty.*, 480 U.S. 616, 672 (1987) (Scalia, J., dissenting) ("vindication by congressional inaction is a canard").

Flood was decided, moreover, at a time when, for *stare decisis* purposes, decisions interpreting the Sherman Act were treated just like decisions interpreting any other statute. In recent years, by contrast, the Court has emphasized that "the general presumption that legislative changes should be left to Congress has less force with respect to the Sherman Act." *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997). *See also Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 899 (2007) ("*Stare decisis* is not as significant in this case, however, because the issue before us is the scope of the Sherman Act.").

Where developments in the law "have removed or weakened the conceptual underpinnings from the prior decision . . . the Court has not hesitated to overrule an earlier decision." *Patterson v. McLean Credit Union*, 491 U.S. 164, 173 (1989). That is precisely what has happened to *Flood v. Kuhn*. It is no longer plausible to impute to Congress an unspoken desire to exempt baseball from the Sherman Act.

II. At the very least, the Court should clarify the scope of baseball's antitrust exemption.

As the justifications for MLB's antitrust exemption have evaporated, the lower courts, powerless to remove the exemption, have been left to grapple with its scope. They have been reduced to parsing *Flood* for clues as to what this Court meant when it reaffirmed the exemption. This exercise has produced a broad conflict among the lower courts as to whether the exemption extends to matters other than the reserve system, and a specific conflict on whether the exemption extends to franchise relocation.

This conflict needs to be resolved as soon as possible. Under the interpretation of *Flood* favored by MLB and adopted by some lower courts, the exemption extends to any matter encompassed by "the business of baseball." That view was less troublesome when the business of baseball consisted of hiring players and selling tickets to games. Today, when the thirty businesses that constitute MLB have extended their tentacles into markets unforeseen in 1972 – Internet streaming, transmission to mobile devices, and the new world of interactive digital media – an antitrust exemption for "the business of baseball" threatens to become boundless, encompassing every aspect of the economy baseball touches.

A. The lower courts are divided on the scope of the exemption, including whether it applies to franchise relocation.

Two lower courts, including the Florida Supreme Court, have held that MLB's antitrust exemption applies only to the reserve system. *See Butterworth v. National League of Professional Baseball Clubs*, 644 So. 2d 1021, 1024-25 & n.7 (Fla. 1994); *Piazza v. Major League Baseball*, 831 F. Supp. 420, 435-38 (E.D. Pa. 1993). Several other lower courts, including the Seventh, Ninth, and Eleventh Circuits, as well as the Supreme Courts of Minnesota and Wisconsin, have held that the exemption extends to the entire "business of baseball." *See* App. 7a; *Major League Baseball v. Crist*, 331 F.3d 1177, 1183 (11th Cir. 2003); *Charles O. Finley & Co., Inc. v. Kuhn*, 569 F.2d 527, 541 (7th Cir. 1978), *cert. denied*, 439 U.S. 876 (1978); *Minnesota Twins Partnership v. State*, 592 N.W.2d 847, 854-56 (Minn. 1999); *State v. Milwaukee Braves, Inc.*, 144 N.W.2d 1, 15 (Wis. 1966); *Morsani v. Major League Baseball*, 79 F. Supp. 2d 1331, 1335 (M.D. Fla. 1999); *McCoy v. Major League Baseball*, 911 F. Supp. 454, 457 (W.D. Wash. 1995); *New Orleans Pelicans Baseball, Inc. v. National Ass'n of Professional Baseball Leagues, Inc.*, 1994 WL 63114, *9 (E.D. La. 1994).

The conflict is largely attributable to ambiguity within the Court's opinion in *Flood*. At times, *Flood* describes the exemption as covering "baseball's reserve system." *Flood*, 407 U.S. at 259 (characterizing the question presented as whether "baseball's reserve

system is within the reach of the federal antitrust laws"), 274 (noting the emphasis placed in *Toolson* on "the understanding that the reserve system was not subject to existing federal antitrust laws"), 283 (imputing to Congress "no intention to subject baseball's reserve system to the reach of the antitrust statutes"). At other times, however, *Flood* describes the exemption as covering "baseball" or "the business of baseball." *Id.* at 273 (quoting *Toolson*'s statement that "Congress had no intention of including the business of baseball within the scope of the federal antitrust laws"), 281 (discussing proposed legislation regarding "the applicability or nonapplicability of the antitrust laws to baseball"), 282 (asserting that the exemption "rests on a recognition and an acceptance of baseball's unique characteristics and needs").

Several of the lower court cases, on both sides of the split, involve whether the exemption applies to franchise relocation. In *Butterworth*, the Florida Supreme Court held that the exemption does not apply to "decisions involving the sale and location of baseball franchises." 644 So. 2d at 1021. *See also Piazza*, 831 F. Supp. at 438 (holding MLB is not exempt from antitrust law for blocking the Giants' efforts to move to Tampa). On the other side of the split, the Eleventh Circuit and the Minnesota and Wisconsin Supreme Courts, like the Ninth Circuit in the instant case, hold MLB *is* exempt from antitrust law in matters involving franchise relocation. *Professional Baseball Schools and Clubs, Inc. v. Kuhn*, 693 F.2d 1085, 1085-86 (11th Cir. 1982) (holding the

exemption applicable to "the franchise location system"); *Minnesota Twins Partnership*, 592 N.W.2d at 856 ("we conclude that the sale and relocation of a baseball franchise, like the reserve clause discussed in *Flood*, is an integral part of the business of professional baseball and falls within the exemption"); *Milwaukee Braves*, 144 N.W.2d at 15 (noting that the exemption applies to claims arising from Braves' move to Atlanta). *See also Morsani*, 79 F. Supp. 2d at 1335 (applying the exemption to claims arising from efforts to relocate the Minnesota Twins and Texas Rangers); *New Orleans Pelicans*, 1994 WL 631144 at *9 (applying the exemption to claims arising from efforts to relocate the minor league Charlotte Knights).

In the Flood Act, Congress deliberately left this conflict open. Congress was well aware of *Butterworth* and *Piazza*, the then-recent cases holding that the exemption does not apply to franchise relocation. But because the point of the Flood Act was to say nothing about any aspect of baseball other than the employment of major league players, Congress intentionally refrained from expressing its approval or disapproval of this view.

The conflict is particularly intolerable because the Florida Supreme Court and the Eleventh Circuit are on opposite sides. Florida is home to two of MLB's clubs, the Miami Marlins and the Tampa Bay Rays, as well as fourteen minor league clubs.

B. Unless the Court cabins the exemption, MLB will continue to extend its monopoly by expanding the definition of the "business of baseball."

While MLB claims an antitrust exemption for "the business of baseball," MLB has also expanded its definition of what that business is. When the Court used the phrase "business of baseball," it understood that "[t]he business is giving exhibitions of base ball." *Flood*, 407 U.S. at 269 (quoting *Federal Baseball Club*, 259 U.S. at 208). In 1972 no one had any idea that MLB would use its antitrust exemption to block clubs from moving to cities where more fans could attend their games. The *Flood* Court could not have conceived that MLB would use the exemption to charge customers monopoly prices for cable television broadcasts or Internet streaming. And of course in 1972 it would have been impossible to imagine that MLB would wield its exemption to become a major player in the lucrative new world of interactive digital media.

This is not your grandfather's antitrust exemption. The exemption this Court recognized in *Toolson* and *Flood* was a modest one, but in recent years it has grown beyond recognition, as MLB claims antitrust immunity for every commercial enterprise it touches. The Court should, at the very least, clarify that the exemption applies only in the context in which it was created. Otherwise MLB's monopoly power will continue to expand along with its definition of the business of baseball.

This expanded exemption is causing real harm to consumers and to their communities. This case is a perfect example: More baseball fans will watch the A's in San José than in Oakland, and they will enjoy the games in more pleasant surroundings. To bar the A's from moving is to reduce consumer welfare, for the sole benefit of a competing producer, the Giants. This is precisely the harm that antitrust law is designed to prevent.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

United States Court of Appeals, Ninth Circuit

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, Plaintiffs-Appellants,

v.

OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association, DBA Major League Baseball; Allan Huber Selig, "Bud," Defendants-Appellees.

No. 14-15139
Argued and Submitted Aug. 12, 2014
Filed Jan. 15, 2015

Joseph W. Cotchett (argued), Philip L. Gregory (argued), Frank C. Damrell, Jr., Anne Marie Murphy, Camilo Artiga-Purcell of Cotchett, Pitre & McCarthy, LLP, Burlingame, CA, and Richard Doyle, Nora Frimann of the Office of the City Attorney, San Jose, CA, for Appellants.

John W. Keker (argued), Paula L. Blizzard, R. Adam Lauridsen, Thomas E. Gorman of Keker & Van Nest LLP, San Francisco, CA, and Bradley I. Ruskin of Proskauer Rose LLP, New York, NY, and Scott P. Cooper, Sarah Kroll-Rosenbaum, Jennifer L. Roche, Shawn S. Ledingham, Jr. of Proskauer Rose LLP, Los Angeles, CA, for Appellees.

Appeal from the United States District Court for the Northern District of California, Ronald M. Whyte,

Senior District Judge, Presiding. D.C. No. 5:13-cv-02787-RMW.

Before ALEX KOZINSKI, BARRY G. SILVERMAN and RICHARD R. CLIFTON, Circuit Judges.

KOZINSKI, Circuit Judge:

The City of San Jose steps up to the plate to challenge the baseball industry's 92-year old exemption from the antitrust laws. It joins the long line of litigants that have sought to overturn one of federal law's most enduring anomalies.

I. Background

Major League Baseball's (MLB)[1] constitution requires that each of the league's 30 member clubs play their home games within a designated operating territory. For the Oakland Athletics, that territory is comprised of two California counties: Alameda and Contra Costa. Faced with dwindling attendance and revenue, the Athletics want to move to San Jose, which they consider a more profitable venue. But there's a snag: San Jose falls within the exclusive operating territory of the San Francisco Giants, and

[1] The defendants in this case are the "Office of the Commissioner of Baseball," which is an unincorporated association of all 30 MLB clubs, and Allan "Bud" Selig, whose individual job title is Commissioner of MLB. For convenience, we refer to the defendants as "MLB." The plaintiffs in this case are the City of San Jose and the San Jose Diridon Development Authority, which we refer to collectively as "San Jose."

relocation to another franchise's territory is prohibited unless approved by at least three-quarters of MLB's clubs.

MLB has not rushed to grant this approval. In 2009, MLB established a "special Relocation Committee" to investigate the implications of the move for the league, but four years later the committee was "still at work," with no resolution in sight. In the meantime, the Athletics moved forward with their plan to build a stadium in San Jose by entering into an option agreement with the city that gave them the right to purchase six parcels of land the city had set aside. But, because MLB hadn't yet approved the move, the Athletics were unable to perform on the agreement, and the land sat idle.

Believing that the delay was MLB's attempt to stymie the relocation and preserve the Giants' local monopoly, San Jose filed suit. It alleged violations of state and federal antitrust laws, of California's consumer protection statute and of California tort law. Relying on the baseball industry's historic exemption from the antitrust laws, the district court granted MLB's motion to dismiss on all but the tort claims.[2] San Jose appeals, arguing that the baseball exemption does not apply to antitrust claims relating to franchise relocation. We review de novo. *See Colony*

[2] The district court subsequently declined to retain supplemental jurisdiction over those state law tort claims and dismissed them without prejudice.

Cove Props., LLC v. City of Carson, 640 F.3d 948, 955 (9th Cir. 2011).

II. Discussion

Our analysis is governed by three Supreme Court cases decided over the course of half a century; taken together, they set the scope of baseball's exemption from the antitrust laws. *See generally* Stuart Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption* (2013). First, in *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200, 42 S.Ct. 465, 66 L.Ed. 898 (1922), the Court, reflecting the era's soon-to-be-outmoded interpretation of the Commerce Clause, held that the Sherman Act had no application to the "business [of] giving exhibitions of base ball" because such "exhibitions" are a "purely state affair[ ]." *Id.* at 208.

Next up, in *Toolson v. New York Yankees, Inc.*, 346 U.S. 356, 74 S.Ct. 78, 98 L.Ed. 64 (1953), the Court, in a short per curiam, affirmed *Federal Baseball*, albeit on a different ground. *Federal Baseball*'s Commerce Clause underpinning was no longer good law, but the Court recognized that "Congress [ ] had the [*Federal Baseball*] ruling under consideration [and had] not seen fit to bring [baseball] under the [antitrust] laws by legislation." *Id.* at 357. As such, "[t]he business [was] left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation," and the Court determined

that even if there were circumstances that "warrant[ed] application [ ] of the antitrust laws[, such laws] should be [applied] by legislation." *Id.* "Without re-examination of the underlying issues," the Court reaffirmed *Federal Baseball*'s central holding that "the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust laws." *Id.*

Finally in *Flood v. Kuhn*, 407 U.S. 258, 92 S.Ct. 2099, 32 L.Ed.2d 728 (1972), the Court once again upheld the baseball exemption, this time in a lengthy, reasoned opinion.[3] The Court noted "the confusion and the retroactivity problems that inevitably would result with a judicial overturning of *Federal Baseball*" and again stated its "preference that if any change is to be made, it come by legislative action." *Id.* at 283. In particular, the Court stressed that Congress had acquiesced in the baseball exemption and thus "by its positive inaction . . . clearly evinced a desire not to disapprove [it] legislatively." *Id.* at 283-84. *Flood* and its progenitors, therefore, upheld the baseball exemption for two fundamental reasons: (1) fidelity to the principle of stare decisis and the concomitant aversion to disturbing reliance interests created by the exemption; and (2) Congress's apparent acquiescence in the holdings of *Federal Baseball* and *Toolson*.

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[3] Some thought, too lengthy. *See* 407 U.S. at 285.

San Jose first argues that *Flood* applies only to baseball's "reserve clause"[4] – the particular provision at issue in that case – and not to other facets of the baseball industry, like franchise relocation. In other words, San Jose urges that we limit *Flood* to its facts. Such a drastic limitation on *Flood*'s scope is foreclosed by our precedent. Under the baseball exemption, we have rejected an antitrust claim that was wholly unrelated to the reserve clause. *See Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101, 1103 (9th Cir. 1974). In *Portland Baseball*, a former minor league franchise owner brought suit against MLB. The owner argued that MLB failed to comply with the terms of an agreement it struck with minor league teams to provide compensation in the event a major league franchise moved into a minor league franchise's territory. *Id.* at 1102. One of the plaintiff's claims was that MLB's monopolization of the baseball industry rendered minor league teams unable to negotiate on fair terms. *Portland Baseball Club, Inc. v. Kuhn*, 368 F. Supp. 1004, 1009 (D. Or. 1971). Even though the antitrust claim in *Portland Baseball* had nothing to do with the reserve clause, we cited *Flood* in upholding the claim's dismissal. *Portland Baseball*, 491 F.2d at 1103. *Portland Baseball* may not define precisely the boundaries of the baseball exemption,

[4] The "reserve clause" was a provision in baseball contracts that prevented players from signing with other clubs, even after their contracts had expired, without the express consent of the club they played for.

but it fatally undercuts San Jose's attempt to restrict *Flood* to the reserve clause.

San Jose next contends that if we are to hold that the baseball exemption extends beyond the reserve clause, we must remand to the district court to determine whether franchise relocation is sufficiently related to "baseball's unique characteristics and needs" to warrant exemption. This argument appears to be derived from a single sentence in *Flood*, which states that the baseball exemption "rests on a recognition and an acceptance of baseball's unique characteristics and needs." *Flood*, 407 U.S. at 282. From this line alone, San Jose argues that the *Flood* Court intended a fact-sensitive inquiry whenever the antitrust exemption is challenged. But, aside from the isolated language San Jose quotes, nothing in *Flood* suggests that the reserve clause was exempted based on some fact-sensitive analysis of the role the clause played within the baseball industry.

Rather, *Flood*'s stare decisis and congressional acquiescence rationales suggest the Court intended the exemption to have the same scope as the exemption established in *Federal Baseball* and *Toolson*. After all, it would make little sense for *Flood* to have contracted (or expanded) the exemption from the one established in the cases in which Congress acquiesced and which generated reliance interests. And *Federal Baseball* and *Toolson* clearly extend the baseball exemption to the entire "business of providing public baseball games for profit between clubs of professional baseball players." *Toolson*, 346 U.S. at 357; *see also*

Radovich v. Nat'l Football League, 352 U.S. 445, 451, 77 S.Ct. 390, 1 L.Ed.2d 456 (1957) (noting that the antitrust exemption articulated in *Federal Baseball* and *Toolson* applies to "the business of organized professional baseball."); *Charles O. Finley & Co., Inc. v. Kuhn*, 569 F.2d 527, 541 (7th Cir. 1978) ("Despite the two references in the *Flood* case to the reserve system, it appears clear from the entire opinions in the three baseball cases, as well as from *Radovich*, that the Supreme Court intended to exempt the business of baseball, not any particular facet of that business, from the federal antitrust laws.") (footnote omitted).

It is undisputed that restrictions on franchise relocation relate to the "business of providing public baseball games for profit between clubs of professional baseball players." *Toolson*, 346 U.S. at 357. The designation of franchises to particular geographic territories is the league's basic organizing principle. Limitations on franchise relocation are designed to ensure access to baseball games for a broad range of markets and to safeguard the profitability – and thus viability – of each ball club. Interfering with franchise relocation rules therefore indisputably interferes with the public exhibition of professional baseball. *See Prof'l Baseball Sch. & Clubs, Inc. v. Kuhn*, 693 F.2d 1085, 1086 (11th Cir. 1982) (rejecting an antitrust challenge to baseball franchise relocation because it is "an integral part of the business of baseball").

That doesn't necessarily mean all antitrust suits that touch on the baseball industry are barred. In

Twin City Sportservice, Inc. v. Charles O. Finley & Co., Inc., 512 F.2d 1264 (9th Cir. 1975), for example, we assessed an antitrust claim by a baseball franchise against stadium concessionaires without any reference to the baseball exemption. Nor does it mean that MLB or its franchises are immune from antitrust suit. There might be activities that MLB and its franchises engage in that are wholly collateral to the public display of baseball games, and for which antitrust liability may therefore attach. But San Jose does not – and cannot – allege that franchise relocation is such an activity. To the contrary, few, if any, issues are as central to a sports league's proper functioning as its rules regarding the geographic designation of franchises.

Flood's congressional acquiescence rationale applies with special force to franchise relocation. In 1998, Congress passed the Curt Flood Act, which withdrew baseball's antitrust exemption with respect to the reserve clause and other labor issues, but explicitly *maintained* it for franchise relocation. *See* Pub.L. No. 105-297, § 3(b)(3), 112 Stat. 2824 (1998) (codified at 15 U.S.C. § 26b(b)(3)) ("This section does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to . . . franchise [ ] location or relocation").

In an ordinary case, congressional inaction "lacks persuasive significance because several equally tenable inferences may be drawn from such inaction." *Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S.

633, 650, 110 S.Ct. 2668, 110 L.Ed.2d 579 (1990) (internal quotation marks omitted). But when Congress specifically legislates in a field and explicitly exempts an issue from that legislation, our ability to infer congressional intent to leave that issue undisturbed is at its apex. *See, e.g., Kimbrough v. United States*, 552 U.S. 85, 106, 128 S.Ct. 558, 169 L.Ed.2d 481 (2007) (congressional inaction is probative when Congress "fail[s] to act on a proposed amendment . . . in a high-profile area in which it had previously exercised its [ ] authority"). The exclusion of franchise relocation from the Curt Flood Act demonstrates that Congress (1) was aware of the possibility that the baseball exemption could apply to franchise relocation; (2) declined to alter the status quo with respect to relocation; and (3) had sufficient will to overturn the exemption in other areas. *Flood*'s clear implication is that the scope of the baseball exemption is coextensive with the degree of congressional acquiescence, and the case for congressional acquiescence with respect to franchise relocation is in fact far stronger than it was for the reserve clause at issue in *Flood* itself.

In short, antitrust claims against MLB's franchise relocation policies are in the heartland of those precluded by *Flood*'s rationale. San Jose's claims under the Sherman and Clayton Acts must accordingly be dismissed.

And San Jose's state antitrust claims necessarily fall with its federal claims. Baseball is an exception to the normal rule that "federal antitrust laws [ ]

supplement, not displace, state antitrust remedies." *California v. ARC Am. Corp*., 490 U.S. 93, 102, 109 S.Ct. 1661, 104 L.Ed.2d 86 (1989). In *Flood*, the Court affirmed the dismissal of the plaintiff's state law claims because "state antitrust regulation would conflict with federal policy and because national uniformity is required in any regulation of baseball." *Flood*, 407 U.S. at 284 (internal quotation marks omitted). In other words, the Court in *Flood* determined that state antitrust claims constitute an impermissible end run around the baseball exemption. San Jose can point to no case that has ever held that state antitrust claims continue to be viable after federal antitrust claims have been dismissed under the baseball exemption. *See, e.g., Major League Baseball v. Crist*, 331 F.3d 1177, 1179 (11th Cir. 2003) (holding that state antitrust claims are preempted if they mirror federal claims that fall within the baseball exemption). That suffices to reject San Jose's state antitrust claims, which entirely duplicate its claims under the federal antitrust laws.

San Jose also alleges a violation of California's unfair competition law (UCL). However, under California law, "[i]f the same conduct is alleged to be both an antitrust violation and an 'unfair' business act or practice for the same reason – because it unreasonably restrains competition and harms consumers – the determination that the conduct is not an unreasonable restraint of trade necessarily implies that the conduct is not 'unfair' toward consumers." *Chavez v. Whirlpool Corp*., 93 Cal. App. 4th 363, 113 Cal. Rptr.

2d 175, 184 (Ct. App. 2001). An independent claim under California's UCL is therefore barred so long as MLB's activities are lawful under the antitrust laws.[5]

* * *

Like Casey, San Jose has struck out here. The scope of the Supreme Court's holding in *Flood* plainly extends to questions of franchise relocation. San Jose is, at bottom, asking us to deem *Flood* wrongly decided, and that we cannot do. Only Congress and the Supreme Court are empowered to question *Flood*'s continued vitality, and with it, the fate of baseball's singular and historic exemption from the antitrust laws.[6]

AFFIRMED.

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[5] MLB also argues that San Jose lacks antitrust standing to bring this challenge. However, "[u]nlike Article III standing, the question of standing to sue under the antitrust laws does not go to subject matter jurisdiction, and thus need not be considered" before addressing the merits. *Datagate, Inc. v. Hewlett-Packard Co.*, 60 F.3d 1421, 1425 n.1 (9th Cir. 1995). Because we affirm on the basis of the baseball exemption, we need not reach the question of San Jose's standing.

[6] In light of our disposition, all pending motions are denied as moot.

APPENDIX B

United States District Court, N.D. 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
Filed October 11, 2013

Joseph W. Cotchett, Anne Marie Murphy, Philip Lawrence Gregory, Frank Cadmus Damrell, Jr., Cotchett Pitre & McCarthy LLP, Burlingame, CA, Nora Valerie Frimann, J. Richard Doyle, Office Of The City Attorney, San Jose, CA, for Plaintiffs.

Bradley I Ruskin, New York NY, John Watkins Keker, Paula Lenore Blizzard, Thomas Edward Gorman, Keker & Van Nest LLP, San Francisco, CA, Jennifer Lynn Roche, Scott P. Cooper, Shawn Scott Ledingham, Jr., Sarah Kroll-Rosenbaum, Proskauer LLP, La, CA, for Defendants.

ORDER GRANTING-IN-PART AND DENYING-IN-PART DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

[Re: Docket No. 25]

RONALD M. WHYTE, United States District Judge

> *[W]e continue to believe that the Supreme Court should retain the exclusive privilege of overruling its own decisions, save perhaps when opinions already delivered have created a near certainty that only the occasion is needed for pronouncement of the doom.*

Salerno v. American League of Professional Baseball Clubs, 429 F.2d 1003, 1005 (2d Cir. 1970).

This lawsuit yet again raises the question of the scope of baseball's exemption from federal antitrust laws. The judicially created exemption was born in 1922 in *Federal Base Ball Club of Baltimore, Inc. v. National League of Professional Base Ball Clubs* ("*Federal Baseball*"), 259 U.S. 200 (1922) (Holmes, J.), and reaffirmed in *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953) (per curiam) and *Flood v. Kuhn*, 407 U.S. 258 (1972) (Blackmun, J.). Many distinguished jurists, including the Justices themselves, however, have openly criticized the Supreme Court's decisions distinguishing baseball from other professional sports for the purposes of exempting only baseball from antitrust laws. In 1957, in *Radovich v. National Football League*, Justice Clark writing for the majority acknowledged that the distinction for

baseball may be "*unrealistic, inconsistent, or illogical*," and "*were we considering the question of baseball for the first time upon a clean slate, we would have no doubts*" that the business of baseball is within the scope of the Sherman Antitrust Act. 352 U.S. 445, 452 (1957) (emphasis added) (holding that the business of football is subject to the Sherman Act). In 1970, Judge Friendly writing for the Second Circuit "freely acknowledge[d] [the court's] belief that *Federal Baseball* was not one of Mr. Justice Holmes' happiest days, that the rationale of *Toolson* is extremely dubious and that, to use the Supreme Court's own adjectives, the distinction between baseball and other professional sports is 'unrealistic,' 'inconsistent' and 'illogical.'" *Salerno*, 429 F.2d at 1005 (quoting *Radovich*, 352 U.S. at 452). In 1972, in *Flood*, Justice Blackmun writing for the majority said that "*Federal Baseball* and *Toolson* have become an *aberration* confined to baseball." 407 U.S. at 282 (emphasis added).

Despite the recognized flaws in the antitrust exemption for baseball, the Court has consistently "conclude[d] that the orderly way to eliminate error or discrimination, if any there be, is by legislation and not by court decision." *Radovich*, 352 U.S. at 452 (reasoning that "Congressional processes are more accommodative, affording the whole industry hearings and an opportunity to assist in the formulation of new legislation" and "[t]he resulting product is therefore more likely to protect the industry and the public alike."). "The Court has emphasized that since 1922 baseball, with full and continuing congressional

awareness, has been allowed to develop and to expand unhindered by federal legislative action." *Flood*, 407 U.S. at 283. The *Flood* Court held that "[i]f there is any inconsistency or illogic in all this, it is *an inconsistency and illogic of long standing* that is to be remedied by the Congress and not by this Court." *Id.* at 284 (emphasis added) (affirming *Federal Baseball* and *Toolson*).

The facts of this case present the issue of whether club *relocation* is a part of the "business of baseball" subject to the Supreme Court's holdings in *Federal Baseball*, *Toolson* and *Flood*. Plaintiffs, the City of San José, City of San José as successor agency to the Redevelopment Agency of the City of San José ("RDA"), and the San José Diridon Development Authority (collectively, "City" or "San José"), argue that the antitrust exemption set forth in *Federal Baseball*, *Toolson* and *Flood* applies only to baseball's "reserve clause."[1] This position, however, is contrary

[1] The reserve clause, "publicly introduced into baseball contracts in 1877," confined "the player to the club that ha[d] him under the contract." *Flood*, 407 U.S. at 259 n.1. The Court of Appeals for the District of Columbia in the *Federal Baseball* case described the reserve clause as follows: "Generally speaking, every player was required to contract with his club that he would serve it for one year, and would enter into a new contract 'for the succeeding season at a salary to be determined by the parties to such contract.' The quoted part is spoken of as the 'reserve clause,' and it is found, in effect, in the contracts of the minor league players, as well as in those of the major league players." *Nat'l League of Prof. Baseball Clubs v. Federal Baseball Clubs of Baltimore*, 269 F. 681, 687 (D.C. Cir. 1920).

to the holdings of a vast majority of the courts that have addressed the issue. All federal circuit courts that have considered the issue (the Eleventh, Seventh, Ninth and Second Circuits) have not limited the antitrust exemption to the reserve clause, but have adopted the view that the exemption broadly covers the "business of baseball."[2] Only one federal district court[3] and one state supreme court[4] have explicitly limited the antitrust exemption to baseball's reserve system. Two other federal district courts have considered the breadth of the "business of baseball" exemption, holding that the radio broadcasting of baseball games[5] and employment relations with umpires[6] are not "integral" to the business of baseball and thus not

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[2] *Major League Baseball v. Crist*, 331 F.3d 1177 (11th Cir. 2003); *Prof'l Baseball Schools & Clubs, Inc. v. Kuhn*, 693 F.2d 1085, 1086 (11th Cir. 1982); *Charles O. Finley & Co., Inc. v. Kuhn*, 569 F.2d 527, 541 (7th Cir. 1978); *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101 (9th Cir. 1974); *Salerno*, 429 F.2d at 1005 (2d Cir. 1970); *Portland Baseball Club, Inc. v. Baltimore Baseball Club, Inc.*, 282 F.2d 680 (9th Cir. 1960); *see also Triple-A Baseball Club Assocs. v. Northeastern Baseball, Inc.*, 832 F.2d 214, 216 n.1 (1st Cir. 1987) (noting the baseball exemption in a breach of contract case).

[3] *Piazza v. Major League Baseball*, 831 F.Supp. 420 (E.D. Pa. 1993).

[4] *Butterworth v. Nat'l League of Prof'l Baseball Clubs*, 644 So. 2d 1021 (Fla. 1994).

[5] *Henderson Broadcasting Corp. v. Houston Sports Ass'n, Inc.*, 541 F. Supp. 263, 265–72 (S.D. Tex. 1982).

[6] *Postema v. Nat'l League of Prof'l Baseball Clubs*, 799 F. Supp. 1475, 1489 (S.D.N.Y. 1992), *overruled on other grounds by* 998 F.2d 60 (2d Cir. 1993).

within the exemption. They do not, however, define the "business of baseball" or hold that it is limited to the reserve clause.[7]

San José filed suit against the Office of the Commissioner of Baseball and Allan Huber "Bud" Selig (collectively, "MLB") alleging claims for violation of the Sherman Antitrust Act, California's Cartwright Act, and state tort and unfair competition laws based on MLB's failure to approve the Oakland Athletics Baseball Club's ("the A's") proposed relocation from Oakland to San José. MLB moves to dismiss the City's complaint on the basis that the business of baseball, including club relocation, has long been exempt from antitrust regulation. For the reasons explained below, this court concludes that: (1) the Supreme Court trilogy (*Federal Baseball*, *Toolson* and *Flood*) is not limited to MLB's reserve system; (2) the longstanding antitrust exemption still encompasses all MLB decisions integral to the business of baseball; (3) the City's state law claims based upon

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[7] *See Henderson*, 541 F. Supp. at 269 ("Radio broadcasting is not a part of the sport in the way in which players, umpires, the league structure and the reserve system are."); *Postema*, 799 F. Supp. at 1489 ("It is thus clear that although the baseball exemption does immunize baseball from antitrust challenges to its league structure and its reserve system, the exemption does not provide baseball with blanket immunity for anti-competitive behavior in every context in which it operates. The Court must therefore determine whether baseball's employment relations with its umpires are 'central enough to baseball to be encompassed in the baseball exemption.'" (quoting *Henderson*, 541 F. Supp. at 265)).

state antitrust and unfair competition law are preempted; and (4) the City's state law tort claims are sufficiently pled to survive MLB's motion to dismiss. Accordingly, the court GRANTS-IN-PART and DENIES-IN-PART MLB's motion to dismiss the complaint.

I. BACKGROUND

The Office of the Commissioner of Baseball, doing business as MLB, is an unincorporated association of thirty Major League Baseball Clubs, "organized into two leagues, the American League and the National League, with three divisions in each League." Major League Const. ("ML Const.") art. II, § 1, art. VIII, § 1, Compl. Ex. 4, Dkt. No. 1; *see also* current ML Const. at Dkt. No. 35-2. All thirty Clubs are "entitled to the benefits of" and "bound by" by the Major League Constitution ("ML Constitution") and the rules adopted and promulgated by the Commissioner pursuant thereto. *Id.* art. I, art. IV, art. XI, § 3. With respect to Club relocation, the ML Constitution provides that "[t]he vote of three-fourths of the Major League Clubs" is required for the approval of "[t]he relocation of any Major League Club." *Id.* art. V, § 2(b)(3).

The A's is a Major League Baseball Club in the American League, Western Division. *Id.* art. VIII § 1. Pursuant to the Major League Constitution, the A's "operating territory" is "Alameda and Contra Costa Counties in California." *Id.* art. VIII, § 8. The team was founded in Philadelphia, Pennsylvania in 1901

as the "Philadelphia Athletics," one of the American League's eight charter franchises. Compl. ¶ 47. In 1955, the team relocated to Kansas City and became the "Kansas City Athletics." *Id.* Just over a decade later, in 1968, the A's moved to Oakland. *Id.* ¶ 48. The A's enjoyed tremendous success in the next two decades, winning three consecutive World Championships in the 1970s; three American League Pennants in 1999, 1989 and 1990; and the 1989 World Series. *Id.* Today, the A's remain in Oakland. Their home stadium is the "Oakland Coliseum," or "Coliseum," which the team shares with the Oakland Raiders of the National Football League. *Id.* ¶ 50.

Since 1990, however, "attendance at A's games has plummeted." *Id.* ¶ 51. The City alleges various reasons for the low attendance: (1) the Coliseum is currently the fourth-oldest ballpark in MLB; (2) according to the 2010 census, the Giants' territory includes 4.2 million people and the A's territory only 2.6 million; and (3) the team is "heavily dependent on revenue sharing" with the Raiders because they share the Coliseum. *Id.* ¶¶ 49-52. The City also alleges that the A's are "one of the most economically disadvantaged teams" in MLB because MLB "does not split team revenues as evenly as other sports." *Id.* ¶ 49.

For several years, the Athletics have considered possible alternative locations for their home stadium, including Fremont (which ultimately failed in February 2009) and San José. Since 2009, A's owner Lew Wolff has focused the team's relocation efforts on San José. In early 2009, the City of San José issued an

Economic Impact Analysis detailing the economic benefits of the proposed A's stadium in San Jose, which would consist of 13.36 acres near the Diridon train station and would seat 32,000 fans. Compl. ¶¶ 68, 70 and Ex. 1. In March 2011, the RDA purchased six parcels of land with the intent that that the property would be developed into a MLB ballpark. See Option Agreement, Compl. Ex. 3.

The ML Constitution, however, currently designates San José as within the San Francisco Giants' operating territory. ML Const. art. VIII, § 8. Unlike the Los Angeles Dodgers and Los Angeles Angels and the New York Mets and New York Yankees, which share certain operating territories, the A's and the Giants territories do not overlap. *Id.* Because San José is outside of the A's operating territory, relocation requires a three-quarter majority approval by MLB's Clubs. *Id.* art. V, § 2(b)(3), art. VIII, § 8.[8] As such, Commissioner Selig allegedly asked the mayor of San José, Chuck Reed, to delay a public vote on whether the A's could purchase land and build a new stadium in San José. Compl. ¶ 73. The City also alleges that the Giants have "interceded to prevent the A's from moving to San José" based on the Giants' assertion that "if the [A's] were allowed to move there, it would undermine the Giants' investment in its

[8] Allegedly because the MLB is "hostile" to Club movement, only one MLB Club has relocated in the past 40 some years. Compl. ¶ 111 (In 2005, the Montreal Expos relocated to Washington D.C. and became the Washington Nationals.).

stadium in San Francisco and marketing to fans." *Id.* ¶¶ 118, 121. Commissioner Selig, commenting on the territorial dispute, allegedly stated:

> Wolff and the Oakland ownership group and management have worked very hard to obtain a facility that will allow them to compete into the 21st century. . . . The time has come for a thorough analysis of why a stadium deal has not been reached. The A's cannot and will not continue indefinitely in their current situation.

Id. ¶ 119.

Despite the ongoing dispute, on November 8, 2011, the San José City Council and the Athletics Investment Group entered into a two-year Option Agreement giving the A's the option to purchase the six parcels of land set aside by the RDA for the purposes of building the ballpark for a purchase price of $6,975,227. Option Agreement 2, Compl. Ex. 3. The Athletics Investment Group paid $75,000 for the initial two year option, which included the option to renew for a third year for an additional $25,000. At oral argument, the City represented that the Athletics Investment Group recently paid the additional $25,000 to extend the option for a third year. The City alleges that MLB has intentionally delayed approving the A's relocation for over four years, effectively preventing the A's from exercising its option to purchase the land set aside by the City under the Option Agreement and resulting in damages to the City in the form of lost revenue "reasonably expected under

the Option Agreement and Purchase Agreement, respectively." Compl. ¶¶ 162-64. The City alleges that the territorial rights restrictions in the ML Constitution and MLB's failure to act on the territorial dispute restrains competition in the bay area baseball market, perpetuates the Giants' monopoly over the Santa Clara market, and creates anticompetitive effects that lead to consumer harm in violation of federal and state antitrust laws. The complaint also brings claims under California's unfair competition laws and for tortious interference with San José's contractual relationships with the A's and its prospective economic advantage. MLB moves to dismiss all counts in the complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

II. MATERIALS CONSIDERED

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1989). Two exceptions exist: (1) the court may consider materials properly submitted as part of the complaint; and (2) the court may take judicial notice of facts that are "not subject to reasonable dispute," Fed.R.Evid. 201(b), including "matters of public record." *See Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir.2001). There is no dispute that the court may consider the materials attached to the complaint. There is a dispute about the propriety of judicial notice.

MLB asks the court to take judicial notice of: San José City Council Resolution No. 74908 (Exhibit A); excerpts from the 1982 hearings before the Senate Judiciary Committee on Professional Sports Antitrust Immunity (Exhibit B); the October 29, 1997 Report of the Senate Judiciary Committee on the Curt Flood Act, S. Rep. 105-118 (Exhibit C); the California State Controller's March 2013 report titled "[RDA]: Asset Transfer Review January 1, 2011 through January 31, 2012" (Exhibit D); and a memorandum of the San Jose City Manager and San José [RDA] Executive Director bearing the subject line "Option Agreement for Sale of Property to Athletics Investment Group, LLC," dated October 24, 2011 (Exhibit E). Dkt. No. 26.

The City argues that judicial notice of Exhibit A (San José City Council Resolution No. 74908) is improper because the Resolution is unsigned, calling the authenticity of the document into question. Despite the unsigned nature of San José City Council Resolution No. 74908, the court concludes that document is a matter of public record and that its contents are not subject to reasonable dispute,[9] and thus deems judicial notice of the contents of the document appropriate.

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[9] The signed version of the Resolution is also publicly available through the City government's online archives, and it is identical to the unsigned version attached to the request for judicial notice.

With respect to Exhibits B and C (the legislative records), the City argues that the documents are offered for the sole purpose of legal argument and are thus improper. Similarly, the City argues that Exhibits D and E (City government report and memorandum) are offered solely to contest the validity of the Option Agreement and to argue that performance would require the A's to purchase additional parcels of land, respectively, both improper purposes.

The court concludes that the legislative histories, the Controller's Report and the RDA's Memorandum are all matters of public record not subject to reasonable dispute. Accordingly, the court takes judicial notice of Exhibits B-E. With respect to all exhibits, however, the court takes judicial notice "for the purpose of determining what statements are contained therein, not to prove the truth of the contents or any party's assertion of what the contents mean." *United States v. S. Cal. Edison Co.*, 300 F. Supp. 2d 964, 975 (E.D. Cal. 2004).

III. ANALYSIS

Quoting *Major League Baseball v. Butterworth*, 181 F. Supp. 2d 1316, 1331 (N.D. Fla. 2001), MLB argues that: "[t]he business of baseball is exempt from the antitrust laws, as it has been since 1922, and as it will remain until Congress decides otherwise. Period." According to MLB, all of the City's claims are premised on the same alleged antitrust violations and all fail for this reason. The City counters

that *Federal Baseball*, *Toolson* and *Flood* are limited to anticompetitive restrictions on players' abilities to negotiate their employment contracts, and as such, restraints on team relocation are not exempt from antitrust laws under the trilogy of Supreme Court cases. The City further asserts that once the scope of the exemption is properly cabined to player issues, all of its state law claims succeed. The City argues, however, that its unfair competition and tort claims would succeed even without any underlying antitrust violation. The court addresses the City's claims in turn.

A. Sherman Act Claims

The City charges MLB with violations of the Sherman Antitrust Act, 15 U.S.C. §§ 1 and 2. The question is whether MLB's alleged restraints on the A's relocation are exempt from the City's antitrust claims. The issue boils down to whether *Federal Baseball*, *Toolson* and *Flood* ("the Trilogy") are limited to baseball's reserve system. Although the reasoning and results of those cases seem illogical today, they have survived for many years and are precedent that the court must follow.

1. The Trilogy and Related Supreme Court Cases

In *Federal Baseball*, petitioner Federal Baseball Club of Baltimore sued the National League and the American League ("the Major Leagues") under the

Sherman Antitrust Act alleging that the Major Leagues conspired to monopolize the baseball business by means of league structure and the reserve system. 259 U.S. at 207. The Supreme Court for the District of Columbia entered judgment for petitioner, but the Court of Appeals for the District of Columbia reversed on the basis that the Major Leagues "were not within the Sherman Act." *Id.* at 208. The Supreme Court granted certiorari and affirmed judgment for the Major Leagues. *Id.* at 208-09. The Court first held that baseball qualifies as a business, specifically: "the business is *giving exhibitions of base ball* [sic], which are purely state affairs." *Id.* at 208. The Court then held, however, that the business of baseball is not engaged in interstate commerce. *Id.* at 208-09 (Although "competitions must be arranged between clubs from different cities and States" to carry out the exhibitions, "the fact that . . . the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business."). The Court held that any interstate activities were merely incidental to the state exhibitions, and thus "would not be called trade or commerce in the commonly accepted use of those words." *Id.* at 209. Accordingly, the Court concluded that "the restrictions by contract that prevented the plaintiff from getting players to break their bargains [(i.e., the reserve system)] and the other conduct charged against the defendants were not an interference with commerce among the states." *Id.*

Thirty years later, the Supreme Court revisited *Federal Baseball* for the first time in *Toolson*.[10] In *Toolson*, in a per curiam, one paragraph opinion, the Court upheld *Federal Baseball*:

> In [*Federal Baseball*], this Court held that the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust laws. Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect. The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust

[10] There were three petitioners in *Toolson*, all professional baseball players. Two of the petitioners originally filed separate actions in the Southern District of Ohio, each alleging injury based on the reserve system and certain restrictions "with respect to the sale of broadcasting rights for radio and television," which deprived each player of "the reasonable value of his services and his opportunities for professional promotion." *Kowalski v. Chandler*, 202 F.2d 413, 414 (6th Cir. 1953); *see also Corbett v. Chandler*, 202 F.2d 428, 428 (6th Cir. 1953) (summary affirmance citing to *Kowalski*). Petitioner Toolson originally filed suit in the Southern District of California, alleging, *inter alia*, that he was injured by MLB's enforcement of his reserve clause and certain territorial restrictions, including those related to the media broadcasting of baseball exhibitions. *See Toolson v. New York Yankees*, 101 F. Supp. 93, 94 (S.D. Cal. 1951); *see also* Petitioner's Opening Supreme Court Brief, Toolson, 346 U.S. 356, 1953 WL 78316, at *5-*9 (Sept. 16, 1953). The respective district courts decided for defendants, and the Sixth and Ninth Circuits affirmed. The Supreme Court granted certiorari in all three actions and decided them together in one opinion.

> legislation. The present cases ask us to overrule the prior decision and, with retrospective effect, hold the legislation applicable. We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation. Without reexamination of the underlying issues, the judgments below are affirmed on the authority of [*Federal Baseball*], so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws.

Toolson, 346 U.S. at 356-57.

After *Toolson*, the Court faced the issue of whether other types of sport or leisure were also exempt from the antitrust laws under the same reasoning. The Court held that they were not. *United States v. Shubert*, 348 U.S. 222 (1955) (theatrical attractions), *United States v. Int'l Boxing Club*, 348 U.S. 236 (1955) (boxing), and *Radovich*, 352 U.S. 445 (1957) (football). In all three cases, the Court cabined the antitrust exemption to the "business of baseball." *Shubert*, 348 U.S. at 227-30; *Int'l Boxing Club*, 348 U.S. at 242-43; *Radovich*, 352 U.S. at 450-51. In *Radovich*, the Court considered *Federal Baseball*, *Toolson*, *Shubert* and *International Boxing* and, in line with those cases, continued to characterize baseball's exemption as broadly applicable to "the business of organized professional baseball." *Radovich*, 352 U.S. at 451. In *Radovich*, the Court admitted that any distinction between the interstate

nature of football and baseball may be "unrealistic, inconsistent, or illogical," but nevertheless upheld the distinction on the basis of *stare decisis*, concluding that the proper remedy was "by legislation and not by court decision." *Id.* at 452.

In 1972, the Court again had the opportunity to overrule *Federal Baseball* and *Toolson* in *Flood*. In *Flood*, petitioner, professional baseball player Curtis Flood, was traded to another major league club without his previous knowledge or consent. 407 U.S. at 264-65. The Commissioner of Baseball denied Flood's request to be made a free agent. *Id.* at 265. Flood brought suit against the Commissioner of Baseball, the presidents of the two major leagues, and the major league clubs challenging professional baseball's reserve clause under, *inter alia*, the Sherman Antitrust Act, under New York's and California's antitrust laws, and common law. *Flood*, 316 F. Supp. 271, 272 (S.D.N.Y. 1970). The District Court for the Southern District of New York dismissed the federal antitrust claims under *Federal Baseball* and dismissed the state law claims on the basis that there must be "uniformity in any regulation of baseball and its reserve system" and, as such, any conflicting state regulation would violate the Commerce Clause. *Id*. at 279-80. The Second Circuit affirmed. 443 F.2d 264, 267-68 (2d Cir. 1971). On certiorari, the Supreme Court affirmed the dismissal of all claims. 407 U.S. at 285.

In so affirming, the Supreme court did overturn *Federal Baseball* in one respect, holding that

"[p]rofessional baseball is a business and it *is engaged in interstate commerce*." 407 U.S. at 282 (emphasis added). Despite officially recognizing that, unlike in 1922, the business of baseball was then "in interstate commerce," the Court held that, based on Congress's inaction for "half a century" following *Federal Baseball*, Congress intended for baseball to remain outside the scope of antitrust regulation:

> Congress as yet has had no intention to subject baseball's reserve system to the reach of the antitrust statutes. This, obviously, has been deemed to be something other than mere congressional silence and passivity.

Id. at 282-83. Although the Court describes baseball's exemption as an "aberration,"[11] the Court reaffirmed that the exemption is "an established one . . . that has been recognized not only in *Federal Baseball* and *Toolson*, but in *Shubert*, *International Boxing*, and *Radovich*, as well, a total of five consecutive cases in this Court." *Id.* at 282.

Because *Flood* explicitly overrules *Federal Baseball*'s holding that the business of the exhibition of baseball is purely a state activity, the City argues that *stare decisis* only requires this court to adhere to an antitrust exemption limited to the reserve clause,

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[11] "With its reserve system enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly. *Federal Baseball* and *Toolson* have become an aberration confined to baseball." *Id.* at 282.

which was at issue in *Flood*.[12] This court examines the decisions that have analyzed the issue post-*Flood*.

2. Circuit Court Decisions Post-*Flood*

At the circuit court level, the Ninth, Seventh and Eleventh Circuits have addressed the issue post-*Flood*, although the Ninth Circuit did so without substantial analysis. Two years after *Flood*, in 1974, the Ninth Circuit considered whether MLB's relocation into formerly minor league territory violated Professional Baseball Rule 1(a) or the antitrust laws. *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101, 1102-03 (9th Cir. 1974) (per curiam). In one sentence, the court upheld the district court's dismissal of the antitrust claims: "Finally, the plaintiff's claim for relief under the antitrust laws was properly dismissed." *Id.* at 1103 (citing *Flood*, 407 U.S. 258).

In 1978, the Seventh Circuit considered whether restraints on the A's ability to sell A's contractual rights in three players to other teams violated federal antitrust laws. *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 530 (7th Cir. 1978). The court provided

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[12] While *Federal Baseball* and *Toolson* did address baseball's reserve system, *Federal Baseball* also addressed league structure. 259 U.S. at 207. Similarly, *Toolson* also addressed certain territorial restrictions and issues of league structure. *See* 101 F. Supp. at 94 (district court decision); Petitioner's Opening Supreme Court Brief, 1953 WL 78316, at *5-*9 (outlining the various allegations). Accordingly, those opinions are not properly characterized as limited on their facts to the reserve clause.

substantial analysis and held that, notwithstanding "two" references in *Flood* to the reserve clause, it was clear from *Federal Baseball*, *Toolson*, *Flood* and *Radovich* that the Court "intended to exempt the business of baseball, not any particular facet of that business, from the federal antitrust laws." *Id.* at 541.

In 1982, the Eleventh Circuit considered federal antitrust claims based on, *inter alia*, "the player assignment system and the franchise location system" and "the Carolina League's rule requiring member teams to only play games with other teams that also belong to the National Association." *Prof'l Baseball Schools & Clubs, Inc. v. Kuhn*, 693 F.2d 1085, 1085 (11th Cir. 1982). The Eleventh Circuit did not squarely address whether the Supreme Court trilogy was limited to the reserve clause, but implicitly denied any such argument by upholding the challenged conduct – which included the "franchise location system" and certain territorial restrictions on the games – as exempt from antitrust regulation under *Federal Baseball*, *Toolson* and *Flood*. *Id.* at 1086. The court reasoned that "[e]ach of the activities appellant alleged as violative of the antitrust laws plainly concerns matters that are *an integral part of the business of baseball*" and thus affirmed the dismissal. *Id.* (emphasis added).[13]

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[13] The Eleventh Circuit reaffirmed this view in *Major League Baseball v. Crist*, 331 F.3d 1177, 1179 (11th Cir. 2003), *affirming Major League Baseball v. Butterworth*, 181 F. Supp. 2d 1316 (N.D. Fla. 2001), discussed *infra*.

The City relies on *Twin City Sportservice, Inc. v. Charles O Finley & Co., Inc.*, 676 F.2d 1291 (9th Cir. 1982), for the proposition that baseball's antitrust exemption is limited. In *Twin City*, the issue was whether a concessioner's long-term, exclusive contract to provide concessions for the A's (entered into in 1950 when the A's were in Philadelphia) constituted an unreasonable restraint on trade. *Id.* at 1296. The Ninth Circuit considered the antitrust issue without mentioning baseball's exemption from antitrust laws because the exemption was never at issue in the case. *Twin City* does not provide support for the City's position.

3. District Court Decisions Post-*Flood*

a. Issues Merely Related to, but Not Integral to, Baseball

Two district courts have concluded that certain aspects of baseball, which are merely related to, but not *essential* to, the business of baseball, including the radio broadcasting of baseball games and umpire employment issues, are not subject to the antitrust exemption. *See Henderson Broadcasting Corp. v. Houston Sports Ass'n, Inc.*, 541 F. Supp. 263, 265-72 (S.D. Tex. 1982) (radio broadcasting); *Postema v. Nat'l League of Prof'l Baseball Clubs*, 799 F. Supp. 1475, 1489 (S.D.N.Y. 1992) (umpire employment issues), *overruled on other grounds by* 998 F.2d 60 (2d Cir. 1993). In *Postema*, the district court held:

> It is thus clear that although the baseball exemption does immunize baseball from antitrust challenges to its *league structure and its reserve system*, the exemption does not provide baseball with blanket immunity for anti-competitive behavior in every context in which it operates. The Court must therefore determine whether baseball's employment relations with its umpires are "central enough to baseball to be encompassed in the baseball exemption."

Postema, 799 F. Supp. at 1489 (citing *Henderson*, 541 F. Supp. at 265) (emphasis added); *but see Salerno*, 429 F.2d at 1004-05 (affirming dismissal of antitrust claims premised on the wrongful discharge of MLB umpires based on both (1) the binding effect of *Federal Baseball* and *Toolson* and (2) the plaintiffs' failure to allege "restrictive trade practices directed at umpires"). The *Postema* court distinguished *Salerno* on the basis that *Salerno* was decided before *Flood* "anchored the baseball exemption to the sport's 'unique characteristics and needs.'" *Postema*, 799 F. Supp. at 1489 (quoting *Flood*, 407 U.S. at 282). Thus, the court concluded that, "[u]nlike the *league structure* or the reserve system, baseball's relations with non-players are not a *unique characteristic or need* of the game. Anti-competitive conduct toward umpires is not an *essential part of baseball* and in no way enhances its vitality or viability." *Id.* (emphasis added). Even under this more narrow view of the exemption, however, there can be no dispute that team relocation is a "league structure" issue and an

"essential part of baseball" that would fall within the exemption post-*Flood*. *See Prof'l Baseball Schools & Clubs*, 693 F.2d at 1085 (describing "franchise location" as "plainly [a] matter[ ] that [is] *an integral part of the business of baseball*" (emphasis added)).

b. Cases Relating to the Giant's Attempted Relocation to Tampa Bay

A series of cases in the 1990s related to the San Francisco Giant's attempted relocation to Tampa Bay, Florida resulted in differing opinions regarding the scope of baseball's antitrust exemption. In 1993, in *Piazza v. Major League Baseball*, potential investors (from Pennsylvania) brought claims for constitutional violations, federal antitrust violations under the Sherman Act, and state law claims, on the basis that MLB impeded their efforts to purchase the San Francisco Giants and relocate the team to Tampa Bay, Florida. 831 F. Supp. 420, 421 (E.D. Pa.1993). Judge Padova concluded, in a very lengthy opinion, that once the Court in *Flood* held that the business of baseball was in interstate commerce, the Court "stripped from *Federal Baseball* and *Toolson* any precedential value those cases may have had beyond the particular facts there involved, i.e., the reserve clause." *Id.* at 436.

In 1994, the Florida Supreme Court considered the same issue in *Butterworth v. National League*, 644 So.2d 1021 (Fla.1994). The Florida Attorney

General ("AG") initiated antitrust civil investigative demands ("CIDs") related to the same investors' unsuccessful effort to relocate the San Francisco Giants to Tampa Bay, Florida. 644 So.2d at 1022. Despite finding "no question that *Piazza* is against the great weight of federal cases regarding the scope of the exemption," the Florida Supreme Court followed *Piazza* and upheld the AG's initiation of the CIDs. *Id.* at 1025 and n.8.

Then, in 2001, in *Major League Baseball v. Butterworth*, MLB sued the Florida AG in the Northern District of Florida seeking declaratory and injunctive relief for the AG's issuance of another set of CIDs with respect to MLB's alleged interference with the Giant's relocation. Judge Hinkle expressly considered whether *Flood* limited *Federal Baseball* to the reserve clause, and rejected *Piazza* and the Florida Supreme Court's approach. *Butterworth*, 181 F. Supp. 2d 1316, 1326-31 (N.D. Fla.2001). The court held:

> In sum, although in *Flood* the Court was asked to overrule *Federal Baseball* and *Toolson*, the Court explicitly declined to do so, holding instead that the business of baseball was exempt from the antitrust laws, just as *Federal Baseball* and *Toolson* had said. The Court reached this result not based on any original antitrust analysis but instead because of its explicit determination that any change should come from Congress.

Id. at 1330. The district court characterized *Flood* as "not so much a decision about antitrust law as about

the appropriate role of the judiciary within our constitutional system." *Id.* The district court also held that collateral estoppel did not attach to the Florida Supreme Court's decision permitting the CIDs because there was a lack of identity of parties between the two cases, namely the fact that the state action had no binding effect on MLB or the Commissioner, and the different issues in each case. *Id.* at 1336-37. On appeal, the Eleventh Circuit affirmed, holding that the business of baseball is exempt from antitrust regulation, and also concluding that "the federal exemption preempts state antitrust law." *Crist*, 331 F.3d at 1179.

It is against this backdrop that the court considers whether MLB's alleged conduct in this case is immune from antitrust regulation.

4. Application

This court agrees with the other jurists that have found baseball's antitrust exemption to be "unrealistic, inconsistent, or illogical." *Radovich*, 352 U.S. at 452. The exemption is an "aberration" that makes little sense given the heavily interstate nature of the "business of baseball" today. *See Flood*, 407 U.S. at 282. Despite this recognition, the court is still bound by the Supreme Court's holdings, and cannot conclude today that those holdings are limited to the reserve clause. *Flood* explicitly declined to overrule *Federal Baseball* and *Toolson*, holding: "we adhere once again to Federal Baseball and Toolson and to

their application to *professional baseball*." *Id.* at 284 (emphasis added). *Federal Baseball* and *Toolson* are broadly decided, i.e., the cases are *not* limited to the reserve clause either by the underlying facts (which include other claims related to, *inter alia*, territorial restrictions on media broadcasting) or the language used in the holdings. The court disagrees with the Eastern District of Pennsylvania's opinion in *Piazza* that *Federal Baseball*, *Toolson* and *Flood* can be limited to the reserve clause because the reserve clause is never referenced in any of those cases as part of the Court's holdings. While the Court does reference MLB's reserve system in *Flood*, the reserve system is the only alleged anticompetitive restraint on trade in that case. *See Flood*, 407 U.S. at 260-61, 265-66. Thus, in *Flood*, the court naturally held that, under *Federal Baseball* and *Toolson*, the reserve system, a part of the broader "business of baseball," continued to enjoy exemption from the antitrust laws. *See id.* at 282-83. The Court's recognition and holding in *Flood* that the business of baseball is now in interstate commerce cannot override the Court's ultimate holding that Congressional inaction (at that time for half a century, but now for now over 90 years) shows Congress's intent that the judicial exception for "the business of baseball" remain unchanged. *See id*. The Supreme Court is explicit that "if any change is to be made, it [must] come by legislative action that, by its nature, is only prospective in operation." *Id.* at 283.

Since *Flood*, Congress did take legislative action, passing the Curt Flood Act of 1998 ("Act"), codified at 15 U.S.C. § 26b. The Act provides:

> Subject to subsections (b) through (d) of this section, the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce.

15 U.S.C. § 26b(a). Subsection (b), however, provides that "[n]o court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices, or agreements other than those set forth in subsection (a)." *Id.* § 26b(b). Subsection (b) further provides that the Act "does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to . . . (3) . . . *franchise expansion, location or relocation*." *Id.* § 26b(b)(3) (emphasis added). Accordingly, despite the opportunity to do so, Congress chose not to alter the scope of the exemption with respect to any issues other than those "directly relating to or affecting employment of major league baseball players." *Id.* § 26b(a)-(b); see also Sen. Rep. No. 105-118, at 6 (1997) ("With regard to contexts, actions or issues

outside the scope of subsection 27(a) . . . , the law as it exists today is not changed by this bill."). The Curt Flood Act provides 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. 15 U.S.C. § 26b(a)-(b); *accord Morsani v. Major League Baseball*, 79 F. Supp. 2d 1331, 1336 n.12 (M.D. Fla. 1999) ("Congress explicitly preserved the exemption for all matters 'relating to or affecting franchise expansion, location or relocation'. . . . Congress' preservation of the broadest aspects of the antitrust exemption in this recent legislation casts in sharp relief the misdirection in *Butterworth*, 644 So.2d 1021 (Fla. 1994).").

For these reasons, the court concludes that the federal antitrust exemption for the "business of baseball" remains unchanged, and is not limited to the reserve clause. Although not endorsing the more narrow tests from *Henderson* and *Postema*, even applying those tests, in contrast to the radio broadcasting or umpire employment issues in those cases, the alleged interference with a baseball club's relocation efforts presents an issue of league structure that is "integral" to the business of baseball, and thus falls squarely within the exemption. *See Prof'l Baseball Schools & Clubs*, 693 F.2d at 1086.

The court holds that MLB's alleged interference with the A's relocation to San José is exempt from antitrust regulation. Accordingly, the court dismisses the City's Sherman Act claims.

B. Antitrust Standing and Injury

MLB further argues that dismissal of the antitrust claims is proper because the City does not have standing under sections 4 or 16 of the Clayton Act. *See* 15 U.S.C. § 15(a) ("section 4" of the Act) (conferring standing for the recovery of treble damages to "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws. . . ."); *id.* § 26 ("section 16" of the Act) (permitting claims for injunctive relief "against threatened loss or damage by a violation of the antitrust laws"). "[T]he standing requirements under [section] 16 of the Clayton Act are broader than those under [section] 4 of the Act." *City of Rohnert Park v. Harris*, 601 F.2d 1040, 1044 (9th Cir. 1979). The City asserts that it possesses standing to bring claims under section 4, 15 U.S.C. § 15(a), based on "direct injury to their property, i.e., the Diridon Redevelopment Project Area," and under, section 16, 15 U.S.C. § 26 based on "an existing threat to their ability to compete for relocation of the [A's] to San José." Opp'n 20, 21, Dkt. No. 28.

To state a claim for antitrust injury under section 4, the City must allege "(1) unlawful conduct, (2) causing an injury to the plaintiff, (3) that flows from that which makes the conduct unlawful, and (4) that is of the type the antitrust laws were intended to prevent." *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of Cal.*, 190 F.3d 1051, 1055 (9th Cir. 1999); *see also Associated Gen. Contractors v. Cal. State Council of Carpenters*, 459 U.S. 519, 535-45 (1983). Injury that has not

yet occurred, indirect, or merely speculative is generally insufficient to give rise to standing under section 4 of the Clayton Act. *See Cargill, Inc. v. Monfort of Colo., Inc.*, 479 U.S. 104, 111 (1986); *Datagate, Inc. v. Hewlett-Packard Co*., 941 F.2d 864, 869-70 (9th Cir. 1991); *Eagle v. Star-Kist Foods, Inc*., 812 F.2d 538, 542 (9th Cir. 1987). Here, the alleged economic injury resulting from the A's not relocating to San José has not yet occurred, and 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. Accordingly, the City lacks standing to assert an antitrust claim for treble damages under section 4 of the Clayton Act.

"However, section 16 of the Clayton Act, 15 U.S.C. § 26, 'invokes traditional principles of equity and authorizes injunctive relief upon the demonstration of *threatened* injury.'" *Datagate*, 941 F.2d at 869 (quoting *Zenith Radio Corp. v. Hazeltine Research*, 395 U.S. 100, 130 (1969) (emphasis added)). "To have standing under [section 16], a plaintiff must show (1) a threatened loss or injury cognizable in equity (2) proximately resulting from the alleged antitrust violation." *Rohnert Park*, 601 F.2d at 1044. In *Rohnert Park*, plaintiff, the City of Rohnert Park, in an effort to develop a regional shopping center, designated certain city land as a commercial zone suitable for development. *Id.* at 1042-43. The City of Rohnert

Park owned two parcels within that commercial zone. *Id.* at 1043. Defendants decided to construct a regional shopping center in the neighboring town of Santa Rosa as part of an urban renewal project, and the City of Rohnert Park alleged, *inter alia*, antitrust violations under sections 1 and 2 of the Sherman Act based on defendants' "attempt to monopolize retail merchandise space in the Santa Rosa trade area." *Id.* at 1042-43. The Ninth Circuit held that Rohnert Park failed to allege an injury cognizable in equity because the City's proprietary interest in the commercial zone was merely speculative (i.e., it was not clear that the two parcels of land owned by the City would have actually been a part of a shopping center because part of the property was designated for non-commercial purposes, including a library and a waste water facility). *Id.* at 1044-45. Even if Rohnert Park did have a property interest, the court held that Rohnert Park failed to show proximate causation because it did not "ma[k]e a sufficient showing that, absent the alleged antitrust violations by appellees, its commercial area would have been selected as a site for shopping center development." *Id.* at 1045.[14] The court

[14] The court also held that political subdivision, including cities, cannot sue "as Parens patriae on behalf of its property owners, taxpayers, and inhabitants who might be injured by the loss of investment profits and tax revenues," but "may, however, 'sue to vindicate such of their own proprietary interests as might be congruent with the interests of their inhabitants.'" *Id.* at 1044 (quoting *In re Multidistrict Vehicle Air Pollution M.D.L. No. 31*, 481 F.2d 122, 131 (9th Cir. 1973).

reasoned that Rohnert Park could not rely on the "remote possibility, unsubstantiated by allegations of fact, that their situation might have been better had respondents acted otherwise." *Id.* (quoting *Warth v. Seldin*, 422 U.S. 490, 507 (1975)).

Unlike in *Rohnert Park*, where the city's property interest was speculative, here, the complaint alleges that the City of San José owns the parcels of land set aside for the A's Stadium pursuant to the Option Agreement (the "Diridon land"). *See* Comp. ¶ 75. Also unlike in *Rohnert Park*, where there was no indication that the Rohnert Park would have been selected for the urban renewal project but for some antitrust violation, here, the A's have already selected the Diridon land as the prospective site for a new stadium.[15] The allegations in the complaint, taken as true, along with the fact that the A's have elected to extend the option for a third year, indicate that the A's very seriously wish to relocate to San José, and would do so but for MLB's alleged antitrust violation.

Although the court finds that the City may have standing to sue for injunctive relief, there is still a question as to whether the City's claimed injury to

[15] MLB argues that the A's could relocate to another city within the club's operating territory. But, the complaint alleges that the A's have already attempted to do so, and failed, at least in Fremont. It is unrealistic, at this point, that the A's would voluntarily *choose* another city over San José given the efforts that the A's have already expended to negotiate the Option Agreement with San José.

the Diridon property would sufficiently state an injury in the relevant market. *See Cargill*, 479 U.S. at 111-13 (holding that that a plaintiff seeking injunctive relief under section 16 of the Clayton Act must also allege a threat of antitrust injury "of the type the antitrust laws were designed to prevent and that flows from that which makes defendants' acts unlawful"); *McCoy v. Major League Baseball*, 911 F. Supp. 454, 458 (W.D. Wash. 1995) (holding that baseball fans do not have section 4 standing because "the fans' damages do not arise out of the allegedly illegal conduct that the antitrust laws are intended to remedy"). The court need not decide this issue, however, because the court dismisses the antitrust claims on the basis of the federal antitrust exemption for the business of baseball.

C. Cartwright Act Claims

The City also charges MLB with violations of California's Cartwright Act, Cal. Bus. & Prof.Code § 16700 et seq. In *Flood*, the Supreme Court upheld the lower courts' dismissals of all related state and common law claims on the grounds that "national uniformity is required in any regulation of baseball and its reserved [sic] system" and that "the Commerce Clause precludes the application here of state antitrust law." 407 U.S. at 284-85 (internal quotations and alterations omitted); *see Flood*, 316 F. Supp. at 280 ("As we see it, application of various and diverse state laws here would seriously interfere with

league play and the operation of organized baseball."); *Flood*, 443 F.2d at 268 ("[A]s the burden on interstate commerce outweighs the states' interest in regulating baseball's reserve system, the Commerce Clause precludes the application here of state antitrust law."); *see also Crist*, 331 F.3d at 1179 ("[W]e hold that the federal exemption preempts state antitrust law."); *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 611 (7th Cir. 1997) (explaining that *Flood* is an "isolated exception" in "a field in which Congress has *not* sought to replace state with federal law.").

The City argues that the cited cases, except for *Crist*, are limited to labor matters and inapplicable to team relocation issues. But, this court rejected that distinction, holding that the federal antitrust exemption extends beyond player issues, to team relocation actions. Thus, these cases are on point. In *Partee v. San Diego Chargers Football Co.*, the California Supreme Court explicitly adopted the reasoning in *Flood* and held that California's Cartwright Act does not apply to the interstate activities of professional football:

> No case has been found applying state antitrust laws to the interstate activities of professional sports. Professional football is a nationwide business structure essentially the same as baseball. Professional football's teams are dependent upon the league playing schedule for competitive play, *just as in baseball. . . . We are satisfied that national*

> *uniformity required in regulation of baseball and its reserve system* is likewise required in the player-team-league relationships challenged by Partee and that *the burden on interstate commerce outweighs the state interests in applying state antitrust laws to those relationships.*

34 Cal. 3d 378, 384-85 (1983) (emphasis added). This court follows the Supreme Court in *Flood*, the Eleventh Circuit in *Crist*, and the California Supreme Court in *Partee*, and dismisses the City's Cartwright Act claims under the Commerce Clause. Allowing the state claims to proceed would "prevent needed national uniformity in the regulation of baseball." *Butterworth*, 181 F. Supp. 2d at 1333.

D. State Unfair Competition Claims

The City also asserts claims under California's Unfair Competition Laws ("UCL"), Cal. Bus. & Prof.Code § 17200 et seq.[16] California law requires a

[16] Although state law creates the City's causes of action, the court appears to have federal question jurisdiction over the UCL claims because entitlement to relief is necessarily predicated on the resolution of a substantial federal antitrust question. *See Franchise Tax Bd. of State of Cal. v. Const. Laborers Vacation Trust for So. Cal.*, 463 U.S. 1, 14 (1983) (superseded by statute on other grounds) ("Even though state law creates appellant's causes of action, its case might still 'arise under' the laws of the United States if a well-pleaded complaint established that its right to relief under state law *requires resolution of a substantial question of federal law in dispute between the parties*." (emphasis

(Continued on following page)

plaintiff to prove an "unlawful, unfair or fraudulent business act or practice." *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999). The City alleges UCL violations based on both "unlawful" and "unfair" conduct. The unlawful or unfair conduct alleged is the same conduct that underlies the City's antitrust claims: MLB's alleged interference with the A's relocation to San José by delaying any relocation approval decision. The court held these allegations to be insufficient to state a claim under the Sherman Act, and thus the unlawful competition claims necessarily fail.

California law defines "unfair competition" as "conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because it effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition." *Cel-Tech*, 20 Cal. 4th at 187. Where the alleged conduct does not violate the antitrust laws, a claim based on *unfair* conduct cannot survive. *DocMagic, Inc. v. Ellie Mae, Inc.*, 745 F. Supp. 2d 1119, 1147 (N.D. Cal. 2010) ("[Plaintiff] has not alleged facts showing that [Defendant]'s conduct violated the Sherman Act. . . . As a result, any claims [plaintiff] might be asserting under the UCL's unfair prong *necessarily fail as well*." (emphasis added)); *Chavez v. Whirlpool Corp.*, 93 Cal. App. 4th 363, 375 (2001) ("If the same conduct is

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added)); *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 841-43 (9th Cir. 2004).

alleged to be both an antitrust violation and an 'unfair' business act or practice for the same reason – because it unreasonably restrains competition and harms consumers – the determination that the conduct is not an unreasonable restraint of trade necessarily implies that the conduct is not 'unfair' toward consumers."); *Live Universe, Inc. v. MySpace, Inc.*, 304 Fed. Appx. 554, 557 (9th Cir. 2008) (same). Even considering the unfair competition claim, the court does not find that the alleged conduct – an unwarranted and intentional delay in approving the A's relocation request – can arguably violate the "policy or spirit" of the antitrust laws where MLB remains exempt from antitrust regulation. "To permit a separate inquiry into essentially the same question under the unfair competition law would only invite conflict and uncertainty and could lead to the enjoining of procompetitive conduct." *Chavez*, 93 Cal. App. 4th at 375. Accordingly, the court dismisses the City's UCL claims.

D. Tortious Interference Claims

Finally, the City asserts claims for tortious interference with prospective economic advantage and tortious interference with contract.[17] "[T]he tort of interference with contract is merely a species of the broader tort of interference with prospective economic

[17] The court exercises supplemental jurisdiction over these state law claims pursuant to 28 U.S.C. § 1367(a).

advantage." *Buckaloo v. Johnson*, 14 Cal.3d 815, 823 (1975), *overruled on other grounds by Della Penna v. Toyota Motor Sales, U.S.A.*, 11 Cal. 4th 376, 393 n.5 (1995). As such, the broader tort of interference with prospective economic advantage does not require the existence of a valid contract. *Id.* at 826-27.

Because interference claims are not exclusively premised on the alleged violation of antitrust law, but are also based on MLB's alleged delay in rendering a relocation decision in frustration of the Option Agreement, the court considers these claims independently of the antitrust claims.

1. Whether MLB Must be a "Stranger" or "Outsider" to the Contract

The California Supreme Court has held that these interference torts can be brought only against non-contracting parties. *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 514 (1994) ("[C]onsistent with [the state's] underlying policy of protecting the expectations of contracting parties against frustration *by outsiders* who have no legitimate social or economic interest in the contractual relationship, the tort cause of action for interference with contract *does not lie against a party to the contract*." (second emphasis added)). The parties dispute whether, in that case, the California Supreme Court also required the allegedly interfering parties to be "outsiders" to or "strangers" to the contract, i.e., parties without any economic interest in the contract.

In *Woods v. Fox Broadcasting Sub., Inc.*, 129 Cal. App. 4th 344, 352-53 (2005), the California Court of Appeals held that the rule from *Applied Equipment* does not require anything other than that the accused interfering party be a non-contracting party, rejecting the Ninth Circuit's statements to the contrary in *Marin Tug & Barge, Inc. v. Westport Petroleum, Inc.*, 271 F.3d 825, 832-34 (9th Cir. 2001) (requiring the accused interfering party to be a "stranger" to the contract). In *G & C Auto Body Inc. v. GEICO Gen. Ins. Co.*, 552 F. Supp. 2d 1015, 1019-21 (N.D. Cal. 2008), the Northern District of California recently followed *Woods* and rejected *Marin Tug* on this point. In light of *Woods*, the California Supreme Court would likely reject the "stranger" test from *Marin Tug*. Accordingly, the court declines to dismiss the claims on this basis. MLB is not a party to the contract and thus satisfies the Applied Equipment requirement.

2. Tortious Interference with Prospective Economic Advantage

To prove a claim of tortious interference with prospective economic advantage in California, a plaintiff must set forth the following elements: "(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5)

economic harm to the plaintiff proximately caused by the acts of the defendant." *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1153 (2003) (quotation omitted). With respect to the third element, "a plaintiff seeking to recover for alleged interference with prospective economic relations has the burden of pleading and proving that the defendant's interference was wrongful by some measure beyond the fact of interference itself." *Della Penna*, 11 Cal. 4th at 392-93 (1995) (internal quotation omitted); *Korea Supply Co.*, 29 Cal. 4th at 1154 (clarifying that this requirement is part of the third element of the test and holding that, under the third element, specific intent is not required). Unlike a claim for tortious interference with contract, where "intentionally interfering with an existing contract is 'a wrong in and of itself,' . . . intentionally interfering with a plaintiff's prospective economic advantage is not." *Korea Supply Co.*, 29 Cal. 4th at 1158 (quoting *Quelimane Co. v. Stewart Title Guar. Co.*, 19 Cal. 4th 26, 56 (1998)). For this reason, a claim for tortious interference with prospective economic advantage requires an allegation of an independently wrongful act. *See id.* In *Korea Supply Company*, the California Supreme Court defined an independently wrongful act as one that "is *unlawful*, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." 29 Cal. 4th at 1159 (emphasis added).

Here, because the court has already concluded that there was no unlawful act under the antitrust

laws (or unfair competition laws), the only independently wrongful act could be tortious interference with contract, if there is, which is discussed below.

3. Tortious Interference with Contract

As discussed above, "[b]ecause interference with an existing contract receives greater solicitude than does interference with prospective economic advantage . . . , it is not necessary that the defendant's conduct be wrongful apart from the interference with the contract itself." *Quelimane*, 19 Cal. 4th at 55 (internal citation omitted). Thus, the absence of an antitrust violation or otherwise unlawful anticompetitive action does not necessarily foreclose this claim. To state a cause of action for intentional interference with contractual relations, however, the City must allege: "(1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126 (1990).

MLB argues that the complaint fails to allege the fourth and fifth elements of "breach or disruption" and "resulting damage." The City counters that the MLB Relocation Committee's delay in deciding whether to approve the A's relocation for over four

years directly caused a disruption of the A's ability to execute the Option Agreement and disrupted any future negotiation of a purchase agreement, presumably causing damage to the City. *See* Opp'n 18; Compl. ¶ 162.

The fourth element of "breach or disruption" does not require an allegation of "an actual or inevitable breach of contract" but may be satisfied with allegations that "plaintiff's performance [has been made] made more costly or more burdensome." *Id.* at 1129. At the time the Option Agreement was negotiated, both parties were aware that MLB might or might not approve the A's relocation. See Compl. ¶ 73 ("San José Mayor Chuck Reed called for a public vote on whether the [A's] could purchase land and build a new stadium for the [A's] in San José. However at Commissioner Selig's request, Mayor Reed delayed the vote pending the MLB Relocation Committee's determination of the A's – Giants territorial dispute."). Despite this knowledge, it is reasonable to infer that the A's and the City entered into the Option Agreement with the understanding that MLB would return a relocation decision within the two year term of the contract.

The court finds that the complaint sufficiently alleges a "disruption" of the contract because, here, the A's are unable to exercise the option due to MLB's delay in conducting the vote pursuant to the MLB Constitution to approve or deny relocation. By asking the City to delay on a public vote on the stadium, the City was justified in assuming that MLB would make

a decision within a reasonable time which it has not. Regardless of whether MLB ultimately approves or denies the relocation request – and the court has concluded that it is within MLB's authority to decide either way – the A's were recently forced by MLB's delay to extend the Option Agreement for another year, or lose the option. As a result of MLB's delay, the A's incurred an additional $25,000 expense to renew the option, and the City is left waiting another year to sell the land set aside for the stadium in question. Fact questions remain regarding the City's damages resulting from the alleged interference. The court cannot say at this stage that the City has incurred no damages owing to MLB's frustration of the contract. Although MLB's frustration of the Option Agreement is not an antitrust violation, MLB is nonetheless aware of the Option Contract and has engaged in acts (or rather, has failed to engage a vote pursuant to the MLB Constitution) indicating an intent to frustrate the contract. The court concludes that the allegations in the complaint are sufficient to state a claim for tortious interference with contract.[18]

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[18] MLB also asserts in a footnote that the option agreement between San José and the A's is void, and therefore the City has not pled the existence of a valid contract, relying on the judicially noticed "[RDA]: Asset Transfer Review" report from the California State Controller finding certain asset transfers from the RDA to the City after January 1, 2011 to be invalid. *See* Dkt. No. 26-4. The court concludes that the "[RDA]: Asset Transfer Review" report is insufficient to definitively show that the Option Agreement is invalid. At the dismissal stage, the court draws all reasonable inferences in favor of the plaintiff based on

(Continued on following page)

The alleged tortious interference with contract is an independently unlawful act sufficient to support the City's tortious interference with prospective economic advantage claim, although the claims may be duplicative.

IV. ORDER

For the foregoing reasons, MLB's motion to dismiss the Sherman Act claim and the state claims for violation of the Cartwright Act and for unfair competition are granted without leave to amend. Although leave to amend is generally given after the initial granting of a motion to dismiss for failure to state a claim, leave may be denied if amendment would be futile. *See, e.g., Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008). Here, the City has not suggested how its dismissed claims could be successfully amended nor does the court see how they could be. MLB's motion to dismiss the state claims for tortious interference with contract and economic advantage is denied.

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the allegations in the complaint and presumes that the contract is valid.

APPENDIX C

United States District Court, N.D. 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.

No. C-13-02787 RMW

January 3, 2014

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 refiling 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 agency to the Redevelopment Agency of the City of San Jose; and

the San Jose Diridon Development Authority and that plaintiffs are entitled to no relief by way of their complaint.

Dated: January 3, 2014

<<signature>>
RONALD M. WHYTE
United States District Judge

APPENDIX D

15 U.S.C. §§ 1 and 2 (the Sherman Act)

§ 1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

§ 2. Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

APPENDIX E

15 U.S.C. § 26b (the Curt Flood Act of 1998)

§ 26b. Application of the antitrust laws to professional major league baseball

(a) Major league baseball subject to antitrust laws

Subject to subsections (b) through (d) of this section, the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce.

(b) Limitation of section

No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices, or agreements other than those set forth in subsection (a) of this section. This section does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to, any conduct, acts, practices, or agreements that do not directly relate to or affect employment of major league baseball players to play

baseball at the major league level, including but not limited to

(1) any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players;

(2) the agreement between organized professional major league baseball teams and the teams of the National Association of Professional Baseball Leagues, commonly known as the "Professional Baseball Agreement", the relationship between organized professional major league baseball and organized professional minor league baseball, or any other matter relating to organized professional baseball's minor leagues;

(3) any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting franchise expansion, location or relocation, franchise ownership issues, including ownership transfers, the relationship between the Office of the Commissioner and franchise owners, the marketing or sales of the entertainment product of organized professional baseball and the licensing of intellectual property rights owned or held by organized professional baseball teams individually or collectively;

(4) any conduct, acts, practices, or agreements protected by Public Law 87-331 (15 U.S.C. 1291 et seq.) (commonly known as the "Sports Broadcasting Act of 1961");

(5) the relationship between persons in the business of organized professional baseball and umpires or other individuals who are employed in the business of organized professional baseball by such persons; or

(6) any conduct, acts, practices, or agreements of persons not in the business of organized professional major league baseball.

(c) Standing to sue

Only a major league baseball player has standing to sue under this section. For the purposes of this section, a major league baseball player is –

(1) a person who is a party to a major league player's contract, or is playing baseball at the major league level; or

(2) a person who was a party to a major league player's contract or playing baseball at the major league level at the time of the injury that is the subject of the complaint; or

(3) a person who has been a party to a major league player's contract or who has played baseball at the major league level, and who claims he has been injured in his efforts to secure a subsequent major league player's contract by an alleged violation of the antitrust laws: Provided however, That for the purposes of this paragraph,

the alleged antitrust violation shall not include any conduct, acts, practices, or agreements of persons in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, including any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players; or

(4) a person who was a party to a major league player's contract or who was playing baseball at the major league level at the conclusion of the last full championship season immediately preceding the expiration of the last collective bargaining agreement between persons in the business of organized professional major league baseball and the exclusive collective bargaining representative of major league baseball players.

(d) Conduct, acts, practices, or agreements subject to antitrust laws

(1) As used in this section, "person" means any entity, including an individual, partnership, corporation, trust or unincorporated association or any combination or association thereof. As used in this section, the National Association of Professional Baseball Leagues, its member leagues and the clubs of those leagues, are not "in the business of organized professional major league baseball".

(2) In cases involving conduct, acts, practices, or agreements that directly relate to or affect both employment of major league baseball players to play baseball at the major league level and also

relate to or affect any other aspect of organized professional baseball, including but not limited to employment to play baseball at the minor league level and the other areas set forth in subsection (b) of this section, only those components, portions or aspects of such conduct, acts, practices, or agreements that directly relate to or affect employment of major league players to play baseball at the major league level may be challenged under subsection (a) of this section and then only to the extent that they directly relate to or affect employment of major league baseball players to play baseball at the major league level.

(3) As used in subsection (a) of this section, interpretation of the term "directly" shall not be governed by any interpretation of section 151 et seq. of Title 29 (as amended).

(4) Nothing in this section shall be construed to affect the application to organized professional baseball of the nonstatutory labor exemption from the antitrust laws.

(5) The scope of the conduct, acts, practices, or agreements covered by subsection (b) of this section shall not be strictly or narrowly construed.