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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SERGIO MIRANDA, et al.,

Plaintiffs,

v.

OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as MAJOR LEAGUE BASEBALL, et al.,

Defendants.

Case No. 3:14-cv-05349-HSG

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT UNDER FEDERAL RULE 12(b)(2) AND 12(b)(6)

Judge: Hon. Haywood S. Gilliam, Jr.

Date Filed: December 5, 2014

Trial Date: None set

[1] With the exception of Baltimore Orioles Limited Partnership and Baltimore Orioles, Inc., Keker & Van Nest is counsel to all Defendants in this matter.

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on a mutually agreeable date to be determined by the parties or as soon thereafter as this matter may be heard in Courtroom 15 before the Honorable Haywood S. Gilliam, Jr., located at 450 Golden Gate Avenue, San Francisco, California, the undersigned Defendants will and do hereby move this Court for an Order, pursuant to Federal Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the Plaintiffs' complaint.

Plaintiffs' claims are barred under controlling law and fail to state any claim upon which relief can be granted. In addition, this Court lacks personal jurisdiction over certain of the Defendants. Defendants seek relief based upon this Notice of Motion and Motion to Dismiss; the Memorandum of Points and Authorities filed concurrently with this Motion; Defendants' Request for Judicial Notice and all attached exhibits; the pleadings on file; the argument of counsel; and such other materials as the Court may properly consider.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

"[T]he business of baseball is exempt from the antitrust laws, as it has been since 1922, and as it will remain unless and until Congress decides otherwise. Period."

> *Major League Baseball v. Butterworth*, 181 F. Supp. 2d 1316, 1331 (N.D. Fla. 2001), *aff'd*, *Major League Baseball v. Crist*, 331 F.3d 1177 (11th Cir. 2003)

The United States Supreme Court first declared the business of baseball exempt from antitrust regulation in 1922. Since then, the Supreme Court has repeatedly and consistently enforced the exemption to dismiss a variety of antitrust claims. Circuit courts, including the Ninth Circuit, have correctly followed these precedents to exempt the business of baseball from the antitrust laws. The Plaintiffs now assert that all of these decisions are wrong. They ask this Court both to contravene binding precedent from the Supreme Court, and to ignore well-settled law from across the circuit courts. And to the extent that Plaintiffs argue that the antitrust

exemption does not cover Minor League labor issues, they ask this Court to reject the Ninth Circuit's holding—from January of this year—that baseball's antitrust exemption covers the "entire 'business of providing public baseball games for profit between clubs of professional baseball players.'" *City of San José v. Comm'r of Baseball*, 776 F.3d 686, 690 (9th Cir. 2015) (quoting *Toolson v. New York Yankees, Inc.*, 346 U.S. 356, 357 (1953)). Plaintiffs' argument would also require this Court to ignore the Curt Flood Act, whereby Congress expressly left the antitrust exemption intact for Minor League labor issues, including "any conduct, acts, practices, or agreements . . . relating to . . . employment to play baseball at the minor league level." 15 U.S.C. § 26b(b)(1). Since the Plaintiffs' claims are barred by baseball's antitrust exemption, this Court must dismiss them for failing to state a claim for relief under Rule 12(b)(6).

In addition, this Court lacks personal jurisdiction over eight of the MLB Clubs named as Defendants in the Complaint.[2] These non-resident MLB Clubs (collectively, the "12(b)(2) Defendants") are not corporations and therefore are not subject to nationwide service of process under the federal antitrust laws. Moreover, the 12(b)(2) Defendants are not subject to jurisdiction under California's long-arm statute, which permits courts to exercise jurisdiction over non-resident defendants coextensive with the limits imposed by the Due Process Clause of the United States Constitution. Plaintiffs do not allege any facts supporting the notion that the 12(b)(2) Defendants have continuous and systematic affiliations with California such that the Defendants can be deemed "at home" in the state. Nor do Plaintiffs allege facts suggesting that their claims arise out of or relate to the 12(b)(2) Defendants' contacts with California. Accordingly, Plaintiffs' complaint should be dismissed as to the 12(b)(2) Defendants for lack of personal jurisdiction. Even if Plaintiffs could allege facts sufficient to establish personal jurisdiction, leave to amend would be futile because, as explained below, Plaintiffs' claims against all Defendants are barred by the antitrust exemption.

[2] Baltimore Orioles Limited Partnership; Boston Red Sox Baseball Club L.P.; Chicago White Sox, Ltd.; New York Yankees, P'ship; The Phillies (incorrectly named as "The Phillies L.P."); Pittsburgh Associates, L.P. (incorrectly named as "Pittsburgh Baseball, Inc." and "Pittsburgh Baseball P'Ship"); Tampa Bay Rays Baseball, Ltd.; and Washington Nationals Baseball Club, LLC.

II. BACKGROUND

A. Defendants: MLB, the Major League Clubs, and their relationship to Minor League Baseball.

Major League Baseball ("MLB") is an unincorporated association whose members are the 30 MLB Clubs. Complaint at ¶ 16. Each Club employs Major League players on its active roster and on an extended reserve list (which is more commonly known as the "40-man roster"). *Id.* at ¶ 68; *see also* MLR 2(b)–(c).[3] Each Club also employs a number of Minor League players for player-development purposes. *Id.* at ¶¶ 68–69; MLR 2(b)–(c). Throughout the year, Major League Clubs may assign individual Minor League players to different levels of the Minor League system, depending on what skills that player needs to develop before he can reach the Major League level.

Even though a Minor League player may train with—and play games for—a Minor League Club, that player is still employed by the Major League Club. Complaint at ¶¶ 88–89. The player's employment agreement is established by filling in terms in a Uniform Player Contract, which is attached to the Major League Rules. *See* MLR Attachment 3. Under the Uniform Player Contract, a Minor League player's first-year salary is set by MLB (although it varies depending on the player's league assignment). MLR 3(c)(2). Although the first-year salary is predetermined, first-year players and Major League Clubs are free to negotiate additional compensation such as signing bonuses, roster bonuses, and incentive bonuses. MLR 3(c)(4)(A)–(C). The Major League Club also may compensate the player by agreeing to pay the full cost of a college education, including tuition and living expenses. MLR 3(c)(4)(D). After the Minor League player's first season, the Major League Club can choose to renew the player's contract with a salary to be determined by negotiation between the player and the Club. MLR Attachment 3 at § VII.A. If the player and Club cannot agree on a salary, the Club can set the player's salary, although only within certain prescribed limits. *Id.*

[3] The Plaintiffs attached the Major League Rules ("MLRs") to their Complaint as Exhibit A, and therefore the Court may consider the facts contained in the MLRs on a Motion to Dismiss. Fed. R. Civ. P. 10(c); *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). The MLRs that Plaintiffs attached were issued in 2008, and thus do not include certain amendments that were made thereafter. But the Defendants are not asking the Court to take judicial notice of those amendments because they do not affect this Motion to Dismiss.

Under the so-called "reserve clause," a Minor League player's Uniform Player Contract can be renewed by whichever Club employs him at season's end. MLR Attachment 3 at § VI.A. A player's Uniform Player Contract can be renewed as many as six times before the player becomes a free agent (*id.*), although many players become free agents sooner. For example, if a player is released he can negotiate with any Club and sign a new Uniform Player Contract. MLR 3(a)(1)(D). Such a player can also negotiate so that his new Uniform Player Contract is not renewable, thereby guaranteeing that the player will become a free agent at season's end if he is not promoted to the Major League Roster. MLR Attachment 3 at § VI.A, Addendum A.

B. Plaintiffs and their allegations.

The four named Plaintiffs allege that they are former Minor League baseball players. Complaint at ¶¶ 12–15. Each one alleges that he had a short career in the Minor Leagues, and—cumulatively—the four Plaintiffs allege that they were employed by only four of the thirty Major League Clubs. *Id.* The Plaintiffs' allegations focus on their assignments in Florida, and none of the Plaintiffs has alleged any connection to this district or to the State of California more generally. *Id.*

Plaintiffs allege that the Defendants are part of a "cartel" known as "Major League Baseball" or MLB. *Id.* at ¶ 1. They further allege that MLB "openly colludes on the working conditions for the development of its chief commodity: minor league professional baseball players." *Id.* at ¶ 2. Plaintiffs claim that "the MLB cartel inserted a provision (known as the reserve clause) into players' contracts that allows teams to retain [players] for seven (7) years" and "restrict their ability to negotiate with other teams . . . , which reserve clause preserves MLB's minor league system of artificially low salaries and nonexistent contractual mobility." *Id.* at ¶ 3. The Plaintiffs' allegations focus on how Defendants use the Uniform Player Contract and its reserve clause to "artificially and illegally depress[ ] minor league wages." *See generally id.* at ¶¶ 81–85, 90–102, 127–28, 136–37; *id.* at § IX.B. More specifically, Plaintiffs claim that Defendants' use of the Uniform Player Contract and its reserve clause is a violation of Sections 1 and 2 of the Sherman Act. *Id.* at ¶¶ 123–145.

Despite the fact that Plaintiffs assert antitrust claims, they admit that baseball is exempt

from the antitrust laws under a series of Supreme Court decisions. *Id.* at ¶ 103. The Plaintiffs argue that this Court can ignore those Supreme Court decisions because—according to Plaintiffs—baseball's antitrust exemption "no longer has . . . any current basis in economic reality" and "no longer has any underpinning." *Id.* at ¶¶ 103–04.

III. LEGAL ARGUMENT

A. Baseball's antitrust exemption bars Plaintiffs' claims.

To survive a motion to dismiss under Rule 12(b)(6), Plaintiffs must plead facts showing that their "right to relief [rises] above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiffs must show "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While the Court must accept material ***factual*** allegations as true, pleadings that are "no more than conclusions, are not entitled to the assumption of truth." *Id*. at 679; *see also Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998) ("conclusory allegations . . . and unwarranted inferences" are insufficient).

1. The Supreme Court has repeatedly held that baseball is exempt from antitrust regulation.

In 1922, the Supreme Court held that the Clayton and Sherman Acts do not apply to the business of baseball. *Fed. Baseball Club of Baltimore, Inc. v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200 (1922). Justice Oliver Wendell Holmes, writing for a unanimous court, concluded that baseball was not interstate commerce and therefore was not regulated by the Sherman Act. *Id.* at 208. While the Supreme Court's Commerce Clause doctrine has changed over the last 93 years, the broad scope of the antitrust exemption has not. The Supreme Court has consistently reaffirmed that "the business of baseball" is beyond the scope of antitrust regulation. As the Ninth Circuit correctly observed just months ago, the Supreme Court's opinions "clearly extend the baseball exemption to the entire 'business of providing public baseball games for profit between clubs of professional baseball players.'" *City of San José*, 776 F.3d at 690 (quoting *Toolson*, 346 U.S. at 357).

The Plaintiffs argue that they can avoid binding Supreme Court precedent because the Supreme Court's rationales for maintaining the exemption "have no basis." Complaint at ¶¶ 103–04. But for the last sixty years, the Supreme Court has reaffirmed baseball's antitrust exemption

based on *stare decisis*, baseball's reliance interests, and the Court's express deference to Congress. *See Flood v. Kuhn*, 407 U.S. 258, 285 (1972); *Toolson*, 346 U.S. at 357; *Radovich v. Nat'l Football League*, 352 U.S. 445, 451–52 (1957); *United States v. Int'l Boxing Club*, 348 U.S. 236, 241–42 (1955); *United States v. Shubert*, 348 U.S. 222, 230 (1955). The Court has observed that "more harm would be done in overruling *Federal Baseball* than in upholding [it]," as "[v]ast 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.

Starting in 1953, the Supreme Court has consistently held that if the exemption is to be altered or curtailed, it is for Congress to do so. *Toolson*, 346 U.S. at 357; *see also Flood*, 407 U.S. at 283, 285; *Radovich*, 352 U.S. at 451; *Int'l Boxing*, 348 U.S. at 244; *Shubert*, 348 U.S. at 229–30. In 1972, the Supreme Court recognized that Congress's deliberate decision not to repeal the exemption amounted to "something other than mere congressional silence and passivity," and instead constituted "positive inaction," reflecting that "Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." *Flood*, 407 U.S. at 283–85. Then, in 1998, Congress took the affirmative step of enacting the Curt Flood Act, which repealed the exemption only for disputes relating to employment of Major League Baseball players. The Curt Flood Act explicitly affirmed that the exemption covered the rest of the business of baseball, including the employment of Minor League players, the amateur draft, or "any reserve clause as applied to minor league players." *See* 15 U.S.C. § 26b(b)(1).

For almost a century, the Supreme Court has repeatedly affirmed that Major League Baseball is exempt from antitrust regulation. The federal courts are "bound to follow a controlling Supreme Court precedent until it is explicitly overruled by that Court." *Nunez-Reyes v. Holder*, 646 F.3d 684, 692 (9th Cir. 2011) (en banc). Therefore, this Court should, and indeed must, apply the well-established exemption and dismiss Plaintiffs' antitrust claims.

2. The antitrust exemption broadly applies to the "business of baseball," which includes Plaintiffs' claims regarding Minor League labor issues.

The Supreme Court has repeatedly held that the antitrust exemption applies to the "business of baseball." *Flood*, 407 U.S. at 285; *Radovich*, 352 U.S. at 451; *Shubert*, 348 U.S. at 228; *Toolson*, 346 U.S. at 357. As the Ninth Circuit has described it, baseball's antitrust

exemption covers the "entire 'business of providing public baseball games for profit between clubs of professional baseball players.'" *City of San José*, 776 F.3d at 690 (quoting *Toolson*, 346 U.S. at 357). Or as the Seventh Circuit put it, "the Supreme Court intended to exempt the business of baseball, not any particular facet of that business, from the federal antitrust laws." *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 541 (7th Cir. 1978).

Here, the Plaintiffs have targeted conduct at the core of the antitrust exemption. Plaintiffs allege that MLB and its constituent Clubs have conspired to use the "reserve clause" in the Uniform Player Contract to prevent competition for Minor League players and thereby depress Minor League wages. Complaint at ¶¶ 3, 59(b)–(d), 67, 103, 105, 107, 110, 112, 116, 127, 128, 136. But in *Flood v. Kuhn*—the most recent Supreme Court decision regarding the exemption—the Court expressly held that baseball's "reserve system" was outside "the reach of the federal antitrust laws." *Flood*, 407 U.S. at 259, 267–68, 281, 283, 284. Indeed, the trial court in *Flood* took extensive testimony on the importance of the "reserve clause" and the Uniform Player Contract as it was used for Minor League players. *Flood v. Kuhn*, 316 F. Supp. 271, 273–76 (S.D.N.Y. 1970). The district court in *Flood* described the reserved system as the "cornerstone" of the business of baseball:

> At the center of this single, unified but stratified organization of baseball leagues is the reserve system, the essence of which has been in force for nearly one hundred years, almost the entire history of organized professional baseball. All teams in organized baseball agree to be bound by and enforce its strictures. It is perhaps the cornerstone of the present structure in that it insures team continuity and control of a supply of ballplayers. It is the heart of plaintiff's complaint.

Id. at 273. In short, the Supreme Court has not only addressed the broader question of baseball's exemption from antitrust regulation, it has also *specifically* held that antitrust laws cannot be used to regulate the reserve clause.

More broadly, various courts have also held that the antitrust exemption bars claims focused on ***other*** conduct between MLB and the Minor Leagues. For example, the Ninth Circuit has held that a Minor League Club could not state a claim for antitrust relief when MLB moved a Major League franchise into the Minor League Club's territory without allegedly providing proper compensation. *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101, 1103 (9th Cir. 1974). The Eleventh Circuit has held that a Minor League franchise cannot sue MLB for

monopolization of—amongst other things—the systems for Minor League "player assignment" and game-scheduling. *Prof'l Baseball Schools & Clubs, Inc. v. Kuhn*, 693 F.2d 1085, 1085–86 (11th Cir. 1982). And a district court has held that an aspiring Minor League owner cannot state a claim for antitrust relief based on allegations that the league conspired to deny his bid for a preferred geographic territory. *New Orleans Pelicans Baseball, Inc. v. Nat'l Ass'n of Prof. Baseball Leagues, Inc.*, 1994 WL 631144, at *1, *9 (E.D. La. Mar. 1, 1994).

The Plaintiffs cannot identify a single opinion holding that baseball's antitrust exemption permits an antitrust challenge to the reserve clause. Plaintiffs ask this Court to ignore the Ninth Circuit—which held that the exemption covers the "entire 'business of providing public baseball games for profit between clubs of professional baseball players'"[4] and the Supreme Court—which expressly held that the reserve clause is immune from antitrust challenge. In short, Plaintiffs ask this Court to commit legal error.

3. Congress has refused to subject Minor League labor issues to antitrust regulation.

Congress has not ignored the Supreme Court's consistent holding that—if the antitrust exemption is to be altered or repealed—it must be done by Congress, not the Court. *Flood*, 407 U.S. at 284. In fact, Congress has regularly considered legislation to address the existence and scope of professional baseball's antitrust exemption.[5] And Congress has repeatedly refused to subject all but one aspect of the business of baseball to antitrust regulation.

In 1998, Congress enacted the Curt Flood Act (15 U.S.C. § 26b), and again reinforced that the business of baseball is broadly exempt from antitrust laws. The Curt Flood Act provided ***Major League*** players, for the first time, with certain antitrust recourse for injuries related to their employment. 15 U.S.C. § 26b(a). But Congress explicitly declined to repeal the exemption as it applies to any other aspect of the business of baseball—including the employment of Minor League players. Instead, the Curt Flood Act specifically states that it "does ***not*** create, permit or

[4] *City of San José*, 776 F.3d at 690 (quoting *Toolson*, 346 U.S. at 357).

[5] The Supreme Court in *Flood* found it particularly relevant that, in the 19 years between its decisions in *Toolson* and *Flood*, "more than 50 bills [were] introduced in Congress relative to the applicability or nonapplicability of the antitrust laws to baseball." *Flood*, 407 U.S. at 281. Similarly, from 1972 to 2014, Congress held ***45 hearings*** on baseball's antitrust exemption. *See* Statutory and Legislative Addendum at page 17.

imply a cause of action . . . under the antitrust laws, or otherwise apply the antitrust laws to" anything other than issues relating to the employment of Major League players. 15 U.S.C. § 26b(b) (emphasis added); *see also id.* (mandating 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).").

Consequently, the Curt Flood Act left baseball's antitrust exemption intact for the rest of the business of baseball, including "employment . . . 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***." 15 U.S.C. § 26b(b)(1) (emphasis added). The Curt Flood Act also explicitly exempts any antitrust claims based on any agreement between "major league baseball and . . . minor league baseball, or any other matter relating to organized professional baseball's minor leagues." 15 U.S.C. § 26b(b)(2). Congress explicitly chose which aspects of baseball would be subject to the antitrust laws and thereby confirmed that it did not intend for the antitrust laws to apply to anything other than ***Major League*** employment issues. *See Morsani v. Major League Baseball*, 79 F. Supp. 2d 1331, 1335 n.12 (M.D. Fla. 1999). In *City of San José*, the Ninth Circuit examined a parallel provision of the Curt Flood Act where Congress preserved the antitrust exemption for franchise relocation. 776 F.3d at 690–91. The Ninth Circuit reasoned that "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." *Id.* at 691. "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." *Id.* If this Court applies the Ninth Circuit's reasoning regarding congressional intent to the present case, and takes notice of the fact that the Minor League labor exclusion is located in the same statutory section as the franchise-relocation exclusion, it further confirms that the Curt Flood Act was deliberately designed to preserve the exemption for Minor League labor claims.

In fact, the legislative history of the Curt Flood Act indicates that Congress took special

care to ensure that the Act's limited and specific repeal of the exemption would not be applied to Minor League labor issues. In 1997, MLB and the Major League players' union signed a new collective bargaining agreement. S. Rep. No. 105–118 at 3. As part of that agreement, the two sides committed that they would

> jointly request and cooperate in lobbying the Congress to pass a law that will clarify that Major League Baseball players are covered under the antitrust laws (i.e. that Major League Players have the same rights under the antitrust laws as do other professional athletes, e.g. football and basketball players), along with a provision that makes it clear that passage of that bill does not change the application of the antitrust laws in any other context or with respect to any other person or entity.

Id. at 3–4.

Although the legislation was supported by both players and owners, the National Association of Professional Baseball Leagues, which represents Minor League Baseball, "had concerns" that the Curt Flood Act might be used to bring antitrust claims against the Minor Leagues. *Id.* at 4. MLB, in turn, announced that its previous "support was tempered by the fact that our business partner"—Minor League Baseball—"has concern as to whether the proposed legislation adequately protects their interests." *Id.* (quoting letter from Commissioner Selig to Senator Hatch). Minor League Baseball expressed a fear that even a limited removal of the antitrust exemption would "end the major league funding upon which the minor leagues' viability depends." *Id.* at 10. As four Senators later explained, "The reason [for this fear] is clear: the majors pay 100 percent of the salaries of all minor league players, managers, coaches and trainers . . . in return for the prospect of major league talent someday down the line. **Without the ability to *reserve* their players**, major league teams will no longer have assurance that they can realize their investment in minor league players." *Id.* at 10 (emphasis added).

Once the Minor Leagues raised these concerns, the Curt Flood Act's supporters took additional steps to ensure there was no ambiguity regarding the exemption's continued application to Minor League labor issues. At a Senate hearing in 1997, the Executive Director of the Major League players' union testified that the legislation would have "no effect" on "the application of the antitrust laws to the amateur draft, the reserve clause as applied to minor league players, or the various agreements between the major leagues and the minor leagues." *Major*

League Baseball Antitrust Reform: Hearing on S. 53 Before the S. Comm. On the Judiciary, 105th Cong. 102 at 10 (testimony of Donald Fehr); *see also id.* at 12 (statement of Donald Fehr) (recounting history of Minor League opposition to partial repeal of the antitrust exemption). Eventually, Senator Orrin Hatch was compelled to add an amendment "to clarify even further that [the Bill] would have no impact on the legal status of the minor leagues." S. Rep. No. 105–118 at 4. But the Court does not need to parse legislative history to find proof that Congress deliberately exempted Minor League labor issues from antitrust regulation. As explained above, the text of the Curt Flood Act is unambiguous. Congress deliberately excluded Minor League labor issues from the Curt Flood Act, and thereby confirmed that Minor League labor issues fell within the core of the antitrust exemption.

* * *

Plaintiffs have targeted Minor League labor issues that lie at the heart of baseball's antitrust exemption. Supreme Court and Ninth Circuit authority bar Plaintiffs' claims, and no reading of the Flood Act can save them. For the reasons stated above, Plaintiffs' claims are baseless and futile. They should be dismissed without leave to amend.

B. This Court lacks personal jurisdiction over the 12(b)(2) Defendants.

A court's determination of whether to exercise personal jurisdiction is a question of law. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002). "Although the defendant is the moving party on a motion to dismiss, the plaintiff bears the burden of establishing that jurisdiction exists." *Id.* The Plaintiffs' allegations here do not satisfy that burden.

1. The Clayton Act's nationwide service-of-process provision does not authorize the exercise of personal jurisdiction over unincorporated defendants.

The Plaintiffs allege that the "Defendants transact business in this District and are subject to personal jurisdiction in this District," and cite Section 12 of the Clayton Act, 15 U.S.C. § 22, which contains both a venue clause and a service-of-process clause. Complaint at ¶ 63. The Plaintiffs appear to be invoking the service-of-process clause to justify the Court's exercise of personal jurisdiction over the Defendants. But the 12(b)(2) Defendants do not fall within the

reach of Section 12 and are thus not subject to personal jurisdiction under the statute.

Section 12 of the Clayton Act permits nationwide service of process (and thus nationwide personal jurisdiction) against corporations in circumstances in which they might not otherwise be subject to jurisdiction:

> Any suit, action, or proceeding under the antitrust laws against ***a corporation*** may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

15 U.S.C. § 22 (emphasis added). As the Ninth Circuit reads the statute, personal jurisdiction under Section 12 is satisfied in any district in which the plaintiff serves the defendant so long as the defendant is a corporation operating somewhere in the United States. *See Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174, 1180–81 (9th Cir. 2004).

While many of the named Defendants here are corporations, the 12(b)(2) Defendants are not. Seven of the eight 12(b)(2) Defendants are limited partnerships; the other is a limited liability company. None are subject to personal jurisdiction under the statute.

The Defendants are aware of no case in which a court has exercised jurisdiction over an unincorporated defendant pursuant to Section 12 of the Clayton Act. Indeed, every court to address the question has held that Section 12 applies exclusively to incorporated defendants. For example, a court in this District refused to extend Section 12 to cover a professional soccer league that was sued for antitrust violations. The league, the court explained, was "an unincorporated association, not a corporation, so Clayton Act § 12 is inapplicable by its own terms to provide for service of process against [the league] in this action." *California Clippers, Inc. v. U.S. Soccer Football Ass'n*, 314 F. Supp. 1057, 1061 (N.D. Cal. 1970). Other courts applying Section 12 have reached similar conclusions.[6] In sum, the statute the Plaintiffs cite does not authorize the

[6] *See, e.g.*, *Kingsepp v. Wesleyan Univ.*, 763 F. Supp. 22 (S.D.N.Y. 1991) (holding that Section 12 permitted service of process against incorporated colleges but not against a college organized as a trust); *Pac. Seafarers, Inc. v. Pac. Far E. Line*, 48 F.R.D. 347, 349 (D.D.C. 1969) (quashing

exercise of personal jurisdiction over the unincorporated Defendants named in the complaint.

Because Section 12 of the Clayton Act does not permit service of process over the 12(b)(2) Defendants, this Court must apply the law of the forum state to determine whether personal jurisdiction exists. *See* Fed. R. Civ. P. 4(k)(1)(A); *CE Distrib., LLC v. New Sensor Corp.*, 380 F.3d 1107, 1110 (9th Cir. 2004). California's long-arm statute authorizes courts to exercise jurisdiction to the extent permitted by due process. Cal. Code. Civ. Proc. § 410.10. The Supreme Court has identified two types of personal jurisdiction that comport with the requirements of due process: general jurisdiction and specific jurisdiction. *See Walden v. Fiore*, 134 S. Ct. 1115, 1121 n.6 (2014). The 12(b)(2) Defendants are not subject to personal jurisdiction under either approach.

2. The Plaintiffs fail to allege facts demonstrating that the 12(b)(2) Defendants' have contacts with California that are "continuous and systematic."

A court may assert general jurisdiction over a non-resident defendant only when that defendant's "affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011) The Supreme Court has upheld an exercise of general jurisdiction over a defendant where the forum state was the defendant's "principal, if temporary, place of business" for several years. *See id*. at 2854, 2856 (discussing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952)). General jurisdiction is appropriate only where "a defendant's contacts with a forum are so substantial, continuous, and systematic that the defendant can be deemed to be 'present' in that forum for all purposes." *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1205 (9th Cir. 2006). Mere "visits" to the forum state are not enough; rather, there must be some "indication that [the defendant] has sat down and made itself

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service of process against defendants because they were unincorporated associations outside the reach of Section 12); *McManus v. Tato*, 184 F. Supp. 958, 959 (S.D.N.Y. 1959) (same); *see also Orange Theatre Corp. v. Rayherstz Amusement Corp.*, 139 F.2d 871, 875 (3d Cir. 1944) (explaining that Section 12's service of process provision "applies only to suits against corporations").

at home." *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1124–25 (9th Cir. 2002).

Here, Plaintiffs do not allege any facts indicating that the 12(b)(2) Defendants have continuous and systematic contacts with California. Even if Plaintiffs were to allege occasional visits by the 12(b)(2) Defendants to California, courts have routinely held that occasional involvement in California-based events does not constitute the continuous and systematic contact necessary to justify general jurisdiction. *See, e.g., Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1490 (9th Cir. 1993) (finding no "systematic and continuous contacts with California" based on the allegation that the defendant "attended five medical conferences in California over the last four years").[7] In short, the 12(b)(2) Defendants are not "essentially at home" in California. *See Goodyear*, 131 S. Ct. at 2851. This Court, therefore, may not exercise general jurisdiction over the 12(b)(2) Defendants here.[8]

3. The Court lacks specific jurisdiction because the Plaintiffs do not allege that their claims arise out of the 12(b)(2) Defendants' contacts with California.

"The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation." *Walden*, 134 S. Ct. at 1121 (internal citations omitted). For a court to exercise specific jurisdiction consistent with due process, the litigation must "result[] from alleged injuries that arise out of or relate to" the activities that are directed to the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quotation marks omitted). In the Ninth Circuit, courts employ a three-part test to determine whether a defendant's contacts suffice to establish specific

[7] *See also Autogenomics, Inc. v. Oxford Gene Tech. Ltd.*, 566 F.3d 1012, 1018 (Fed. Cir. 2009) (finding no general jurisdiction because the defendant's attendance at "four conferences over five years constitute[s] only sporadic and insubstantial contacts"); *Vice v. Woodline USA, Inc.*, No. C 10-04103 CW, 2011 WL 207936, at *3 (N.D. Cal. Jan. 21, 2011) (refusing to exercise general jurisdiction where defendant "attends two annual trade shows in California").

[8] MLB, an unincorporated association, is not challenging personal jurisdiction here. The existence of personal jurisdiction over an unincorporated association is not a basis for exercising personal jurisdiction over its non-resident members. *See Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 284 F. Supp. 2d 204, 216 (D. Mass. 2003) ("That the Castano Group is subject to personal jurisdiction in Massachusetts as an unincorporated association does not imply that this Court has personal jurisdiction over group members who reside outside Massachusetts.").

jurisdiction: "(1) the nonresident defendant must have purposefully availed himself of the privilege of conducting activities in the forum by some affirmative act or conduct; (2) plaintiff's claim must arise out of or result from the defendant's forum-related activities; and (3) exercise of jurisdiction must be reasonable." *Roth v. Garcia Marquez*, 942 F.2d 617, 620–21 (9th Cir. 1991). "Each of the three tests must be satisfied to permit a district court to exercise limited personal jurisdiction over a non-resident defendant." *Peterson v. Kennedy*, 771 F.2d 1244, 1261 (9th Cir. 1985).

Here, Plaintiffs cannot satisfy the test for personal jurisdiction because they do not allege any particular conduct in—or directed to—California that relates to Plaintiffs' claims.[9] Under Ninth Circuit law, courts apply a "'but for' test" to determine whether a claim arises out of forum-related activities. *Doe v. Unocal Corp.*, 248 F.3d 915, 924–25 (9th Cir. 2001). The court must inquire whether the plaintiffs' claims would have arisen but for the defendants' contacts with the forum state. *Id.; see also Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995) (finding that a defendant's frequent trips to California "do not weigh in favor of an exercise of specific jurisdiction, because [the plaintiff's] case against the [defendant] does not concern the [defendant's] business trips"). Plaintiffs allege no facts sufficient to show that their claims arise out of their own or the 12(b)(2) Defendants' forum-related activities. The Plaintiffs' allegations focus primarily on the Plaintiffs' assignments in Florida. Complaint at ¶¶ 12–15. They do not mention any work, involvement, or presence by the Plaintiffs or the 12(b)(2) Defendants in California; at most, the Plaintiffs simply allege that the "Defendants transact business in this District." Complaint at ¶ 63. The 12(b)(2) Defendants' purported transaction of business is insufficient to confer jurisdiction because Plaintiffs' allegations draw no specific connection

[9] *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 803 (9th Cir. 2004) (finding no specific jurisdiction, in part, because the plaintiff did "not point to any conduct by [the defendant] in California related to the [claim] that would be readily susceptible to a purposeful availment analysis").

between the named Plaintiffs and any California activities of the Defendants.[10] *See Unocal*, 248 F.3d at 925.

IV. CONCLUSION

Because the Plaintiffs have not pleaded any facts supporting this Court's exercise of personal jurisdiction over the 12(b)(2) Defendants, the complaint should be dismissed as to those Defendants for lack of personal jurisdiction. For the remaining Defendants, the Plaintiffs' complaint fails to state a claim for relief under Rule12(b)(6) because their claims are barred by baseball's antitrust exemption. It would be futile to allow Plaintiffs to amend their complaint, because no amount of creative re-pleading—with regard to either personal jurisdiction or the merits—could circumvent the antitrust exemption and the legal deficiencies described above. Therefore, Defendants request dismissal of all claims without leave to amend.

Dated: May 14, 2015

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Attorneys for Defendants Baltimore Orioles Limited Partnership and Baltimore Orioles, Inc.

[10] The Court may not consider a defendant's contacts with unnamed putative class members residing in the forum state when considering specific jurisdiction. *See Ambriz v. Coca-Cola Co.*, No. 13-cv-03539-JST, 2014 WL 296159, at *6 (N.D. Cal. Jan. 27, 2014) (holding that venue was improper due to lack of personal jurisdiction because "a defendant's contacts with the named plaintiff in a class action, without reference to the defendant's contacts with unnamed members of the proposed class, must be sufficient for the Court to exercise specific personal jurisdiction over the defendant").

CERTIFICATION OF CONCURRENCE FROM ALL SIGNATORIES

I, David J. Rosen, am the ECF user whose ID and password are being used to file this Motion to Dismiss. In compliance with N.D. Cal. Civ. L.R. 5-1(i)(3), I hereby attest that I have obtained the concurrence of each signatory to this document.

/s/ David J. Rosen
DAVID J. ROSEN

Statutory and Legislative Addendum

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Clayton Act § 12, codified at 15 U.S.C. § 22

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Curt Flood Act, codified at 15 U.S.C. § 26b

§ 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.

Congressional Hearings on Baseball's Antitrust Exemption since 1972

1. *Professional Sports Blackouts: Hearing Before the H. Comm. on Interstate and Foreign Commerce, Subcomm. on Communications and Power*, 93rd Cong., 1st Sess. (1973).

2. *Rights of Professional Athletes: Hearing Before the H. Comm. on the Judiciary, Subcomm. on Monopolies and Commercial Law*, 94th Cong., 1st Sess. (1975).

3. *Professional Sports and the Law: Hearing Before the H. Comm. on Professional Sports*, 94th Cong., 2d Sess. (1976).

4. *Inquiry into Professional Sports: Hearing Before the H. Comm. on Professional Sports*, 94th Cong., 2d Sess. (1976).

5. *Inquiry into Professional Sports: Hearing Before the H. Comm. on Professional Sports*, 94th Cong., 2d Sess. (1976).

6. *Rights of Professional Athletes: Hearing Before the H. Comm. on the Judiciary, Subcomm. on Monopolies and Commercial Law*, 95th Cong., 1st Sess. (1977).

7. *Sports Anti-blackout Legislation: Hearing Before the H. Comm. on Interstate and Foreign Commerce, Subcomm. on Communications*, 95th Cong., 2d Sess. (1978).

8. *Sports Anti-blackout Legislation: Hearing Before the H. Comm. on Interstate and Foreign Commerce, Subcomm. on Communications and Power*, 96th Cong., 1st Sess. (1979).

9. *Antitrust Policy and Professional Sports: Hearing Before the H. Comm. on the Judiciary, Subcomm. on Monopolies and Commercial Law*, 97th Cong., 1st & 2d Sess. (1981).

10. *Antitrust Policy and Professional Sports: Hearing Before the H. Comm. on the Judiciary, Subcomm. on Monopolies and Commercial Law*, 97th Cong., 1st & 2d Sess. (1982).

11. *Professional Sports Antitrust Immunity: Hearing Before the Sen. Comm. on the Judiciary*, 97th Cong., 2d Sess. (1982).

12. *Professional Sports Antitrust Immunity: Hearing Before the Sen. Comm. on the Judiciary*, 98th Cong., 1st Sess. (1983).

13. *Professional Sports Team Community Protection Act: Hearing Before the H. Comm. on Energy and Commerce, Subcomm. on Commerce, Transportation, and Tourism*, 98th Cong., 2d Sess. (1984).

14. *Professional Sports Team Community Protection Act: Hearing Before the Sen. Comm. on Commerce, Science, and Transportation*, 98th Cong., 2d Sess. (1984).

15. *Professional Sports: Hearing Before the H. Comm. on Energy and Commerce, Subcomm. on Commerce, Transportation, and Tourism*, 99th Cong., 1st Sess. (1985).

16. *Professional Sports Antitrust Immunity: Hearing Before the Sen. Comm. on the Judiciary*, 99th Cong., 1st Sess. (1985).

17. *Professional Sports Community Protection Act of 1985: Hearing Before the Sen. Comm. on Commerce, Science, and Transportation*, 99th Cong., 1st Sess. (1985).

18. *Professional Sports Antitrust Immunity: Hearing Before the Sen. Comm. on the Judiciary*, 99th Cong., 2d Sess. (1986).

19. *Antitrust Implications of the Recent NFL Television Contract: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 100th Cong., 1st Sess. (1987).

20. *Professional Sports Antitrust Immunity: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 100th Cong., 2d Sess. (1988).

21. *Competitive Issues in the Cable Television Industry: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 100th Cong., 2d Sess. (1988).

22. *Sports Programming and Cable Television: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 101st Cong., 1st Sess. (1989).

23. *Competitive Problems in the Cable Television Industry: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 101st Cong., 1st Sess. (1990).

24. *Cable Television Regulation (Part 2): Hearing Before the H. Comm. on Energy and Commerce, Subcomm. on Telecommunications and Finance*, 101st Cong., 2d Sess. (1990).

25. *Sports Programming and Cable Television: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 101st Cong., 2d Sess. (1991).

26. *Prohibiting State-Sanctioned Sports Gambling: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Patents, Copyrights, and Trademarks*, 102nd Cong., 1st Sess. (1991).

27. *Baseball's Antitrust Immunity: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 102nd Cong., 2d Sess. (1992).

28. *Baseball's Antitrust Immunity: Hearing Before the H. Comm. on the Judiciary, Subcomm. on Economic and Commercial Law*, 103rd Cong., 1st Sess. (1993).

29. *Key Issues Confronting Minor League Baseball: Hearing Before the H. Comm. on Small Business*, 103rd Cong., 2d Sess. (1994).

30. *Baseball's Antitrust Exemption (Part 2): Hearing Before the H. Comm. on the Judiciary, Subcomm. on Economic and Commercial Law*, 103rd Cong., 2d Sess. (1994).

31. *Impact on Collective Bargaining of the Antitrust Exemption, Major League Play Ball Act of 1995: Hearing Before the H. Comm. on Education and Labor, Subcomm. on Labor-Management Relations*, 103rd Cong., 2d Sess. (1994).

32. *Professional Baseball Teams and the Anti-trust Laws: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 103rd Cong., 2d Sess. (1994).

33. *The Court-Imposed Major League Baseball Antitrust Exemption: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Business Rights, and Competition*, 104th Cong., 1st Sess. (1995).

34. *Antitrust Issues in Relocation of Professional Sports Franchises: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Business Rights, and Competition*, 104th Cong., 1st Sess. (1995).

35. *The Court-Imposed Major League Baseball Antitrust Exemption: Hearing Before the Sen. Comm. on Antitrust, Business Rights, and Competition*, 104th Cong., 1st Sess. (1995).

36. *Professional Sports Franchise Relocation: Hearing Before the H. Comm. on the Judiciary*, 104th Cong., 2d Sess. (1996).

37. *Professional Sports: The Challenges Facing the Future of the Industry: Hearing Before the Sen. Comm. on the Judiciary*, 104th Cong., 2d Sess. (1996).

38. *Major League Baseball Reform Act of 1995: Hearing Before the Sen. Comm. on the Judiciary*, 104th Cong., 2d Sess. (1996).

39. *Major League Baseball Antitrust Reform: Hearing Before the Sen. Comm. on the Judiciary*, 105th Cong., 1st Sess. (1997).

40. *Stadium Financing and Franchise Relocation Act of 1999: Hearing Before the Sen. Comm. on the Judiciary*, 106th Cong., 1st Sess. (1999).

41. *Baseball's Revenue Gap: Pennant for Sale?: Hearing Before the Sen. Comm. on the Judiciary*, 106th Cong., 2d Sess. (2000).

42. *Fairness in Antitrust in National Sports (Fans) Act of 2001: Hearing Before the H. Comm. on the Judiciary*, 107th Cong., 1st Sess. (2001).

43. *The Application of Federal Antitrust Laws to Major League Baseball: Hearing Before the Sen. Comm. on the Judiciary*, 107th Cong., 2d Sess. (2002).

44. *Out at Home: Why Most Nats Fans Can't See Their Team on TV: Hearing Before the H. Comm. on Gov't Reform*, 109th Cong., 2d Sess. (2006).

45. *Exclusive Sports Programming: Examining Competition and Consumer Choice: Hearing Before the Sen. Comm. on Commerce, Science and Transportation, 110th Cong.*, 1st Sess. (2007).