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

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA / SAN JOSE DIVISION

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. 13-CV-02787-RMW

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

Hearing Date: October 4, 2013

Judge: Hon. Ronald M. Whyte
Date Filed: June 18, 2013
Trial Date: None Set

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NOTICE OF MOTION AND MOTION TO DISMISS

TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 4, 2013 at 9:00 a.m., or as soon thereafter as this matter may be heard in Courtroom 6 before the Honorable Ronald M. Whyte, located at 280 South 1st Street, San José, CA 95113, Defendants Office of the Commissioner of Baseball and Allan Huber "Bud" Selig will and do hereby move this Court for an Order, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the complaint of Plaintiffs 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' claims are barred under controlling law and fail to state any claim upon which relief can be granted. 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 on such other materials as the Court may properly consider.

MEMORANDUM OF POINTS AND AUTHORITIES

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)

This lawsuit is barred by nearly a century of jurisprudence establishing that the business of baseball is exempt from antitrust challenge. Here, the City of San José, wearing three purportedly different hats,[1] has sued Major League Baseball and Commissioner Selig,[2] alleging

[1] The City of San José is acting as: (1) the City itself ("City"); (2) the entity responsible for winding up the affairs of the dissolved Redevelopment Agency of the City of San José ("San José RDA"); and (3) the joint powers authority formed by the City and the San José RDA, the San José Diridon Development Authority ("Diridon JPA") (collectively, "San José" or "Plaintiffs").

[2] Defendant Office of the Commissioner of Baseball ("Major League Baseball" or "MLB") is an unincorporated association doing business as Major League Baseball and is comprised of thirty member clubs, including the Oakland Athletics. Defendant Allan H. Selig is the Commissioner of Baseball and serves as the Chief Executive Officer of MLB.

that the provisions of the Major League Constitution dealing with franchise relocation and operating territories violate federal and state antitrust laws. Those allegations fail in the face of the longstanding antitrust exemption for the business of baseball, an exemption that has been affirmed three times by the United States Supreme Court, most recently in *Flood v. Kuhn*, 407 U.S. 258 (1972). While the complaint notes the existence of the antitrust exemption in passing, it blithely ignores that this exemption erects an absolute bar against Plaintiffs' claims.

Plaintiffs also assert state law claims predicated on their fatally defective antitrust claims. Plaintiffs' claims for unfair competition and for tortious interference with prospective economic advantage depend on a predicate bad act—the supposed antitrust violations—and therefore those claims fall with the antitrust claims. The Court should also dismiss both interference claims because, as the complaint makes clear, Defendants are not strangers to the relationship between Plaintiffs and the Oakland Athletics. Since Defendants have a legitimate, direct interest in that economic relationship, they are incapable of interfering with that relationship as a matter of law. Additionally, Plaintiffs' claim for "tortious interference with contractual advantage" fails to state a claim because the asserted option contract has not been breached.

Finally, the Court should dismiss Plaintiffs' antitrust claims for the independent reason that they have failed to sufficiently allege antitrust standing. The alleged harms are too remote and speculative to support an antitrust claim, and Plaintiffs have suffered no antitrust injury. If Plaintiffs' claims were cognizable, it would lead to absurd results: every time a franchise contemplated relocation, MLB would be subjected to suits from any city that desires a team ***and*** from any city that does not want to lose its team.

This case should be dismissed in its entirety.

BACKGROUND

This case involves the potential relocation of the Oakland Athletics baseball club from Oakland to San José. The Oakland Athletics baseball club is a member of Major League Baseball, whose thirty member Clubs have all agreed to be governed by the Major League

Constitution and the rules adopted and promulgated by MLB and the Commissioner. *See* Major League Constitution Art. I, Art. IV, Art. XI § 3.[3]

Each of the Clubs plays its home games in an operating territory identified in the Major League Constitution.[4] *See* ML Const. Art. VIII § 8. Contrary to Plaintiffs' allegations, there is no provision in the Major League Constitution that requires the operating territories to be exclusive.[5] Indeed, as Plaintiffs admit, there are multiple Clubs that share operating territories. Compl. ¶ 110. Under the Major League Constitution, there is a process that allows for Clubs to relocate. Compl. ¶ 108. Despite Plaintiffs' assertions, this process does not grant any Club "absolute veto power over the relocation of a competitive team within its 'operating territory.'"[6] Compl. ¶ 7. No such veto power exists in the Major League Constitution. Here, while the City of San José is within the San Francisco Giants' operating territory, nothing in the Major League Constitution gives the Giants the unilateral ability to block or veto any Club's relocation into that territory. *See* ML Const. Art. VIII § 8.

The Athletics' operating territory consists of Alameda and Contra Costa Counties in California, and the Athletics currently play home games in the O.co Coliseum in Oakland. *Id.*; Compl. ¶¶ 46, 50. For several years the Athletics have investigated possible alternative stadiums

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[3] **Key to common citations:** The Major League Constitution, or "ML Const.," is Ex. 4 to Plaintiffs' complaint. The "Option Agreement" between Diridon JPA and the Athletics, or "Opt. Agmt.," is Ex. 3 to Plaintiffs' complaint. And San José City Council Resolution No. 75667 (adopted Sept. 21, 2010) is attached to the Option Agreement, so that resolution will be referred to as "Opt. Agmt. Ex. C."

[4] Plaintiffs' attached a previous version of the Major League Constitution to their complaint. For all purposes relevant to their allegations, that version is the same as the current version.

[5] Plaintiffs allege that territories are "exclusive" based on a definition purportedly found in a ***non-existent*** Article 4.1 of the Major League Constitution. Compl. ¶ 86. No such definition exists in the Major League Constitution. To the contrary, Article VIII § 8 of the Major League Constitution—the section setting out the operating territories—does not contain the word "exclusive" and in fact creates several shared territories.

[6] Plaintiffs cite to ***non-existent*** Articles 4.2 and 4.3 of the Major League Constitution and Article VIII § 8, which exists but does not pertain to any voting rights or procedures and does not address relocation. Compl. ¶ 7; *see also* ¶¶ 34, 89–92, 182, 185, 193. Defendants can only speculate about what Plaintiffs were referring to when citing statements that do not exist in the Major League Constitution; perhaps it is no coincidence that "Article 4.3" was the provision of the ***NFL Constitution*** that was challenged by the Raiders and once contained a veto provision. *See L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 726 F.2d 1381, 1384 (9th Cir. 1984) ("*Raiders I*") ("In 1978, Rule 4.3 required unanimous approval of all the 28 teams of the [NFL] whenever a team…seeks to relocate in the home territory of another team.").

in which to play their home games. These potential alternatives have included construction of a new ballpark in several locations, including in Oakland, in other communities in Alameda and Contra Costa Counties, and, most recently, in San José. Because the City of San José is not within the Athletics' operating territory, a move to San José (and a change in the Athletics' operating territory) would be a relocation requiring approval by three-quarters of the Clubs. ML Const. Art. V § 2(b)(3).

There is no stadium in San José suitable for playing Major League Baseball games. *See* Economic Impact Analysis 14 (Compl. Ex. 1). San José has not offered to fund any part of the construction of a stadium. In fact, in 2009, the San José City Council expressly resolved ***not*** to make any material economic commitment to either the potential relocation of the Athletics or the construction of a ballpark. *See* Opt. Agmt. Ex. C at 2; *see also* San José City Council Res. No. 74908 (adopted May 12, 2009) (affirmed in Opt. Agmt. Ex. C at 1) (Request for Judicial Notice ["RFJN"] Ex. A).

The only step San José did take toward a new stadium was to execute a contract with the Athletics in November 2011 that gives the Athletics a two-year ***option*** to purchase certain parcels of land that San José had purportedly transferred to the Diridon JPA. Compl. ¶ 76; Opt. Agmt. There are no allegations that the Athletics breached the Option Agreement in any way, nor could they breach it, as the Option Agreement does not require the Athletics to take any further action.

STANDARD OF REVIEW

To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must plead facts showing that its "right to relief [rises] above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A plaintiff 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). Furthermore, the Court need not accept the truth of any allegations that are contradicted by matters properly subject to judicial notice or by exhibits attached to the complaint. *Daniels-Hall v. Nat'l Educ. Ass'n*, 629

F.3d 992, 998–99 (9th Cir. 2010); *Appling v. Wachovia Mortg., FSB*, 745 F. Supp. 2d 961, 967 (N.D. Cal. 2010). In reviewing a motion to dismiss, the Court may not assume that a plaintiff can prove facts not alleged. *Associated Gen. Contractors v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983).

ARGUMENT

I. PLAINTIFFS' ANTITRUST CLAIMS MUST BE DISMISSED BECAUSE THE "BUSINESS OF BASEBALL" IS EXEMPT FROM ANTITRUST REGULATION

The United States Supreme Court first declared the business of baseball exempt from antitrust regulation in 1922. Since then, the Supreme Court has repeatedly enforced that exemption to dismiss claims brought under both federal and state antitrust laws. Over the last 91 years, Major League Baseball has organized its business in justifiable reliance on this established national policy—that the business of baseball is not subject to antitrust regulation. Under binding Supreme Court precedent, this Court must hold that Plaintiffs are absolutely barred from bringing claims under the Sherman Act and the Cartwright Act.

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

In 1922, the Supreme Court first held that the Clayton and Sherman Acts do not govern the business of baseball. *Fed. Baseball Club, Inc. v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200 (1922). The plaintiff in *Federal Baseball*, the last remaining club in the Federal League, alleged that the American and National Leagues had violated the antitrust laws—and destroyed the Federal League—by purchasing its teams or otherwise inducing their departure. *Id.* at 207. The Court, speaking unanimously through Justice Oliver Wendell Holmes, concluded that baseball games were "purely state affairs," and therefore baseball was not interstate commerce. *Id.* at 208–09. And, since baseball did not engage in interstate commerce, it was not subject to federal antitrust regulation. Although later Supreme Court opinions have criticized the ***reasoning*** of the original *Federal Baseball* decision, the Court has always, and in every case, reaffirmed that "the business of baseball" is outside the scope of antitrust regulation.

In *Toolson v. New York Yankees, Inc.*, the Supreme Court described its earlier opinion as holding that Congress never had any "intention of including the business of baseball within the

scope of the federal antitrust laws." 346 U.S. 356, 357 (1953) (affirming the dismissal of three separate antitrust cases alleging the attempted monopolization of baseball and/or anticompetitive employment practices). The Court observed that thirty years had passed since the exemption was first recognized, that baseball had proceeded and developed "on the understanding that it was not subject to existing antitrust legislation," and that Congress had "not seen fit" to remove the exemption. *Id*. As a matter of *stare decisis*, the Court therefore upheld the exemption—keeping "the business of baseball" outside "the scope of the federal antitrust laws." *Id*. And the Court specifically stated that ***only*** Congress could reverse such well-established law. *Id*.

Over the next several years, the Supreme Court reaffirmed the antitrust exemption for baseball while denying similar exemptions to other groups. For example, in *United States v. Shubert*, the Court observed that baseball had "grown and developed" "in reliance" on the well-established antitrust exemption. 348 U.S. 222, 229 (1955). Although, Congress had "actively considered" the exemption, it "had not seen fit to reject it." *Id*. Therefore, the Court held, "the rule of *stare decisis*" mandated that the exemption be preserved, even as it would not be extended to other industries. *Id* at 230. And in *Radovich v. National Football League*, the Court again emphasized Major League Baseball's significant reliance on the baseball exemption: "Vast efforts had gone into the development and organization of baseball . . . and enormous capital had been invested in reliance on its permanence. Congress had chosen to make no change." 352 U.S. 445, 450 (1957). The Court acknowledged that it would come to a different conclusion if it were deciding the baseball exemption "upon a clean slate," but concluded that the only way to reverse thirty-plus years of precedent was "by legislation and not by court decision." *Id*. at 452. Thus, the Court upheld the rule established in *Federal Baseball* and *Toolson*—that "the business of organized professional baseball" is exempt from antitrust regulation. *Id*. at 451.

In 1972, the Court once again directly confronted baseball's antitrust exemption in *Flood v. Kuhn*, 407 U.S. 258 (1972). After describing the various Supreme Court opinions that either upheld or confirmed baseball's antitrust exemption, *id*. at 269–81, the Court stated the obvious: the exemption is firmly "established." *Id*. at 282. Congress had been aware of the exemption, and had done nothing to change it, which is not "mere congressional silence and passivity." *Id*. at

283. In fact, quoting the language of *Toolson*, the Court wrote that "Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." *Id.* at 273. The Court admitted that baseball's exemption was an "anomaly," but reaffirmed that the rule was of such "long standing" that it must be "remedied by the Congress and not by this Court." *Id*. at 282, 284.

In short, the Supreme Court has never indicated any intention to limit or abolish baseball's antitrust exemption and thereby overturn almost a century of *stare decisis*. Instead, the Supreme Court has repeatedly deferred to Congress. *Flood*, 407 U.S. at 285 ("[T]he remedy, if any is indicated, is for congressional, and not judicial, action."); *Shubert*, 348 U.S. at 230 ("If the *Toolson* holding is to be expanded—or contracted—the appropriate remedy lies with Congress."); *see also Toolson*, 346 U.S. at 357. And the Ninth Circuit has properly followed suit, recognizing the binding effect of the exemption and acknowledging that, "if professional baseball is to be brought within the pale of federal antitrust laws, the Congress must do it." *Portland Baseball Club, Inc. v. Baltimore Baseball Club, Inc*., 282 F.2d 680 (9th Cir. 1960); *see also Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101 (9th Cir. 1974); *Toolson v. New York Yankees, Inc.*, 200 F.2d 198 (9th Cir. 1952).

For its part, Congress has, by "positive inaction . . . clearly evinced a desire not to disapprove [the exemption] legislatively." *Flood*, 407 U.S. at 283–84. Since the *Flood* decision in 1972, Congress has made only one change to baseball's antitrust exemption. In 1998, Congress provided MLB players with the same antitrust recourse as would be available to athletes in any other sport. *See* 15 U.S.C. § 26b(a). But Congress preserved the rest of baseball's exemption, noting that its legislation did not change established antitrust law as it has been applied—or rather, not applied—to issues like "franchise expansion, location or relocation" and "the relationship between the Office of the Commissioner and franchise owners." 15 U.S.C. § 26b(b)(3); *see also Morsani v. Major League Baseball*, 79 F. Supp. 2d 1331, 1335 n.12 (M.D. Fla. 1999) (noting Congress's "explicit" preservation of the exemption for relocation). Congress thus preserved baseball's antitrust exemption for team relocation issues—confirming that

Plaintiffs have no antitrust case here.[7] Compl. ¶¶ 99–101.

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.

B. The allegations here—related to possible team relocation—fall squarely within the core of baseball's antitrust exemption

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 Seventh Circuit has described 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).

League structure, operating territories, and team relocation are at the absolute core of baseball's antitrust exemption. For example, the Eleventh Circuit held that the "franchise location system" is exempt from antitrust scrutiny because it is "an integral part of the business of baseball." *Prof'l Baseball Schools & Clubs, Inc. v. Kuhn*, 693 F.2d 1085, 1085–86 (11th Cir. 1982); *see also Crist*, 331 F.3d at 1183 (explaining that issues "central to baseball's league structure" are exempt from antitrust regulation). When MLB created a new team in Seattle, it was sued for antitrust violations. The Ninth Circuit thought the antitrust claims so meritless that it dismissed them in a single sentence. *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101, 1103 (9th Cir. 1974) (citing *Flood*). Similarly, the Wisconsin Supreme Court held that "decisions made with respect to location or transfer of a franchise" are completely exempt from scrutiny

[7] 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. Since then, Congress has continued to deliberate on whether to modify baseball's antitrust exemption. *See* Professional Sports Antitrust Immunity: Hearing on S. 2784 and S. 2821 Before the S. Comm. on the Judiciary, 97th Cong. 230–31 (1982) (statement by then-Sen. Joseph Biden) (RFJN Ex. B). However, with full recognition that "Baseball is totally exempt," including with regard to its relocation rules, Congress has modified the exemption only once. And even then it decided to "retain the antitrust exemption" for many issues, including "league expansion" and "**franchise location**." S. Rep. 105-118, at 6 (1997) (emphasis added) (RFJN Ex. C).

under federal and state antitrust laws. *Wisconsin v. Milwaukee Braves, Inc.*, 144 N.W.2d 1, 15 (Wis. 1966). And the Minnesota Supreme Court wrote that "relocation of a baseball franchise" was "an integral part of the business of professional baseball" and thus held that relocation "falls within the exemption." *Minn. Twins P'ship v. State ex rel. Hatch*, 592 N.W.2d 847, 856 (Minn. 1999). A district judge in Louisiana stated the principle succinctly: "The defendants are in the business of baseball. Their business is a legally sanctioned monopoly. One of the central features of that monopoly is the power to decide who can play where." *New Orleans Pelicans Baseball, Inc. v. Nat'l Ass'n of Prof'l Baseball Leagues*, Civ. A No. 93–253, 1994 WL 631144, at *9 (E.D. La. Mar. 1, 1994). Indeed, no factual development is necessary to determine that the exemption applies to such a fundamental issue as Club location. *Prof'l Baseball Schools*, 693 F.2d at 1085–86. Because all of Plaintiffs' antitrust claims are based on MLB's rules for franchise territories and relocation,[8] all of those claims are barred and must be dismissed.[9]

C. Plaintiffs' state claims are barred by the Supremacy Clause and the Commerce Clause

Plaintiffs also attempt to impose antitrust regulation on MLB by asserting state law antitrust claims under the Cartwright Act, the Unfair Competition Law, and the common law of tortious interference, but those claims cannot stand for two independent constitutional reasons.

First, as the Supreme Court held in *Flood*, applying "state antitrust regulation would conflict with federal policy and . . . national 'uniformity (is required) in any regulation of baseball.'" 407 U.S. at 284 (quoting *Flood v. Kuhn*, 316 F. Supp. 217, 281 (S.D.N.Y. 1970)). The Supremacy Clause of the Constitution flatly prohibits this type of inconsistent regulation. *See* U.S. Const. Art. VI, cl. 2. Thus, baseball stands as an exception to the general rule that federal antitrust law does not preempt state antitrust law. *See In re Brand Name Prescription*

[8] *See* Comp. ¶¶ 86–97, 101–10, 112–15, 122–23, 125, 127–28.

[9] In 91 years of jurisprudence on baseball's antitrust exemption, only a single federal judge has held that the exemption applies just to restrictions on free agency under the so-called "reserve clause." *Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993). In the 20 years since that anomalous decision, every federal court that has considered it has squarely rejected its strained reasoning and applied the antitrust exemption broadly. *See, e.g., Butterworth*, 181 F. Supp. 2d at 1324 n.9; *Morsani*, 79 F. Supp. 2d at 1335 n.12; *McCoy v. Major League Baseball*, 911 F. Supp. 454, 457 (W.D. Wash. 1995); *Pelicans Baseball*, 1994 WL 631144, at *8–9 (E.D. La. Mar. 1, 1994).

Drugs Antitrust Litig., 123 F.3d 599, 611 (7th Cir. 1997) (Posner, J.) (observing that federal antitrust law uniquely preempts state antitrust law for baseball). Baseball is ***not*** an area where "Congress has refrained from federal antitrust regulation," and thereby left the states "free reign to apply their antitrust laws." *Crist*, 331 F.3d at 1184. Instead, "federal law establishes a universal"—meaning national—"exemption in the name of uniformity." *Id*. at 1186. Baseball's antitrust exemption therefore preempts and displaces state law. The Plaintiffs' state law claims under the Cartwright Act, the Unfair Competition Law, and the common law of tortious interference seek to impose liability on MLB for its internal rules pertaining to Club relocation. Each is an effort to impose state regulation of conduct expressly encompassed within baseball's antitrust exemption, and therefore each claim is preempted by federal law and must be dismissed.

Second, Plaintiffs' attempt to use state law claims to conduct antitrust regulation of MLB is also prohibited under the Commerce Clause. See *Flood*, 407 U.S. at 284–85 (holding that, in addition to being preempted, the state law antitrust claims were barred as an undue burden on interstate commerce). The Commerce Clause prohibits the application of state antitrust laws not only in baseball, which has a unique antitrust exemption, but also in other professional sports. *See, e.g., Robertson v. Nat'l Basketball Ass'n*, 389 F. Supp. 867, 880 (S.D.N.Y. 1975) (precluding application of state antitrust laws to the NBA). The California Supreme Court has reasoned that professional sports leagues need a "nationally uniform set of rules governing the league structure," to avoid "[f]ragmentation" and "differing state antitrust decisions." *Partee v. San Diego Chargers Football Co.*, 34 Cal. 3d 378, 384–85 (1983). Therefore, it held that the Cartwright Act cannot be used against professional football. *Id*. at 385. And since "professional football is a nationwide business structured essentially the same as baseball," *id.* at 384, this Court should dismiss Plaintiffs' state law claims.[10]

The antitrust exemption cannot be circumvented by creative attempts to use state statutes and the common law to regulate the business of baseball. For example, the district court in *Flood v. Kuhn* did not just dismiss state and federal ***antitrust*** claims. The court also dismissed state

[10] *See Wainwright v. Goode*, 464 U.S. 78, 84 (1983) (holding that "the views of the state's highest court with respect to state law are binding on the federal courts").

common law and civil rights claims because baseball's "nationwide character" and the "interdependence" of MLB's Clubs required a "uniformity" of regulation. 316 F. Supp. at 279–80, *aff'd*, 443 F.2d 264 (2d Cir. 1971). Plaintiffs' Cartwright Act, Unfair Competition Law, and tortious interference claims are merely an improper attempt to regulate antitrust issues by other means, and therefore, as a matter of law, they must be dismissed.[11] *See Hebert v. L.A. Raiders, Ltd.*, 23 Cal. App. 4th 414, 424–25 (1991) (dismissing complaint where Commerce Clause defense was properly raised and determined by way of demurrer).

II. PLAINTIFFS' UNFAIR COMPETITION LAW AND TORT CLAIMS FAIL AS A MATTER OF LAW AND SHOULD BE DISMISSED

In addition to the state and federal antitrust charges, Plaintiffs have also asserted (1) a claim under California's Unfair Competition Law, (2) a claim of tortious interference with prospective economic advantage, and (3) a claim of tortious interference with contract.[12] The first two claims cannot stand without a predicate "unfair" or "wrongful" act. And the only bad acts that Plaintiffs point to are their allegations under state and federal antitrust law. Compl. ¶¶ 155, 170–72, 175. Therefore these claims fail absent a violation of the Sherman Act. Similarly, the two interference claims require interference by a "third-party stranger" to the relationship between the Athletics and San José. Since MLB has legitimate economic interests to defend, and a contractual right to evaluate potential franchise relocation, Defendants are not "strangers" and cannot be liable for interference. Furthermore, the interference with contract claim must also be dismissed because Plaintiffs have not pleaded, and cannot plead, other essential elements of the tort, such as "breach" and "damage."

Since Plaintiffs' state law claims cannot be stated without a determination that federal law was violated, this Court has subject matter jurisdiction over these claims and should dismiss them

[11] *See* Compl. ¶¶ 86–97, 101–10, 112–15, 122–23, 125, 127–28. In particular, the complaint bases the two interference torts on an alleged interference with "relocation," which is at the core of baseball's antitrust exemption. *Id.* at ¶¶ 129–30, 152–53, 155, 161–62. The UCL claim is also based on the same alleged antitrust violations, *see id.* at ¶¶ 170–172, 175, as is the Cartwright Act claim, *id.* at ¶¶ 179–86.

[12] Plaintiffs identify their second interference claim as "tortious interference with contractual advantage." Compl. at p. 35. Defendants assume that Plaintiffs' claim is for the recognized tort of "tortious interference with contract," sometimes called "tortious interference with contractual relations."

on the merits. Even though Plaintiffs used state law to plead these causes of action, the claims still arise under the laws of the United States because of "the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law." *Grable & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005). As this Court recognized in *National Credit Reporting Association v. Experian Information Solutions, Inc.*, the federal court has jurisdiction over a state law claim—such as a claim under the Unfair Competition Law—when the claim "requires a determination that the borrowed federal law was violated." No. C 04–01661 WHA, 2004 WL 1888769, at *3 (N.D. Cal. July 21, 2004). Here, like in *National Credit Reporting*, "Plaintiff's claim is merely a naked attempt to enforce the Sherman Act in the guise of a Section 17200 claim" and related common-law tort claims. *Id.* at *4. As explained further below, application of a substantial question of federal law—the antitrust exemption—is a necessary predicate to the Plaintiffs' state law claims. Therefore, this Court has "arising under" jurisdiction under 28 U.S.C. § 1331 and should dismiss the claims on the merits.[13]

A. Plaintiffs' claims for unfair competition and tortious interference with prospective economic advantage cannot stand without the antitrust claims

Plaintiffs' claim for unfair competition must be dismissed because it relies on antitrust allegations that are legally invalid. First, California's Unfair Competition Law requires a 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) (quoting Cal. Bus. & Prof. Code § 17200). Here, the only "unlawful" or "fraudulent" practice that has been alleged is an antitrust violation. But there is no antitrust violation, because, as explained above, the antitrust laws do not apply to the business of baseball. To the extent that Plaintiffs allege that Defendants engaged in "unfair" acts, "the word 'unfair' . . . means conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the

[13] Alternatively, the Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367. As a matter of "economy, convenience, fairness, and comity," the Court should retain jurisdiction, and dismiss the entire case on the merits, rather than allow the Plaintiffs to re-file these claims in state court. *Imagineering, Inc. v. Kiewit Pacific Co.*, 976 F.2d 1303, 1309 (9th Cir. 1992), *abrogated on other grounds, Diaz v. Gates*, 420 F.3d 897, 900 (9th Cir. 2005) (en banc).

same as a violation of the law, or otherwise significantly threatens or harms competition." *Id*. at 187. But, again, there is no threat of an antitrust violation, because Defendants' alleged conduct is perfectly legal under the antitrust laws. Since Plaintiffs' antitrust claims are legally deficient, their Unfair Competition Law claim must also be dismissed.[14] *Parrish v. NFL Players Ass'n*, 534 F. Supp. 2d 1081, 1092–94 (N.D. Cal. 2007).

Similarly, Plaintiffs' claim for tortious interference with prospective economic advantage fails because it also depends on the same faulty antitrust claims. In particular, that tort requires Plaintiffs to show that Defendants' "intentional interference" was "independently wrongful." *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1158–59 (2003).[15] To withstand a motion to dismiss, Plaintiffs must plausibly demonstrate that Defendants committed an act that is "proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." *Id*. at 1159. Here, the only independently wrongful act that Plaintiffs have asserted is an antitrust violation. Since Defendants are exempt from antitrust regulation here, there is no "independently wrongful act." As the Ninth Circuit has held, a claim for interference with prospective economic advantage must be dismissed where the only independently wrongful act is preempted. *See Sybersound Records, Inc. v. UAV Corp.*, 517 F.3d 1137, 1151 (9th Cir. 2008); *see also Jensen Enters., Inc. v. Oldcastle Precast, Inc.*, No. C 06–247 SI, 2009 WL

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[14] Moreover, Plaintiffs lack standing to assert an Unfair Competition Law claim. As governmental entities, Plaintiffs are not "persons" under the UCL. *See* Cal. Bus. & Prof. Code §§ 17201 & 17204; *S.F. Bay Area Rapid Transit Dist. v. Spencer*, No. C 04-04632 SI, 2005 WL 2171906, at *6–7 (N.D. Cal. Sept. 6. 2005) (citing cases). Nor is this a properly authorized public prosecutor case brought on behalf of the People of California. Plaintiffs cannot transform their lawsuit into a public prosecutor action simply by adding the City Attorney as counsel. *See, e.g., Cnty. of Santa Clara v. Astra U.S., Inc.*, 428 F. Supp. 2d 1029, 1032–36 (N.D. Cal. 2006). Plaintiffs likewise do not have standing to seek restitution under the UCL because the damages they seek are not funds MLB obtained from the Plaintiffs or the citizens of San José. *Bradstreet v. Wong*, 161 Cal. App. 4th 1440, 1461 (2008) (a plaintiff must have suffered a loss of money or property and the defendant must have "acquired or directly and personally benefited from" the property that the plaintiff lost).

[15] The elements of the tort are:

> (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 [independently wrongful] 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., 29 Cal. 4th at 1153.

440492, at *8 (N.D. Cal. Feb. 23, 2009), *aff'd*, 375 Fed. Appx. 730 (9th Cir. 2010) (dismissing plaintiff's tortious interference claims because "the Court has determined that plaintiff cannot establish antitrust violation or antitrust injury" and therefore "plaintiff has not established the tortious or wrongful conduct essential to a tortious interference claim").

B. MLB is not a stranger to the alleged relationship between San José and the Athletics and cannot be liable for either tortious interference claim

Both of Plaintiffs' tortious interference claims must be dismissed because MLB is not a "stranger" to the economic relationship between San José and the Athletics—the relationship with which Defendants allegedly interfered. Compl. ¶¶ 152, 161. In fact, MLB has both a vested economic interest in the Athletics and a contractual right to approve or disapprove any proposed franchise relocation. As such, it cannot be liable for tortious interference.

The California Supreme Court has stated that interference torts can be brought only against "***outsiders*** who have no legitimate social or economic interest in the contractual relationship." *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 514 (1994) (emphasis in original). As the Ninth Circuit has explained, "California law has long recognized that the core of intentional interference business torts is interference with an economic relationship by a third-party ***stranger*** to that relationship." *Marin Tug & Barge, Inc. v. Westport Petroleum, Inc.*, 271 F.3d 825, 832 (9th Cir. 2001) (emphasis in original). Interference is not tortious or improper unless it is committed by a stranger, because an entity that is "not-a-stranger"—like MLB—has a legitimate interest in protecting its rights. *See also Exxon Corp. v. Super. Ct.*, 51 Cal. App. 4th 1672, 1688 (1997) (finding that a gasoline franchisor "has a clear financial interest in its dealers and therefore is privileged to 'interfere' with the contract").

Here, MLB is not a stranger to the Option Agreement because it has both a direct financial interest in the Athletics, and a contractual right to protect the league's interests in franchise location and operating territories. ***First***, as Plaintiffs recognize, MLB shares substantial local and national revenue across all thirty Clubs, which means the financial stability and prosperity of any one Club directly and materially affects the financial interests of all other Clubs. *See* Compl. ¶ 49; Economic Impact Analysis at Appendix II-3 (Compl. Ex. 1). ***Second***, MLB has a contractual right to approve or disapprove franchise relocations or changes to operating

territories. *See* ML Const. Art. V § 2(b)(3), Art. VIII § 8. And, ***third***, the Athletics expressly agreed to be bound by the Major League Constitution and all rules promulgated thereunder. *See* ML Const. Art. I, Art. IV, Art. XI § 3.

In similar circumstances, federal courts have dismissed tortious interference claims, and they have done so on motions to dismiss. For example, the plaintiffs in *Fresno Motors* were two automobile dealerships who sought to purchase the assets of a local Mercedes-Benz dealership, but were stymied by the distributor, Mercedes-Benz. *Fresno Motors, LLC v. Mercedes-Benz USA, LLC*, 852 F. Supp. 2d 1280, 1283 (E.D. Cal. 2012). By contractual agreement, the local Mercedes-Benz dealership could not sell "without [distributor Mercedes-Benz's] written consent." *Id.* at 1285–86. Mercedes-Benz also had a contractual "right of first refusal," which allowed it to step into the shoes of the purchaser and buy the assets for itself. *Id.* at 1286. When the local dealership tried to sell, Mercedes-Benz exercised its right to purchase the assets, effectively terminating the plaintiffs' purchase agreement. *Id.* at 1288. The putative purchaser sued for interference with contract and prospective contractual advantage, but in a thorough and detailed opinion, the district court granted Mercedes-Benz's motion to dismiss.

First, the court held that these tort claims could not lie against Mercedes-Benz because it had an "inextricable economic interest and involvement" in the dealership. *Id.* at 1299. As the court explained, a defendant cannot be liable for interference when it has a "'direct interest' in a business relationship," such as when "the underlying contract cannot exist without the defendant's participation," or "when the defendant stands to benefit from the contract's performance." *Id.* at 1295 (citing *Marin Tug*, 271 F.3d at 834, among others). Here, MLB has exactly the same "direct interest." MLB is an association of Clubs that have an "inextricable economic interest and involvement" in the business of the Athletics. *Fresno Motors*, 852 F. Supp. 2d at 1299. MLB has a "right to protect its own economic interest" because it has a "sufficiently direct economic stake" in the relationship between San José and the Athletics—in fact, the Athletics could not exist without a league to play in. *Id.* at 1295 (citing *Marin Tug*, 271 F.3d at 832, among others). Therefore, Defendants cannot be liable for interference with that relationship.

Second, the court held that the tort claims must be dismissed because Mercedes-Benz "had a preexisting contractual right to interfere" with the asset-purchase agreement. *Id.* at 1299. As a matter of law, Mercedes-Benz could not ***tortiously*** interfere with the purchase agreement, because its involvement "was both necessary and integral to the consummation of the transaction." *Id.* at 1300. Here, too, Major League Baseball has a "preexisting contractual . . . right" to approve or disapprove any franchise relocation or change in operating territory. *Id.* at 1301. Its approval is both "necessary and integral" to any franchise relocation. Therefore, Defendants cannot be liable for interference with that relationship.[16]

Here, since the Plaintiffs' complaint and attachments demonstrate that the Defendants have a legitimate interest in any agreement that involves Club relocation, the interference claims should be dismissed. *See, e.g., Orion Tire Corp. v. Gen. Tire, Inc.*, No. CV 92–2391 AAH (EEX), 1992 WL 295224, at *3 (C.D. Cal. Aug. 17, 1992) (dismissing an interference claim because "the privilege is clear on the face of the amended complaint").[17]

C. Plaintiffs' claim for interference with contract also fails because they have not (and cannot) plead the elements of breach, disruption, or resulting damages

The tort of interference with contract requires that the alleged interference be "improper." *Quelimane Co. v. Stewart Title Gty. Co.*, 19 Cal. 4th 26, 56 (1998) (citing Restatement (Second)

[16] This Court has previously applied the same Ninth Circuit precedent on the "not-a-stranger" principle and dismissed an interference claim brought against a defendant who was "not a stranger to the relationship" between the contracting parties. *In re Leisure Corp.*, C-03–03012 RMW, 2007 WL 607696, at *13 (N.D. Cal. Feb. 23, 2007) (Whyte, J.).

[17] The tortious interference claims further fail because the Option Agreement is void following the California Legislature's enactment of ABX1 26 (the "Dissolution Act"). *See PG&E v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126 (1990) ("[A] plaintiff must plead . . . a valid contract between plaintiff and a third party."). The Dissolution Act declared that any transfers of assets from an RDA to a government agency after January 1, 2011 were legally "unauthorized," and mandated that any such illegally transferred assets must be returned to the RDA or its successor agency. Cal. Health & Safety Code ("H&S Code") § 34167.5. Well after the Dissolution Act was effective, the San José RDA and the City (acting through their joint powers authority) entered into the Option Agreement. Compl. ¶ 76; Compl. Ex. 3. However, the land offered in the Option Agreement was not the JPA's to convey or encumber, as title to those assets was never lawfully transferred from the San José RDA, and agreements encumbering RDA assets after the enactment of the Dissolution Act are "void from the outset." H&S Code §§ 34162, 34167.5. The California State Controller has concluded—pursuant to H&S Code § 34167.5—that the San José RDA's transfer was "unallowable" under the Dissolution Act, and therefore the land must be returned to the City and disposed of "expeditiously and in a manner aimed at maximizing value." California State Controller's Asset Transfer Review 8 (March 2013) (RFJN Ex. D); H&S Code § 34177.

of Torts § 766 cmt. j). Absent the alleged antitrust violations, Defendants' conduct is perfectly legal and in no way "improper." Moreover, Plaintiffs' complaint also conspicuously fails to allege several essential elements of tortious interference with contract, including (1) "actual breach or disruption of the contractual relationship," and (2) "resulting damage." *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126 (1990).[18] The only contract at issue is the Option Agreement, assuming it is not void (*see* above, note 17). Compl. ¶ 129–32 (citing Opt. Agmt.). Plaintiffs do not allege, as they must, that the Option Agreement was breached. Furthermore, under that agreement, the Athletics have already performed their obligations in full—the Athletics paid $50,000 to obtain a two-year option to purchase parcels of land in downtown San José. Compl. ¶ 76. When that agreement was executed and Plaintiffs received their $50,000, Plaintiffs received everything they were owed under the agreement. The Athletics have full discretion to decline to execute the option, so they owe Plaintiffs nothing further. In short, Plaintiffs have not (and cannot) allege that the Option Agreement was breached, and they cannot allege that it even ***could*** be breached. And since the Athletics have already performed their obligations, Plaintiffs cannot allege that performance of the Option Agreement was disrupted. Thus, Plaintiffs' claim should be dismissed for failure to plead the required elements of the tort.

III. THE ANTITRUST CLAIMS FAIL INDEPENDENT OF THE EXEMPTION

The antitrust laws impose two additional standing requirements beyond the normal requirements of Article III standing. Although the Court does not need to reach this issue—because Plaintiffs' claims fail in the face of the antitrust exemption—the Court should ***also*** dismiss Plaintiffs' claims because they do not have standing to bring them. First, Plaintiffs have not satisfied the standing requirements of the Clayton Act, which gives rise to private causes of

[18] The elements of the tort of interference with contract are:

> (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.
>
> *PG&E*, 50 Cal. 3d at 1126.

action to enforce the antitrust laws. Second, Plaintiffs have not met the antitrust standing requirements laid out by the Supreme Court to limit antitrust claims to appropriate plaintiffs.

A. Plaintiffs do not have Clayton Act standing

In order to bring a Sherman Act claim, a private plaintiff must first show that it has standing under the Clayton Act. That Act establishes a private cause of action for damages under the antitrust laws for "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws . . . ." 15 U.S.C. § 15(a). It also provides a cause of action for injunctive relief, 15 U.S.C. § 26, and provides a right of action for a state government to assert claims as *parens patriae* on behalf of its citizens. 15 U.S.C. § 15c. San José does not meet any of these tests and cannot bring a claim.

San José purports to bring antitrust claims on its own behalf and on behalf of the People of the City of San José. San José does not allege harm arising directly from any purported property interest in the Option Agreement,[19] rather it alleges that if the Option Agreement had been exercised and all the other necessary events had taken place such that the Athletics had moved to San José, Plaintiffs would have benefited from increased tax revenue, spending, and job creation. Compl. ¶¶ 24–25, 141–146.

But alleged antitrust damages from such general harm to the local economy do not constitute injury to "business or property" as required under the Clayton Act. The Supreme Court squarely addressed this question in *Hawaii v. Standard Oil Co.*, 405 U.S. 251 (1972), where it denied standing to the State of Hawaii to sue for "injury to its general economy." *Id*. at 263–64. The Court reasoned that Congress "could have, for example, required violators to compensate federal, state, and local governments for the estimated damage to their respective economies caused by the [antitrust] violations. But this remedy was not selected." *Id*. at 262. The Court found that a "large and ultimately indeterminable part of the injury to the 'general economy,' . . .

[19] Any alleged property interest in the Option Agreement itself is not actionable because Plaintiffs would actually have lost money if the option had been exercised. The Option Agreement would have permitted the Athletics to purchase the Diridon property at nearly $20 million below market value. *Compare* Compl. ¶ 76; Opt. Agmt at 1–2 (offering certain parcels for sale for $6.9 million) *with* California State Controller's Asset Transfer Review, Sch. 2 (listing book values of *same* parcels as $26.1 million) (RFJN Ex. D).

is no more than a reflection of injuries to the 'business or property' of consumers, for which they may recover themselves under § 4 [of the Clayton Act]." *Id*. at 264. The Court concluded that "business or property" was limited to "commercial interests or enterprises," and thus denied Hawaii standing to sue under the Clayton Act for injury to its general economy. *Id*. *See also In re Multidistrict Vehicle Air Pollution*, 481 F.2d 122, 126 (9th Cir. 1973) (citing *Hawaii*, 405 U.S. at 264). The alleged harm to San José's economy similarly does not constitute injury to business or property, and thus Plaintiffs cannot state a claim for damages under the Clayton Act.

San José's interests in its general economy are also insufficient to support a claim for injunctive relief under the Clayton Act, as the Ninth Circuit held in *City of Rohnert Park v. Harris*, 601 F.2d 1040, 1044 (9th Cir. 1979). There, the City of Rohnert Park desired to have a developer create a shopping center on a piece of city property, but instead, the developer, in conjunction with the City of Santa Rosa, its urban renewal agency, and others, chose to develop it in Santa Rosa. Rohnert Park sued for antitrust violations, among other claims, but the district court granted summary judgment against it, finding no antitrust violation. On appeal, the Ninth Circuit declined to reach the merits of the summary judgment decision, holding instead that the threshold issue was that Rohnert Park did not have standing under the Clayton Act to bring an antitrust claim in the first place. The court stated that a city can have standing only for its own "proprietary interests." *Id*. It found insufficient the city's interests in improving a local commercial zone, and its ownership of the property in the commercial zone, because it was too speculative that the property would even be selected as the site for the shopping center. *Id*. at 1044–45.

Here, too, Plaintiffs' allegation that they "would have benefited but for [Defendants'] actions is ***entirely speculative***." *Id.* at 1045 (emphasis added). Plaintiffs' speculative *future* benefits depend on, among other things: (1) whether the Athletics could afford to make the move and would choose to do so; (2) whether the Option Agreement would be exercised; (3) whether San José could perform under the Option Agreement notwithstanding California's invalidation of the Option Agreement and RDAs in general,[20] and if it could legally do so, whether the political

[20] *See* above, note 17.

choice would be made to do so; (4) whether the Athletics could purchase the ***other*** land not owned by San José, but which would be necessary to build a stadium on the proposed site;[21] and, (5) whether the Athletics could obtain financing, secure regulatory approvals, and ultimately build such a stadium. San José can no more state a claim for injunctive relief under the Clayton Act than Rohnert Park could.

Nor can a city such as San José bring an antitrust claim in a representative capacity on behalf of its citizens. Under the express terms of the Clayton Act, *parens patriae* authority rests only with the State of California; "political subdivisions, such as cities and counties, whose power is derivative and not sovereign, cannot sue as *parens patriae*." *Id.* at 1044 (finding that city improperly asserted antitrust claims "on behalf of its property owners, taxpayers, and inhabitants") (quoting *In re Multidistrict Vehicle Air Pollution*, 481 F.2d at 131).

Because the alleged lost tax revenue and San José's interest in potential spending and job creation do not give rise to standing under the Clayton Act, Plaintiffs have failed to state a claim.

B. Plaintiffs do not have antitrust standing

In addition to Clayton Act standing, an antitrust plaintiff must satisfy the judicial requirements of antitrust standing. The doctrine of antitrust standing places additional limits on who is an appropriate plaintiff, because although an alleged antitrust violation may "cause ripples of harm to flow through [an] economy," Congress did not intend to allow every person affected by an alleged violation to maintain an action for treble damages. *Blue Shield of Va. v. McCready*, 457 U.S. 465, 476–77 (1982). Courts seek to limit who can bring an antitrust claim in part because of the "famously burdensome discovery" of antitrust claims. *FTC v. Actavis*, 133 S.Ct. 2223, 2247 (2013) (Roberts, J., dissenting) (citing *Bell Atl. Corp. v. Twombly*, 550 US 544, 558–59 (2007)). In evaluating whether a plaintiff has standing to assert an antitrust claim, courts consider a variety of factors, including: (1) whether there is an antitrust injury, including whether plaintiff is a consumer or competitor in the relevant market; (2) whether a direct causal

[21] Indeed, the Athletics would need to purchase many additional parcels in order to build a ballpark on the proposed site. *See* October 24, 2011 Memorandum of City Manager and San José RDA Executive Director, Attachment 1, p. 2 (RFJN Ex. E). Notably, much of the necessary property is owned by AT&T, *id.*, which also holds the naming rights for the San Francisco Giants' home stadium—AT&T Park.

connection between the antitrust violation and alleged injury exists; (3) the speculative measure of the harm; and (4) the risk of duplicative recoveries or complexity in apportioning damages. *Associated Gen. Contractors v. Cal. State Council of Carpenters*, 459 U.S. 519, 535–45 (1983) ("*AGC*"). The complaint does not allege facts sufficient to satisfy these factors.[22]

1. Plaintiffs do not allege they are participants in the relevant market

As the Supreme Court has held, there is no antitrust standing where plaintiff was "neither a consumer nor a competitor in the market in which trade was restrained." *AGC*, 459 U.S. at 539. As the Ninth Circuit has phrased it, the "injured party [must] be a participant in the same market as the alleged malefactors." *Am. Ad Mgmt. v. Gen. Tel. Co.*, 190 F.3d 1051, 1507 (9th Cir. 1999) (quotation marks and citation omitted). Plaintiffs do not allege, nor could they, that they are participants in their alleged market for "the provision of major league men's professional baseball contests." Compl. ¶ 34.

San José is a city. And, like many cities, it might want to host a Major League Club in a brand new revenue-producing stadium, and to entertain fans in its local businesses. San José is not, however, a Major League Club, a potential purchaser of a Major League Club, or the owner of a stadium that is available for lease to a Major League Club.[23] Plaintiffs are not, and do not allege they are, consumers, competitors, or other economic actors in the market for the provision of baseball contests. In fact, Plaintiffs admit that the MLB Clubs are the competitors in the alleged market for "major league men's professional baseball games." Compl. ¶ 30. As such, Plaintiffs are neither consumers nor competitors in the relevant market, and do not possess antitrust standing.

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[22] Plaintiffs also fail to satisfy the similar standing requirements of the Cartwright Act. Antitrust standing under the Cartwright Act is limited to those plaintiffs whose injuries "were not secondary, consequential or remote." *Cellular Plus, Inc. v. Super. Ct.*, 14 Cal. App. 4th 1224, 1232 (1993). Plaintiff must also allege "injury within the area of the economy that is endangered by a breakdown of competitive conditions." *Kolling v. Dow Jones & Co.*, 137 Cal. App. 3d 709, 724 (1982); *accord In re Napster, Inc. Copyright Litig.*, 354 F. Supp. 2d 1113, 1125–26 (N.D. Cal. 2005) (recognizing that courts applying Cartwright Act standing requirements have consistently followed the "market participant" rule, and dismissing Cartwright Act claim for same reasons as dismissal of Sherman Act claim).

[23] Nor is San José a prospective owner of such a stadium, and indeed it has declared that it will spend no money on this ballpark project. *See* Opt. Agmt. Ex. C at 2; *see also* San José City Council Res. No. 74908 (adopted May 12, 2009) (affirmed in Opt. Agmt. Ex. C at 3) (RFJN Ex. A).

The requirement that a plaintiff be a consumer or competitor in the relevant market essentially ensures that antitrust damages go to persons who either make purchases in the relevant market (consumers) or who sell in the relevant market (competitors). San José does neither, and indeed, incorporated into the Option Agreement itself is a series of Negotiating Principles setting out the City's refusal to expend any taxes or public funds to support construction, improvements, operations, maintenance, or game-day expenses. *See* San José City Council Resolution No. 74908 (adopted May 12, 2009) (affirmed in Opt. Agmt. Ex. C at 1) (RFJN Ex. A). Antitrust standing cannot be conferred on a plaintiff that has not engaged in commerce—that is, made a purchase, competed in a market, or made preparations to compete in a market. *See Dedication & Everlasting Love to Animals v. Humane Soc'y*, 50 F.3d 710, 712 (9th Cir. 1995) (no antitrust standing in dispute between two charitable organizations not involved in trade or commerce).

Thus, because Plaintiffs were not consumers or participants in the alleged relevant market, they lack antitrust standing.

2. Plaintiffs do not allege they were injured by harm to competition in the relevant market

Antitrust injury exists only where the alleged loss stems from a competition-reducing effect of the alleged wrongful behavior. *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 334 (1990); *Pool Water Prods. v. Olin Corp*. 258 F.3d 1024, 1036 (9th Cir. 2001) (holding that antitrust injury is injury "of the kind the antitrust laws were meant to protect against"). "The antitrust injury requirement obligates a plaintiff to demonstrate, as a threshold matter, 'that the challenged action has had an actual adverse effect on competition as a whole in the relevant market; to prove it has been harmed as an individual competitor will not suffice.'" *George Haug Co. v. Rolls Royce Motor Cars Inc.*, 148 F.3d 136, 139 (2d Cir. 1998) (citation omitted). Plaintiffs have not alleged, and cannot allege, that they suffered any injury arising from an anti-competitive effect in the alleged relevant market.

The location of the Athletics in one or the other of two cities less than fifty miles apart has no possible anti-competitive effect in the alleged market for "men's professional baseball contests." Compl. ¶ 34. Plaintiffs do not allege that the Athletics' failure to relocate to San José

would "'alter the structure of the market or the potential for new entry[,] . . . reduce the quantity produced, increase the price charged, or affect the quantity supplied,'" and thus Plaintiffs do not allege a reduction in competition in the relevant market. *See Baseball at Trotwood, LLC v. Dayton Prof'l Baseball Club, LLC*, 113 F. Supp. 2d 1164, 1174 (S.D. Ohio 1999) (quoting *Fishman v. Estate of Wirtz*, 807 F.2d 520, 563 (7th Cir. 1986) (Easterbrook, J., dissenting in part)).

The crux of Plaintiffs' claims is that if the Athletics cannot relocate to San José, Plaintiffs will miss out on the downstream economic benefits to the local economy that the presence of a professional baseball club would bring, benefits that instead will inure to the local economy of whatever city becomes (or remains) the Athletics' home. Compl. ¶¶ 70, 131, 139–146. But that is a hallmark of a *competitive* market, one in which there are winners and losers. It does not constitute antitrust injury. *See St. Louis Convention & Visitors Comm'n v. Nat'l Football League*, 154 F.3d 851, 864 (8th Cir. 1998) (finding no antitrust injury where plaintiff failed to show reduction in competition among entities that were bidding for an NFL franchise as a stadium tenant); s*ee also Seattle Totems Hockey Club, Inc. v. Nat'l Hockey League*, 783 F.2d 1347, 1350 (9th Cir. 1986) (rejecting antitrust claim of minor league hockey team and its owners and finding that "[w]ithout an NHL franchise Seattle constituted a potential [World Hockey Association] site, and the denial, if any, of an NHL franchise under these circumstances did not injure competition"); *Mid-South Grizzlies v. Nat'l Football League*, 720 F.2d 772, 786 (3d Cir. 1983) (holding that failure to obtain NFL franchise is not an injury to competition because it left the Memphis area available for another league's franchise). While a league's decision not to relocate a team to a particular city may have an effect on those hoping to benefit from the relocation, it could not, in this context, constitute injury to competition.

3. Plaintiffs' alleged injuries are derivative and far too speculative to confer antitrust standing

Finally, Plaintiffs' alleged injuries are indirect and far too speculative to confer antitrust standing. Before allowing a claim to proceed, a court must address "whether a claim rests at bottom on some abstract conception or speculative measure of harm." *AGC*, 459 U.S. at 543

(quoting *Blue Shield*, 457 U.S. at 475 n.11). As the Ninth Circuit has recognized, "[t]he chain of causation between the injury and the alleged restraint in the market should lead directly to the 'immediate victims' of any alleged antitrust violation." *Eagle v. Star-Kist Foods, Inc.*, 812 F.2d 538, 541 (9th Cir. 1987) (citation omitted). The bar against claims that are too indirect or speculative is not only for the benefit of the parties, but because the "indirectness of the alleged injury also implicates the strong interest . . . in keeping the scope of complex antitrust trials within judicially manageable limits." *AGC*, 459 U.S. at 543.

Plaintiffs' alleged injuries are too remote from the alleged market restraint to garner the protection of the antitrust laws. Their purported injuries consist of potential losses of tax revenue, spending, and new jobs resulting from the possible relocation of the Athletics to San José. Compl. ¶¶ 140–50. As explained above at pages 19-20, these injuries are entirely speculative and premised on the occurrence of a chain of independent events that may never occur.

Plaintiffs' claims of harm are more remote even than those in *McCoy v. Major League Baseball*, 911 F. Supp. 454 (W.D. Wash. 1995). There, the court granted MLB's motion to dismiss antitrust claims brought by fans and by businesses located near a stadium who alleged they were injured as a result of the 1994 players' strike and the cancellation of games in 1994 and 1995. *Id*. at 458. The court held that all of the claims were barred by the antitrust exemption, and further held that they were ***also*** barred because the claimed injuries were too remote to create antitrust standing. *Id.* Relying on the Ninth Circuit's analysis in *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 791 F.2d 1356 (9th Cir. 1986) ("*Raiders II*"), the *McCoy* court held that any injury suffered by those plaintiffs was an "indirect 'ripple effect'" of defendants' actions, and that the "symbiotic relationship" that businesses operating within the vicinity of baseball stadiums have with the business of baseball is insufficient to allow for antitrust standing. 911 F. Supp. at 458.

At best, Plaintiffs have alleged potential ripple effects they speculate could occur if the Athletics do not relocate to San José. Plaintiffs have not alleged direct or sufficiently certain harm attributable to the "provision of baseball contests" to establish antitrust standing. If Plaintiffs' alleged harms were sufficient to establish antitrust standing, every city that desired an

MLB team could state an antitrust claim. That cannot be squared with the Supreme Court's caution that "there is a point beyond which the [antitrust] wrongdoer should not be held liable." *Blue Shield*, 457 U.S. at 477 (quoting *Ill. Brick Co. v. Illinois*, 431 U.S. 720, 760 (1977) (Brennan, J. dissenting)). San José's alleged harms have gone well beyond that point and its claims should be dismissed.

Because Plaintiffs are not consumers or participants in the alleged relevant market, have suffered no antitrust injury, and claim alleged damages that are too indirect and speculative to give rise to an antitrust claim, Plaintiffs' antitrust claims must be dismissed for lack of antitrust standing even if they were not barred by baseball's antitrust exemption.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' complaint should be dismissed in its entirety. Allowing Plaintiffs to amend their complaint would be futile, because no amount of creative re-pleading could possibly circumvent the antitrust exemption and the legal deficiencies described above. Therefore, Defendants request dismissal of all claims, with prejudice, and without leave to amend.

Dated: August 7, 2013

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