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13 *as successor agency to the Redevelopment Agency of the City of*  
*San José; and the San José Diridon Development Authority*

14 **IN THE UNITED STATES DISTRICT COURT**

15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 **SAN JOSÉ DIVISION**

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

22 **Plaintiffs,**

23 **v.**

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

27 **Defendants.**  
28

**Case No. 13-CV-02787-RMW**

**MEMORANDUM OF POINTS AND**  
**AUTHORITIES OF PLAINTIFFS IN**  
**OPPOSITION TO DEFENDANTS’**  
**REQUEST FOR JUDICIAL NOTICE IN**  
**SUPPORT OF MOTION TO DISMISS**  
**PLAINTIFFS’ COMPLAINT**

**Hearing Date: October 4, 2013**  
**Time: 9:00 a.m.**  
**Judge: Hon. Ronald M. Whyte**  
**Date Filed: June 18, 2013**  
**Trial Date: None Set**

1 “Generally, a district court may not consider any material beyond the pleadings in ruling  
 2 on a Rule 12(b)(6) motion.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542,  
 3 1555 (9th Cir. 1989). “All allegations of material fact are taken as true and construed in the light  
 4 most favorable to Plaintiffs.” *Epstein v. Washington Energy Co.*, 83 F.3d 1136, 1140 (9th Cir.  
 5 1996). Under certain limited scenarios, pursuant to Federal Rule of Evidence 201, a court may  
 6 take judicial notice of “matters of public record.” *Lee v. City of Los Angeles*, 250 F.3d 668, 688-  
 7 689 (9th Cir. 2001), internal citation omitted. However, a court may not take judicial notice of a  
 8 fact that is “subject to reasonable dispute.” Fed. R. Evid. 201(b). Further, while the court may  
 9 take judicial notice of the general meaning of words, phrases, and legal expressions, “documents  
 10 are judicially noticeable only for the purpose of determining what statements are contained  
 11 therein, not to prove the truth of the contents or any party’s assertion of what the contents mean.”  
 12 *United States v. S. Cal. Edison Co.*, 300 F.Supp.2d 964, 975 (E.D. Cal. 2004).

13 Defendants’ Request for Judicial Notice should be denied because the subject documents  
 14 are unauthenticated, incomplete, contested, and/or irrelevant to a determination of Defendants’  
 15 Rule 12(b)(6) motion:

- 16 **1. Exhibit A:** Plaintiffs challenge the authenticity of Exhibit A, titled “RESOLUTION  
 17 NO. 74908,” because, despite attestation signature lines, it is unsigned by either San  
 18 José City Clerk Lee Price or Mayor Chuck Reed. *See* Fed R. Evid. 901(a), 902(2); *see*  
 19 *also Botelho v. U.S. Bank, N.A.*, 692 F.Supp.2d 1174, 1177 (N.D. Cal. 2010); *Lopez v.*  
 20 *Mortgage*, 2009 U.S. Dist. LEXIS 108415 (E.D. Cal. Nov. 19, 2009) (taking judicial  
 21 notice of those loan documents which the parties agreed were authentic, but declining  
 22 to do so for the one loan document whose authenticity plaintiff disputed). Moreover,  
 23 the root of the Uniform Resource Locator (“URL”) provided by Defendants indicates  
 24 “THIS WEBSITE IS NO LONGER BEING UPDATED,” further calling into question  
 25 the authenticity of Exhibit A. *See* <http://www3.sanjoseca.gov/clerk/>. Finally,  
 26 assuming *arguendo* Exhibit A is an authentic reproduction of Resolution No. 74908,  
 27 this Court may only take judicial notice of its contents, not Defendants’ “assertion of  
 28 what the contents mean.” *S. Cal. Edison Co.*, 300 F.Supp.2d at 975.

- 1           **2. Exhibit B:** Plaintiffs challenge the authenticity of Exhibit B, titled “PROFESSIONAL  
2           SPORTS ANTITRUST IMMUNITY,” on the basis there are extraneous markings on  
3           the cover page and the document is incomplete. *See* Fed R. Evid. 901(a), 902(2); *see*  
4           *also Botelho v. U.S. Bank, N.A.*, 692 F.Supp.2d 1174, 1177 (N.D. Cal. 2010); *Lopez v.*  
5           *Mortgage*, 2009 U.S. Dist. LEXIS 108415 (E.D. Cal. Nov. 19, 2009). Further, even if  
6           valid, Exhibit B has no bearing on this Court’s determination of Defendants’ motion to  
7           dismiss, and is offered solely as legal argument. *See* MP&A ISO Mnt Dismiss, 8, fn  
8           7; *see also See Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d  
9           1022, 1025 (9th Cir. 2006) (court declined to take judicial notice of two Staff Reports,  
10           as they were not relevant to resolution of the appeal); *S. Cal. Edison Co.*, 300  
11           F.Supp.2d at 975 (courts may *not* take judicial notice of “what the contents [of a  
12           document] mean”).
- 13           **3. Exhibit C:** Plaintiffs oppose judicial notice of Exhibit C, Report with Minority Views  
14           regarding the Curt Flood Act of 1997, on the basis it is offered solely as legal  
15           argument. *See* MP&A ISO Mnt Dismiss, 8, fn 7; *see also Santa Monica Food Not*  
16           *Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 (9th Cir. 2006). Indeed, for  
17           purposes of Defendants’ motion to dismiss, the Curt Flood Act of 1997 speaks for  
18           itself. In this vein, to the extent this Court takes judicial notice of Exhibit C, it may  
19           only take judicial notice of its contents, not Defendants’ “assertion of what the  
20           contents mean.” *S. Cal. Edison Co.*, 300 F.Supp.2d at 975.
- 21           **4. Exhibit D:** Plaintiffs oppose judicial notice of Exhibit D, California State Controller  
22           John Chiang’s March 2013 Review Report, because it is offered to contest the validity  
23           of the Option Agreement (*see* Complaint, Exhibit 3). MP&A ISO Mtn Dismiss, 16, fn  
24           17; *see also* Fed. R. Evid. 201(b) (court may *not* take judicial notice of a fact that is  
25           “subject to reasonable dispute”). To the extent this Court takes judicial notice of  
26           Exhibit D, it may only take judicial notice of its contents, not Defendants’ “assertion  
27           of what the contents mean.” *S. Cal. Edison Co.*, 300 F.Supp.2d at 975.
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**5. Exhibit E:** Plaintiffs oppose judicial notice of Exhibit E, an October 24, 2011 Memorandum of City Manager and San José RDA Executive Director, because it is offered solely to argue “the Athletics would need to purchase many additional parcels in order to build a ballpark on the proposed cite.” MP&A ISO Mtn Dismiss, 20, fn 21. Not only is this assertion contested, it is outside the pleadings and irrelevant at the motion to dismiss stage. *See* Fed. R. Evid. 201(b) (court may *not* take judicial notice of a fact that is “subject to reasonable dispute”). To the extent this Court takes judicial notice of Exhibit E, it may only take judicial notice of its contents, not Defendants’ “assertion of what the contents mean.” *S. Cal. Edison Co.*, 300 F.Supp.2d at 975.

For the foregoing reasons, Plaintiffs respectfully request that this Court deny Defendants’ Request for Judicial Notice in its entirety.

Dated: September 6, 2013

**COTCHETT, PITRE & McCARTHY, LLP**

By: /s/ Joseph W. Cotchett

**JOSEPH W. COTCHETT**

*Attorneys for Plaintiffs*