KEKER & VAN NEST LLP
JOHN KEKER - # 49092
jkeker@kvn.com
PAULA L. BLIZZARD - # 207920
pblizzard@kvn.com
THOMAS E. GORMAN - # 279409
tgorman@kvn.com
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

PROSKAUER ROSE LLP
BRADLEY I. RUSKIN (*pro hac vice*)
bruskin@proskauer.com
Eleven Times Square
New York, NY 10036
Telephone: 212-969-3000
Facsimile: 212-969-2900

PROSKAUER ROSE LLP
SCOTT P. COOPER (SBN 96905)
scooper@proskauer.com
SARAH KROLL-ROSENBAUM (SBN 272358)
skroll-rosenbaum@proskauer.com
JENNIFER L. ROCHE (SBN 254538)
jroche@proskauer.com
SHAWN S. LEDINGHAM, JR. (SBN 275268)
sledingham@proskauer.com
2049 Century Park East, 32nd Floor
Los Angeles, CA 90067-3206
Telephone: 310-557-2900
Facsimile: 310-557-2193

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

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA / SAN JOSE DIVISION

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' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT** Hearing Date: October 4, 2013 Judge: Hon. Ronald M. Whyte Date Filed: June 18, 2013 Trial Date: None Set

REQUEST FOR JUDICIAL NOTICE

Defendants Office of the Commissioner of Baseball and Allan Huber "Bud" Selig respectfully request that the Court take judicial notice of the following governmental records cited in support of their Motion to Dismiss:

A. San José City Council Resolution 74908, adopted May 12, 2009 ("2009 City Council Resolution"), attached as Exhibit A;

B. Excerpts from the record of the 1982 hearings before the Senate Judiciary Committee on Professional Sports Antitrust Immunity, 97th Cong., Serial No. J-97-134, attached as Exhibit B;

C. The October 29, 1997 Report of the Senate Judiciary Committee on the Curt Flood Act (bill S. 53, later enrolled as 15 U.S.C. § 26B), S. Rep. 105-118, attached as Exhibit C;

D. The California State Controller's March 2013 Review Report entitled "Redevelopment Agency of the City of San Jose: Asset Transfer Review January 1, 2011, through January 31, 2012" ("Controller's Report"), attached as Exhibit D; and

E. A memorandum of the San José City Manager and San José Redevelopment Agency Executive Director bearing the subject line "Option Agreement for Sale of Property to Athletics Investment Group, LLC," dated October 24, 2011 ("October 2011 Memorandum"), attached as Exhibit E.

MEMORANDUM OF POINTS AND AUTHORITIES

Courts may take judicial notice of facts that are "not subject to reasonable dispute," such as when they can be "accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). Here, Defendants seek judicial notice of public records and reports generated by federal, state, and municipal governmental entities, all of which can be confirmed by reference to publicly available information contained in the Congressional Record or on government websites.[1] Judicial notice of such documents is

[1] Exhibits A, C, D, and E are all available from federal, state, and municipal websites. *See* Exhibit A, *available at* http://www3.sanjoseca.gov/clerk/ORDS_RESOS/RESO_74908.pdf; Exhibit C, *available at* http://www.gpo.gov/fdsys/pkg/CRPT-105srpt118/pdf/CRPT-105srpt118.pdf; Exhibit D, *available at* http://www.sco.ca.gov/Files-AUD/03_2013san_jose_asset_transfer_review.pdf; Exhibit E, *available at* http://www3.sanjoseca.gov/clerk/Agenda/20111108/20111108_jpa02.pdf.

appropriate "at any stage of the proceeding," Fed. R. Evid. 201(d), including when considering a Rule 12(b)(6) motion to dismiss. *Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001). As the Northern District of California has recognized, "courts routinely take judicial notice of legislative history and of information on government websites." *Paralyzed Veterans of Am. v. McPherson*, No. C 06-4670 SBA, 2006 WL 3462780, at *4 (N.D. Cal. Nov. 28, 2006); *see also Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998–99 (9th Cir. 2010) (holding that it was "appropriate to take judicial notice of this information [taken from school district websites], as it was made publicly available by government entities (the school districts), and neither party disputes the authenticity of the web sites or the accuracy of the information displayed therein").

Additionally, courts in this Circuit have recognized that each specific category of document raised here is appropriate for judicial notice:

1. Exhibit A, the 2009 City Council Resolution, constitutes a record of an administrative proceeding and is therefore subject to judicial notice. *See Lewis v. Cnty. of Berkeley*, No. C-08-5089 JCS, 2009 WL 33326, at *3–4 (N.D. Cal. Jan. 6, 2009) (taking judicial notice of city council resolution); *see also Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006) ("City ordinances fall within the category of 'common knowledge' and are therefore proper subjects for judicial notice.") (quoting *Newcomb v. Brennan*, 558 F.2d 825, 829 (7th Cir. 1977)).
2. Exhibits B and C consist of "materials and testimony . . . in the Congressional Record" or in published Congressional Reports, and are therefore appropriate for judicial notice. *Planned Parenthood Fed'n of Am. v. Ashcroft*, 320 F. Supp. 2d 957, 1014 n.42 (N.D. Cal. 2004) (taking judicial notice of hearings before Congressional committees), *rev'd on other grounds*, *Gonzales v. Carhart*, 550 U.S. 124 (2007);

Exhibit B is available in the Congressional Record. *See* Professional Sports Antitrust Immunity: Hearing on S. 2784 and S. 2821 Before the S. Comm. on the Judiciary, 97th Cong., Serial No. J-97-134 (1982).

3. Exhibit D, the Controller's Report, and Exhibit E, the October 2011 Memorandum, are "government agency reports of public record," both "capable of verification by reference to [the government entity's] website," and are therefore judicially noticeable. *Lamle v. City of Santa Monica*, No. CV 04-6355-GHK (SH), 2010 WL 3734868, at *5 (C.D. Cal. July 23, 2010); *see also Retired Emps. Ass'n of Orange Cnty., Inc. v. Cnty. of Orange*, 632 F. Supp. 2d 983, 985 (C.D. Cal. 2009) (taking judicial notice of report issued by county controller).

For the foregoing reasons, the documents here may be considered by the Court in ruling on Defendants' Motion to Dismiss and Defendants therefore request that the Court grant this Request for Judicial Notice.

Dated: August 7, 2013

KEKER & VAN NEST LLP

By: */s/ John Keker*
JOHN KEKER
PAULA L. BLIZZARD
THOMAS E. GORMAN

PROSKAUER ROSE LLP
BRADLEY I. RUSKIN

SCOTT P. COOPER
SARAH KROLL-ROSENBAUM
JENNIFER L. ROCHE
SHAWN S. LEDINGHAM, JR.

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