Case No. 15-16938

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SERGIO MIRANDA, et al.,
Plaintiffs – Appellants,

v.

OFFICE OF THE COMMISSIONER OF BASEBALL, et al.,
Defendants – Appellees.

Appeal from the United States District Court
Northern District of California
The Honorable Haywood S. Gilliam, Jr., Presiding
Case No. 3:14-cv-05349-HSG

ANSWERING BRIEF OF MAJOR LEAGUE BASEBALL AND THE CLUBS

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CORPORATE DISCLOSURE STATEMENT

Under Rule 26.1 of the Federal Rules of Appellate Procedure, Defendant-Appellees make the following disclosure:

The Office of the Commissioner of Baseball (which does business as "Major League Baseball" or "MLB") is an unincorporated association and has as its members, the 30 Major League Baseball Clubs. As such, it has no corporate parent and no publicly held corporation owns 10% or more of MLB.

1. AZPB, L.P. is a Delaware limited partnership. There is no corporate parent or publicly held corporation that owns 10% or more of its stock.

2. Angels Baseball LP is a California limited partnership. There is no corporate parent or publicly held corporation that owns 10% or more of its stock.

3. Athletics Investment Group LLC d/b/a Oakland Athletics Baseball Club is a California limited liability company. Athletics Investment Group LLC is wholly owned by Athletics Holdings LLC, which is a Delaware limited liability company. There is no publicly held corporation that owns 10% or more of Athletics Investment Group LLC or Athletics Holdings LLC.

4. Atlanta National League Baseball Club, Inc. is a Georgia corporation, and is a wholly owned subsidiary of Liberty Media Corporation, a publicly held corporation (on November 2, 2015, the Secretary of State and Corporation Commissioner of the State of Georgia certified the conversion of Atlanta National

League Baseball Club, Inc. (a Domestic Profit Corporation) to Atlanta National League Baseball Club, LLC (a Domestic Limited Liability Company)). Liberty Media Corporation recently announced plans to reclassify its common stock into three new tracking stock groups, one of which would be designated as the Liberty Braves Group.

5. Baltimore Orioles, Inc. is the managing general partner of the Baltimore Orioles, L.P. Baltimore Orioles, Inc. is a corporation formed pursuant to the laws of the State of Maryland. Baltimore Orioles, L.P. ("BOLP") is a limited liability partnership formed pursuant to the laws of the State of Maryland. It is an original partner of TCR Sports Broadcasting Holding, L.L.P. BOLP is TCR's managing partner. There is no publicly-held corporation that owns 10% or more of the stock of Baltimore Orioles, Inc.

6. The Baseball Club of Seattle, LLLP ("TBCOS"), which was incorrectly named in the complaint as "Baseball Club of Seattle, LLP", is a Washington limited-liability limited partnership. Its corporate parents are Mariners Investment LLC and Mariners Baseball, LLC (both Washington limited liability companies), which are both wholly owned by First Avenue Entertainment LLLP (a Washington limited-liability limited partnership). First Avenue Entertainment LLLP is majority-owned by Nintendo of America Inc., which is wholly owned by Nintendo Co. Ltd. (a publicly held corporation in Japan).

7. Boston Red Sox Baseball Club Limited Partnership is a Massachusetts limited partnership, whose General Partner is New England Sports Ventures, LLC, a Delaware Limited Liability Company. No publicly traded company owns 10% or more of the stock of Boston Red Sox Baseball Club Limited Partnership.

8. The Plaintiffs named Chicago Baseball Holdings, LLC ("CBH") in their complaint, but that entity is not a proper party in this proceeding. Chicago Cubs Baseball Club, LLC, is a Delaware limited liability company. It is wholly owned by CBH, which is a Delaware limited liability company. CBH's sole member is Chicago Entertainment Ventures, LLC, a Delaware limited liability company. There is no publicly held corporation that owns 10% or more of Chicago Cubs Baseball Club, LLC or CBH.

9. Chicago White Sox, Ltd. is an Illinois limited partnership. It has no corporate parent and there is no publicly held corporation that owns 10% or more of Chicago White Sox, Ltd.

10. The Cincinnati Reds LLC is a Delaware limited liability company. The Cincinnati Reds LLC is controlled by Reds Baseball Partners, LLC, an Ohio limited liability company. There is no publicly held corporation that owns 10% more of its stock.

11. Cleveland Indians Baseball Co., Inc. is an Ohio corporation. Its corporate parent is CIBC Holdings, Inc. There is no publicly held corporation that

owns 10% or more of its stock. Cleveland Indians Baseball Co., LP is an Ohio limited partnership. It has no corporate parent and there is no publicly held corporation that owns 10% or more of its stock.

12. Colorado Rockies Baseball Club Ltd. is a Colorado limited partnership. The General Partner of the Partnership is Colorado Baseball 1993, Inc. There is no publicly held corporation that owns 10% or more of Colorado Rockies Baseball Club, Ltd.

13. Detroit Tigers, Inc. is a Michigan corporation. There is no corporate parent or publicly held corporation that owns 10% or more of its stock.

14. Houston Baseball Partners, LLC is a Delaware Corporation. Its parent corporations are HBP Team Holdings, LLC and Houston Astros, LLC. There is no publicly held corporation that owns 10% or more of the stock of Houston Baseball Partners, LLC.

15. Kansas City Royals Baseball Corporation is a Missouri corporation. It has no parent corporation and there is no publicly held corporation that owns 10% or more of its stock.

16. Los Angeles Dodgers LLC (incorrectly named as "Los Angeles Dodgers, LLC" in the complaint), a Delaware limited liability company, is wholly owned by Los Angeles Dodgers Holding Company LLC (incorrectly named as "Los Angeles Dodgers Holding Co." in the complaint). Los Angeles Dodgers

Holding Company LLC is also a Delaware limited liability company, and it is wholly owned by LA Holdco LLC, also a Delaware limited liability company. None is directly owned by a publicly held corporation.

17. Miami Marlins, L.P. is a Delaware limited partnership. Its parent corporations are Double Play Holdings, Inc. and Linedrive Holdings, Inc., neither of which is publicly held.

18. Milwaukee Brewers Baseball Club, Inc. is a Wisconsin Corporation. There is no corporate parent or publicly held corporation that owns 10% or more of its stock. Milwaukee Brewers Baseball Club, L.P. is a Wisconsin Limited Partnership. There is no corporate parent or publicly held corporation that owns 10% or more of its stock.

19. Minnesota Twins, LLC is a Delaware limited liability company having two members, Dakota Holdings, LLC and Twins Sports, Inc. There is no publicly held corporation that owns 10% more of its stock.

20. New York Yankees Partnership is a limited partnership organized under the laws of the state of Ohio. There is no parent corporation or publicly held corporation that owns 10% or more of its stock.

21. Padres L.P. is a Delaware limited partnership. SoCal SportsNet LLC, a Delaware limited liability company, owns more than 10% of the equity interest in

Padres L.P. San Diego Padres Baseball Club, L.P. does not exist as a separate entity from Padres L.P.

22. The Phillies is a limited partnership organized under the laws of the Commonwealth of Pennsylvania. It has no corporate parent and there is no publicly held corporation that owns 10% or more of its stock.

23. Pittsburgh Associates (incorrectly named in the complaint as "Pittsburgh Baseball, Inc." and "Pittsburgh Baseball Partnership") is a limited partnership under the laws of the Commonwealth of Pennsylvania. Its General Partner is Pittsburgh Baseball Holdings, Inc., and there is no publicly held corporation that owns 10% or more of its stock.

24. Rangers Baseball, LLC, a Delaware limited liability company, is 100% owned by its parent, Rangers Baseball Express, LLC, also a Delaware limited liability company. There is no publicly held corporation that owns 10% or more of either entity's stock.

25. Rogers Blue Jays Baseball Partnership is a general partnership organized and existing under the laws of the Province of Ontario. The partners are Rogers Sports Holdings, Inc. and Blue Jays Holdco, Inc., both of which are Ontario corporations. There is no publicly held corporation that directly owns 10% or more of Rogers Blue Jays Baseball Partnership.

26. San Francisco Baseball Associates LLC is a Delaware limited liability company. It has no corporate parent and there is no publicly held corporation that owns 10% or more of its stock.

27. St. Louis Cardinals, LLC is a Missouri limited liability company. SLC Holdings, L.L.C. is the sole member and manager of SLC. No publicly held corporation owns a membership interest in St. Louis Cardinals, LLC of 10% or more.

28. Sterling Mets, L.P. is a Delaware limited partnership. Its general partner is Mets Partners, Inc., a New York corporation. There is no publicly held corporation that owns 10% or more of Sterling Mets, L.P.'s stock.

29. Tampa Bay Rays Baseball Ltd. is a Florida limited partnership. 501SG, LLC, a Delaware limited liability company, is the sole general partner, and there is no publicly held corporation that owns 10% or more of the stock of Tampa Bay Rays Baseball Ltd.

30. Washington Nationals Baseball Club, LLC is a limited liability company organized under the laws of Delaware. Nine Sports Holdings LLC, a Delaware corporation, is the parent of Washington Nationals Baseball Club, LLC. There is no publicly held corporation that owns 10% or more of the stock of Washington Nationals Baseball Club, LLC.

DATED: March 4, 2016

/s John W. Keker
John W. Keker
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OFFICE OF THE COMMISSIONER
OF BASEBALL, et al.

STATEMENT OF JURISDICTION

Plaintiffs and appellants Sergio Miranda, Jeffrey Dominguez, Jorge Padilla, and Cirilo Cruz provided a Statement of Jurisdiction that does not comply with Circuit Rule 28-2.2. MLB and the Clubs offer this corrected statement:

The district court had federal-question subject-matter jurisdiction over Plaintiffs' Sherman Act claims under 28 U.S.C. § 1331.

On September 14, 2015, the district court issued an "Order Granting Motion to Dismiss" Plaintiffs' Sherman Act claims under Federal Rule of Civil Procedure 12(b)(6). III ER A474–77

On September 24, 2015, the district court issued a final judgment that "dismissed [Plaintiffs' case] with prejudice." III ER A478–79.

On September 28, 2015, Plaintiffs timely filed their Notice of Appeal under Federal Rule of Appellate Procedure 4(a)(1)(A). III ER A480–81.

This Court has appellate jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUES PRESENTED

Plaintiffs believe that baseball's antitrust exemption "should be eliminated." Op. Br. at 2. But in 2015, this Court held that baseball's exemption was supported by Supreme Court precedent, circuit precedent, and the Curt Flood Act. As this Court put it last year: "Only Congress and the Supreme Court are empowered to question [the] continued vitality" of the antitrust exemption. *City of San José v. Office of the Comm'r of Baseball*, 776 F.3d 686, 692 (9th Cir.), *cert. denied*, 136 S. Ct. 36 (2015). Thus, the question presented by this appeal is:

1. Whether the district court committed legal error when it held that Plaintiffs' claims must be dismissed under binding Supreme Court precedent as well as this Court's decision in *City of San José*?

PERTINENT STATUTES AND LEGISLATIVE ACTIVITY

Pertinent statutes and legislative activity are included in an attached Statutory and Legislative Addendum, which begins on page 30.

STANDARD OF REVIEW

A district court's order granting a motion to dismiss under Rule 12(b)(6) is reviewed *de novo*. *Stearns v. Ticketmaster Corp.*, 655 F.3d 1013, 1018 (9th Cir. 2011). To avoid dismissal, a plaintiff must allege facts showing that the "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). The Court "can affirm a 12(b)(6) dismissal on any ground supported by the record, even if the district court did not rely on the ground." *United States v. Corinthian Colls.*, 655 F.3d 984, 992 (9th Cir. 2011) (internal citations and quotation marks omitted).

STATEMENT OF THE CASE

A. 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. I ER A007. 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"). I ER A016; *see also* I ER A060–62.[1] Each Club also employs a number of Minor League players for player-development purposes. I ER A016, A060–62. Throughout the year, Major League Clubs may assign individual Minor League players to different levels of the Minor League system, depending on what skills a 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. I ER A020. 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* II ER A229–55. Under the Uniform Player Contract, a Minor League player's first-year

[1] The Plaintiffs attached the Major League Rules ("MLRs") to their complaint and incorporated them by reference. *See* I ER A036–II ER A310. Therefore the MLRs were part of the pleadings when the district court decided Defendants' 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 later amendments. But we do not ask the Court to take judicial notice of those amendments because they do not affect this appeal.

salary is set by MLB (although it varies depending on the player's league assignment). I ER A078. 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. I ER A078–80. 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. I ER A080–85. 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. II ER A233–234. 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*.

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. II ER A231–22. 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. I ER A072. 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. II ER A231–32.

B. Plaintiffs and their allegations.

The four named Plaintiffs allege that they are former Minor League baseball players. I ER A006–07. 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.*

Plaintiffs allege that the Defendants are part of a "cartel" known as "Major League Baseball" or MLB. I ER A004.[2] They further allege that MLB "openly colludes on the working conditions for the development of its chief commodity: minor league professional baseball players." *Id.* 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.* Plaintiffs focus their allegations on how MLB and the Clubs purportedly use the Uniform Player Contract and its reserve clause to "artificially and illegally depress[ ] minor league wages." *See generally* I ER A018–23, A029, A031, A033; Op. Br. at 1, 6, 9–13, 17, 21, 22, 28, 29, 32, 33, 35, 36, 40, 44, 45.

[2] Throughout Plaintiffs' Opening Brief, they argue that MLB and the Clubs have conceded or admitted the allegations in the Complaint, or that the Defendants did not dispute the veracity of these allegations. *See* Op. Br. at 2, 4, 5, 15, 17, 19. This is not true. MLB and the Clubs must assume that Plaintiffs' non-conclusory allegations are true for purposes of a motion to dismiss (*see Iqbal*, 556 U.S. at 679) but have never conceded that Plaintiffs' allegations are true.

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. I ER A029–32.

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. I ER A023. 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." I ER A023–24.[3]

C. The district court held that Plaintiffs' claims were barred by this Court's 2015 decision in *City of San José*.

Plaintiffs' Opening Brief asks this Court to reverse the district court's final judgment (Op. Br. at 48), but Plaintiffs fail to describe or discuss the district court's opinion.[4]

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[3] *See also* Op. Br. at 2 (arguing that the "exemption no longer has, if ever it had, any basis in reality and should be eliminated"), 4 (arguing that "exemption for baseball . . . did not then and should not now exist"), 15 (arguing that there "is no longer (if there ever was) any valid basis for any judicially created exemption for the business of baseball, especially in the area of antitrust"), 29 (arguing that "it is time to take another look at the 'baseball exemption' based on current economic factors").

[4] Plaintiffs also fail to offer a "concise statement of the applicable standard of review," which is a violation of Federal Rule of Appellate Procedure 28(a)(8)(B).

The district court dismissed Plaintiffs' complaint with prejudice under Federal Rule 12(b)(6) for failing "to state a plausible claim on its face." III ER A474. Specifically, the court held that "the reasoning adopted by the Ninth Circuit in *City of San José* directly governs the claims at issue in this case." III ER A476. The district court held that there "can be no reasonable dispute that the alleged restrictions on the pay and mobility of minor league baseball players fall into . . . the articulation of the antitrust exemption recognized in *City of San José*." *Id.* And because "baseball's historic antitrust exemption bars any antitrust claims arising from Plaintiffs' employment as minor league baseball players," the district court found "that any amendment of Plaintiffs' Complaint would be futile." III ER A477.

SUMMARY OF THE ARGUMENT

"[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. Plaintiffs now assert that all of these decisions are wrong. They ask this Court both to contravene binding precedent from the Supreme Court, to ignore well-settled law from across the circuit courts, and to reject a unanimous panel opinion that ***this*** Court issued in 2015. In short, the Plaintiffs ask this Court to commit legal error.

In the alternative, Plaintiffs argue that the antitrust exemption can be narrowly limited to the facts of the specific cases in which it has been litigated. But to succeed on this argument, Plaintiffs need this Court to reject its own 2015 opinion—which held that baseball's antitrust exemption is not narrowly cabined, and instead 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 (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).

This Court should affirm the district court's decision to dismiss the complaint under Rule 12(b)(6) because Plaintiffs' claims are barred by baseball's antitrust exemption.

ARGUMENT

A. The district court did not err by following this Court's binding 2015 decision that held that the entire "business of baseball" is exempt from antitrust regulation.

As the district court below held, this case is "guided and ultimately determined by the Ninth Circuit's recent decision *City of San José v. Office of the Commissioner of Baseball*, 776 F.3d 686 (9th Cir. 2015)." III ER A475. The appellants in that case, like the Plaintiffs here, argued that baseball's antitrust exemption was a "product of a bygone era," "outdated," "antiquated," and "highly questionable." Appellants' Opening Brief, 2015 WL 1293361, *2–3 (Mar. 5, 2013). But this Court rejected appellants' "challenge" to the "baseball industry's 92-year old exemption from the antitrust laws." *City of San José*, 776 F.3d at 687. Indeed, this Court held that the Supreme Court had extended the antitrust exemption to broadly cover "the ***entire*** 'business of providing public baseball games for profit between clubs of professional baseball players.'" *Id.* at 690 (quoting *Toolson*, 346 U.S. at 357) (emphasis added).

Here, Plaintiffs' Opening Brief offers just one short paragraph on *City of San José*, where Plaintiffs attempt to distinguish that decision as a "franchise relocation case" that "had nothing to do with the 'reserve clause.'" Op. Br. at 22. This Court should reject Plaintiffs' interpretation of *City of San José* for two reasons. First, this Court recognized a binding legal rule in *City of San José*—that the antitrust

exemption covers the entire business of baseball—and that rule is binding and applicable in future cases even if they present slightly different facts. "Our system of precedent or *stare decisis* is thus based on adherence to both the reasoning and result of a case, and not simply to the result alone." *Planned Parenthood v. Casey*, 947 F.2d 682, 692 (3d Cir. 1991), *aff'd in part and rev'd in part*, 505 U.S. 833 (1992). "This distinguishes the American system of precedent, sometimes called 'rule stare decisis,' from the English system, which historically has been limited to following the results or disposition based on the facts of a case and thus referred to as 'result stare decisis.'" *Casey*, 947 F.2d at 692.

Second, it would be particularly inappropriate to limit *City of San José* to its exact facts because that decision rejected an argument about limiting precedent narrowly. 776 F.3d at 689. Indeed, the appellants in *City of San José* argued that baseball's antitrust exemption should be limited to the reserve clause, because the facts of *Flood v. Kuhn* involved a challenge to the reserve clause. *See* Appellants' Opening Brief, *City of San José*, 2015 WL 1293361, *21–24 (Mar. 5, 2013). This Court refused to "limit *Flood* to its facts" and specifically held that the Supreme Court's decisions had established a much broader rule. *City of San José*, 776 F.3d at 689–90. Plaintiffs' argument is painfully ironic—they ask this Court to limit to its facts a decision that held that precedential opinions should ***not*** be limited to their facts.

The decision in *City of San José* is binding on the district courts in this circuit. If the district court below had failed to "follow binding precedent," its error would have been "clear" or "plain." *United States v. Gonzalez-Zotelo*, 556 F.3d 736, 740–41 (9th Cir. 2009). Obviously, then, the district court did not commit legal error when it correctly followed the Ninth Circuit's guidance, applying "the baseball exemption to the entire 'business of providing public baseball games for profit between clubs of professional baseball players.'" *City of San Jose*, 776 F.3d at 690. The district court properly held that Plaintiffs' claims regarding Minor League compensation fell squarely within the scope of the "business of baseball"—a finding that Plaintiffs do not even challenge here. And thus, the district court properly dismissed their claims.

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

In addition to the clear binding precedent from last year's opinion in *City of San Jose*, there is ample Supreme Court and congressional authority for affirming the district court's decision.

1. The Supreme Court has repeatedly held that baseball is exempt from antitrust regulation, including in cases where petitioners challenged the Minor League reserve clause.

Since 1922, the Supreme Court has held that the Clayton and Sherman Acts do not apply to the business of baseball. *See Fed. Baseball Club of Baltimore, Inc. v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200 (1922). While the Supreme

Court's Commerce Clause doctrine has changed over the last 94 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.

The Plaintiffs argue that they can avoid binding Supreme Court precedent because the Supreme Court's rationales for maintaining the exemption "have no basis." I ER A023–24 . But for the last sixty years, the Supreme Court has "upheld the baseball exemption for two fundamental reasons: (1) fidelity to the principle of *stare decisis* and the concomitant aversion to disturbing reliance interests created by the exemption; and (2) Congress's apparent acquiescence in the holdings of *Federal Baseball* and *Toolson*." *City of San José*, 776 F.3d at 689.[5]

Plaintiffs also argue that they can distinguish the Supreme Court's holdings because their complaint raises slightly different facts. Op. Br. at 6, 22 Again, that is not how *stare decisis* works. *See* above at 12–13. But more importantly, 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. And the Circuit Courts have uniformly held that "the Supreme Court intended to exempt the business of

[5] *See also 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).

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); *see also Major League Baseball v. Crist*, 331 F.3d 1177, 1183 (11th Cir. 2003). As the Ninth Circuit recently explained, baseball's antitrust exemption does ***not*** require a "fact-sensitive inquiry" because the 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).

Here, the Plaintiffs have targeted conduct at the core of the antitrust exemption. Plaintiffs allege that MLB and its 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. I ER A004, A013–14, A016, A023–27, A029, A031. 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. Plaintiffs claim that *Flood* only decided that the Major League reserve clause was exempt, and that *Flood* did not address the Minor League reserve clause. Op. Br. at 21–22. But the two clauses are the same. And the petitioner in *Flood* specifically and explicitly challenged the "legality . . . of Organized Baseball's 'reserve system'" for both the Major Leagues ***and*** the Minor Leagues. Brief for Petitioner, *Flood v. Kuhn*, No. 71-32, 407 U.S. 258,

1971 WL 133753, at *4. For example, the petitioner asserted that "the reserve system and the group boycott used to enforce [the reserve system] affect not only the 600 members of the Major League Players Association, but also countless numbers of unorganized players in the twenty-one **minor leagues**." *Id*. at *41–42 (emphasis added). The petitioner told the Supreme Court that the Minor League rules compelled players to sign a contract containing the reserve clause, and that this "eliminates competition in the recruitment and retention of the vast majority of minor league players who are not under major league contract. They suffer the same restrictions on their freedom to seek and obtain employment as do their major league brethren, and at markedly lower salaries." *Id.* at *8 n.5 (citing rules for Major and Minor Leagues, as described in *Flood v. Kuhn*, 316 F. Supp. 271, 274 n.4 (S.D.N.Y. 1970)). 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*, 316 F. Supp. at 273–76. The district court in *Flood* described the reserve 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, when the Supreme Court held in *Flood* that baseball's "reserve system" was outside "the reach of the federal antitrust laws," it exempted the entire "reserve system," including the Minor League reserve clause. *Flood*, 407 U.S. at 259, 267–68, 274, 281, 282, 283, 284.

And *Flood* isn't the only Supreme Court decision to discuss the Minor League reserve clause. In *Corbett v. Chandler*, which was published as *Toolson v. New York Yankees*, the Supreme Court rejected a challenge from a Minor League owner who claimed, among other contentions, that "Organized Baseball" was monopolizing players with the "reserve clause together with the [ ] **Minor League** contract." Brief for the Petitioner, *Corbett v. Chandler*, No. 51-25, 1953 WL 78337, at *31 (emphasis added). The Court rejected that challenge based on the antitrust exemption. *Corbett v. Chandler*, *decided sub nom. Toolson*, 346 U.S. at 357.

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's prior ruling—which held that the exemption covers the "entire 'business of providing public baseball games for profit between clubs of professional baseball players'"[6] and the Supreme Court—

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

which expressly held that the reserve clause is immune from antitrust challenge. In short, Plaintiffs ask this Court to commit legal error.

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

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. In fact, Congress has regularly considered legislation to address the existence and scope of professional baseball's antitrust exemption.[7]

Then, 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

[7] The *Flood* Court found it particularly relevant that, in the 19 years between *Toolson* and *Flood*, "more than 50 bills [were] introduced in Congress [on] 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*** related to the business of baseball, most of which raised questions about baseball's antitrust exemption. *See* Statutory and Legislative Addendum at pages 34-38.

certain antitrust recourse for injuries related to their employment. 15 U.S.C. § 26b(a). But Congress explicitly declined to repeal the exemption for 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 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. Judge Kozinski's opinion 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.* This Court should again apply the same reasoning regarding congressional intent, and take notice of the fact that the Minor League labor exclusion is located in the same statutory section as the franchise-relocation exclusion; consequently it should find 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 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. Minor League Baseball worried 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 as to the exemption's 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. Of course, 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.

3. To reverse Supreme Court precedent, Plaintiffs must address their complaints to the Supreme Court or Congress.

Plaintiffs spend the majority of their brief arguing that the Supreme Court decisions on antitrust exemption are not well-reasoned, but those are contentions for a petition for *certiorari*, not a brief to this Court. For example, Plaintiffs attack the Supreme Court's decisions by claiming that they misinterpreted the Sherman Act; that they have "no analysis, and respectfully, no basis"; that they are "erroneous[ ]"; and that they have been "proved . . . wrong." Op. Br. at 19, 21, 25. Plaintiffs also argue that "economic realities ha[ve] changed greatly" and that "it is time to take another look." Op. Br. at 25, 29.[8] Plaintiffs' arguments are unconvincing; indeed, many of these same arguments have already been rejected by the Supreme Court. *See Flood*, 407 U.S. at 274, 282–84. But if Plaintiffs want to try these arguments, again, they must direct them to the Supreme Court. Plaintiffs quote extensively from *Leegin* and *State Oil*,[9] but fail to acknowledge the key lesson of those cases: "it is [the Supreme] Court's prerogative alone to overrule one of its precedents." *State Oil Co. v. Kahn*, 522 U.S. 3, 20 (1997). And on this particular question—whether the business of baseball is subject to antitrust regulation—the Supreme Court has repeatedly declared that it won't reverse itself and that only Congress can change the law. *Toolson*, 346 U.S. at 357; *see also*

[8] The facts that Plaintiffs cite for the purported "changed circumstances" are beyond the facts alleged in the Complaint. *See* Op. Br. at 29–33. Even if the analysis that Plaintiffs propose was legally proper (it is not), there are no facts properly before the Court to support it.

[9] Op. Br. at 23–26.

Flood, 407 U.S. at 283-84, 285; *Radovich*, 352 U.S. at 450-51; *Int'l Boxing*, 348 U.S. at 244; *Shubert*, 348 U.S. at 229–30.

4. Plaintiffs ask this Court to commit legal error by ignoring binding precedent.

Finally, Plaintiffs ask this court straightforwardly to "not apply[ ]" the Supreme Court's binding precedent, as though lower courts can pick and choose which Supreme Court decisions they would like to follow. Op. Br. at 43. Unsurprisingly, Plaintiffs cite cases that do not actually support this lawless argument. *See* Op. Br. at 43–44. In *Gately v. Massachusetts*, for example, the First Circuit did not ignore a Supreme Court rule. 2 F.3d 1221, 1226–28 (1st Cir. 1993). On the contrary, the First Circuit noted that its prior precedent was based on very specific facts, and then it held that two intervening Supreme Court "pronouncements" had "altered" the "legal landscape" and "called into question" that prior precedent. *Id.* at 1228. The *Gately* court thus did not ignore the rules of *stare decisis*; rather, it dutifully followed the Supreme Court even though the Supreme Court's rulings conflicted with the First Circuit's prior precedent. Here, Plaintiffs point to no pronouncements by the Supreme Court that have similarly altered the legal landscape and eliminated the baseball exemption. And in *Brown v. Mesirow Stein Real Estate, Inc.*, the district court also did not ignore prior precedent. 7 F. Supp. 2d 1004, 1006 (N.D. Ill. 1998). Instead, the district court found that an older Seventh Circuit opinion had not actually "heard and decided" a

key issue, and therefore its status as *stare decisis* was "questionable." *Id.* More importantly, the district court identified several subsequent Seventh Circuit opinions that had decided the same issue in precisely the opposite way. *Id.* at 1006–08. Faced with an apparent intra-circuit split, the district court followed the more numerous, more recent, and more fully reasoned opinions. *Id.* Here, there is no split in authority on baseball's antitrust exemption and no reason for this Court to ignore binding precedent.

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 baseball's well-established antitrust exemption.

CONCLUSION

This Court should affirm the district court's judgment because Plaintiffs' claims are barred by baseball's antitrust exemption.

DATED: March 4, 2016

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STATEMENT ON ORAL ARGUMENT

Under Federal Rule of Appellate Procedure 34(a)(2), this "appeal is frivolous," the "dispositive issue . . . has been authoritatively decided," ***and*** the "legal arguments are adequately presented in the briefs and record." Therefore, MLB, the Commissioner Emeritus Allan Huber "Bud" Selig, and the 30 Clubs do not believe that oral argument is necessary.

DATED: March 4, 2016

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CERTIFICATE OF COUNSEL REGARDING RELATED CASES

Counsel for the Defendants / Appellees is not aware of any related case pending.

DATED: March 4, 2016

/s John W. Keker
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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 5,786 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface—14 point Times New Roman—using Microsoft Word 2010.

DATED: March 4, 2016

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STATUTORY AND LEGISLATIVE ADDENDUM

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). 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 the Business of Baseball 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).

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED: March 4, 2016

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