

1 JOSEPH W. COTCHETT (SBN 36324; jcotchett@cpmlegal.com)
2 PHILIP L. GREGORY (SBN 95217; pgregory@cpmlegal.com)
3 FRANK C. DAMRELL, JR (SBN 37126; fdamrell@cpmlegal.com)
4 ANNE MARIE MURPHY (SBN 202540; amurphy@cpmlegal.com)
5 **COTCHETT, PITRE & McCARTHY, LLP**
6 840 Malcolm Road, Suite 200
7 Burlingame, California 94010
8 Telephone: (650) 697-6000
9 Facsimile: (650) 692-3606

10 RICHARD DOYLE (SBN 88625; cao.main@sanjoseca.gov)
11 NORA FRIMANN (SBN 93249; cao.main@sanjoseca.gov)
12 **OFFICE OF THE CITY ATTORNEY**
13 200 East Santa Clara Street, 16th Floor
14 San José, California 95113
15 Telephone: (408) 535-1900
16 Facsimile: (408) 998-3131

17 *Attorneys for Plaintiffs the City of San José; the City of San José,*
18 *as successor agency to the Redevelopment Agency of the City of*
19 *San José; and the San José Diridon Development Authority*

20 **IN THE UNITED STATES DISTRICT COURT**
21 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
22 **SAN JOSE DIVISION**

23 **CITY OF SAN JOSÉ; CITY OF SAN**
24 **JOSÉ AS SUCCESSOR AGENCY TO**
25 **THE REDEVELOPMENT AGENCY OF**
26 **THE CITY OF SAN JOSÉ; and THE SAN**
27 **JOSÉ DIRIDON DEVELOPMENT**
28 **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

DECLARATION OF EXPERT WITNESS
ROGER G. NOLL IN SUPPORT OF
PLAINTIFFS’ OPPOSITION TO
DEFENDANTS’ MOTION TO DISMISS
PLAINTIFFS’ COMPLAINT UNDER
FEDERAL RULE OF CIVIL PROCEDURE
12(b)(6)

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

DECLARATION OF EXPERT WITNESS ROGER G. NOLL

1
2 1. My name is Roger G. Noll. I reside in Palo Alto, California. I am Professor
3 Emeritus of Economics at Stanford University and a Senior Fellow at the Stanford Institute for
4 Economic Policy Research, where I am Co-Director of the Program on Regulatory Policy. My
5 educational background includes a B.S. in mathematics from the California Institute of
6 Technology and a Ph.D. in economics from Harvard University. My complete curriculum vita is
7 attached as Appendix A.
8

9 2. My primary area of scholarship is the field of industrial organization economics,
10 which includes antitrust economics and the economics of specific industries. I have taught
11 antitrust economics at both the undergraduate and graduate levels. I am the author, co-author, or
12 editor of thirteen books, and the author or co-author of over 300 articles. Many of these
13 publications deal with antitrust economics. I also have published extensively on the economics of
14 sports, including *Sports, Jobs and Taxes*, co-edited with Andrew Zimbalist, which deals with the
15 economic impact of sports teams and facilities and for which Professor Zimbalist and I wrote a
16 chapter on the implications of the economic impact of teams and facilities for antitrust policy.
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18 3. I have served as a consultant in antitrust litigation, including matters pertaining to
19 sports. I have served as an economic expert for the players' association in all major U.S. team
20 sports (baseball, basketball, football, hockey, and soccer) on the economic effects of restrictions
21 on competition in markets for the playing services of professional athletes, including testimony at
22 trial in *Freeman McNeil, et al., vs. National Football League* (U.S. District Court, Minnesota) and
23 *John Mackey vs. National Football League* (U.S. district Court, Minnesota). In *Bernard Parrish,*
24 *et al., vs. National Football League Players Association* (U. S. District Court, Northern District of
25 California) I testified on behalf of the players' association about the value of licensing rights for
26 retired NFL players.
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4. Other cases in which I have testified at trial in recent years are the following:

- *In re Application of MobiTV Related to U.S. vs. ASCAP* (U.S. District Court, New York City);
- *Reggie White, et al., v. NFL: Lockout Insurance & Lockout Loans* (U.S. District Court, Minneapolis);
- *SmithKlein Beecham d/b/a GlaxoSmithKline vs. Abbott Laboratories* (U.S. District Court, Northern District of California, Oakland);
- *Novell vs. Microsoft* (U. S. District Court, Salt Lake City);
- *DVD CCA vs. Kaleidescape* (Superior Court, San Jose); and
- *In the Matter of Adjustment of Rates and Terms for Pre-existing Subscription and Satellite Digital Audio Radio Service* (Copyright Royalty Board, Washington, D.C.).

5. In addition to the cases in which I have testified at trial, I have submitted expert reports and/or been deposed in numerous matters. I have also testified before the U.S. Congress on antitrust and sports matters on numerous occasions.

ASSIGNMENT

6. Attorneys for Plaintiffs have asked me to analyze Plaintiffs’ allegations in this matter to determine the economic evidence and analysis that would be used to prove liability in support of their claims. In undertaking this task I have read the Complaint, which was filed on June 18, 2013. I also have read Defendants’ Motion to Dismiss, filed on August 7, 2013. Finally, I have made use of information that has been collected from other public sources and my four decades of research on the economics of sports.

7. The purpose of this Declaration is to provide a preliminary analysis of the economic issues in this litigation before discovery has taken place. Hence, I reserve the right to revise my analysis and amend my conclusions on the basis of new information that has not yet become available. In particular, I understand that this Declaration is being submitted in connection with settling of the pleadings and that I am not being asked to opine on the merits of the claims. I would like to have the benefits of the complete discovery record before reaching my conclusions on the merits.

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ANALYSIS

8. The objective of an antitrust economics analysis of liability is to determine whether conduct by Defendants caused harm to the competitive process. Ultimately, harm to the competitive process means harm to consumers, in this case sports fans. My main conclusion is that preventing the Oakland Athletics baseball team from moving to San Jose causes harm to competition because relocating to San Jose would substantially increase the potential fan base and attendance of the team.

9. Major League Baseball (“MLB”) is made up of thirty teams. These teams are economic competitors in many markets, including markets for players, coaches, regional television rights, and product licenses. If teams are geographically close, they also compete for attendance among sports fans in a local area. Presently MLB has local teams that compete for attendance in Baltimore-Washington, Chicago, Los Angeles, New York and the Bay Area.

10. Economics research and prior litigation have concluded that each major professional sports league in the U.S., including MLB, possesses market power in the provision of major league games in its sport in North America. Among the ways that MLB exercises its market power is by controlling the number and geographic location of major league baseball teams in North America. MLB has adopted rules that define the “home territory” of each team in the league and that place restrictions on franchise relocation. For now irrelevant historical reasons MLB has placed San Jose in the home territory of the San Francisco Giants, even though a team in San Jose would be less of a direct competitor to the Giants than is a team in Oakland because San Jose is much further than Oakland from the Giants’ home stadium.

11. One domain of competition in MLB as well as other professional sports is competition among cities to attract or to retain a team. Economics research shows that the financial success of a baseball team depends on the economic and demographic characteristics of its home territory, the quality of its home stadium, and the financial terms and other arrangements concerning the stadium. Cities actively compete for baseball teams on the basis of agreements that they offer to a team concerning a home stadium. The alleged anti-competitive conduct in this

1 case is Defendants' inhibition of competition and restraint of trade through the application of
2 restrictions on team relocation which are preventing the City of San José from competing with the
3 City of Oakland for the Athletics Baseball Club (Athletics).

4 12. Economists who have studied the location of teams in a league have concluded that
5 in some circumstances a league has a reasonable business justification for restricting relocation.
6 In particular, because the success of a league depends on the financial success of each team,
7 leagues have a valid interest in assuring that each team will enjoy sufficient popularity in its home
8 territory to be financially viable. This pro-competitive justification does not apply to MLB's
9 refusal to allow the Athletics to move to the City of San José.

10 13. San Jose is much more attractive than Oakland as a home location for a baseball
11 team for several reasons. First, San Jose has a much larger population base, and so substantially
12 greater potential home attendance for a local team. Second, San Jose is located in the Silicon
13 Valley, which is the corporate home to many of the world's leading high technology companies.
14 This feature of San Jose is important because an increasingly important component of the revenue
15 of a major league sports team is the sale of luxury boxes and other reserve seating to corporations,
16 law firms, and wealthy individuals. Third, San Jose has identified and made available to the
17 Athletics a location for a new stadium that will be a substantial improvement over the facility and
18 location where the Athletics currently play. For these reasons San Jose is a much more attractive
19 home territory for the Athletics than Oakland. Moreover, relocation to San Jose is financially
20 attractive to the Athletics precisely because it increases total economic output, which in sports is
21 the number of fans in attendance.

22 14. Competition in the local market for major league baseball would be enhanced if
23 the Athletics relocate to San José. By increasing the potential revenue of the Athletics, relocation
24 to San Jose would increase the financial incentive of the Athletics to field a team of higher
25 quality. Making the Athletics more competitive would intensify competition between the
26 Athletics and the San Francisco Giants, the other Bay Area major league baseball team.

27 15. MLB has not yet set forth its complete business justifications for preventing the
28 movement of the Athletics to San Jose, so a full analysis of this issue is not feasible at this time.

1 In antitrust economics, a restriction on competition can be justified only if it is reasonably
2 necessary to achieve a pro-competitive objective, which is defined as an improvement in
3 performance that benefits consumers. Given that San Jose is substantially more economically
4 attractive than Oakland as a home location for the Athletics, the only plausible reason for
5 preventing relocation of the Athletics to San Jose is to protect the Giants from more intense
6 competition from the Athletics.

7 16. Protecting an incumbent firm from losing business to a more efficient competitor
8 is never a reasonable business justification for a restriction on competition. In this instance, such
9 protection is especially unwarranted. Since moving to their new stadium in downtown San
10 Francisco, the Giants are among the most successful teams in MLB. Indeed, the success of the
11 Giants since relocating to a new and much superior stadium illustrates why the quality and
12 location of a stadium is extremely important to the success of a team. While the Giants will
13 experience more intense competition from the Athletics if the latter move into a much better
14 stadium in San Jose, historical experience with stadium improvements demonstrates that
15 increased attendance at home games of the Athletics will not come at the expense of the Giants,
16 just as the Giants' improved attendance since relocating to downtown San Francisco has not come
17 primarily at the expense of the Athletics.

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1 I declare that the foregoing is true to the best of my knowledge and belief. Executed on
2 September 6, 2013 at Stanford, California.

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5 **ROGER G. NOLL**
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