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

19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA / SAN JOSE DIVISION

21 CITY OF SAN JOSÉ; CITY OF SAN
22 JOSÉ AS SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF
23 THE CITY OF SAN JOSÉ; and THE SAN
JOSÉ DIRIDON DEVELOPMENT
24 AUTHORITY,

25 Plaintiffs,

v.

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

28 Defendants.

Case No. 13-CV-02787-RMW

**REPLY IN SUPPORT OF 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

1 Defendants have presented public records generated by federal, state, or municipal
2 government entities. They are all appropriate for judicial notice.

3 **A. Exhibit A**

4 Plaintiffs object to the authenticity of Exhibit A, a 2009 San Jose City Council
5 Resolution. The document is an official publication obtained from the City of San Jose's official
6 website ¹ and therefore it is self-authenticating under Federal Rule of Evidence 902(5). *Paralyzed*
7 *Veterans of Am. v. McPherson*, No. C 06-4670 SBA, 2008 WL 4183981, at *6-7 (N.D. Cal. Sept.
8 9, 2008) (concluding that reports issued by a public authority and published on the Secretary of
9 State's website were "self-authenticating"); *Estate of Gonzales v. Hickman*, No. ED CV 05-660
10 MMM (RCx), 2007 WL 3237727, at *2 n.3 (C.D. Cal. May 30, 2007) (holding that report issued
11 by the Inspector General and published on the Inspector General's website was self-
12 authenticating). A signed² and otherwise identical copy of the resolution is also available in a
13 different section of Plaintiffs' website. See "Option Agreement" Memorandum from Mayor
14 Chuck Reed to Rules and Open Government Committee" (Oct. 20, 2011) (attaching Resolution
15 No. 74908), available at <http://ca-sanjose.civicplus.com/Archive/ViewFile/Item/691>.

16 **B. Exhibits B and C**

17 Plaintiffs object to the authenticity of Exhibit B because "there are extraneous markings
18 on the cover page and the document is incomplete." Opp. to RFJN at 2:1-3. The first page of
19 Exhibit B bears a stamp and handwritten filing notations that were added by the UCLA Law

20 ¹ Plaintiffs make irrelevant arguments that Exhibit A should be disregarded because it is available
21 from a San Jose website that is no longer "updated." This web page is incorporated into the San
22 Jose City Clerk's active website, under the link labeled "Archived Agendas & Minutes." See
23 <http://sanjoseca.gov/index.aspx?NID=145>. The "root URL" that Plaintiffs attempt to disavow in
24 their Opposition is the City's online source for *all* City Council minutes and resolutions prior to
2013. Further, Exhibit A is the version of Resolution 74908 that is linked to, and referenced in,
the minutes for the May 12, 2009 San Jose City Council meeting at which the resolution was
adopted. San Jose cannot seriously contend that a City Council resolution that was incorporated
into City Council minutes on the City Clerk's website is inauthentic.

25 ² Plaintiffs' argument that Exhibit A is not signed and thus not authentic is unavailing. As an
26 official publication, it is self-authenticating under Fed. R. Evid. 902(5). Plaintiffs do not dispute
27 that resolutions are public records subject to judicial notice. *Thornbrough v. W. Placer Unified*
28 *Sch. Dist.*, No. 2:09-cv-02613-GEB-GGH, 2010 WL 2179917, at *2 (E.D. Cal. May 27, 2010)
(taking judicial notice of school district's resolution because it was a matter of public record);
Meeker v. Belridge Water Storage Dist., No. 1:05-CV-00603 OWW SMS, 2006 U.S. Dist.
LEXIS 91775, at *31-32 (E.D. Cal. Oct. 23, 2006) (taking judicial notice of a copy of the
Belridge Water Storage District's resolution, a public record).

1 Library. RFJN Ex. B. Defendants obviously do not ask this Court to take judicial notice of these
2 markings. *See Dent v. Holder*, 627 F.3d 365, 371–72 (9th Cir. 2010) (taking judicial notice of
3 government records but not taking notice of handwritten notations or stamps on certain
4 documents in the records). This congressional record comes from an official publication of the
5 United States, and is therefore self-authenticating under Federal Rule of Evidence 902(5).
6 Further, judicial notice of an excerpt is proper. *See, e.g., Pentair Thermal Mgmt., LLC v. Rowe*
7 *Indus., Inc.*, No. 06-cv-07164 NC, 2013 WL 1320422, at *4 (N.D. Cal. Mar. 31, 2013) (taking
8 judicial notice of an excerpt of a guide published by the EPA).

9 Plaintiffs also object that the legislative history contained in Exhibits B and C is “offered
10 solely as legal argument.” Opp. to RFJN at 2:7, 2:14–15. That is incorrect and not a valid reason
11 for the Court to decline to take judicial notice. Defendants have presented legislative history
12 regarding Congress’s treatment of the baseball antitrust exemption to show Congress’s purpose
13 and intent for enactment of the Curt Flood Act. Federal district courts regularly, and
14 appropriately, take notice of legislative history to aid in their interpretation of statutes. *See, e.g.,*
15 *Palmer v. Stassinos*, 348 F. Supp. 2d 1070, 1077, 1080–82 (N.D. Cal. 2004). And Defendants
16 may rely on judicially noticed documents in their argument. *Davenport v. Bd. of Trs.*, 654 F.
17 Supp. 2d 1073, 1095 (E.D. Cal. 2009) (granting request for judicial notice of matters of public
18 record used to support the defendant’s argument); *Glover v. Fremont Inv. & Loan*, No. C-09-
19 03922 (JCS), 2009 WL 5114001, at *2 (N.D. Cal. Dec. 18, 2009) (taking judicial notice of
20 documents used to support the defendant’s argument on motion to dismiss).

21 **C. Exhibits D & E**

22 Plaintiffs do not dispute that “[j]udicial notice is appropriate for records and reports of
23 administrative bodies,” such as Exhibits D and E. *United States v. 14.02 Acres*, 547 F.3d 943,
24 955 (9th Cir. 2008) (internal quotation marks omitted). Defendants request judicial notice of
25 Exhibit D, the California State Controller’s March 2013 Review Report and Exhibit E, the
26 memorandum of the San Jose City Manager and San Jose Redevelopment Agency Executive
27 Director dated October 24, 2011; Defendants have not requested judicial notice of any “assertions
28 of what the contents mean.” Opp. to RFJN at ¶ 4; *see Boysen v. Walgreen Co.*, No. C 11-06262

1 SI, 2012 WL 2953069, at *1 n.2 (N.D. Cal. July 19, 2012); *see also In re LeapFrog Enters., Inc.*
2 *Sec. Litig.*, 527 F. Supp. 2d 1033, 1042 (N.D. Cal. 2007) (“By granting defendants’ request for
3 judicial notice, the court does not purport to accept defendants’ interpretation of the matters
4 therein.”).

5 For the foregoing reasons, the Court should grant the Defendants’ Request for Judicial
6 Notice.

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8 Dated: September 20, 2013

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10 By: /s/ John Keker
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