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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID GONZALEZ CAMACHO, <i>et al.</i> ,	}	Case No. 12-cv-2859-L(BGS)
Plaintiffs,	}	ORDER GRANTING DEFENDANTS' MOTION TO DISMISS [DOC. 12]
v.	}	
MAJOR LEAGUE BASEBALL, <i>et al.</i> ,	}	
Defendants.	}	

On November 30, 2012, Plaintiffs David Gonzalez Camacho and Daniel Arrellano Pesqueira commenced this tort action against multiple defendants.¹ This action arises from allegations that Major League Baseball conspired with the Mexican Major Leagues to prevent baseball prospect Daniel Pesqueira from playing baseball in the United States. Pending before the Court is the Office of the Commissioner of Baseball (d/b/a Major League Baseball), Major League Baseball Enterprises, Inc., and Major League Baseball Properties, Inc.'s motion to

¹ The defendants in this action are Major League Baseball, Major League Baseball Enterprises, Inc., Major League Baseball Properties, Inc., Office of the Commissioner of Baseball, National Association of Professional Baseball Leagues, National Association of Professional Baseball Leagues, Inc., and Minor League Baseball.

1 dismiss pursuant to Federal Rule of Civil Procedure 12(b)(7).² Plaintiffs oppose the motion.

2 The Court found this motion suitable for determination on the papers submitted and
3 without oral argument. *See* Civ. L.R. 7.1(d.1). (Doc. 19.) For the following reasons, the Court
4 **GRANTS** Defendants’ motion to dismiss.

5
6 **I. BACKGROUND³**

7 Mr. Gonzalez is a citizen of Mexico, “who is domiciled and does business in the City of
8 Tijuana . . . in the country of Mexico, and who does business and resides in the County of San
9 Diego, California, USA.” (First Am. Compl. (“FAC”) ¶ 4.) He is and was “engaged in the
10 training, support, promotion and representation of young, talented and high caliber Mexican
11 baseball players for eventual placement in international major and minor leagues, including
12 Major and Minor League baseball conducted in the United States[.]” (*Id.*) Mr. Pesqueira is a
13 citizen of Mexico who resides in Tijuana, Mexico. (*Id.*)

14 On April 1, 2010, Mr. Gonzalez entered into an “Exclusive Agency Contract” with Mr.
15 Pesqueira’s parents on behalf of Mr. Pesqueira, who was a minor at the time. (FAC ¶ 15.)
16 Under the agency contract, Mr. Pesqueira provided Mr. Gonzalez with, among other things, the
17 “exclusive rights to represent Pesqueira in the negotiation for and contracting of any and all
18 services of Pesqueira as a baseball player for any club in the major and/or minor leagues of any
19 and all countries at any level of play; and Plaintiff Pesqueira agreed that Plaintiff Gonzalez
20 would receive a 30% commission on any and all receipts and entitlements of Pesqueira for his
21 services as a baseball player for a three year term.” (*Id.* ¶ 16.) Plaintiffs allege that Mr.
22 Pesqueira is “a young, talented, and burgeoning Mexican baseball player who at all times
23 relevant was and is a formidable left handed pitcher.” (*Id.* ¶ 15.) And pursuant to the terms of

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25 _____
26 ² The Court will refer to the defendants moving to dismiss collectively as “Defendants”
for the purposes of this motion.

27 ³ In the complaint, David Gonzalez Camacho is referred to as “Gonzalez,” and Daniel
28 Arrellano Pesqueira, who is also once mentioned as “Daniel Pesqueira Arellano,” is referred to
as “Pesqueira.” The Court will follow the same naming convention, and refer to the plaintiffs as
Mr. Gonzalez and Mr. Pesqueira.

1 the contract, Mr. Gonzalez began to train and promote Mr. Pesqueira, eventually garnering the
2 interest of talent scouts. (*Id.* ¶ 15-2.⁴)

3 On February 17, 2012, the Boston Red Sox invited Mr. Pesqueira to train with the team
4 for spring training in Fort Meyers, Florida. (FAC ¶ 15-2.) Then on March 6, 2012, a scout for
5 the Boston Red Sox notified Mr. Gonzalez that Mr. Pesqueira would be returned to Mexico
6 “based upon the direction of Major League Baseball” because Mr. Pesqueira “belonged to a
7 Mexican league team and could not play in the major leagues without the consent of the
8 Mexican league team.” (*Id.* ¶ 16-2.) Plaintiffs dispute the validity of this explanation, which
9 they describe as a “completely false” premise. (*See id.*) Major League Baseball also advised
10 Mr. Gonzalez that Mr. Pesqueira “was and is on the reserve list of the Association of
11 Professional Baseball Teams of the Mexican Leagues, therefore, he was ineligible to play for the
12 Boston Red Sox.” (*Id.*)

13 At Mr. Gonzalez’s request, Major League Baseball forwarded a copy of the “contractual
14 documentation” between Mr. Pesqueira and the Mexican League team called the Diablos Rojos
15 (“Red Devils”). (FAC ¶ 18.) Plaintiffs describe the documentation as containing “two
16 preprinted, form pages, each prepared in Spanish[,]” without any contractual terms. (*Id.*) One
17 page—titled “Contract for Professional Services”—includes Mr. Pesqueira’s signature from
18 January 1, 2010 with a start date of March 22, 2009, and a second page with the same title
19 includes Mr. Pesqueira’s signature from and with a start date of March 21, 2011. (*Id.*) The
20 former purportedly covers the 2009 Mexican baseball season, and the latter covers the 2011
21 season. Plaintiffs allege that at both times Mr. Pesqueira was under 18 years old, having been
22 born on April 6, 1994. (*Id.*) They also note that the earlier contract bears Mr. Pesqueira’s father
23 signature, though the later one does not. (*Id.* ¶ 19.)

24 According to Plaintiffs, Mr. Pesqueira and his father confirmed that they did not sign
25 either of the documents provided by Major League Baseball. (FAC ¶¶ 19–20.) They believe
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27
28 ⁴ The complaint includes two paragraph 15s and two paragraph 16s. The Court will refer to the second paragraph 15 as paragraph 15-2, and the second paragraph 16 as 16-2.

1 that “either or both signatures of Pesqueira on each document has or have been fraudulently
2 lifted from another document and transferred onto these documents, and that these documents
3 are not authentic.” (*Id.* ¶ 19.)

4 Sometime thereafter, Mr. Gonzalez made a legal request to produce “any and all contracts
5 or documents signed by Pesqueira, his parents or legal representatives binding him in any way to
6 the Red Devils, to any other baseball team and/or to the Association of Professional Baseball
7 Teams of the Mexican Leagues.” (FAC ¶ 22.) On February 23, 2011, the Association of
8 Professional Baseball Teams of the Mexican Leagues timely complied, and produced a contract
9 similar to the aforementioned ones. (*Id.* ¶ 24.) However, this contract contained a signature of
10 Mr. Pesqueira dated January 1, 2010 with a March 22, 2010 start date, covering the 2010
11 Mexican baseball season. (*Id.*) Plaintiffs allege that Mr. Pesqueira’s signature on this contract is
12 the “exact same signature[.]” as contained in the earlier documents meant to cover the 2009
13 baseball season. (*Id.*) Two other documents were also produced: a document “purported to be a
14 Mexican Federal Institute of Elections ID Card of Alberto Pesqueira Corrales, the biological
15 father of Pesqueira,” and a “purported copy of Pesqueira’s birth certificate.” (*Id.*) Plaintiffs
16 allege that no documentation was produced at the time pertaining to Mr. Pesqueira and the 2011
17 Mexican baseball season. (*Id.* ¶ 25.)

18 Plaintiffs continued their investigation. (FAC ¶¶ 26–32.) Either during or after the
19 investigation, Mr. Gonzalez “encouraged and facilitated efforts of Major League Baseball to
20 communicate and work with the Association of Professional Baseball Teams of the Mexican
21 Leagues and the Red Devils of Mexico to verify that in fact Pesqueira was free to train and
22 contract with the Boston Red Sox or any other team.” (*Id.* ¶ 32.) Plaintiffs allege that Major
23 League Baseball did indeed communicate with the Mexican League and “confirmed that
24 Pesqueira in fact was not committed to in any way, nor under contract with, the Association of
25 Professional Baseball Teams of the Mexican Leagues and the Red Devils of Mexico.” (*Id.*)

26 Plaintiffs commenced this action on November 30, 2012. They subsequently amended
27 their complaint after it was dismissed without prejudice for lack of subject-matter jurisdiction.
28 In the FAC, they assert the following claims against all of the defendants for: (1) intentional

1 interference with economic relations; (2) intentional interference with prospective economic
2 advantage; (3) negligent interference with economic relations; (4) negligent interference with
3 prospective economic relations; (5) declaratory relief; (6) negligence; and (7) unfair business
4 practices. Defendants now move to dismiss under Rule 12(b)(7). Plaintiffs oppose.

6 **II. LEGAL STANDARD**

7 A party may move to dismiss a case for “failure to join a party under Rule 19.” Fed. R.
8 Civ. P. 12(b)(7). Rule 19 imposes a three-step inquiry: (1) Is the absent party necessary (i.e.,
9 required to be joined if feasible) under Rule 19(a)?; (2) If so, is it feasible to order that absent
10 party to be joined?; and (3) If joinder is not feasible, can the case proceed without the absent
11 party, or is the absent party indispensable such that the action must be dismissed? *Salt River*
12 *Project Agric. Improvement & Power Dist. v. Lee*, 672 F.3d 1176, 1179 (9th Cir. 2012). The
13 terms “necessary” and “feasible” are “terms of art in Rule 19 jurisprudence”: “Necessary” refers
14 to a party who should be joined if feasible; and “indispensable” refers to “a party whose
15 participation is so important to the resolution of the case that, if the joinder of the party is not
16 feasible, the suit must be dismissed.” *Disabled Rights Action Comm. v. Las Vegas Events, Inc.*,
17 375 F.3d 861, 867 n.5 (9th Cir. 2004). The failure to join a party under Rule 19 can only lead to
18 dismissal of a suit where the court cannot obtain jurisdiction over the necessary party and that
19 party is determined to be indispensable to the action. *See* Fed. R. Civ. P. 19(a).

20 “The Ninth Circuit has held that a court should grant a 12(b)(7) motion to dismiss only if
21 the court determines that joinder would destroy jurisdiction and the nonjoined party is necessary
22 and indispensable.” *Biagro W. Sales Inc. v. Helena Chem. Co.*, 160 F. Supp. 2d 1136, 1141
23 (E.D. Cal. 2001). “A motion to dismiss for failure to join an indispensable party requires the
24 moving party to bear the burden in producing evidence in support of the motion.” *Id.* “A Rule
25 12(b)(7) motion for failure to join an indispensable party demands a fact specific and practical
26 inquiry.” *Id.*; *see Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990). “To
27 determine whether Rule 19 requires the joinder of additional parties, the court may consider
28 evidence outside the pleadings.” *McShan v. Sherrill*, 283 F.2d 462, 464 (9th Cir. 1960).

1 **III. DISCUSSION⁵**

2 Defendants argue that both the Red Devils and the Mexican League are necessary parties
3 that cannot be feasibly joined to this action because (1) a determination of the validity of Mr.
4 Pesqueira’s alleged contracts with the Red Devils is necessary, and (2) joining the parties would
5 vitiate this Court’s subject-matter jurisdiction and Plaintiffs cannot establish personal
6 jurisdiction over these absent parties in this Court. Plaintiffs present their claims very differently
7 in their opposition brief compared to the allegations in the complaint. In a disingenuous early-
8 inning strategic shift, they direct the focus of this action on Mr. Gonzalez’s agency contract with
9 Mr. Pesqueira, arguing that the Red Devils and Mexican League are “joint tortfeasors” that are
10 not necessary parties to litigate the claims asserted in this action. (*See* Pls.’ Opp’n 8:14–16:24.)
11 Plaintiffs swing for the fences, but ultimately come up short.

12 Upon reviewing the allegations in the complaint, it is clear that the threshold issue in this
13 action is the validity of the alleged contracts entered into between Mr. Pesqueira and the Red
14 Devils. Plaintiffs proceed with their action under the presumption that those contracts are
15 invalid—because Mr. Pesqueira was a minor at the time the contracts were executed, or because
16 the signatures were “fraudulently lifted from another document and transferred onto these
17 documents.” (*See* FAC ¶¶ 18–20, 24.) These allegations in the complaint overwhelmingly
18 demonstrate that this entire action hinges on one game-winning issue—the validity of the Red
19 Devils contracts. The Court emphasizes that determining the validity of the alleged contracts
20 between Mr. Pesqueira and the Red Devils is outside the scope of this series. Therefore, the
21 Court rejects the disingenuous shifted premise that Plaintiffs present in their opposition brief,
22 and shall proceed analyzing Defendants’ motion while recognizing that the validity of the
23 alleged contracts entered into between Mr. Pesqueira and the Red Devils is the go-ahead run.

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27 ⁵ Plaintiffs object to *every* exhibit that Defendants provide. (Docs. 22-1, 26.) Most of the
28 Court’s analysis relies on the allegations in the complaint, but insofar as the Court’s reliance on
any of the evidence that Defendants present, the Court **OVERRULES** Plaintiffs’ objections.

1 **A. The Red Devils and the Mexican League Are Necessary Parties.**

2 A party is necessary if: (1) complete relief cannot be granted in the party’s absence; or (2)
3 the district court determines that “the absent party’s participation is necessary to protect its
4 legally cognizable interests or to protect other parties from a substantial risk of incurring
5 multiple or inconsistent obligations because of those interests.” *Disabled Rights Action Comm.*,
6 375 F.3d at 878 (quoting Fed. R. Civ. P. 19(a)). Such a legally cognizable interest must be more
7 than a financial stake in the outcome of the litigation. *Makah Indian Tribe*, 910 F.2d at 558.
8 Defendants demonstrate that the Red Devils and the Mexican League are necessary parties under
9 the latter of the two aforementioned definitions. *See Disabled Rights Action Comm.*, 375 F.3d at
10 878.

11 Under Rule 19(a)(1)(B)(i), an absent party is necessary if it “has a *legally protected*
12 *interest in the suit*” and “that interest will be *impaired or impeded* by the suit.” *Makah Indian*
13 *Tribe*, 910 F.2d at 558 (emphasis in original). “Impairment may be minimized if the absent party
14 is adequately represented in the suit.” *Id.* It is also a “fundamental principle” that “a party to a
15 contract is necessary, and if not susceptible to joinder, indispensable to litigation seeking to
16 decimate that contract.” *Dawavendewa v. Salt River Project Agric. Improvement & Power Dist.*,
17 276 F.3d 1150, 1157 (9th Cir. 2002).

18 Plaintiffs unequivocally seek a judicial determination of their rights and duties under the
19 alleged contracts between Mr. Pesqueira and the Red Devils. (*See* FAC ¶¶ 67–69.) In the
20 complaint, Plaintiffs explicitly state that they desire “a declaration as to whether or not Pesqueira
21 is bound to the Red Devils of Mexico.” (*Id.* ¶ 68.) They even go as far as to state that a “judicial
22 declaration is *necessary* and appropriate at this time under the circumstances” because without
23 the declaration, they are “financially burdened by the wrongful position taken by defendants
24 Major League Baseball, and unable to work in their chosen professions.” (*Id.* ¶ 69 (emphasis
25 added).) In other words, determining the validity of the Red Devils contracts is necessary to
26 resolve essentially all of the wrongful conduct alleged in this action. The same applies to the
27 Mexican League because of its bylaws and regulations that require disputes between players and
28 member teams to be resolved by binding arbitration before the Executive President of the

1 Mexican League. (*See* Defs.’ Ex. E-1; S. Gonzalez Decl. ¶ 4.)

2 Neither the Red Devils nor the Mexican League are represented in this action, and a
3 determination by this Court regarding the validity of the Red Devils contracts may impair and
4 impede the Red Devils’ and the Mexican League’s legally protected interest in this suit. *See*
5 *Makah Indian Tribe*, 910 F.2d at 558. Keeping with the baseball theme, a batter cannot record a
6 base hit or a home run against an absent pitcher; that pitcher needs to be in the game before that
7 happens. *See id.* In this circumstance, the absent pitchers are the Red Devils and the Mexican
8 League. *See id.* Therefore, as a party to the Red Devils contracts, the Red Devils, and by
9 extension the Mexican League, are necessary parties. *See Dawavendewa*, 276 F.3d at 1157.

10 Alternatively, under Rule 19(a)(1)(B)(ii), an absent party is also necessary if there is a
11 potential risk that adjudicating an action without the absent party could leave an existing party
12 open to “incurring double, multiple, or otherwise inconsistent obligations.” Fed. R. Civ. P.
13 19(a)(1)(B)(ii). The Ninth Circuit has stated that

14 “[i]nconsistent obligations” are not . . . the same as inconsistent
15 adjudications or results. Inconsistent obligations occur when a party is
16 unable to comply with one court’s order without breaching another
17 court’s order concerning the same incident. Inconsistent adjudications
or results, by contrast, occur when a defendant successfully defends a
claim in one forum, yet loses on another claim arising from the same
incident in another forum.

18 *Cahill Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California*, 547 F.3d 962, 976
19 (9th Cir. 2008) (quoting *Delgado v. Plaza Las Americas, Inc.*, 139 F.3d 1, 3 (1st Cir. 1998)).

20 Defendants argue that “the Red Devils could still sue others in the Mexican courts and
21 elsewhere for wrongfully interfering with its contract with Mr. Pesqueira[,]” and “[t]his action
22 will not have any binding effect on the Red Devils unless the team is made a party to this case.”
23 (Defs.’ Mot. 11:10–19.) The concern that Defendants suggest is important, but for the purposes
24 of Rule 19, the paramount concern is a Mexican court or another in the United States
25 determining that the Red Devils contracts are valid if this Court finds that they are not, or vice
26 versa. That would produce inconsistent obligations for all of the parties in this action in addition
27 to the Red Devils because operating under one court’s determination would then necessarily
28 cause the parties to breach another court’s determination regarding the same issue, i.e., the

1 validity of the Red Devils contracts. *See Cahill Dehe Band of Wintun Indians*, 547 F.3d at 976.
2 Therefore, because of the risk of inconsistent obligations, the Red Devils are a necessary party to
3 this action. *See id.*

4 Swing and a miss—strike one.

5
6 **B. Joining the Red Devils and the Mexican League Is Not Feasible.**

7 “If an absentee is a necessary party under Rule 19(a), the second stage is for the court to
8 determine whether it is feasible to order that the absentee be joined.” *Equal Emp’t Opportunity*
9 *Comm’n v. Peabody W. Coal Co.*, 400 F.3d 774, 779 (9th Cir. 2005). Rule 19(a) sets forth three
10 circumstances in which joinder is not feasible: (1) when venue is improper; (2) when the
11 absentee is not subject to personal jurisdiction; and (3) when joinder would destroy subject
12 matter jurisdiction. *See id.* (citing Fed. R. Civ. P. 19(a); *Tick v. Cohen*, 787 F.2d 1490, 1493
13 (11th Cir. 1986)).

14 Defendants argue that “[t]he Red Devils and the Mexican League cannot be joined both
15 because their joinder would destroy this Court’s subject-matter jurisdiction, and because
16 Plaintiffs cannot establish personal jurisdiction over them in this Court.” (Defs.’ Mot.
17 11:20–13:27.) Plaintiffs do not address feasibility in their opposition brief. In fact, the words
18 “feasible” and “feasibility” do not appear anywhere in their brief. Consequently, Plaintiffs
19 concede that joining the Red Devils and the Mexican League is not feasible under the second
20 and third circumstances that Rule 19 enumerates. *See Civ. L.R. 7.1(f.3.c)*. They took this pitch
21 and it went right down the middle—strike two.

22
23 **C. The Red Devils and Mexican League Are Indispensable Parties.**

24 If the necessary party cannot be joined, the court must then determine whether the party is
25 indispensable. *Kescoli v. Babbitt*, 101 F.3d 1304, 1309 (9th Cir. 1996). Under Rule 19(b),
26 indispensable parties are “persons who not only have an interest in the controversy, but an
27 interest of such a nature that a final decree cannot be made without either affecting that interest,
28 or leaving the controversy in such a condition that its final termination may be wholly

1 inconsistent with equity and good conscience.” *Shields v. Barrow*, 58 U.S. 130, 139 (1854).
2 Rule 19(b) provides the factors that courts should consider in determining if an action should be
3 dismissed because an absent party is indispensable: (1) prejudice to any party or to the absent
4 party; (2) whether relief can be shaped to lessen prejudice; (3) whether an adequate remedy, even
5 if not complete, can be awarded without the absent party; and (4) whether there exists an
6 alternative forum. Fed. R. Civ. P. 19(b); *see also Confederated Tribes of Chehalis Indian*
7 *Reservation v. Lujan*, 928 F.2d 1496, 1498 (9th Cir. 1991). Furthermore, “[n]o procedural
8 principle is more deeply imbedded in the common law than that, in an action to set aside a lease
9 or a contract, all parties who may be affected by the determination of the action are
10 indispensable.” *Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1325 (9th Cir. 1975).

11 Plaintiffs’ primary arguments addressing indispensability are: (1) Defendants fail to meet
12 their burden, in part, because all of the cases cited are distinguishable, and (2) in equity and good
13 conscience, this case should be allowed to proceed regardless of whether the Red Devils and the
14 Mexican League are indispensable. (Pls.’ Mot. 16:24–22:12.) The Court rejects these
15 arguments. Plaintiffs either misread or misunderstand the cited case law, and they also fail to
16 provide any law themselves that provides an avenue for this Court to bypass Rules 12(b)(7) and
17 19 and all of the related case law as they implore the Court do.

18 Rather, in seeking a determination that the Red Devils contracts are invalid, Plaintiffs are,
19 for all practical purposes, attempting to set aside a contract. And it is evident from the
20 allegations in the complaint that the Red Devils, as a party to the alleged contracts, and by
21 extension the Mexican League, are parties that will be affected by any determination regarding
22 the validity of the contracts. If Plaintiffs want to record an earned run against the absent
23 pitchers, Plaintiffs need to face them. Thus, under *Lomayaktewa*, the Red Devils and the
24 Mexican League are indispensable parties to this action. *See Lomayaktewa*, 520 F.2d at 1325.
25 Consequently, all four of the Rule 19(b) factors weigh in favor of dismissal. *See Fed. R. Civ. P.*
26 *19(b)*. And finally, strike three—out.

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1 **IV. CONCLUSION & ORDER**

2 In light of the foregoing, the Court **GRANTS** Defendants' motion to dismiss under Rule
3 12(b)(7) and **DISMISSES** this action in its entirety. (Doc. 12.)

4 **IT IS SO ORDERED.**

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6 DATED: December 19, 2013

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8 M. James Lorenz
9 United States District Court Judge
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