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CITY OF ANAHEIM

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

13 CITY OF ANAHEIM, a charter city and
14 municipal corporation,

15 Plaintiff,

16 vs.

17 ANGELS BASEBALL, L.P., a California
18 limited partnership; and DOES 1 through 100,
inclusive,

19 Defendants.

Case No.: 05CC01902

Judge: Hon. Peter J. Polos
Dept.: C26

**CITY OF ANAHEIM'S REPLY
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
REQUEST FOR PRELIMINARY
INJUNCTION**

Preliminary Injunction Hearing

Date: Jan. 21, 2005
Time: 9:00 a.m.
Dept.: C26

Action Filed: Jan. 5, 2005
Trial Date: None Set

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. DEFENDANT’S DISPARAGEMENT OF THE NAME ANAHEIM HAS SENT THE**
3 **MESSAGE THAT THE CITY OF ANAHEIM IS NOT A MAJOR LEAGUE CITY,**
4 **BUT A BUSH LEAGUE CITY.**

5 When the Anaheim Angels won the world series in 2002, Anaheim was known throughout
6 the nation as a “major league” city. Now, Defendant is telling the country that Anaheim is not.
7 Defendant is telling the nation that it does not want its name associated with what it considers to
8 be bush league Anaheim. It spurns Anaheim for “first class” Los Angeles. It is an act of
9 disassociation. It is an act of disparagement.

10 Yet Defendant contends that it is technically complying with a contractual provision that
11 was designed to identify the team with Anaheim and to enhance Anaheim’s nationwide
12 prominence and prestige. This intent of the parties is obvious by the contractual provision itself;
13 why else would the parties require that Anaheim be in the team name? But, going beyond what
14 should be obvious, the City has submitted overwhelming evidence in declarations that this major
15 league city identification is exactly what Disney and the City intended. Only through doublespeak
16 can Defendant’s actions be argued to be consistent with its contractual obligations.

17 In reality, the baseball team’s new ownership is seeking to “write out” from its agreement
18 the requirement that the baseball team be identified with Anaheim. Today, through the name,
19 “The Los Angeles Angels of Anaheim”, it relegates Anaheim to nothing more than a useless
20 appendage that is already being dropped from use in the team name. The transparent intent is
21 shown by Defendant’s argument that Anaheim need never have been publicized as part of the
22 team name, but that it would have been enough to make the team name part of a corporate filing
23 tucked away in a forgotten drawer. Even further, Defendant argues that Anaheim only needed to
24 be part of the team name for one bright shining moment, and anytime afterwards, Anaheim could
25 be discarded from the team name in the team’s unfettered discretion.

26 It is Defendant that is attempting to rewrite the agreement and write Anaheim out. The
27 evidence of the meaning and purpose of the team name provision in the agreement is
28 overwhelming and this evidence is absolutely admissible to prove the parties’ obligations and
intent. In fact, the evidence of the intent to identify Anaheim as a major league city throughout the

1 nation is unrefuted. Arguments that lawyers could have or should have written documents better
2 (which is almost always the case in retrospect), do not impact the unrefuted and overwhelming
3 evidence of what the parties meant by the obligation to make Anaheim part of the team name.
4 Anaheim will be irreparably harmed if Defendant is not enjoined from implementing the name
5 change to the Los Angeles Angels (...of Anaheim). Through Defendant's breach of the covenant
6 of good faith and fair dealing, Anaheim will not only be deprived of nationwide recognition as a
7 major league city (the benefit the parties bargained to confer on Anaheim), but Anaheim will be
8 disparaged as a second class city the Angels would like the fans to forget.

9 The City of Anaheim is entitled to a preliminary injunction stating that Defendant refrain
10 from calling the baseball team the "Los Angeles Angels" or the "Los Angeles Angels of
11 Anaheim" because:

12 1. The Covenant of Good Faith and Fair Dealing implied in every agreement requires
13 that one party to an agreement not act to deprive the other party of the bargained for benefits of the
14 agreement.

15 2. The fact that the purpose of § 11(f) was to identify Anaheim with the team so as to
16 promote Anaheim as a Major League City is obvious from the provision itself, why else would the
17 parties require that Anaheim be in the team name?

18 3. Evidence of the parties' intent is clearly admissible in California to prove the
19 meaning of an agreement and to interpret the parties' obligations. Anaheim has provided
20 overwhelming, uncontradicted evidence that the parties' intent concerning the team name was to
21 identify Anaheim with the team so as to promote Anaheim as a Major League City throughout the
22 nation when the baseball team was referenced.

23 4. The evidence of this intent includes declarations from the principal negotiators of
24 the agreement which show that this intent was specifically discussed and shared by both parties.
25 The evidence also includes the custom and practice in the Major League Baseball industry,
26 whereby only one geographical name has ever been used in a team name and whereby the city or
27 other geographical name is prominently publicized throughout the nation, thereby closely
28 associating and identifying the city or geographical area with the team. The evidence of intent

1 also includes the conduct of the parties in implementing the agreement whereby the team name
2 was used throughout the nation to closely identify Anaheim with the team and promote Anaheim
3 as a Major League City, like other cities with MLB teams.

4 5. Having established through overwhelming, uncontradicted evidence that the parties
5 intended Anaheim to benefit by being closely identified with the team through the team name and
6 by being promoted through the team name as a Major League City, the covenant of good faith and
7 fair dealing bars Defendant from denying this benefit to Anaheim through a change in the team
8 name that would not only fail to promote Anaheim as a Major League City, but which effectively
9 disparages Anaheim as bush league.

10 6. The unprecedented inclusion of Los Angeles as the first of two geographical names
11 in the team name, with Anaheim being relegated to the overshadowed tail of the name, makes the
12 name Anaheim a useless appendage that is already routinely being discarded.

13 7. Defendant's arguments that the lawyers could have been more specific in the
14 agreement are irrelevant, it can almost always be said that lawyers could have made agreements
15 clearer and they often fail to anticipate bad faith conduct by the other party.

16 8. Defendant's "straw man" argument that Anaheim is trying to rewrite § 11(f) to
17 require the team to forever be named the "Anaheim Angels" is not accurate. Anaheim is simply
18 asserting that the team name can not be changed to Los Angeles Angels or Los Angeles Angels of
19 Anaheim, and it will assert that the name can not be changed to any other name that denies
20 Anaheim the benefit of being closely identified with the team so as to promote Anaheim as a
21 Major League City.

22 9. Clearly, Defendant will be irreparably harmed if the name change is not enjoined.
23 Cases hold that damages are inadequate as a matter of law for harm caused by failure to publicize
24 a plaintiff's name or when conduct threatens a loss of goodwill. Moreover, the parties stipulated in
25 Section 35 of the Agreement that the damages would be an inadequate remedy for breach of the
26 obligations concerning the team name obligation and that injunctive relief would be appropriate to
27 enforce the obligation.

28 10. Defendant's alleged loss of ill-gotten future profits from its breach through the

1 name change is not a factor the courts consider when balancing the hardships on a request for a
2 preliminary injunction.

3 **II. THE CITY AND THE BASEBALL TEAM AGREED THAT THE CITY OF**
4 **ANAHEIM WOULD BE IDENTIFIED WITH THE BASEBALL TEAM TO**
5 **PUBLICIZE ANAHEIM AS A MAJOR LEAGUE CITY THROUGHOUT THE**
6 **NATION.**

7 Defendant Angels Baseball, L.P. violated Section 11(f) of its 1996 Lease Agreement with
8 the City by publicly announcing on January 3, 2005 that it has changed the official name of the
9 baseball team from the Anaheim Angels to the Los Angeles Angels of Anaheim. The lease
10 provision required the tenant (previously known as Anaheim Angels, L.P.) to change the name of
11 its Major League Baseball team to include the name “Anaheim” therein no later than the
12 commencement of the 1997 season. (1996 Lease Agreement, § 11(f) [Exhibit B].) This
13 requirement was implemented in 1996 by the managing partner of Anaheim Angels, LP, Disney
14 Baseball Enterprises, Inc. (“Disney”) by changing the team name, “California Angels”, to the
15 “Anaheim Angels.” (Ruth Decl., ¶ 6; Smith Decl., ¶ 3.) Both parties understood that the purpose
16 of the name change was to provide Anaheim with nationwide exposure by closely identifying
17 Anaheim with the baseball team and thereby promote Anaheim as a tourism, convention, sports
18 and entertainment destination. (Ruth Decl., ¶ 3; Doti Decl. ¶ 5; Smith Decl., ¶¶ 6-7; Morgan Decl.,
19 ¶ 3; Daly Decl. ¶¶ 4-5.) The identification of Anaheim with the Angels baseball team is of
20 immense importance and value to the City of Anaheim because Anaheim is a world-wide tourism,
21 convention, sports and entertainment center. (*Id.*) The City’s principal source of general funds is
22 from hotel occupancy taxes, amounting to approximately \$63.3 million in the City’s 2004 budget.
23 (Smith Decl., ¶ 6; Morgan Decl., ¶ 3.) The City agreed to substantial economic concessions as
24 part of the 1996 Lease Agreement, including the commitment of \$30 million in City funds (and
25 advertising revenues) to Disney’s stadium renovation project, the relinquishment to the team of
26 almost all stadium related revenues, and the turnover of control and operation of the stadium, rent
27 free, to the baseball team through 2029. (Ruth Decl., ¶¶ 8-9; Smith Decl., ¶¶ 8-9.)

28 Defendant’s January 3, 2005 announcement was the final step in a two phased marketing
plan implemented by Defendant. (Morgan Decl., ¶ 7.) The first phase, implemented in 2004, was

1 to systematically exclude references to Anaheim in the team name so as to disassociate Anaheim
2 from the Angels brand. (Smith Decl., ¶ 5; Morgan Decl., ¶ 7). The second phase, now being
3 implemented, is to officially change the team name to Los Angeles Angels in order to create a
4 brand to be identified with the Los Angeles community, rather than Anaheim or Orange County.
5 (Morgan Decl., ¶ 8; Smith Decl., ¶ 10; Sewell Email [Exhibit A]; Morgan Ltr. to Kuhl, 12/17/04
6 [Exhibit F].) The token inclusion of Anaheim at the tail end of the team name, overshadowed by
7 Los Angeles at front and center, is nothing more than a transparent device to relegate Anaheim to
8 the scrapheap of useless appendages. This is evident from Defendant’s email notice to all other
9 major league teams on January 3, 2005 to use “LA” instead of “ANA” when referring to the team
10 on schedules, etc. (Smith Decl., ¶ 10; Sewell Email [Exhibit A].) *This final phase, if not*
11 *enjoined by the Court, sends the exact opposite message of the message the parties intended –*
12 *instead of Anaheim being viewed as a major league city, Anaheim is ancillary and subservient*
13 *to the City of Los Angeles. Anaheim, as is already happening, will be mocked, not admired.*
14 Defendant’s gimmick will deprive Anaheim of the nationwide exposure and promotion of its name
15 in conjunction with its tourism, convention, entertainment and sports industries - the bargained for
16 benefits of the name change. (Ruth Decl., ¶ 10; Smith Decl., ¶ 10, 12; Doti Decl., ¶ 6; Sewell
17 Email [Exhibit A].)

18 **III. A PRELIMINARY INJUNCTION IS APPROPRIATE TO STOP DEFENDANT’S**
19 **RECENTLY COMMENCED AND CONTINUING BREACH OF THE 1996 LEASE**
20 **AGREEMENT IN ORDER TO PREVENT BOTH ONGOING AND FUTURE**
21 **INJURY TO THE CITY.**

22 Defendant argues that the City cannot obtain a preliminary injunction because the team
23 name change is, according to Defendant, a *fait accompli*—a completed act.¹ This alleged
24 “completed act” only recently occurred on January 3, 2005. At this time, the name change is only

25 ¹ The City objects, and moves to strike, the defendant’s opposition brief on the grounds that it is
26 35 pages long. Similarly, the City objects, and moves to strike, Defendant’s previously filed
27 opposition to the City’s request for a temporary restraining order that was 28 pages long. Other
28 than in summary judgment/adjudication motions, no opening or responding memorandum may
exceed 15 pages. (Cal. Rules Court, Rule 313(d).) The Court has the discretion to “refuse[] to
consider” the excessive memorandum. (*Id.* at Rule 317(d).) Given the tight briefing schedule on
the preliminary injunction and the practical inability of the City to seek *ex parte* relief, the City has
been forced to respond to Defendant’s excessive arguments in its own extensive reply brief and
requests the Court’s permission to do so.

1 beginning to be implemented. The team has been named the Anaheim Angels for over eight years.
2 Defendant has just begun the implementation of the name change it announced less than three
3 weeks ago. It is time to enjoin and stop its implementation. “Where the harm is a *continuing*
4 *interference* with the plaintiff’s rights, which could be prevented by granting an injunction, *the*
5 *completed act doctrine does not preclude the issuance of an injunction.*” (*Sahlobei v.*
6 *Providence Healthcare* (2003) 112 Cal.App.4th 1137, 1157.) Moreover, a preliminary injunction
7 may be issued to *prevent prospective damage*, as well as to *contain ongoing damage*. (*Robbins v.*
8 *Superior Court* (1985) 38 Cal.3d 199, 205; *Nutro Products v. Cole Grain Co.* (1992) 3
9 Cal.App.4th 860, 867; *see also* 6 Witkin, *Cal. Procedure*, (4th ed), § 277, p. 221.)

10 Here, unless enjoined by this Court, Defendant will continue to use the new “Los Angeles
11 Angels of Anaheim” name in violation of the City’s rights under the 1996 Lease Agreement.
12 Thus, the issuance of a preliminary injunction to restrain Defendant from continuing to implement
13 the team name change is appropriate to stop both the ongoing damage that the City is suffering, as
14 well as the prospective damage that the City will inevitably suffer if Defendant is allowed to
15 continue its program of disassociating itself from Anaheim and marketing itself as an “LA team”
16 at the exclusion of Anaheim.

17 **IV. THE PRELIMINARY INJUNCTION SOUGHT BY THE CITY IS PROHIBITORY,**
18 **NOT MANDATORY.**

19 Defendant misrepresents and mischaracterizes the preliminary injunction sought by the
20 City. Contrary to Defendant’s assertions, the City is *not* requesting a preliminary injunction *man-*
21 *dating* that Defendant use the name “Anaheim Angels.” Rather, the City is seeking a preliminary
22 injunction that *prohibits* Defendant from implementing the name change to “Los Angeles Angels”
23 or “Los Angeles Angels of Anaheim.” In its Complaint, the City plainly requests a preliminary
24 injunction “enjoining defendants . . . [f]rom any actions or conduct to implement a change in the
25 name of the baseball team that has been officially named the Anaheim Angels from 1997 to 2004
26 to the Los Angeles Angels of Anaheim. . . .” (Complaint, Prayer for Relief (2)(i), p. 14.)

27 Code of Civil Procedure § 525 states that “an injunction is a writ or order requiring a
28 person to *refrain from a particular act.*” This statute succinctly defines a prohibitory injunction.

1 (6 Witkin, *Cal. Procedure*, (4th ed.), § 280, p. 222.) Moreover, an injunction that is substantially
2 prohibitory does not become mandatory simply because it has incidental mandatory aspects.
3 (*Youngblood v. Wilcox* (1989) 207 Cal.App.3d 1368, 1372, n. 1.)

4 For example, in the Fourth District Court of Appeal’s decision in *Youngblood*, the
5 plaintiffs had purchased a lifetime membership from a golf and tennis club. (*Id.* at 1371.) When
6 the club terminated their membership and excluded them from the club and its facilities, the
7 Youngbloods filed suit for breach of contract and related causes of action. (*Id.* at 1371-1372.)
8 The Youngbloods sought a preliminary injunction to force the club to honor their membership
9 rights under the contract by allowing them back into the club. (*Id.* at 1372.) The trial court issued
10 a preliminary injunction “restraining [the club] from interfering with the Youngbloods’ rights as
11 lifetime members of the Club.” (*Id.* at 1372.)

12 The club appealed the issuance of the preliminary injunction. On appeal, the club argued
13 that the injunction was *mandatory*, rather than *prohibitory*. (*Id.* at 1372, n. 1.) The club had
14 *already excluded* the Youngbloods from the club and prohibited their use of its facilities—a *fait*
15 *accompli*. The club argued that by “restraining [the club] from interfering with the Youngbloods’
16 rights as lifetime members of the Club,” the preliminary injunction effectively required the club to
17 allow them back into the club. (*Id.* at 1371, 1372, n. 1.) The court rejected the club’s argument
18 that the injunction was mandatory rather than prohibitory. The court explained that the premise of
19 the complaint was that the Youngbloods were lifetime members of the club, and that the club had
20 failed to honor their contractual rights as club members. (*Id.* at 1372, n. 1.) Although the injunc-
21 tion had the incidental effect of ordering the club to allow the Youngbloods back into the club,
22 “[a]n injunction may have incidental mandatory aspects and still be deemed prohibitory.” (*Id.*)

23 Thus, here, even if a preliminary injunction prohibiting Defendant from implementing the
24 “Los Angeles Angels” or “Los Angeles Angels of Anaheim” name change has some incidental
25 mandatory aspects, that does not make the injunction mandatory rather than prohibitory. As
26 *Youngblood* demonstrates, despite the fact that Defendant’s plan to effectively exclude Anaheim
27 through the name change is, in Defendant’s eyes, a *fait accompli*, a preliminary injunction that
28 *prohibits* Defendant from continuing its implementation of a name change that breaches the City’s

1 contractual rights is *not a mandatory injunction*.

2 **V. THE CITY IS LIKELY TO SUCCEED IN PROVING THE PARTIES MUTUALLY**
3 **INTENDED THAT ANAHEIM WOULD BE THE ONLY CITY INCLUDED IN THE**
4 **TEAM NAME TO ENSURE THE CITY WOULD OBTAIN THE UNIQUE**
5 **EXPOSURE, GOODWILL, AND NAME RECOGNITION FOR WHICH IT**
6 **BARGAINED.**

7 The City has sued Defendant for changing the name of the “Anaheim Angels” to the “Los
8 Angeles Angels of Anaheim.” The City alleges that the awkward and unusual new team name—
9 which relegates Anaheim to the scrap heap of useless appendages, overshadowed by the more
10 prominently mentioned Los Angeles, breaches Section 11(f) of the 1996 Lease Agreement and
11 Defendant’s duty to exercise good faith and fair dealing to ensure the City obtains the unique
12 exposure, goodwill, and name recognition benefits for which it bargained. In fact, Defendant’s
13 name change does just the opposite of what the parties intended – it subjects Anaheim to ridicule
14 and diminishment in comparison to the prominent placement of another city, Los Angeles, at the
15 front of the team’s name. The new name clearly signals that Anaheim is not a major league city,
16 but Los Angeles is.

17 The provision at issue states: “Tenant will change the name of the Team to include the
18 name ‘Anaheim’ therein, such change to be effective no later than the commencement of the 1997
19 Season.”² (1996 Lease Agreement, § 11(f), p. 46 [Pltf. Exhibit B].) In determining whether the
20 new team name is in good faith compliance with Section 11(f) of the 1996 Lease Agreement, the
21 Court must determine whether the new team name *gives effect* to the *mutual intention* of the
22 parties *at the time of contracting*. (Civ. Code, § 1636 [“A contract *must* be interpreted as to give
23 effect to the mutual intention of the parties as it existed at the time of contracting”, emph.
24 added].) Here, the evidence overwhelmingly indicates that the Los Angeles Angels of Anaheim
25 team name *does not* give effect to the mutual intention of the parties at the time of contracting. In
26 fact, it does the opposite by *sending the signal that Anaheim is not a major league city*.

27 ² Importantly, the 1996 Lease Agreement defines “Tenant” as “The California Angels L.P., a
28 California limited partnership, and its permitted *successors and assigns*.” (*Id.* at Recital F(79). p.
9 [Pltf. Exhibit B.] In addition, “Team” is defined as “the California Angels, a member of the
American League, and its permitted *successors and assigns* hereunder.” (*Id.* at Recital F(81), p. 9
[Pltf. Exhibit B.]) Because Defendant admits that it is the *successor* of both The California Angels,
L.P. and the baseball team formerly called the California Angels, this ought to dispose of
Defendant’s suggestion that Section 11(f) does not apply to it.

1 Furthermore, the new name fails to preserve the unique exposure, goodwill, and name recognition
2 benefits to which the City is entitled under the implied covenant of good faith and fair dealing.

3 **A. Defendant’s “Plain Meaning” Argument Is Based On Bad Law; Parol**
4 **Evidence Is Admissible To Prove The Parties Mutually Intended That**
5 **Anaheim Would Be The *Only* City Included In The Team Name.**

6 Defendant asks the Court to ignore the parties’ mutual intent in interpreting the 1996
7 Lease Agreement. Instead, Defendant urges the Court to adopt a distorted, hyper-technical version
8 of the long-repudiated “plain meaning” approach to contract interpretation. Simply put,
9 Defendant’s argument is based on bad law. It is well established that evidence is admissible to
10 prove a meaning to which contractual language is reasonably susceptible. (*Pacific Gas & Elec.*
11 *Co. v. G.W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37-40 [repudiating plain
12 meaning rule and holding evidence is admissible to prove a meaning to which the language is
13 reasonably susceptible]; 1 Witkin, *Summary of Cal. Law*, (9th ed.) Contracts, § 688, p. 621 [“The
14 plain meaning rule was greatly criticized and later repudiated; now evidence of the circumstances
15 is admissible if relevant to prove a meaning of which the contractual language is ‘reasonably
16 susceptible’“]; *see also* 2 Witkin, *Cal. Evidence* (4th ed.), §§ 79-80 [citing numerous cases
17 repudiating old plain meaning rule and allowing evidence to prove a meaning to which the
18 language is reasonably susceptible].)

19 California’s parol evidence rule, codified at Code of Civil Procedure § 1856, expressly
20 allows the introduction of evidence to “*explain . . . or otherwise interpret* the terms of the
21 agreement.” (Code Civ. Proc., § 1856(g), *emph. added.*) California’s parol evidence rule also
22 specifically allows an agreement’s terms to be “*explained or supplemented* by course of dealing
23 or usage of trade or by course of performance.” (*Id.* at § 1856(c), *emph. added.*)

24 Defendant simplistically argues that because Section 11(f) requires the “name of the
25 Team” to “*include*” the name “Anaheim,” the new Los Angeles Angels of Anaheim name is in
26 technical compliance with that provision. The fundamental problem with Defendant’s argument is
27 that it completely ignores all of the *statutorily-mandated* rules of contract interpretation, which
28 *require* the Court to construe Section 11(f) to “*give effect* to the *mutual intention* of the parties as
it existed *at the time of contracting*” (Civ. Code, § 1636), and to determine that mutual intention

1 by examining the *circumstances and context* in which the words of the contract were used (Civ.
2 Code, § 1647; Code Civ. Proc., § 1860), as well as the parties’ *conduct in implementation* of the
3 1996 Lease Agreement—*i.e.*, “usage.” (Civ. Code, §§ 1644, 1655.)

4 Defendant’s argument is so unsupported by California law that it has been forced to
5 dredge the bayous of Louisiana to find a case that—in an attenuated manner—supports the strict
6 “plain meaning” approach that was repudiated by California long ago. Defendant cites the
7 Louisiana case of *Becnel v. Alexander* (La. App. 5th Cir. 2001) 783 So.2d 540 to support its
8 supposed “straightforward application of the Lease’s language.” (Def’t. P’s & A’s, p. 33.) In that
9 case, the Louisiana court allowed a contracting party who had agreed not to use the name “Hewitt
10 Becnel & Associates” to get away with using the name “Becnel & Associates” because the latter
11 name was not *expressly prohibited* in the contract. (*Id.* at 543.)

12 To be fair to the Louisiana court, it was duty-bound to apply *Louisiana’s* parol evidence
13 rule—which is *starkly different* from *California’s* parol evidence rule. As noted by the Louisiana
14 court in *Becnel*, under Louisiana law:

15 When the words of a contract are clear and explicit and lead to no absurd
16 consequences, no further interpretation may be made in search of the parties’ intent.
17 LSA-C.C. art. 2046. . . . Further, when a contract can be construed from the *four*
18 *corners* of the instrument without looking at extrinsic evidence, the question of
19 contractual interpretation is answered as a matter of law.

20 (*Id.* at 542-543 [citing several Louisiana state court decisions] (emph. added).) However, this
21 “four corners” approach is not the law in California. The California Supreme Court has
22 summarized California’s parol evidence rule thus:

23 *The test* of admissibility of extrinsic evidence to explain the meaning of a written
24 instrument *is not whether it appears to the court to be plain and unambiguous on*
25 *its face*, but whether the offered evidence is relevant to prove a meaning to which
26 the language of the instrument is reasonably susceptible. . . . *A rule that would limit*
27 *the determination of the meaning of a written instrument to its four-corners*
28 *merely because it seems to the court to be clear and unambiguous, would either*
deny the relevance of the intention of the parties or presuppose a degree of verbal
precision and stability our language has not attained.

26 (*Pacific Gas & Electric Co. v. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal. 2d 33, 37.)

27 Furthermore, as indicated above, California’s statutory law *expressly allows* parol evidence to
28 “explain,” “supplement” or “interpret” an agreement. (Code Civ. Proc., § 1856(c), (g).) The

1 Court should reject Defendant’s invitation to import Louisiana’s parol evidence rule, and bad
2 decisions, into California.³

3 **B. The Principal Negotiators Of The 1996 Lease Agreement Concur The Parties**
4 **Mutually Intended That Anaheim Would Be The *Only* City Included In The**
5 **Team Name.**

6 The persons primarily responsible for negotiating, entering, and implementing the 1996
7 Lease Agreement all agree that the parties’ mutual intention behind Section 11(f) was to closely
8 identify the City with the team through the team name so that the City could enjoy the unique
9 exposure, goodwill, and name recognition enjoyed by the very few cities who have Major League
10 Baseball teams named after them. (Ruth Decl., ¶ 3; Doti Decl., ¶ 5; Smith Decl., ¶ 4; Morgan
11 Decl., ¶ 3.) Not surprisingly, the principal negotiators of the 1996 Lease Agreement expected
12 Section 11(f) to provide the City with the same type of exposure, goodwill, and name recognition
13 that New York gets from the New York Yankees, that San Francisco gets from the San Francisco
14 Giants, etc. (Ruth Decl., ¶ 5; Daly Decl., ¶ 6.) The parties never discussed or even contemplated
15 that Section 11(f) would be interpreted to allow two cities’ names to be included in the team
16 name—something no team in Major League Baseball had at the time of contracting. (Ruth Decl.,
17 ¶ 4; Daly Decl., ¶ 6.)

18 Defendant’s newly proposed name, “the Los Angeles Angels of Anaheim”, does exactly
19 the opposite of what the parties intended. Instead of displaying that the City of Anaheim is a
20 major league city on the par with New York, San Francisco, and (dare say it) Los Angeles, the
21 new name does just the opposite – it makes Anaheim a meaningless stump behind, and subservient
22 to, the name of Los Angeles. ***Instead of getting prominence and respect, the City receives***
23 ***ridicule.*** Clearly, this result was not the parties’ intent.

24
25
26 ³ Defendant also suggests that because there is an “integration clause” in the 1996 Lease
27 Agreement, the City should not be able to introduce evidence that explains or interprets the 1996
28 Lease Agreement. (Def’t. P’s & A’s, p. 34.) However, under California law, evidence is
admissible to explain, supplement, and interpret the terms of ***even an integrated writing***. (Code
Civ. Proc., § 1856, subd. (c) [“The terms set forth in a writing described in subdivision (a) [re
integrated writings] may be explained or supplemented by course of dealing or usage of trade or
by course of performance”]; *see also* subd. (g) [evidence admissible to explain or interpret terms].)

1 **C. The Circumstances And Context Of The 1996 Lease Agreement Indicate The**
2 **Parties Mutually Intended That Anaheim Would Be The *Only City* Included In**
3 **The Team Name.**

4 Initially, even without extrinsic evidence, it should be obvious that the intent and purpose
5 for including Anaheim in the team name pursuant to Section 11(f) of the Lease Agreement, was to
6 identify Anaheim in the team and publicize and portray Anaheim as a major league city. What
7 else could have been the reason for the provision? Nevertheless, the extrinsic evidence of the
8 parties intent is overwhelming and unrefuted.

9 Defendant argues that the parties should have been “more specific” in drafting Section
10 11(f) if it was their intention to limit the “name of the Team” to include only one city. It is easy to
11 blame lawyers for not making agreements more explicit. In fact, in retrospect, almost every
12 contractual interpretation dispute could be avoided if lawyers were perfect and omniscient.
13 However, the parties were not contracting in a vacuum in 1996. In interpreting the meaning of the
14 words used in Section 11(f)—*e.g.*, the “name of the Team”—the *circumstances* or *context* in
15 which those words were used must be considered. (Civ. Code, § 1647 [“A contract may be
16 explained by reference to the circumstances under which it was made, and the matter to which it
17 relates”]; *see also* Code Civ. Proc., § 1860.) Here, the words “name of the Team” that appear in
18 Section 11(f) undisputedly refer to the name of a **Major League Baseball team**. (1996 Lease
19 Agreement, Recital F(79), p. 9 [Pltf Exhibit B].) When the 1996 Lease Agreement was entered
20 into, there was a well-established custom and practice in Major League Baseball regarding team
21 names, specifically, that every team name consisted of two components: (i) the name of **one** city
22 or state; and (ii) a nickname or mascot. Today, Defendant’s “Los Angeles Angels of Anaheim” is
23 the only team name in Major League Baseball that deviates from that longstanding custom and
24 practice.⁴ Thus, the circumstances and context in which Section 11(f) was drafted support the
25 principal negotiators’ statements that they understood and intended that “Anaheim” would be

26 ⁴ *E.g.*, Atlanta Braves, Baltimore Orioles, Boston Red Sox, Chicago Cubs, Chicago White Sox,
27 Cincinnati Reds, Cleveland Indians, Detroit Tigers, Houston Astros, Kansas City Royals, Los
28 Angeles Dodgers, Milwaukee Brewers, New York Mets, New York Yankees, Oakland A’s,
29 Philadelphia Phillies, Pittsburgh Pirates, San Diego Padres, San Francisco Giants, Seattle
30 Mariners, St. Louis Cardinals, Tampa Bay Devil Rays, Toronto Blue Jays, Washington D.C.
31 Nationals—and until just days ago the Anaheim Angels, now the Los Angeles Angels of
32 Anaheim. (*See* www.mlb.com [official website for Major League Baseball].)

1 “included” in the “name of the Team” in the *same manner in which any other city is included in*
2 *the name of any other Major League Baseball team*—*i.e.*, that Anaheim would be the *only city*
3 included in the team name.

4 **D. The Parties’ Conduct In Implementing The 1996 Lease Agreement For Eight**
5 **Years Demonstrates That The Parties Mutually Intended Anaheim Would Be**
6 **The Only City Included In The Team Name.**

7 Fortunately, no guesswork is needed to verify that this was the parties’ mutual intent
8 because the Court has the benefit of examining *eight years worth of the parties’ conduct* in
9 implementing Section 11(f). It is undisputed that after the parties signed the 1996 Lease
10 Agreement, the name of the team was changed from “California Angels” to “Anaheim Angels,”
11 and that the team name remained “Anaheim Angels” from the 1997 Season until just a few weeks
12 ago. Anaheim was identified with the team throughout the nation and publicized as a major
13 league city. In contract law, the parties’ conduct in carrying out an agreement is, in effect, a
14 “*practical construction*” of the contract, because the parties’ actions in implementing their written
15 words are most likely to indicate their intent concerning those words:

16 This rule of practical construction is predicated on the common sense concept that
17 ‘actions speak louder than words.’ Words are frequently but an imperfect medium
18 to convey thought and intention. *When the parties to a contract perform under it*
19 *and demonstrate by their conduct that they knew what they were talking about*
20 *the courts should enforce that intent.”*

21 (*Crestview Cemetery Assn. v. Dieden* (1960) 54 Cal.2d 744, 754 (emph. added); *see also* 1 Witkin,
22 *Summary of Cal. Law*, (9th ed.) Contracts, § 689, p. 622 [citing 18 other cases for the same
23 proposition].) This rule of practical construction is codified at Civil Code §§ 1644 and 1655,
24 which *require* that the parties’ usage—*i.e.*, the parties’ practice in implementation of the
25 contract⁵—control over even the purported “plain” or “ordinary” meaning of the words used in the
26 contract. Here, the integral identification of Anaheim with the team so as to promote Anaheim as
27 a major league city for *eight years* evidences the parties’ mutual intent that Anaheim would be the
28 *only city* included in the “name of the Team” in order to give the City the intended benefit of its
bargain. By closely identifying the City with the team, Anaheim would likely obtain unique

28 ⁵ “A usage is a ‘habitual or customary practice.’” (1 Witkin, *Summary of Cal. Law*, § 696, p. 629 [citing Rest.2d, Contracts § 210].)

1 exposure, goodwill, and name recognition that the City desired to promote itself as a world-wide
2 tourism, convention, sports, and entertainment destination. (Ruth Decl., ¶ 3; Doti Decl., ¶ 5;
3 Smith Decl., ¶ 4; Morgan Decl., ¶ 3.)

4 In summary: (i) the obvious intent of the naming provision even without extrinsic
5 evidence, (ii) the *declarations of the principal negotiators* of the 1996 Lease Agreement; (iii) the
6 *circumstances* and *context* in which Section 11(f) was drafted, including the existing custom and
7 practice regarding Major League Baseball team names; and (iv) the *eight years worth of conduct*
8 implementing the 1996 Lease Agreement, during which the team was known as the “Anaheim
9 Angels,” all indicate that Section 11(f) was mutually intended by the parties to give the City the
10 same exposure, goodwill, and name recognition that is enjoyed by the very few cities that have
11 Major League Baseball teams named after them.

12 **E. The Parties Mutually Intended That The 1996 Lease Agreement Would Allow**
13 **Flexibility To Change The *Nickname* Portion Of The Team Name, But That**
14 **The Team Name Would Include Anaheim No Matter What The Nickname.**

15 Defendant argues that the City’s position is blown away by the “proverbial smoking
16 gun”—*i.e.*, that the City requested that Section 11(f) state that the name would be changed to
17 “Anaheim Angels,” but that Disney rejected that request. That is not something the City has tried
18 to keep hidden; to the contrary, one of the City’s principal negotiators, Mr. Ruth, made this clear
19 in his declaration. (Ruth Decl., ¶ 4.) Defendant argues that Disney’s rejection of language
20 mandating the specific “Anaheim Angels” name proves that Disney wanted “flexibility” in the
21 name change provision. It is true that both the City and Disney intended for there to be
22 “flexibility” in Section 11(f), but *not* flexibility to *exclude Anaheim* from the team name or to
23 make Anaheim a useless appendage in the team name, as Defendant suggests. Mr. Ruth has
24 explained exactly why Disney wanted Section 11(f) to state that Anaheim would be “included” in
25 the team name, rather than stating that the team name would be “Anaheim Angels”:

26 Tony Tavares indicated that the name would be changed to Anaheim Angels,
27 however, a future owner may want to change the *nickname* to something *other*
28 *than the Angels* and the current wording to include Anaheim in the team name
would give *flexibility* to make such a change in the *nickname*.

(Ruth Decl., ¶ 4 (emph. added.) Thus, the City and Disney *did not* intend to allow the “flexibility”

1 to *exclude* Anaheim from the team name altogether, or to make Anaheim a useless appendage, as
2 Defendant suggests. Defendant’s purported “smoking gun” is nothing more than a pop gun that
3 did not even pop.⁶

4 **F. The Parties Were Not Required To Explicitly State That They Expected**
5 **Major League Baseball Custom And Practice To Give Meaning To The Words**
6 **Used In The 1996 Lease—That Is Implied.**

7 Defendant also argues that if the parties had intended for Anaheim to be the *only* city in
8 the team name, they would made that explicit in Section 11(f). However, it is ridiculous to
9 suggest that at the time of contracting—when every team in Major League Baseball team had *only*
10 *one* city or state in its name—the parties would have intended Anaheim to be “included” in the
11 “name of the Team” any differently than any other city is “included” in the name of any other
12 team in Major League Baseball. One cannot reasonably argue that the parties had a duty to
13 consider every imaginable scenario in which a future owner might try to deviate from
14 longstanding custom and practice, and then expressly allow or prohibit it in the contract.
15 Fortunately, there is no law that requires the parties to expressly allow or prohibit every
16 conceivable act in the universe of possibilities when drafting a contract. “Neither law nor equity
17 requires that every term and condition of an agreement be set forth in the contract. . . .
18 *unexpressed* provisions of the contract may be *inferred* from the writing, *external facts* may be
19 relied upon, and *custom and usage* may be resorted to in an effort to supply a deficiency if it does
20 not alter or vary the terms of the agreement.” (*Denver D. Darling v. Controlled Env’t Constr.*
21 (2001) 89 Cal. App. 4th 1221, 1237 (emph. added).)⁷

22 ⁶ Defendant also disparages Mr. Ruth and Mr. Tavares concerning their statements about the
23 timing of the City’s request that Section 11(f) require the team be called the “Anaheim Angels.”
24 Mr. Ruth specifically states in his supplemental declaration that he did not remember whether the
25 parties discussion on this point took place before or after the parties’ meeting in front of Dr. Doti.
26 (Supp. Ruth Decl., ¶ 7.) Mr. Tavares did not specifically remember the discussion but states that
27 he does not deny that it occurred and therefore could not state the timing of the discussion.
28 (Tavares Decl., ¶ 8.) However, the greater understanding that the team would be closely identified
with Anaheim and promoted as a major league city had been decided early in the process, before
Dr. Doti’s involvement. (Ruth Decl., ¶¶ 3, 4.)

⁷ According to Defendant’s logic, when the parties defined “Team” as a “member of the
American League,” they should have been more specific and stated “the American League of
Major League Baseball.” Or better yet, “the American League of Major League Baseball *in North*
America.”

1 **G. The Specific Team Name Provision (§ 11(f)) Controls Over The General**
2 **Marketing Provisions, And The 1996 Lease Agreement Must Be Interpreted**
3 **To Give Effect To *Every Part*, Including The Team Name Provision.**

4 Defendant raises another equally-flawed argument: that because the 1996 Lease
5 Agreement contains provisions allowing Defendant to control some of its *marketing* operations,
6 Defendant can *ignore* the team name provision in Section 11(f) by *excluding* Anaheim altogether,
7 or relegating it to a useless appendage behind the more prominently-mentioned Los Angeles. This
8 argument likewise flies in the face of the statutorily-mandated rules of contract interpretation.
9 While the Defendant has provided an overly broad interpretation of its marketing discretion, even
10 its overly broad construction would not grant it the right to deny Anaheim the essential benefits of
11 identifying Anaheim with the team. Doing so would violate the rule that a contract must be
12 construed to give effect to *every part*. (Civ. Code, § 1641.) Moreover, because *specific*
13 provisions of an agreement control over *general* provisions, the general provisions of the 1996
14 Lease Agreement that preserve Defendant’s control over its marketing operations cannot be
15 interpreted to trump the specific team name provision at Section 11(f). (Civ. Code, § 1655.)

16 **H. Defendant’s “Estoppel” Argument Contradicts The Fundamental, Statutorily-**
17 **Mandated Rule That A Contract Be Interpreted To Give Effect To The**
18 **Parties’ *Mutual Intention As It Existed At The Time Of Contracting*.**

19 Defendant also advances a novel application of the estoppel doctrine: that because
20 *Defendant* subjectively interpreted Section 11(f) to allow the team’s name to be changed to “Los
21 Angeles Angels of Anaheim” when Defendant was considering whether to buy the team *in 2003*,
22 the City should be estopped from making any argument that varies from Defendant’s own
23 subjective interpretation of the 1996 Lease Agreement. To say the least, if the subjective
24 interpretation of Defendant’s present-day owners and their attorneys—who played no role
25 whatsoever in negotiating, drafting, executing, or, until 2003, implementing the 1996 Lease
26 Agreement—is controlling by virtue of Defendant’s own reliance on its own faulty interpretation,
27 then the fundamental, statutorily-mandated rule that a contract must be interpreted to “give effect
28 to the *mutual intention* of the parties as it existed *at the time of contracting*” will have been
turned on its head. (Civ. Code, § 1636 (emph. added).) On a more practical level, how is the City
supposed to be estopped by events (Defendant’s personal and secret interpretations) of which it

1 had no knowledge or input?

2 If the estoppel argument were to be truly examined, one should turn Defendant's argument
3 on its head. If renaming the team the Los Angeles Angels was so critical to the purchase decision,
4 why didn't Defendant's many fine attorneys exercise due diligence before the purchase and ask
5 Anaheim whether it had objections to such a change in the team name? Defendant's estoppel
6 argument undercuts Defendant's overall credibility.

7 **I. Defendant's "Apples To Oranges" Comparisons Do Not Disprove That The**
8 **Parties Mutually Intended That Anaheim Would Be The *Only City* Included In**
9 **The Team Name.**

9 Defendant also attempts to support its position with a number of "apples to oranges"
10 comparisons. Defendant argues that because there are sports teams that *play their games* in a city
11 other than the city in their team name (*e.g.*, New York Jets who play in East Rutherford, New
12 Jersey), that somehow demonstrates that the "Los Angeles Angels of Anaheim" name complies
13 with Section 11(f) of the 1996 Lease Agreement. (Def't. P's & A's, p. 27.) Needless to say, that is
14 a meaningless comparison.

15 In a similar vein, Defendant argues that because "of Anaheim" appears in the names of
16 Angels Stadium of Anaheim and the Arrowhead Pond of Anaheim, the "Los Angeles Angels of
17 Anaheim" name complies with Section 11(f) of the 1996 Lease Agreement. Agreements relating
18 to a stadium or facility name are fundamentally different from agreements that relate to the name
19 of a major league baseball team. As recognized in the stadium naming provisions of the 1996
20 Lease Agreement, it was acknowledged that the team could name the stadium after a commercial
21 sponsor and thereby derive substantial revenues from the commercial sponsor. The details as to
22 how and whether Anaheim would also be included in the stadium name, therefore had to be
23 addressed, since the commercial sponsor was to be given prominence. The parties provided that
24 Anaheim would still appear in the name but the size of the name Anaheim on stadium signs could
25 be 75% of the size of the commercial sponsor's name. Similarly, the Arena (or Pond) could be
26 named after a commercial sponsor and thereby generate substantial revenues to the operator of the
27 facility. In the Pond facility agreement, Anaheim created a financial inducement to the operator to
28 secure a long term professional hockey or baseball team that would have Anaheim in its team

1 name. If it did so, then the arena operator could put a commercial sponsor name as the first name
2 in the title of the facility. If it did not, then Anaheim would be the first name in the arena name. A
3 major league baseball team can not be named after a commercial sponsor, so there was not the
4 same need to provide such detail. Moreover, neither the stadium name nor the arena name include
5 the name of another city. The lawyers did not add to the stadium or arena naming clauses a
6 provision that the facilities will not include the name of another city. Even when they focused on
7 detail in these naming clauses, this must have seemed so obvious that it would be ludicrous to
8 spell out.

9 **J. The Court Can Confidently Conclude That The City Has A Reasonable**
10 **Probability Of Successfully Proving That The Parties Mutually Intended That**
11 **Anaheim Would Be The *Only City* Included In The Team Name.**

12 The City respectfully suggests that if Defendant’s untenable arguments and weak evidence
13 are the best Defendant has to offer to support its position, the Court should feel more than
14 comfortable in concluding that the City is likely to succeed in proving that the parties mutually
15 intended Section 11(f) to simply require Anaheim to be included in the team name in the *same*
16 *manner as every other Major League Baseball team* named after a city—*i.e.*, with *only one city*,
17 Anaheim, in the team name. Indeed, any interpretation to the contrary would deprive the City of
18 the benefits of its bargain -- the unique exposure, good will, and name recognition that comes with
19 being identified as a major league City.

19 **VI. THE COVENANT OF GOOD FAITH AND FAIR DEALING, CONTAINED**
20 **WITHIN ALL AGREEMENTS, MANDATES THAT THE TEAM NOT DEPRIVE**
21 **ANAHEIM OF THE “BENEFIT OF ITS BARGAIN” THAT ANAHEIM BE**
22 **PROMOTED AS A MAJOR LEAGUE CITY THROUGH ITS IDENTIFICATION**
23 **WITH THE BASEBALL TEAM.**

24 In addition to the City prevailing under general rules of contract interpretation, the City
25 prevails also for another reason. It is well-established that in every contract there is a “covenant of
26 good faith and fair dealing.” As stated by the California Supreme Court in *Egan v. Mutual of*
27 *Omaha Ins. Co.* (1979) 24 Cal.3d 809, 818:

28 In addition to the duties imposed on contracting parties by the express terms of
their agreement, the law implies in every contract a covenant of good faith and
fair dealing. [Citations omitted.] The implied promise requires each contracting
party to refrain from doing anything to injure the right of the other to receive the
benefits of the agreement. [Citations omitted.]

1 In short, subterfuges used to evade “the spirit of the bargain” are not allowed under the covenant
2 of good faith and fair dealing. (*R.J. Kuhl Corp. v. Sullivan* (1993) 13 Cal.App.4th 1589, 1602;
3 Rest.2d Contracts, § 205, com. d.)

4 For example, in *Universal Sales Corp. v. Cal. Etc. Mfg. Co.* (1942) 20 Cal.2d 751, plaintiff
5 produced animal feed and the defendant manufactured presses. Defendant agreed that if plaintiff
6 bought and displayed the usefulness of one of its presses, defendant would give plaintiff 20% of
7 the profits from the sale of future presses, including “improvements thereon”, and any patent
8 rights. (*Id.* at 756.) Defendant subsequently created a slightly modified version of the press, and
9 refused to give plaintiff any of the profits from the sale of the modified press. (*Id.* at 758.)
10 Defendant also personally patented the press and said that the new press was therefore not
11 patented by his company and was not subject to the contract. The court stated defendant’s actions
12 violated the covenant of good faith and fair dealing because ***defendant could not himself enjoy***
13 ***the benefits of the contract while “plaintiff’s rights to the fruits of the contract are destroyed.”***
14 (*Id.* at 772, emph. added.)

15 Similarly, in *Matzen v. Horwitz* (1951) 102 Cal.App.2d 884, two physicians entered into an
16 agreement where the defendant agreed to take over plaintiff’s practice while plaintiff was in the
17 military. Defendant was to “maintain and preserve” the practice. (*Id.* at 886.) However, near the
18 end of the term of the agreement, Defendant diverted a number of the patients to his own practice.
19 Defendant justified his conduct on the fact that there was no restriction in the agreement that
20 forbade him from doing what he did. (*Id.* at 891.) However, the court held for plaintiff and stated,
21 “In every contract there is an implied covenant of good faith and fair dealing and that neither
22 contracting party will do anything that will destroy or injure the rights and interests of the other
23 party. ***It is not necessary that such a covenant be spelled out in order to ensure that one party***
24 ***will not take advantage of a situation*** such as that presented in this action.” (*Id.* at 892, emph.
25 added.)

26 Furthermore, the covenant of good faith and fair dealing requires that when a contract
27 gives a party discretion in the performance of the agreement, the party must exercise such
28 discretion in good faith to implement the purposes of the parties to the agreement. As stated in

1 *Hicks v. E.T. Legg & Associates* (2001) 89 Cal.App.4th 496, 508:

2 “The covenant of good faith and fair dealing finds particular application in
3 situations where one party is invested with a discretionary power affecting the
4 rights of another. Such power must be exercised in good faith. [Citations.]” [Cit.
5 Omit.]

6 “In the case of a discretionary power, it has been suggested *the covenant requires*
7 *the party holding such power to exercise it ‘for any purpose within the*
8 *reasonable contemplation of the parties at the time of formation – to capture*
9 *opportunities that were preserved upon entering the contract, interpreted*
10 *objectively.’* [Citation.]” (*Hicks*, 89 Cal.App.4th at 508, *emph. added.*)

11 To determine whether the party has breached the covenant, one looks at whether the
12 conduct was “objectively reasonable,” regardless of the actor’s motive. (*Badie v. Bank of America*
13 (1998) 67 Cal.App.4th 779, 796; *Ri-Joyce, Inc. v. New Motor Vehicle Bd.* (1992) 2 Cal.App.4th
14 445, 457.) For example, in *Ri-Joyce*, under a franchise agreement, Mazda reserved a qualified
15 right to establish a new dealership “near” one of its franchisees (*Ri-Joyce*) if business expectations
16 were not fulfilled. (*Id.* at 457.) “Near” was not defined in the agreement. The court held that
17 Mazda had to define the term “near” reasonably, and that the parties may prove the intent of the
18 agreement by extrinsic evidence. (*Ibid.*; *see also Okun v. Morton* (1988) 203 Cal.App.3d 805, 820
19 [agreement between parties to jointly participate in the establishment of Hard Rock Cafes
20 contained implied good faith covenant that parties exercise discretion related to establishment of
21 future restaurants in good faith].)

22 To determine the existence and parameters of the covenant of good faith and fair dealing,
23 courts often look to extrinsic evidence such as the negotiations between the parties and the
24 conduct of the parties. (*Badie*, 67 Cal.App.4th at 798-803; *Mobil Oil Corp. v. Exxon Corp.* (1986)
25 177 Cal.App.3d 942, 949 [holding plaintiffs should be allowed to present evidence about
26 expectations of the parties relevant to covenant of good faith and fair dealing]; *see also Bert G.*
27 *Gianelli Distributing Co. v. Beck & Co.* (1985) 172 Cal.App.3d 1020, 1039 [holding plaintiffs
28 may submit evidence of the contractual circumstances and industry practices to show whether
29 there was an implied term in the agreement].) Similarly, the covenant of good faith and fair
30 dealing is itself an interpretive tool to ascertain the actual meaning of an agreement. (*See April*
31 *Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 816; *Mitchell v. Exhibition Foods, Inc.*

1 (1986) 184 Cal.App.3d 1033, 1043.)

2 In the current case, Defendant’s effective elimination of Anaheim from the team name and
3 the team’s identification with another city, Los Angeles, directly undercuts Anaheim’s “benefit of
4 the bargain” in the 1996 Lease Agreement; namely, the publicity associated with having Anaheim
5 identified as a major league city. The City specifically bargained for the integral identification of
6 the name “Anaheim” with the baseball team to obtain the unique and special exposure, publicity,
7 goodwill, and reputation that other cities receive from being associated with a Major League
8 Baseball team. (Daly Decl., ¶ 4, 6; Ruth Decl., ¶ 3-5; Smith Decl., ¶ 6-8.) Because the City
9 markets itself as a premiere destination for tourism, conventions, sporting events, and other
10 entertainment, it was extremely important for the City to be identified with the team to obtain that
11 unique exposure, goodwill, and reputation. (Ruth Decl., ¶¶ 3-5; Smith Decl., ¶¶ 6-8; Morgan
12 Decl., ¶¶ 2-4; Daly Decl., ¶¶ 4, 6.) It was the parties’ mutual intention and understanding that to
13 provide the City with the unique exposure, goodwill, and reputation that it sought, the new
14 “Anaheim Angels” name would be used in the manner that the “California Angels” name had
15 previously been used. (Daly Decl., ¶ 6; Ruth Decl., ¶ 4.) The parties never intended that Section
16 11(f) of the Lease would allow the team to be identified with any city other than Anaheim since
17 this would diminish Anaheim’s prestige rather than enhance it. (Daly Decl., ¶ 6; Ruth Decl., ¶ 4.)

18 Indeed, including the name of any city other than Anaheim in the team name—and even
19 worse, putting the name of that city *ahead* of Anaheim in the team name—tells the world that
20 Anaheim is not good enough for the Angels, that Anaheim is *not a real major league city*, and
21 that the baseball team needs to identify with another city, Los Angeles, to be first class. Defendant
22 has already sent an electronic mail transmission to representatives of major league baseball teams
23 throughout the country on January 3, 2005 and advises them as follows:

24 Pleased be advised that our name has now been changed from Anaheim Angels to
25 Los Angeles Angels of Anaheim, effective today. When scheduling, please use LA
26 in place of ANA, and if you should play against both us and the Dodgers, we would
27 characterized by LAA. (Smith Decl., ¶ 10; Sewell Email [Exhibit A].)

28 Thus, Defendant is disassociating Anaheim from the team by altering the designation for
the team’s home games on schedules throughout the country from ANA (Anaheim) to LA (Los

1 Angeles). (*Id.*) This means that in television newscasts, for example, all line scores will be
2 reported as LA (Los Angeles) instead of as ANA (Anaheim). It also means that scoreboards in
3 other major league stadiums throughout the country will list the scores of Angel games as LA
4 instead of ANA.

5 Even if one assumes that Defendant has discretion regarding the name of the team under
6 Section 11(f), it is clear under *Hicks*, *Ri-Joyce*, and *Badie* that Defendant had to exercise its
7 discretion regarding the team name *reasonably*. Every major league baseball team has *one* city or
8 state name in its name.⁸ (Ruth Decl., ¶ 4; Smith Decl., ¶ 4; *see also* www.mlb.com [listing Major
9 League Baseball team names].) At the time the parties contracted, there were *no teams* that had
10 *more than one* such city or state name as part of its team name—nor had there been any until just
11 days ago when Defendant purported to change its name to the Los Angeles Angels of Anaheim.
12 (Ruth Decl., ¶ 4; *see also* www.mlb.com [listing Major League Baseball team names].) The
13 parties never contemplated having *two* geographic names in the team name, as such a scheme
14 would be at odds with the well-known custom and practice in Major League Baseball of including
15 only *one* geographic name. Even more nonsensical would have been a discussion of including the
16 name of a city located in *another county* where the team *was not located*—*e.g.*, Los Angeles—in
17 the team name. (*Id.*)

18 The unreasonableness of the name the “Los Angeles Angels of Anaheim” is apparent on its
19 face. It is a patently obvious attempt to move the name “Anaheim” to the end of a “string cite”
20 where it has already devolved into a useless appendage. The City knows this is a slick gimmick in
21 order to belittle and disassociate the name Anaheim from the baseball team. The editorial
22 cartoonists know it. The late night talk shows know it. Everyone knows it.

23 None of Defendant’s cases remotely suggest that the covenant of good faith and fair
24 dealing does not apply to the interpretation of the 1996 Lease Agreement. All of Defendant’s

25 _____
26 ⁸ *E.g.*, Atlanta Braves, Baltimore Orioles, Boston Red Sox, Chicago Cubs, Chicago White Sox,
27 Cincinnati Reds, Cleveland Indians, Detroit Tigers, Houston Astros, Kansas City Royals, Los
28 Angeles Dodgers, Milwaukee Brewers, New York Mets, New York Yankees, Oakland A’s,
Philadelphia Phillies, Pittsburgh Pirates, San Diego Padres, San Francisco Giants, Seattle
Mariners, St. Louis Cardinals, Tampa Bay Devil Rays, Toronto Blue Jays, Washington D.C.
Nationals—and until just days ago the Anaheim Angels, now the Los Angeles Angels of
Anaheim. (*See* www.mlb.com [official website for Major League Baseball].)

1 cases deal with situations where the defendant could unambiguously do what it purported to do.
2 In *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342,
3 the court, not surprisingly, held that a contract provision that specifically allowed a landlord to
4 terminate a lease when the tenant notified the landlord of its intent to sublease was *unambiguous*
5 and was “clearly within the parties’ reasonable expectations.” (*Id.* at 376.) In *Guz v. Bechtel Nat.,*
6 *Inc.* (2000) 24 Cal.4th 317, the court merely stated that an unequivocal “at will” employment
7 contract did not require that the employee could only be fired for good cause. (*Id.* at 349.)
8 Similarly, in *Tollefson v. Roman Catholic Bishop* (1990) 219 Cal.App.3d 843, the court merely
9 held that an unambiguous employment contract that expressly authorized nonrenewal at the
10 complete discretion of the employer did not contain an implied “reasonableness” standard as to
11 any nonrenewal of the agreement. (*Id.* at 853-854.)

12 In contrast to the cases cited by Defendant, the City is attempting to show the intent of the
13 parties as to the meaning of Section 11(f). As stated above, under *Badie*, 67 Cal.App.4th at 798-
14 803, *Mobil Oil Corp.*, 177 Cal.App.3d at 949, and *Bert G. Gianelli*, 172 Cal.App.3d at 1039,
15 plaintiffs are entitled to use extrinsic evidence of the parties’ intent, the surrounding circumstance,
16 and industry practices to reveal the nature of the covenant of good faith and fair dealing contained
17 in the 1996 Lease Agreement.

18 As expressed in *Egan, R.J. Kuhl, Universal Sales, Matzen*, and other case law, the
19 covenant of good faith and fair dealing does not permit one party to a contract to take away the
20 other party’s benefit of the contract. Permitting Defendant to circumvent and frustrate the parties’
21 well-established and uncontradicted intent of Section 11(f) of the 1996 Lease Agreement based on
22 hyper-technical, verbal hairsplitting would plainly deprive the City of the benefits of its bargain.
23 It would not carry out the parties’ acknowledged intent of closely identifying Anaheim with the
24 team, identifying Anaheim as a major league city, and thereby promote Anaheim as a tourism,
25 convention, sports and entertainment destination. Instead, it would deprive the City of the unique
26 type of exposure, publicity, goodwill, and reputation that Los Angeles (Dodgers), New York
27 (Yankees), Boston (Red Sox), San Francisco (Giants), and other major league cities enjoy through
28 their identification with Major League Baseball teams. The Defendant’s campaign to disassociate

1 from Anaheim and identify with Los Angeles is an act of disparagement, rather than an act of
2 promotion.

3 **VII. THE CITY WILL SUFFER IRREPARABLE HARM UNLESS DEFENDANT IS**
4 **ENJOINED FROM CONTINUING ITS BREACH OF THE 1996 LEASE**
5 **AGREEMENT, WHICH HARM FAR EXCEEDS ANY IMAGINED HARDSHIP**
6 **IMPOSED ON DEFENDANT.**

7 A plaintiff suffers irreparable harm and establishes that its legal remedies are inadequate
8 by showing that the defendant’s wrongful act constitutes an actual or threatened injury that cannot
9 be adequately compensated by an ordinary damage award. (Code Civ. Proc., § 526(a)(4);
10 *Brownfield v. Daniel Freeman Marina Hosp.* (1989) 208 Cal.App.3d 405, 410.) A threat of
11 irreparable injury also exists where it is extremely difficult to estimate damages, or where the
12 threatened injury is of a repeated and continuing nature. (Code Civ. Proc., § 526(a)(5) and (6);
13 *People ex rel. Gow v. Mitchell Brothers’ Santa Ana Theater* (1981) 118 Cal.App.3d 863, 870-
14 871.)

15 For these reasons, *damages are “inadequate as a matter of law” to compensate a plaintiff*
16 *for harm caused by a defendant’s failure to publicize the plaintiff’s name as promised.*
17 (*Tamarind Lithography Workshop, Inc. v. Sanders* (1983) 143 Cal.App.3d 571, 575.) In
18 *Tamarind*, the plaintiff sued for specific performance after the defendant failed to fulfill its
19 contractual obligation to give him a screen credit in a film he directed for the defendant. (*Id.* at
20 573.) The court noted that by its very nature, publicity or “public acclaim is unique and very
21 difficult, if not sometimes impossible, to quantify in monetary terms.” (*Id.* at 576.) Thus, the court
22 held that legal remedies could not adequately compensate the plaintiff for such breach both
23 because: (1) “an accurate assessment of damages would be far too difficult and require too much
24 speculation” and (2) “any future exhibitions might be deemed to be a continuous breach of
25 contract and thereby create the danger of an untold number of lawsuits.” (*Id.* at 575.)

26 Similarly, conduct that threatens a *loss of goodwill* has been held to be proper grounds for
27 issuance of a preliminary injunction. (*MCA Records, Inc. v. Newton-John* (1979) 90 Cal.App.3d
28 18, 23 [affirming issuance of preliminary injunction to stop threatened breach of contract that
would result in loss of goodwill]; *Hunt v. Phinney* (1960) 177 Cal.App.2d 212, 216 [affirming

1 issuance of injunction to avoid loss of goodwill, and stating that goodwill “is property and as such
2 will be protected by the courts”]; *City of Needles v. Griswold* (1992) 6 Cal.App.4th 1881, 1185-
3 1886.)

4 Moreover, here, the parties themselves have stipulated that each party’s obligations under
5 the lease are “unique” and that each party is entitled to injunctive relief to enforce the lease.
6 Specifically, Section 35 of the 1996 Lease Agreement provides:

7 Each party acknowledges that the obligations of the other party are, with the
8 exception of monetary or financial obligations or undertakings, unique, and if any
9 party were to fail to observe or perform any of the provision of this Lease, the
10 award of damages arising from any such breach would not be an adequate remedy.
11 Therefore, each party acknowledges and agrees that the other party shall be entitled
12 to specific performance, any other injunctive relief, or any other court order to
13 enforce the performance by such defaulting party of the covenants and obligations
14 it has undertaken under this Lease . . . (Ex. B.)

15 “[F]acts recited in a written instrument are conclusively presumed to be true as between the parties
16 thereto, or their successors in interest.” (Evid. Code, § 622.) Thus, Defendant is estopped from
17 arguing that its non-monetary obligations under the 1996 Lease Agreement are not unique or that
18 damages would be an adequate remedy for a breach of such obligations. (*See Palermo v. Pyke*
19 (1952) 111 Cal.App.2d 350, 355 [recital in agreement that “irreparable damage and harm has been
20 done” conclusively presumed true under predecessor statute to Evidence Code § 622]; *see also* 1
21 Witkin, *Summary of Cal. Law* (9th ed. 1987) Contracts, § 799, p. 722 [“The contract may specify
22 particular remedies to be available in the event of a breach, in addition to or in substitution for
23 those otherwise afforded by law.”].)

24 As indicated, the City did not bargain for the “Anaheim Angels” name change to receive
25 quantifiable monetary benefits. Anaheim bargained for the perception of “major league” status
26 that the prominent association with a major league baseball team provides. (Daly Decl., ¶¶ 4, 6;
27 Ruth Decl., ¶ 5.) The City committed *tens of millions* of dollars of Lease concessions to the
28 baseball team to obtain a lease that provided the City this benefit. (Ruth Decl., ¶¶ 8-9; Smith
Decl., ¶¶ 6-9.) The ridiculed proposed name change to “Los Angeles Angels of Anaheim” not
only eliminates the City’s benefit, it does just the opposite by demeaning Anaheim in comparison
to Los Angeles and subjecting the City to ridicule and disparagement. The City will clearly lose

1 the unique national and international prominence that it bargained for if the team name is allowed
2 to be changed to the Los Angeles Angels (of Anaheim), and the team is allowed to systematically
3 exclude “Anaheim” from its use of the team name in its promotional activities. (Ruth Decl., ¶ 10;
4 Doti Decl., ¶ 6; Smith Decl., ¶ 10.) Anyone who is familiar with the ordinary custom and practice
5 relating to team names in Major League Baseball knows that the awkward new “Los Angeles
6 Angels of Anaheim” team name will inevitably be shortened in its common usage, and that the
7 team will be commonly referred to as the “Los Angeles Angels.” (Smith Decl., ¶ 10.) In addition,
8 because Defendant’s new ownership has implemented a program to systematically exclude
9 “Anaheim” from use in the team name (Smith Decl., ¶¶ 5, 10), it can be safely assumed that
10 Defendant will make no effort to protect the awkward tail-end of the new team name to which
11 Anaheim has been relegated, now overshadowed by the City of Los Angeles that has been
12 prominently placed front and center.

13 With each day that passes, Defendant continues its efforts to publicly “re-brand” the
14 “Anaheim Angels” as the “Los Angeles Angels” (of Anaheim), and to exclude mention of
15 Anaheim in the process. (*E.g.*, Smith Decl., ¶ 10; Sewell Email [Exhibit A] [team officially
16 requests that initials used for game locations be changed from ANA (Anaheim) to LA (Los
17 Angeles)].) And with each passing day, the unique exposure, publicity, goodwill, and reputation
18 the City enjoyed, and which helped brand Anaheim as a “first-class” tourism, convention, sports
19 and entertainment destination, is diminished by having the City’s name edged out by the new
20 headliner, Los Angeles.

21 The economic harm that would result from a change in the name from Anaheim Angels to
22 Los Angeles Angels of Anaheim would be extremely significant, beyond calculation. (Ruth Decl.,
23 ¶ 10; Doti Decl., ¶ 6.) Companies pay tens of millions of dollars to be a name sponsor of an arena
24 (*e.g.*, Staples Arena, Petco Park) or the sponsor of a bowl game (*e.g.*, The FedEx Orange Bowl,
25 The Tostitos Fiesta Bowl), which provide only a fraction of the nationwide exposure that Anaheim
26 receives through the Anaheim Angels name. (Smith Decl., ¶ 4.) The right to this exposure and
27 publicity, for a City committed to promotion of its tourism, conventions, entertainment and sports
28 enterprises, through the remaining 25 year term of the 1996 Lease Agreement, can not be

1 adequately compensated in mere dollars.

2 In summary, it is appropriate for the Court to issue a preliminary injunction to avoid
3 irreparable harm to the City based on: (i) the repeated and continuing nature of Defendant’s
4 violation of the 1996 Lease Agreement; (ii) the unique and special quality of the bargained-for
5 benefits of which Defendant is depriving the City; and (iii) the extreme difficulty in quantifying
6 the value of the unique exposure, publicity, goodwill, and reputation that the City will lose from
7 no longer being closely identified with a Major League Baseball team. (*Mitchell Brothers*, 118
8 Cal.App.3d at 870-871 [“the word ‘irreparable’ is . . . used in expressing the rule that an injunction
9 may issue to prevent wrongs of a repeated and continuing character, or which occasion damages
10 estimable only by conjecture and not by any accurate standard”].)

11 By contrast, if a preliminary injunction is issued, Defendant will not suffer any harm
12 greater than that facing the City. Defendant can simply comply by stopping the use of “Los
13 Angeles” and continue to do what it has previously done.

14 **VIII. DEFENDANT’S CLAIMS OF HARDSHIP—THE ANTICIPATED LOSS OF**
15 **BENEFITS IT SPECULATES IT WILL RECEIVE THROUGH ITS WRONGFUL**
16 **AND WILLFUL BREACH OF THE 1996 LEASE AGREEMENT—MUST BE**
17 **REJECTED.**

18 Defendant claims that if it is enjoined from using the “Los Angeles Angels of Anaheim”
19 name, it will “suffer irreparable harm.” (Def’t. P’s & A’s, p. 35.) In evaluating Defendant’s claim
20 of hardship, it is extremely important to understand the *nature* of the hardship that Defendant
21 claims. In short, the hardship that Defendant claims is the *anticipated loss of an anticipated*
22 *benefit from conduct that the City has a reasonable likelihood of proving at trial to be a*
23 *violation of the 1996 Lease Agreement*. The central premise of Defendant’s hardship theory is its
24 speculative and unproven assumption that it will benefit from the new “Los Angeles Angels of
25 Anaheim.” Defendant argues if it cannot go forward with the new name, it will not enjoy these
26 anticipated benefits.

27 This type of purported harm does not rise to the level of the type of “hardship” that courts
28 consider when “balancing the hardships.” When such anticipated benefits are expected to result
from *wrongful* or *willful* conduct, courts ignore claims that “hardship” will result from being

1 deprived of such ill-gotten gains. It is well-settled under California law that a defendant cannot
2 rely upon the defense of “relative hardships” in order to avoid a preliminary injunction *where the*
3 *hardship claimed by the defendant consists of nothing but the deprivation of the benefits that it*
4 *may receive from its breaching or wrongful conduct.* (See, e.g., *Farrington v. Dyke Water Co.*
5 (1958) 50 Cal.2d 198, 200 [in plaintiff’s suit to compel removal of defendant’s encroaching
6 business sign, defendant’s loss of anticipated benefit from encroaching sign was irrelevant to
7 “relative hardship” analysis]; *City of San Marino v. Roman Catholic Church* (1960) 180
8 Cal.App.2d 657, 678 [in City’s suit to enjoin church from violation of zoning ordinance, fact that
9 church would lose benefits from enjoined use was irrelevant].)

10 In *Farrington*, the defendant leased land to erect a business sign. (*Farrington, supra*, 50
11 Cal.2d at pp. 199-200.) When the lease was terminated, the lessor’s successors-in-interest took
12 possession and sought a preliminary injunction compelling the defendant lessee to remove the
13 sign. (*Id.*) In opposing the preliminary injunction request, the defendant argued (and the trial
14 court agreed) that because the sign benefited its business, it would be harmed in the “carrying on
15 of its business” if the sign were removed, and that the plaintiffs would suffer comparatively little
16 harm if the sign were to remain in its encroaching position. (*Id.*) The trial court agreed with the
17 defendant’s argument, and denied the injunction. (*Id.*)

18 On appeal, the California Supreme Court reversed the trial court’s denial of the injunction
19 because the defendant’s “relative hardship” argument was without merit. In short, the *hardship*
20 *claimed by the defendant consisted of the loss of an anticipated benefit by being required to*
21 *discontinue wrongful conduct.* (*Farrington, supra*, 50 Cal.2d at 200.) The Supreme Court
22 explained:

23 It will be noted that the court did not conclude that the removal of the sign would
24 result in hardship to the defendant. It concluded only that the sign is a “substantial
25 benefit to the defendant in the carrying on of its business.” The doctrine of
26 balancing of conveniences is often invoked as a defense in a suit for an injunction
27 where the plaintiff, seeking to vindicate a technical and unsubstantial right would
28 impose an unusual hardship on the public or the defendant. ***Deprivation of a
substantial benefit, however, falls short of the imposition of substantial hardship.
This is more than a verbal distinction. . . . Thus, proof of irreparable injury is a
necessary element of a defense based upon a balancing of conveniences.***

(*Ibid.* (emph. added); see also *City of San Marino, supra*, 180 Cal.App.2d at 678 [same

1 proposition].)

2 Here, Defendant's claimed "hardship" consists entirely of alleged "losses" it speculates it
3 will suffer from discontinuing its breaching conduct. In accordance with the Supreme Court's
4 holding in *Farrington*, Defendant's argument that a preliminary injunction should be denied
5 because of the "hardship" it claims it will suffer must be rejected.

6 Defendant's relative-hardship argument should also be rejected because courts refrain from
7 engaging in a "balancing of the hardships" analysis when the defendant acted in a willful manner
8 relative to the harm the plaintiff seeks to enjoin. (*See, e.g., Christensen v. Tucker* (1952) 114
9 Cal.App.2d 554, 559-560 [defendant encroacher cannot rely upon "relative hardships" analysis
10 where encroachment was willful]; *U.S. v. Marine Shale Processors* (5th Cir. 1996) 81 F.3d 1329,
11 1359 [citing *Christensen* case for proposition that "**a court need not balance the hardship when a**
12 **defendant's conduct has been willful**").) Here, Defendant's recent name change was a willful
13 and deliberate act taken after the City **repeatedly warned** Defendant that such a name change
14 would constitute a breach of the 1996 Lease Agreement. (Morgan Decl., ¶¶ 6-9.) As such, this
15 Court should refrain from giving credence to Defendant's argument that it will suffer self-imposed
16 harm if it is forced to discontinue the wrongful, breaching conduct it willfully undertook in the
17 face of the City's warnings.

18 In addition to lacking any legal support, Defendant's claim of hardship lacks any factual
19 support. Defendant's claim of hardship is based on its assertion that it has invested tremendous
20 sums in its marketing plan, and that if it is unable to implement the name change, it will cost it
21 "millions of dollars." (Def. Memo. of P's & A's, p. 20.) The only purported evidence that
22 Defendant cites to support this theory is the declaration of Dennis Kuhl. In his declaration, Mr.
23 Kuhl explains that Defendant has a certain "marketing plan" that it has implemented since it
24 purchased the team in 2003. Mr. Kuhl claims that Defendant's marketing plan has already reaped
25 incredible rewards, including increases in sold out games, ticket sales, and attendance. (Def. P's
26 & A's, p. 5, [citing Kuhl Decl., ¶ 16-17].)

27 In touting the supposed success of its "marketing plan," Defendant overlooks two key
28 facts. First, the increases in ticket sales and attendance in 2003 and 2004 come on the heels of the

1 team's World Series Championship in 2002 under Disney's ownership. It is far more likely that
2 the team's World Series victory just two years ago is responsible for the increase in tickets sales
3 and attendance, rather than some brilliant new marketing plan. Thus, Defendant's claim to be
4 presently benefiting from a successful marketing plan is *speculative at best*.

5 Second, even if Defendant's "marketing plan" is responsible for these increases in the 2003
6 and 2004 seasons, *this success was achieved while Defendant's baseball team was still called the*
7 *Anaheim Angels*. Thus, success in the 2003 and 2004 seasons under the Anaheim Angels name
8 only proves that the Anaheim Angels name was successful—it does not prove Defendant will
9 benefit from the new "Los Angeles Angels of Anaheim" name.

10 In summary, Defendant's hardship theory lacks both legal and factual support. Under
11 *Farrington*, Defendant's alleged ill-gotten gains from breaching the 1996 Lease Agreement are
12 not weighed on the scale when balancing the hardships. Furthermore, Defendant's purported
13 evidence of hardship is, at best, conjecture.

14 **IX. THE CITY HAS NOT SOMEHOW INEXPLICABLY WAIVED THE RIGHT TO**
15 **OBJECT TO DEFENDANT'S SO-CALLED EVIDENCE PRIOR TO THE**
16 **ACTUAL HEARING ON THE PRELIMINARY INJUNCTION.**

17 Defendant argues that somehow, although the hearing on the City's request for a
18 preliminary injunction has yet to occur, the City has waived any and all objections to Defendants
19 evidence in opposition to the request for the preliminary injunction. (Def. Memo. P's & A's, p. 3.)
20 At approximately 6 p.m. on January 6, the night before the hearing on the City's application for a
21 temporary restraining order, Defendant served the City with *unsigned copies* of the declarations
22 upon which they relied in their opposition to the temporary restraining order. As of this date,
23 despite the fact that Defendant relies upon the same evidence in its opposition to the City's
24 application for a preliminary injunction, Defendant still has not served the City with signed copies
25 of the verification pages of such declarations.

26 Nonetheless, Defendant argues that City has waived its right to object to such evidence
27 because it failed to do so at the January 7 hearing on *the temporary restraining order*. The current
28 hearing for the *preliminary injunction* is January 21, 2005. As numerous cases demonstrate,
objections made at the time a matter is heard are timely made. (*See e.g. Wilcox v. Superior Court*

1 (1994) 27 Cal. App. 4th 809, 829 [court sustained objection to declaration made at hearing];
2 *Weber v. Superior Court of Los Angeles County* (1960) 53 Cal. 2d 403, 405; *Baker v. Baker*
3 (1961) 192 Cal. App. 2d 730 ; *Thompson v. Palmer Corp.* (1956) 138 Cal. App. 2d 387, 388.)
4 Thus, the City has until the conclusion of the hearing on the preliminary injunction to object to the
5 evidence Defendant relies upon in opposing such injunction.

6 Defendant seems to suggest that the rule in California is that all evidentiary objections are
7 forever waived by a party's failure to make such objections as soon as is humanly possible.
8 However, the authority cited by Defendant does not support such a proposition. The statute cited
9 by Defendant, Evidence Code § 353(a) says only that a trial court's judgment or decision shall not
10 "be reversed, by reason of the erroneous admission of evidence unless" an objection to such
11 evidence was timely made. It provides a standard for appellate courts, and does not even require
12 trial courts to accept objectionable evidence where an objection is not timely made. Likewise, the
13 case cited by Defendant, *Heiner v. Kmart* (2000) 84 Cal.App.4th 335 stands only for the
14 proposition that a party cannot contend, on appeal, that a trial court abused its discretion by
15 admitting evidence when the party failed to object to such evidence "at all relevant times." (*Id.* at
16 346.) There is no authority which suggests that the City objections (that are submitted
17 concurrently with this reply brief) are untimely, or even that the Court would be required to
18 disregard them if they were untimely.

19 **X. CONCLUSION**

20 The overwhelming and unrefuted evidence shows that the intent of the parties to the 1996
21 Lease Agreement was that the team name would be changed to include Anaheim so that Anaheim
22 would be closely identified with the team and would be publicized throughout the nation as a
23 major league city. Having the same kind of association with a baseball team as other major league
24 cities (Boston Red Sox, New York Yankees, Oakland A's, etc.) would help promote Anaheim as a
25 tourism, convention, sports and entertainment destination. By its recent name change to the Los
26 Angeles Angels (...of Anaheim), Defendant is telling the nation that Anaheim is not a major
27 league city and that the team has to be associated with the City of Los Angeles to be truly
28 successful. Defendant has breached its agreement and its obligation not to do anything that would

1 deprive Anaheim of the bargained for benefits of the agreement. Defendant must not be
2 encouraged to continue its breach. The Court should enjoin Defendant from implementing the
3 change which disparages Anaheim instead of promoting Anaheim.

4 Dated: January 20, 2005

RUTAN & TUCKER, LLP

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6 By: _____
Michael Rubin
7 Attorney for Plaintiff CITY OF ANAHEIM
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