

1 RUTAN & TUCKER, LLP
MICHAEL RUBIN (State Bar No. 62588)
2 TODD O. LITFIN (State Bar No. 181152)
ANDREW AINSWORTH (State Bar No. 216044)
3 611 Anton Boulevard, Fourteenth Floor
Costa Mesa, California 92626-1931
4 Telephone: 714-641-5100
Facsimile: 714-546-9035

5 SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP
6 ANDREW J. GUILFORD (State Bar No. 66048)
650 Town Center Drive, 4th Floor
7 Costa Mesa, CA 92626-1925
Telephone: 714-513-5100
8 Facsimile: 714-513-5130

9 JACK WHITE (State Bar No. 46149)
City Attorney, City of Anaheim
10 200 S. Anaheim Boulevard, Suite 356
Anaheim, California 92805
11 Telephone: 714-765-5169
Facsimile: 714-765-5123

12 Attorneys for Plaintiff and Cross-Defendant
13 CITY OF ANAHEIM

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

16 CITY OF ANAHEIM, a charter city and
municipal corporation,

17 Plaintiff,

18 vs.

19 ANGELS BASEBALL, LP, a California
20 limited partnership; and DOES 1 through
100, inclusive,

21 Defendant.

22 ANGELS BASEBALL, LP, a California
23 limited partnership,

24 Cross-Complainant,

25 vs.

26 CITY OF ANAHEIM, a charter city and
27 municipal corporation; and ROES 1 through
100, inclusive,

28 Cross-Defendants.

Case No. 05CC01902

Judge: Hon. Peter J. Pools
Dept.: C64

**PLAINTIFF'S OPPOSITION TO EX
PARTE APPLICATION BY ANGELS
BASEBALL LP FOR TEMPORARY
PRETRIAL ORDER**

Date Action Filed: January 5, 2005
Trial Date: January 9, 2006

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I. **INTRODUCTION AND FACTUAL BACKGROUND: CONTRARY TO THE**
3 **IMPLICATIONS OF ITS PAPERS, ABLP HAS HARDLY PLAYED THE**
4 **“SHRINKING VIOLET” WITH THE MEDIA.**

5 While Defendant, ABLP, gives the impression in its papers that communications
6 with the media and the public concerning this litigation emanate only from the City, this is
7 demonstrably untrue and underscores one reason that the City must respond to public
8 inquiries relating to the case. Even prior to the inception of this case, ABLP engaged in a
9 media-based marketing effort to sell its position to the public and to erode public support
10 for the City’s expenditure of funds to protect its interests through the litigation. As a major
11 league sports team, ABLP has unique access to the media and has the ability to exploit this
12 access not only for public interviews but also to circumspectly plant stories and positions
13 with reporters that are beholden to the team.

14 ABLP has recently caused a series of articles to be published which suggest that
15 Anaheim is trying to run Arte Moreno and the team out of town and that pursuing the
16 litigation will effectively cause Mr. Moreno to take his team and move elsewhere.
17 Furthermore, Defendant has compromised the confidentiality of court-ordered mediation
18 proceedings by publicly suggesting to the press that Anaheim undertook unreasonable
19 settlement positions. Not only does this compromise the integrity of the mediation
20 process, it also has the potential to impose public and political pressure upon Anaheim to
21 drop its lawsuit or to effectively cave in to a one-sided settlement.

22 The centerpiece of the recent effort by Defendant is an article that appeared in the
23 Los Angeles Times on November 22, 2005 by Bill Shaikin, entitled “Next Move Could be
24 Up to Moreno”. (See, Exhibit “A” to the Declaration of Michael Rubin (“Rubin Decl.
25 Exh. A”) attached hereto and incorporated herein by this reference.) Next to the article on
26 the cover page of the Sports section is a prominent photograph of Mr. Moreno with the
27 words above the photo “They’re trying to run me out of town...Somewhere along the line
28 you have to think about whether you’re gone.” The text of the article states: “The Angels

1 have made several settlement offers, Moreno said, but he insists on keeping the Los
2 Angeles name and the city insists he remove it.”

3 The November 22nd article also references alleged monetary concessions offered by
4 the team in settlement negotiations and quotes Mr. Moreno with respect to all the benefits
5 that he has brought to the City since he took ownership: “Not only are we giving a check to
6 the city, we’re putting money into that stadium every year.” Mr. Moreno is further quoted:
7 “When does it get to a point where Anaheim understands what we’re doing for the
8 community? Anaheim has had the luxury of having a baseball team. There’s 30 of them.
9 They’re doing everything they can to run us out.”

10 Undoubtedly as a result of this, there have been questions posed to the City’s
11 officials concerning the wisdom of going to trial. On December 28, 2005 a prominent
12 Orange County Register Sports Reporter, Randy Youngman opined in his column:

13 “I think the city of Anaheim is making a huge mistake
14 continuing its lawsuit against the Angels over the name
change, a case that is scheduled for trial January 9.

15 “It’s a lose-lose situation. Even if Anaheim wins a nine-figure
16 judgment, all that does is give owner Arte Moreno an excuse to
move the franchise in the future.”

17 (Rubin Decl. Exh. B.) This was followed up with comment in the Youngman column on
18 New Years Day:

19 Suggested New Year's resolutions for a few of my friends in
20 the wonderfully wacky world of sports:
21 Arte Moreno: To somehow reach an out-of-court settlement
22 with the city of Anaheim, before the name-change trial is
scheduled to start, assuming the city politicians are willing and
reasonable.

23 (Rubin Decl. Exh. C.) In sum, ABLP’s cry of “poor me” with respect to media publicity is
24 directly and blatantly undercut by ABLP’s own concerted efforts to rally the press behind
25 ABLP’s position in this case.

26 While Mr. Moreno runs a private company and can carry out his own strategies
27 without worry about public opposition (the name change was roundly opposed by the
28 public but Mr. Moreno went forward), Anaheim can not ignore erosion of public support

1 and can not ignore public questioning of its actions, particularly when those questions are
2 spawned by Defendant's own media activities.

3 While Mr. Moreno has caused numerous Orange County baseball fans to fear the
4 loss of their team if Anaheim continues to pursue its legal rights, the City has a duty to
5 justify its actions to its citizens. Among other things, it is appropriate to respond to
6 ABLP's own media-based tactics by pointing out:

- 7 • The team is under a long term lease with Anaheim and is required to play its
8 home games at the Stadium in Anaheim through at least the end of the 2016
9 baseball season.
- 10 • Even to terminate the lease after the 2016 baseball season, instead of after
11 the full term of the lease in 2029, the team would have to pay a substantial
12 early termination buy out penalty to Anaheim.
- 13 • While it is not unusual for NFL football teams to move locations, it is very
14 rare for a MLB team to do so. In fact, no major league baseball team has
15 relocated to another City since 1970, with the exception of the Montreal
16 Expos, a special case of a franchise purchased by Major League Baseball
17 itself with the intent of moving the team to Washington D.C.
- 18 • The Anaheim Angels are one of the most successful franchises in Major
19 League Baseball with the third highest MLB attendance last year.
20 Mr. Moreno is not so foolish to leave town and kill the Golden Goose.
- 21 • The best way to assure that the team will stay in Anaheim and Orange
22 County even after 2016 is for Anaheim to successfully preserve its rights to
23 have the team affiliated with Anaheim (rather than affiliated with Los
24 Angeles) through the team name so that Anaheim has the benefit of the
25 exposure and recognition this brings.

- 26 ○ Only by doing so will Anaheim have sufficient incentive to do make
27 the economic concessions to keep the team in Anaheim after 2016.

28 The City was unwilling to make the economic concessions necessary

1 to keep the Los Angeles Rams in Anaheim in the early 1990's, largely
2 because this team with another City's name did not engender the
3 loyalty or the economic return to justify the necessary concessions.

4 ○ Allowing the team to adopt the Los Angeles name and affiliate with
5 Los Angeles for the next 11 years will, if anything, facilitate a move
6 to Los Angeles in 2017, after more than a decade of paving the way
7 by promoting Los Angeles and become LA's team.

- 8 • While Mr. Moreno publicly speaks about the cost he is incurring to make
9 improvements to the stadium, sign players, and pay the City a share of
10 attendance income after high thresholds are achieved, what is not mentioned
11 is the substantial concessions Anaheim made in 1996 to obtain the
12 recognition and publicity that would accrue through naming the team
13 Anaheim.

14 ABLP's papers reference an article in December 23, 2005 LA Times where Mr.
15 Guilford and I commented about the damages being sought by the City and the hundreds
16 of millions of lost impressions due to the name change, it fails to note that these comments
17 were made after ABLP's counsel stated in open court, with the LA Times Reporter
18 present, that the City was alleging such damages. The comments were therefore made to
19 clarify allegations brought up by ABLP's counsel, after the LA Times reporter asked the
20 City's attorneys direct questions concerning the statements made by ABLP's lawyer.

21 It should also be noted that the Mayor of Anaheim has already completed the Q&A
22 with the Orange County Register. The Q&A was undertaken with the understanding that
23 the same questions would be asked Mr. Moreno as would be asked the Mayor. It was
24 Anaheim's understanding that Mr. Moreno was responding to the same Q&A until Friday
25 afternoon when Anaheim's attorney was first informed of the proposed gag order.
26 Anaheim can not prevent the Register from running its article.

1 **II. LEGAL ANALYSIS: ABLP'S REQUESTED "GAG ORDER" BLATANTLY**
2 **VIOLATES THE FIRST AMENDMENT.**

3 The First Amendment to the United States Constitution provides that "Congress
4 shall make no law . . . abridging the freedom of speech, or of the press." Free speech
5 rights are even broader under the California Constitution: "Every person may freely speak,
6 write and publish his or her sentiments, on all subjects, being responsible for the abuse of
7 this right. A law may not restrain or abridge liberty of speech or press." (California
8 Constitution, Article I, section 2, subdivision (a).)

9 **A. ABLP's Request For A Gag Order Must Pass The "Strict Scrutiny" Test**
10 **For Prior Restraints On Free Speech. ABLP Bears The Burden Of**
11 **Overcoming A "Heavy Presumption" Of Unconstitutionality.**

12 Court orders, such as the one sought by ABLP here, that restrict or preclude a
13 person from speaking on an issue in advance of the speech itself qualify as "prior
14 restraints." (*Hurvitz v. Hoefflin* (2000) 84 Cal. App. 4th 1232, 1241 ("*Hurvitz*") ["gag"
15 orders are prior restraints on speech].) "Any prior restraint on expression comes to []
16 Court with a 'heavy presumption' against its constitutional validity." (*Organization for a*
17 *Better Austin v. Keefe* (1971) 402 U.S. 415, 419 ("*Keefe*"); *see also, id.* [gag order against
18 litigant held as an unconstitutional prior restraint on speech].) "Prior restraints are subject
19 to strict scrutiny because of the peculiar dangers presented by such restraints." (*Levine v.*
20 *United States Dist. Court for Cent. Dist.* (9th Cir. 1985) 764 F.2d 59 ("*Levine*").) "**Gag**
21 **orders on trial participants are unconstitutional unless (1) the speech sought to be**
22 **restrained poses a clear and present danger or serious and imminent threat to a**
23 **protected competing interest; (2) the order is narrowly tailored to protect that**
24 **interest; and (3) no less restrictive alternatives are available.**"¹ (*Hurvitz, supra*, at
25

26 ¹ Notably, some courts have espoused a lower standard of scrutiny for gag orders aimed
27 at third-party members of the media. (*See e.g., San Jose Mercury News, Inc. v. Criminal*
28 *Grand Jury* (2004) 122 Cal.App.4th 410, 415-18 [slightly lower standard of review for gag
orders against third-party members of the media.] That distinction, however, is inapposite
to ABLP's present motion, which seeks to "gag" actual trial participants (i.e., City officials
and their attorneys) rather than a third-party member of the media. (*See e.g., Levine v. U.*
S. Dist. Court for C. Dist. of Cal. (9th Cir. 1985) 764 F.2d 590, 595 [strict scrutiny standard

1 1241 [emphasis added].)

2 **B. The Gag Order Sought By ABLP Undoubtedly Seeks To Restrain**
3 **Constitutionally Protected Speech.**

4 Essentially, ABLP’s proposed gag order seeks to prevent all City representatives
5 from engaging in extra-judicial commentary on this case. The requested gag order takes
6 aim at all City officials, including City Council members and staff, as well as the City’s
7 legal counsel.

8 City representatives, however, do not relinquish their First Amendment rights just
9 because they accept public service. (*United States v. Nat’l Treasury Emples. Union* (1995)
10 513 U.S. 454, 465.) Full First Amendment protection extends *even to governmental*
11 *representatives* where the “expressive activities. . . fall within the protected category of
12 citizen comment on matters of public concern.” (*Id.* at 466.) Indeed, the California
13 Supreme Court has observed that public officials, such as officials and employees of
14 Plaintiff City, are *obligated* to speak on matters of public concern: “A councilman has not
15 only a right but an obligation to discuss issues of vital concern with his constituents and to
16 state his views on matters of public importance.” (*Fairfield v. Superior Court of Solano*
17 *County* (1975) 14 Cal.3d 768, 780; *see also, Loza v. Panish* (1980) 102 Cal.App.3d 821
18 [law preventing candidates for public office from publishing statements regarding matters
19 other than name and educational qualifications is an unconstitutional prior restraint of free
20 speech].) Thus, public officials, such as Plaintiff’s City Council members, have a
21 heightened First Amendment right and duty to inform their constituents of public issues.

22 Likewise, attorneys for the City have not shed their First Amendment rights upon
23 entering the courtroom. (*See e.g., Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030
24 (“*Gentile*”) [prohibition on extrajudicial commentaries by defense counsel held as a
25 violation of the attorney’s First Amendment rights].) In *Gentile*, the U.S. Supreme Court
26 reiterated the need to keep the free speech rights of attorneys unshackled:

27 "Since lawyers are considered credible in regard to pending
28 litigation in which they are engaged and are in one of the most
for prior restraints applied to gag order against trial attorney].)

1 knowledgeable positions, they are a crucial source of
2 information and opinion." *Chicago Council of Lawyers v.*
3 *Bauer*, 522 F.2d 242, 250 (CA7 1975). To the extent the press
4 and public rely upon attorneys for information because
5 attorneys are well informed, this may prove the value to the
6 public of speech by members of the bar. If the dangers of their
speech arise from its persuasiveness, from their ability to
explain judicial proceedings, or from the likelihood the speech
will be believed, these are not the sort of dangers that can
validate restrictions. The First Amendment does not permit
suppression of speech because of its power to command assent.

7 (*Gentile, supra*, 501 U.S. at 1056-57.)

8 In sum, none of the individuals against whom ABLP seeks a gag order have
9 relinquished or waived their First Amendment rights. Accordingly, this Court must apply
10 the strict scrutiny standard of review, described above, to ABLP's Motion.

11 **C. ABLP's Request For A Gag Order Simply Cannot Pass The Threshold**
12 **Showing Of A "Clear And Present Danger".**

13 A gag order against trial participants will only issue under urgent circumstances
14 threatening immanent and serious harm. Even some of the most seemingly critical
15 circumstances have failed to pass muster under this "clear and present danger" test. For
16 example, "even the publication of the purloined Pentagon Papers concerning matters of
17 national security could not be restrained: 'A recent case declined to restrain publication of
18 the so-called 'Pentagon Papers' despite the urging of the government that the publication
19 would result in a serious breach of national security.'" (*Gilbert v. Nat'l Enquirer* (1996)
20 43 Cal.App.4th 1135, 1144 ("*Gilbert*").) Moreover, courts have repeatedly refused to
21 "gag" even the harshest criticisms of business practices. (*Keefe, supra* [attempt to restrain
22 distribution of a pamphlet criticizing a real estate broker for his selling practices has
23 likewise been held improper]; *Hurvitz, supra* [gag order on commentary regarding doctor's
24 medical practice held unconstitutional].)

25 At best, ABLP's only justification for a gag order is the possibility of bad publicity.
26 This justification does not even pass the "smell test" for clear and present danger. Even if
27 media publicity could conceivably prejudice a jury, such potentiality simply does not
28 warrant a gag order absent *concrete* evidence of absolute jury prejudice:

1 Where a party contends his or her right to a fair trial has been
2 or will be compromised by pretrial publicity, the law has long
3 imposed on that party the burden of producing evidence to
4 establish the prejudice. "[I]t is not enough for a court to decide
5 that the fair trial right may be affected by the exercise of free
6 speech." Here, the trial court's ruling relies on just such
7 speculation. This is not enough to support the prior restraint on
8 speech.

9 (*Hurvitz, supra*, at 1243-43 [emphasis added].)

10 Several courts have specifically held that bad publicity does not warrant a gag order
11 upon trial participants. Bad publicity is, by all judicial standards, a rather low priority on
12 the scale of justifications for protective orders in civil litigation: "publicity [does] not rise
13 even to a level requiring questioning of individual jurors about the content of publicity."

14 (*Gentile, supra*, at 1039; *see also, Gilbert, supra*.) For example, in *Gilbert, supra*, plaintiff
15 actress sought to restrain publication of personal information and opinion in the *National*
16 *Enquirer*. Noting that *even defamatory* media statements may not be gagged, the court
17 firmly rejected plaintiff's request for an order restraining media publicity:

18 [P]rior restraints are not permitted to stop the publication of a
19 defamatory statement. As our state Supreme Court put it, the
20 published First Amendment cases "leave no doubt that the truth
21 or falsity of a statement on a public issue is irrelevant to the
22 question whether it should be repressed in advance of
23 publication." [citation] "The concept that a statement on a
24 public issue may be suppressed because it is believed by a
25 court to be untrue is entirely inconsistent with constitutional
26 guarantees and raises the spectre of censorship in a most
27 pernicious form. . . .

28 The judiciary has been ever mindful of Thomas Jefferson's
aphorism that 'error of opinion may be tolerated when reason is
free to combat it.' " [citation]

(*Gilbert, supra*, at 1145.) Under the circumstances of this case, the City's commentary and
free speech rights *must* be tolerated, particularly given ABLP's own access to the media.²


² In fact, ABLP's desire to restrain the City's commentary on this case is particularly
ironic. As recently as November 22, 2005, ABLP published its own attacks upon the City
with respect to this case, even going so far as to threaten removal of the Angels team from
the City. ABLP wants to have its cake and eat it too—by seeking to gag the City from
media commentary while ABLP is left perfectly free to its own control of media
propaganda.

1 **III. CONCLUSION**

2 For the several reasons set forth above, Plaintiff City of Anaheim respectfully
3 requests that Defendant's Motion to restrain media publicity must be denied.

4 Dated: January 3, 2006

RUTAN & TUCKER, LLP

5
6 By: 
7 ~~Todd O. Litfin~~ *MICHAEL R. ...*
8 Attorney for Plaintiff
9 CITY OF ANAHEIM
10 *Todd O. Litfin*
11 *M. R. ...*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 and incorporated herein by this reference. Next to the article on the cover page of the
2 Sports section is a prominent photograph of Mr. Moreno with the words above the photo
3 "They're trying to run me out of town...Somewhere along the line you have to think about
4 whether you're gone." The text of the article states: "The Angels have made several
5 settlement offers, Moreno said, but he insists on keeping the Los Angeles name and the
6 city insists he remove it."

7 5. The November 22nd article also references alleged monetary concessions
8 offered by the team in settlement negotiations and quotes Mr. Moreno with respect to all
9 the benefits that he has brought to the City since he took ownership: "Not only are we
10 giving a check to the city, we're putting money into that stadium every year." Mr. Moreno
11 is further quoted: "When does it get to a point where Anaheim understands what we're
12 doing for the community? Anaheim has had the luxury of having a baseball team. There's
13 30 of them. They're doing everything they can to run us out."

14 6. Undoubtedly as a result of this, there have been questions posed to the City's
15 officials concerning the wisdom of going to trial. On December 28, 2005 a prominent
16 Orange County Register Sports Reporter, Randy Youngman opined in his column:

17 "I think the city of Anaheim is making a huge mistake
18 continuing its lawsuit against the Angels over the name
change, a case that is scheduled for trial January 9.

19 "It's a lose-lose situation. Even if Anaheim wins a nine-figure
20 judgment, all that does is give owner Arte Moreno an excuse to
move the franchise in the future."

21 A true and correct copy of this article is attached hereto as Exhibit "B" and incorporated
22 herein by this reference. This article was followed up with comment in the Youngman
23 column on New Years Day:

24 Suggested New Year's resolutions for a few of my friends in
25 the wonderfully wacky world of sports:
26 Arte Moreno: To somehow reach an out-of-court settlement
27 with the city of Anaheim, before the name-change trial is
scheduled to start, assuming the city politicians are willing and
reasonable.

28 A true and correct copy of this New Years Day article is attached hereto as Exhibit "C"

1 and incorporated herein by this reference. In sum, ABLP's cry of "poor me" with respect
2 to media publicity is directly and blatantly undercut by ABLP's own concerted efforts to
3 rally the press behind ABLP's position in this case.

4 7. While Mr. Moreno runs a private company and can carry out his own
5 strategies without worry about public opposition (the name change was roundly opposed
6 by the public but Mr. Moreno went forward), Anaheim can not ignore erosion of public
7 support and can not ignore public questioning of its actions, particularly when those
8 questions are spawned by Defendant's own media activities.

9 8. While Mr. Moreno has caused numerous Orange County baseball fans to fear
10 the loss of their team if Anaheim continues to pursue its legal rights, the City has a duty to
11 justify its actions to its citizens. Among other things, it is appropriate to respond to
12 ABLP's own media-based tactics by pointing out:

- 13 • The team is under a long term lease with Anaheim and is required to play its
14 home games at the Stadium in Anaheim through at least the end of the 2016
15 baseball season.
- 16 • Even to terminate the lease after the 2016 baseball season, instead of after
17 the full term of the lease in 2029, the team would have to pay a substantial
18 early termination buy out penalty to Anaheim.
- 19 • While it is not unusual for NFL football teams to move locations, it is very
20 rare for a MLB team to do so. In fact, no major league baseball team has
21 relocated to another City since 1970, with the exception of the Montreal
22 Expos, a special case of a franchise purchased by Major League Baseball
23 itself with the intent of moving the team to Washington D.C.
- 24 • The Anaheim Angels are one of the most successful franchises in Major
25 League Baseball with the third highest MLB attendance last year.
26 Mr. Moreno is not so foolish to leave town and kill the Golden Goose.
- 27 • The best way to assure that the team will stay in Anaheim and Orange
28 County even after 2016 is for Anaheim to successfully preserve its rights to

1 have the team affiliated with Anaheim (rather than affiliated with Los
2 Angeles) through the team name so that Anaheim has the benefit of the
3 exposure and recognition this brings.

4 ○ Only by doing so will Anaheim have sufficient incentive to do make
5 the economic concessions to keep the team in Anaheim after 2016.

6 The City was unwilling to make the economic concessions necessary
7 to keep the Los Angeles Rams in Anaheim in the early 1990's, largely
8 because this team with another City's name did not engender the
9 loyalty or the economic return to justify the necessary concessions.

10 ○ Allowing the team to adopt the Los Angeles name and affiliate with
11 Los Angeles for the next 11 years will, if anything, facilitate a move
12 to Los Angeles in 2017, after more than a decade of paving the way
13 by promoting Los Angeles and become LA's team.

- 14 ● While Mr. Moreno publicly speaks about the cost he is incurring to make
15 improvements to the stadium, sign players, and pay the City a share of
16 attendance income after high thresholds are achieved, what is not mentioned
17 is the substantial concessions Anaheim made in 1996 to obtain the
18 recognition and publicity that would accrue through naming the team
19 Anaheim.

20 9. ABLP's papers reference an article in December 23, 2005 LA Times where
21 Mr. Guilford and I commented about the damages being sought by the City and the
22 hundreds of millions of lost impressions due to the name change, it fails to note that these
23 comments were made after ABLP's counsel stated in open court, with the LA Times
24 Reporter present, that the City was alleging such damages. The comments were therefore
25 made to clarify allegations brought up by ABLP's counsel, after the LA Times reporter
26 asked the City's attorneys direct questions concerning the statements made by ABLP's
27 lawyer.

28 10. It should also be noted that the Mayor of Anaheim has already completed the

1 Q&A with the Orange County Register. The Q&A was undertaken with the understanding
2 that the same questions would be asked Mr. Moreno as would be asked the Mayor. It was
3 Anaheim's understanding that Mr. Moreno was responding to the same Q&A until Friday
4 afternoon when Anaheim's attorney was first informed of the proposed gag order.

5 Anaheim can not prevent the Register from running its article.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct.

8 Executed on 1/3/2006, at Costa Mesa, California:

9
10 
11 _____
12 Michael Rubin

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Los Angeles Times

SPORTS

Tuesday, November 22, 2005

latimes.com/sports

'They're trying to run me out of town. . . . Somewhere along the line you have to think about whether you're gone.'

Arte Moreno, Angel owner

'Of course we want to have the team in town. . . . We're just trying to uphold the bargain we made with the team.'

Curt Pringle, Anaheim mayor



CHRISTINE COTTER Los Angeles Times

WHAT'S IN A NAME? Owner Arte Moreno was sued by Anaheim after he began billing the Angels as a Los Angeles team.

Next Move Could Be Up to Moreno

Angel owner, increasingly frustrated by his year-old legal battle with Anaheim, says relocating the team is a possibility if the case reaches appeals court.

By BILL SHAIKIN
Times Staff Writer

TEMPE, Ariz. — He might pay more to his lawyers than to his relief pitchers this year. Under a lease at issue in a lawsuit between the Angels and the city of Anaheim, he has paid more to refurbish Angel Stadium than the city has.

So, with the legal battle approaching the one-year mark and threatening to overshadow back-to-back division championships, Angel owner Arte Moreno is increasingly frustrated with city officials.

"They're trying to run me out of town," he said.

The city claims the Angels broke their stadium lease by billing themselves as a Los Angeles team. The trial is set to start Jan. 9. The losing side could appeal a lengthy process that Moreno said could prompt him to consider moving the team.

"If this gets put into appeals

court, somewhere along the line you have to think about whether you're gone," he said.

Anaheim Mayor Curt Pringle dismissed the notion that the City Council wants to chase Moreno out.

"Of course we want to have the team in town," Pringle said. "This council and previous councils have bent over backward to build that relationship. We're not bending over backward now, but we're just trying to uphold the bargain we made with the team."

"We view it as a tremendous asset. That's why we put so much money into the deal."

The city contributed \$20 million to the Walt Disney Co.'s 1996 stadium renovation, contingent upon the team calling itself the Anaheim Angels. Moreno bought the team from Disney in 2003 and changed the name to the Los Angeles Angels of Anaheim last January.

The Angels say they have sat-

[See Angels, Page D7]



LOUI SHAPIRO Los Angeles Times

NEW TWIST: Anaheim Mayor Curt Pringle says city has "bent over backward" for Angels but isn't doing so now.

RELATED STORIES

Halo there: The \$22-million renovation of the Angels' spring complex in Arizona will include the signature Big A logo. D7

Fishing expedition: The Florida Marlins are looking to off-load some big names, and the Dodgers appear interested. D7

City, Owner at Odds Over Lease

(Angels, from Page D1)

ified the lease provision that requires the team name to "include the name Anaheim therein." The city says that name violates the spirit of the lease, depriving Anaheim of prominent media exposure that could be worth tens — or hundreds — of millions.

The Angels have made several settlement offers, Moreno said, but he insists on keeping the Los Angeles name and the city insists he remove it.

"The issue always comes back to the name," Moreno said.

Moreno and Pringle each declined to provide details of the settlement offers.

According to sources familiar with the discussions, the Angels offered to guarantee an annual share of ticket revenue and to address the alleged loss of media exposure by promoting the city in ads and broadcasts, but the team did not offer to repay the \$20 million, or even a prorated part.

The lease requires the Angels to pay the city \$2 for every ticket sold over 2.6 million. The Angels sold 3 million for the first time in 2003 and increased attendance since then, thus paying almost \$5 million to the city.

In addition, Moreno has spent \$34 million on repairs and maintenance at the city-owned stadium, spokesman Tim Mead said. Under the lease, the Angels run the stadium and assume any operating losses.

"Not only are we giving a check to the city, we're putting money into that stadium every year," Moreno said.

Aside from his legal skirmish, Moreno said he sees progress on and off the field.

For the first time, the Angels have won consecutive division championships, with television ratings pulling even with the Dodgers'. Although FSN has offered a cable contract on par with the Dodgers', Moreno said he has not ruled out launching a cable chan-

nel.

From 2002 to '05, he said, annual revenues jumped from \$102 million to \$175 million and season-ticket sales from 12,000 to 28,000. The latter figure reflects a marketing campaign across Southern California, he said, with 38% of season seats this year sold to fans outside Orange County.

"In the next two years, we'll probably be 50-50," he said.

He is getting tired, he said, of hearing questions about the lawsuit instead of about American League Cy Young Award winner Bartolo Colon, or the Angels' attendance records, or about their charitable foundation and renewed community involvement.

He expects to spend \$4 million to \$5 million on legal bills, he said. The Angels spent about \$4 million on their bullpen last season. (That figure accounts for the salaries of 11 relievers, but doesn't include the salary of Kelvin Escobar, who started for three months and relieved for one.)

Said Moreno: "When does it get to a point where Anaheim understands what we're doing for the community? Anaheim has had the luxury of having a baseball team. There's 30 of them. They're doing everything they can to run us out."

"When does it get to a point where the city of Anaheim isn't trying to intimidate the owner of the Angels?"

In 1983, the Angels sued the city over parking lot development rights granted to entice the Rams to Anaheim. By the time the suit was settled in 1995, the Rams had left for St. Louis, and the city paid \$13 million to the Rams' owners and a development company.

Former Angel president Richard Brown, whose law firm helped represent the team in that litigation, said the current lawsuit is nowhere near that complex.

"But if somebody were to appeal,

that could take another year or two," Brown said.

Moreno said he would not necessarily move the team if the lawsuit proceeds to an appellate court.

"I'd be cutting off my nose to spite myself to say I'm leaving," he said. "I have to make the best call for the franchise."

The Angels can opt out of their stadium lease in 2016, and a lengthy court fight could influence Moreno's decision.

Angel Stadium opened in 1966. By the end of this decade, only three ballparks will be older — Chicago's Wrigley Field, Boston's Fenway Park and Dodger Stadium. All three are undergoing major renovations, and Dodger owner Frank McCourt has pledged that his team would play in Dodger Stadium for the next 25 years.

Moreno makes no such commitment to Angel Stadium.

"What kind of stadium will be left in 2016? I really need to make a call four or five years before that," he said. "We don't want to gamble that stadium is going to be in good repair past 2016."

"Is it something that needs to be addressed today? No. I like being in the facility. I like where we're located. Right now, we have a landlord that is suing us."

Pringle said the name change forced the lawsuit. After its conclusion, he said, he hopes the city and the Angels can work together to resolve whatever issues might arise, including the stadium situation.

"The commitment the city has is in line with what we do with every significant business within our borders," Pringle said. "We'll work hard to have a strong relationship with them. Both parties have to be interested in that."

"The city has taken no action except responding to the action taken by others. All we have done is stand up and defend taxpayers' rights."

GamePlan

TODAY'S
BEST
BETS

Watch: Alamo Bowl

Many years during the past decade Michigan vs. Nebraska would have been a Jan. 1 matchup somewhere. This time, the schools meet in San Antonio. ESPN has the broadcast at 5 p.m.



Go: Memphis at Lakers

The Grizzlies, led by Pau Gasol, left, are a decent road team (7-5), while the Lakers have been a below-average home team (6-6), so this could be a battle. The game at Staples Center is set for 7:30 p.m.

Reggie should see Jan. 1 'Bush Bowl'

I hope USC's Reggie Bush plans to watch the unofficial "Reggie Bush Bowl" on New Year's Day.

While Bush is practicing this weekend for the Rose Bowl, his future could very well be decided when the 2-13 Houston Texans play the 3-12 San Francisco 49ers on Sunday in a stadium I'll always call Candlestick.



**RANDY
YOUNGMAN**
REGISTER
COLUMNIST

If the Texans lose, they win the first pick in the 2006 draft — and sources told John McClain of the Houston Chronicle that Houston definitely will pick Bush if he decides to leave USC early.

But if Houston wins, it could get complicated, because that scenario could lead to as many as five teams winding up at 3-13: Houston, San Francisco, New Orleans, Green Bay and the New York Jets.

What happens then?

Well, if two or more teams are tied when determining draft order, the team with the easiest strength of schedule gets to pick first. That's right, head-to-head competition and conference records are irrelevant.

Official worst team is determined by easiest schedule among teams with the worst record. Only in the NFL.

In case you're wondering, heading into the final weekend or the regular season, the Saints' opponents currently have the lowest winning percentage (.517) among the teams still alive in the Bush Sweepstakes. Then it's the Texans and Jets (.533), Packers (.542) and 49ers (.546).

Assuming the Texans beat the 49ers and all the other three-victory teams lose, does that put the Saints in the driver's seat for the No. 1 pick? Not necessarily, though the Saints probably deserve something for playing all of their games away from the Superdome this season.

The plot thickens, because the Saints play Sunday at Tampa Bay, which needs to win as it chases a playoff berth. And so all of the teams' strengths of schedule will change somewhat this weekend.

But if the Saints do wind up with the top pick, will it influence Bush's decision to turn pro? You never know, because the Saints probably will be home nomads again for at least part of next season as repairs at the Superdome continue.

Such intrigue. Such drama. Such uncertainty. I hope Bush isn't confused by all of this.

All we know for certain is the Texans can win by losing Sunday.

Got that?

Touching all bases: I think the city of Anaheim is making a huge mistake continuing its lawsuit against the Angels over the name change, a

case that is scheduled for trial Jan. 9.

It's a lose-lose situation. Even if Anaheim wins a nine-figure judgment, all that does is give owner Arte Moreno an excuse to move the franchise in the future.

- The Texas Rangers are excited about signing free agent Kevin Millwood as their No. 1 starter? If they had acquired Josh Beckett and signed Matt Morris, the first two pitchers Texas futilely pursued, maybe the Angels would have something to worry about.

Besides, I remember when the Rangers were excited about signing Chan Ho Park.

- Memo to the e-mailers wondering why the Angels didn't try to reacquire third baseman Troy Glaus, before Arizona traded him to Toronto: How would it look if GM Bill Stoneman gave up prospects to acquire a player he could have re-signed as a free agent last winter?

- The hype and hoopla over the final "Monday Night Football" telecast on ABC was the biggest non-story in recent memory. MNF isn't ending; it's only moving to ESPN, another network owned by Disney.

NFL fanatics don't care which network carries a game as long as they can watch it. As long as the incomparable Al Michaels continues to do the play-by-play, there's no reason to be sad.

- Have you noticed that No. 11 UCLA (10-1), No. 7 Washington (10-0) and No. 20 Nevada (9-1) haven't lost a game since participating in the John Wooden Classic three weeks ago?

- I'll bet you Tim Tessalone, USC's longtime sports information director, cringed when New England's Willie McGinest referred to his alma mater as "University of Southern Cal" during pregame introductions.

Tessalone's weekly pregame notes always try to discourage the media from referring to the Trojans as "Southern Cal."

- Lakers owner Jerry Buss looked like a genius Sunday, at least for a day, when Miami's Shaquille "The Big Sheriff" O'Neal kept shooting bricks against his former teammates. A Sumo wrestler wouldn't have looked any more out of place in the paint.

- George Horton's Cal State Fullerton Titans (46-18 in 2005) are ranked No. 9 in Collegiate Baseball's 2006 preseason Top 25 poll. Augie Garrido's Texas Longhorns, the defending College World Series champs, are ranked No. 1.

Parting shot: From ABC's Michaels, after Jets QB Vinny Testaverde, 42, threw a TD pass in the closing minutes of New England's 31-21 victory, a game in which Patriots backup Doug Flutie, 43, also made a cameo: "So it's a great night for the AARP!"

CONTACT THE WRITER:

(714) 796-5050 ext. 1026 or
ryoungman@ocregister.com

EXHIBIT C

TOP OF THE 2ND

2006 wishes for some friends

1-1-06

Suggested New Year's resolutions for a few of my friends in the wonderfully wacky world of sports:

Arte Moreno: To somehow reach an out-of-court settlement with the city of Anaheim, before the name-change trial is scheduled to start, assuming the city politicians are willing and reasonable.



RANDY YOUNGMAN
REGISTER
COLUMNIST

Henry and Susan Samuels: To continue our hands-off ownership style and allow Mike Schulman, Tim Ryan and Brian Burke to do their jobs — and continue our efforts to lure an NBA franchise to The Pond.

Bill Stoneman: To continue to say no when Manny Ramirez's name comes up, especially when the Red Sox ask for my top prospects. And to give Tim Salmon a chance in spring training to become the everyday DH.

Bartolo Colon: To return to health and to Cy Young form, as quickly as possible.

Darin Erstad: To earn a contract extension by having another 200-hit season — and stay just the way I am.

Vladimir Guerrero: To take the first pitch in at least every other at-bat.

Mike Scioscia: To manage the Angels to an unprecedented third consecutive division title. And earn another endorsement extension from my favorite appliance store chain.

Grady Little: To keep my office door open at all times — and watch my back at all times.

Frank McCourt: To allow Ned Colletti to do the job I hired him to do. And stop blaming the PR staff when things are written I don't like.

Josh Paul: To tag every batter after a two-strike checked swing in Tampa, just in case.

Milton Bradley: To put a cork in it.

Pete Carroll: To continue to take 'em one at a time — games and national championships — and take aim at Oklahoma's all-time record of 47 consecutive victories (1953-57).

Reggie Bush: To at least think about what Ohio State's Archie Griffin did before making a decision about the NFL.

Matt Lainart: To become a professional ballroom dancer. OK, just kidding.

Karl Dorrell: To win the right game. You know what I mean.

Brandon Breazell: To enjoy many happy returns for UCLA.

Ben Howland: To return the Bruins to national prominence — in March.

Bob Burton: To coach Cal State Fullerton to the Big West championship and earn a berth in the NCAA Tournament.

Jean-Sebastien Ciguere: To return to my 2003 Conn Smythe form and help get the Mighty Ducks back in the playoffs.

Tennu Selanne: To continue my come-back-player-of-the-year season — and stay just the way I am.

Barry Bonds: To not act surprised, insulted or outraged when the world doesn't celebrate my 715th homer.

Rafael Palmeiro: To be honest about what I did or be ready to call it a career.

Phil Jackson: To embrace the expectations of my three-year, \$30 million contract instead of deflecting them.

Kobe Bryant: To make all of my teammates better, which is the true measure of a superstar. And keep my elbows to myself.

Shaquille O'Neal: To get in shape and stop saying I make 'em when it counts and start making 'em when it counts.

Elton Brand: To lead the Clippers to the playoffs — and stay just the way I am.

Ron Artest: See Milton Bradley.

Tiger Woods: To win the Grand Slam — yes, in the same calendar year — just to show it can be done. Hey, why not have lofty goals?

Vijay Singh: To stop being a hypocrite and cooperate with the media.

Michelle Wie: To qualify for a men's tournament and win an LPGA event.

Brett Favre: To call it a Hall of Fame career while I still have all of my limbs.

Peyton Manning: To help the Colts win the Super Bowl and dedicate the victory to Tony Dungy and his family.

Terrell Owens: See Ron Artest.

Paul Tagliabue: To quit playing Los Angeles against Anaheim and decide which city will get the next NFL franchise.

Vin Scully: To not even think about retirement — and stay just the way I am.

Tim McCarver: To at least pretend not to know everything during a telecast, any telecast.

Danica Patrick: To win a race, any race, to justify the hype.

Lance Armstrong: To go back to France and rub it their faces again.

Snug-nug-above: To shoot even par once. OK, maybe something more realistic: to play to my index more than once a month.

CONTACT THE WRITER:
(714) 796-5050 ext. 1026 or
ryoungman@ocregister.com