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10 Attorneys for Defendant and Cross-
11 Complainant ANGELS BASEBALL LP

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

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

16 Plaintiff,

17 vs.

18 ANGELS BASEBALL LP, a California
19 limited partnership; and DOES 2 through
20 100, inclusive,

21 Defendant.

Case No. 05CC01902
Honorable Hon. Peter J. Polos,
Dept. C-64

**EX PARTE APPLICATION BY
DEFENDANT ANGELS BASEBALL
LP FOR A TEMPORARY PRETRIAL
ORDER; DECLARATION OF
GEORGE J. STEPHAN; [PROPOSED]
ORDER IN SUPPORT THEREOF**

Date: January 3, 2006
Time: 1:30 pm
Dept.: C-64

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23 AND RELATED CROSS-ACTION
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1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that Defendant Angles Baseball LP (“ABLP”) hereby
3 moves this Court *ex parte* for a temporary pretrial order precluding the parties from publicly
4 disseminating or otherwise disclosing their perceived merits of the action in the media prior to
5 jury selection. ABLP requests an order that, in effect, has this matter tried in the courthouse,
6 not in the press.

7 **Good Cause.** This *ex parte* application is made on the grounds that good cause exists
8 for the court to issue a temporary pretrial order precluding the parties from publicly
9 disseminating the perceived merits of the action in the media prior to jury selection because:

10 1. As set forth in the motion for a juror questionnaire, the City has fomented
11 substantial pre-trial publicity;

12 2. The City continues to do so on the eve of jury selection, and rejected ABLP’s
13 suggestion of a mutual pretrial order;

14 3. The City Mayor plans to go on Talk of the Town just before jury selection to
15 discuss this matter (ABLP declined the same invitation); and

16 4. The City is or has provided an interview for an OC Register article to appear just
17 before jury selection (ABLP declined the same invitation).

18 **Notice.** On Friday, December 30, 2005, after trading phone calls for a day, George
19 Stephan, counsel for ABLP, talked to Mike Rubin, counsel for the City, to discuss this
20 application, and to advise the City that ABLP was intending to appear *ex parte* on Tuesday,
21 January 3, 2006, (originally this was to be at 9:00 am, but was changed to 1:30 pm because
22 City was not readily available in the morning) in Dept. C-64, but that we wanted to reach
23 agreement on any time convenient to both sides. (See attached declaration of George
24 Stephan.)

25 This application is based upon this notice, the accompanying Memorandum of Points
26 and Authorities, the attached declaration of George J. Stephan, and all papers, pleadings, and
27 documents contained in the court file in this matter, and upon such other and further oral and
28 documentary evidence as may be presented at hearing.

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DATED: January 2, 2006

Respectfully submitted,
STEPHAN, ORINGHER, RICHMAN & THEODORA, P.C.

By: _____
George J. Stephan
Richard J. Decker
Efrat M. Cogan
Attorneys for Defendant and Cross-Complainant
ANGELS BASEBALL LP

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **BRIEF STATEMENT REGARDING THIS EX PARTE APPLICATION**

4 Each of the parties in this action has the right to a fair trial before an unbiased jury.

5 ABLP would like this case tried in the courthouse, not in the press.

6 Thus, City’s most recent attempt to appeal to the jury pool on the eve of jury selection
7 is troubling. ABLP recently learned that an article in the LA Times, the City’s planned
8 appearance on the widely-viewed television show “Talk of the Town,” and an OC Register
9 article due to be published within the next few days directly impacts ABLP’s right to a fair
10 and impartial trial. The media campaign by the City on the eve of jury selection demonstrates
11 plainly why a temporary pretrial order limiting pretrial publicity is vital to preserving the
12 integrity of the judicial system and the right to a fair trial in this matter.

13 The LA Times article, dated December 23, 2005, is entitled “City Weighs Its Angels
14 Claims.” (A true and correct copy of that article is attached to the Declaration of George
15 Stephan as exhibit A.) In that article, the City’s attorney, Andy Guilford further encouraged
16 all potential jurors to impose a large damages award by stating with regard to the amount of
17 damages that the City seeks: “It’s safe to say it’s in the nine-figure range.” Guilford went on
18 to state in the article that the City might forfeit any financial damages if the Angels agreed to
19 drop Los Angeles from their name. The City’s co-counsel, Mike Rubin, outlined the City’s
20 litigation strategy in the article, stating that the City’s damage claims are based upon
21 “hundreds of millions of impressions” of the Anaheim name in stories , scoreboards, standings
22 and elsewhere in various media over the term of the lease.

23 In addition to the article in the Los Angeles Times, the City will appear on the
24 television show “Talk of the Town,” and will be setting forth the merits of its case in an
25 Orange County Register article due to be published within days of jury selection. The OC
26 Register provided ABLP with the “Q and A:”

- 27 1. Why is the team name so important to you?
28 2. What impact has the new name made?

- 1 3. What are the strongest aspects of your case?
- 2 4. Why do you think it's important to spend the money and time on this case?
- 3 5. Why not settle out of court?
- 4 6. How do you expect fans to react to the trial?

5 In each instance, ABLP decline to comment. The City has not. Rather, the evidence
6 shows that the City is electing to try this action in the press by spreading prejudicial pretrial
7 publicity on the eve of jury selection.

8 The extent and nature of City's media campaign on the eve of jury selection threatens
9 to improperly influence the jury pool.

10 Under these circumstances, the courts as well as the parties may employ a number of
11 safeguards to better ensure this does not occur.

12 For example, during jury selection, each of the parties has the "right to challenge and
13 excuse candidates who clearly or potentially cannot be fair." (*In re Hamilton* (1999) 20
14 Cal.4th 273, 295.) Additionally, the court in its discretion may issue an order limiting pretrial
15 publicity if there is a reasonable likelihood of prejudice to the defendant.¹ (See *Younger v.*
16 *Smith* (1973) 30 Cal.App.3d 138, 159-164 [a protective order against pretrial publicity on
17 information that had reasonable likelihood of prejudicing administration of justice was valid
18 against prosecution because there was a reasonable likelihood of publicity tending to prevent a
19 fair trial]; see also *Seattle Times Co. v. Rhinehart* (1984) 467 U.S. 20, 28 [upholding the
20 constitutionality of protective orders that limit discovery].)

21 Here, the interest at issue is the court's ability to protect a litigant's constitutional right
22 to a fair trial. (See *Maggi v. Superior Court* (2004) 119 Cal.App.4th 1218, 1225 citing *Hurvitz*
23 *v. Hoefflin* (2000) 84 Cal.App.4th 1232, 1241-1242 ["the 'protected competing interest'
24 during a trial is the constitutional right to a fair trial"].) This compelling interest is now in
25

26 ¹ Indeed, limitations on pretrial publicity or "extrajudicial statements" has even been
27 codified by the State Bar of California in its Rule of Professional Conduct. (See California
28 Rules of Professional Conduct, Rule 5-120, entitled "Trial Publicity.")

1 jeopardy. The City's widespread and pervasive media blitz on the eve of the eve of jury
2 selection threatens the right to a fair trial. Since there is a competing constitutional right, there
3 is a legal basis for this court to issue a pretrial order – a pretrial order which is limited in both
4 scope and time and will not impact a party's ability to prepare for trial.

5 For these reasons, ABLP requests this court to issue a temporary pretrial order
6 precluding the parties in this action from disseminating information regarding their perceived
7 merits of the action in the media until the final jury is empanelled. By doing so, the court will
8 help ensure that each side receives a fair trial and that the jury renders a decision based solely
9 on the evidence presented in court rather than what is published in the media.

10 DATED: January 2, 2006

Respectfully submitted,
STEPHAN, ORINGHER, RICHMAN & THEODORA, P.C.

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By: _____
George J. Stephan
Richard J. Decker
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Attorneys for Defendant and Cross-Complainant
ANGELS BASEBALL LP

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

Executed January 2, 2006, at Costa Mesa, California.

George J. Stephan

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16 CITY OF ANAHEIM, a charter city and
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Defendant.

Case No. 05CC01902
Honorable Hon. Peter J. Polos,
Dept. C-33
**[PROPOSED] ORDER RE: ABLP'S EX
PARTE APPLICATION FOR A
TEMPORARY PRETRIAL ORDER**

22
23 **AND RELATED CROSS-ACTION**
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1 The *ex parte* application for a temporary pretrial order precluding the parties from the
2 public dissemination of the perceived merits of the action in the media to encourage the case
3 to be tried in the Courthouse rather than in the press came on for hearing on Tuesday, January
4 3, 2006, at 1:30 p.m. in Department C-64 before Judge Peter J. Polos of the above-entitled
5 court.

6 The parties appeared by and through their respective counsel of record.

7 The Court having considered the pleadings and papers filed concerning ABLP's *ex*
8 *parte* application and having considered the arguments of counsel at the hearing, and good
9 cause appearing therefore, ABLP's *ex parte* application is hereby **GRANTED** as follows:

10 **IT IS TEMPORARILY ORDERED** that all parties to this litigation are prohibited
11 from publicly disclosing or otherwise disseminating information regarding the perceived
12 merits of the action in the media prior to jury selection. This order is effective as of January 3,
13 2006 until the final jury is empanelled in this action.

14 **IT IS SO ORDERED.**

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16 DATED: January ___, 2006

HONORABLE PETER POLOS
JUDGE OF THE SUPERIOR COURT

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