Court of Appeal Case No. ________
Orange County Superior Court Case No. 05CC01902

COURT OF APPEAL, STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE

Petitioner,
The City of Anaheim, a charter city and municipal corporation
v.
Superior Court of California, for the County of Orange

Respondent,
Angels Baseball, a California limited partnership
Real Party In Interest.

PETITION FOR WRIT OF MANDAMUS OR OTHER APPROPRIATE RELIEF FROM ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION; AND MEMORANDUM OF POINTS AND AUTHORITIES

FROM ORDER OF THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ORANGE
The Honorable Peter J. Polos, Judge
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PETITION FOR WRIT OF MANDATE

PRELIMINARY STATEMENT

Countless citizens await, with fanatic expectations, the outcome of these proceedings. The trial court's ruling below has created a grave injustice impacting the taxpayers of the City of Anaheim ("Anaheim") and the residents of Orange County. For eight years, the *Anaheim Angels* have represented their home community to this nation of baseball fans. The *Anaheim Angels* have reached the pinnacle of their sport – making the playoffs last year and winning a World Series two years before.

But now, if Defendant has its way, and the trial court's ruling stands, the team that plays the 2005 season opener in less than five weeks will be called the *Los Angeles Angels of Anaheim*. And of course many will follow baseball custom and call the team the *Los Angeles Angels.* Anaheim will be dumped from the name as abruptly as David Eckstein was shipped to St. Louis. In fact, Defendant has even decreed that the abbreviation for the team not include any reference to Anaheim. The die threatens to be cast in the minds of baseball fans across the nation – Anaheim is a second-rate city not deserving of its past identification to a Major League team. And the conclusion will be reflected forever in the record books of a sport sustained by its treasured records.

The law and the trial court clearly should have enjoined this injustice. But in denying Anaheim's motion for preliminary injunction, the trial court found that Anaheim is not likely to prevail because Defendant's conduct has "technically, technically complied" with the parties' contract. Under this logic, a contract costing Anaheim tens of millions to promote its reputation could be fulfilled with names like the "Angels who Hate Anaheim" or the "Angels of Bush League Anaheim." The trial court further found that there is no irreparable harm here, and that the goodwill gained by Anaheim's association with one of thirty teams in America's national pastime is neither "special" nor "unique." The trial court's findings are both unsupported by the record and unsupportable under the law.

It is true that Anaheim, like all other Major League cities, is generally vulnerable to the machinations of the team owner, who is absolved of anti-trust regulation[1] and can generally take its franchise to the city offering the richest deal. But the one protection that cities like Anaheim have, or at least *should have*, is the equitable power of courts to enforce contract law.

And in fact, Anaheim entered into a contract with Defendant's predecessor, Disney Enterprises, Inc. ("Disney"), on May 15, 1996 – the Amended and Restated Lease Agreement ("Lease Agreement"). That

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[1] See Toolson v. New York Yankees, Inc. (1953) 346 U.S. 356.

agreement protected, or was at least intended to protect, Anaheim from some of the whims of the team's owner. In particular, Disney promised that the team would play in Anaheim's stadium for at least 20 years, until 2016. Disney also agreed it would "change the name of the Team to include the name 'Anaheim' therein, such change to be effective no later than the commencement of the 1997 season." Disney performed its half of the bargain, changing the team's name from the *California Angels* to the *Anaheim Angels.*

Anaheim paid dearly for these promises. After signing the agreement, Anaheim committed over $30 million to renovate the stadium where Defendant now profits. And this is just one example among other more expensive, though less cash-intensive, consideration.

There is simply no rational doubt that the team and Anaheim intended that the name of the team would be linked geographically to Anaheim alone. To pretend the parties' intent was not clear is preposterous. With the exception of Defendant, each of the other thirty Major League franchises applies the same pattern in naming their teams: the names have a single location and a single nickname or mascot. The proposed name *Los Angeles Angels of Anaheim* not only deviates from custom, it sounds sufficiently silly that it often evokes laughter for cynically dismissing Anaheim as second-rate. The proposed name is, after all, oxymoronic – redundant, but contradictorily so. The name thus disparages Anaheim by

so awkwardly abandoning the team's association with it. Anaheim's taxpayers paid dearly for a contractual right to the spotlight, and are instead being upstaged, left in the shadow, subsidizing the spotlight shining on Los Angeles.

Anaheim has asked only for an order enjoining Defendant from implementing a change in the name of the team to the *Los Angeles Angels* or the *Los Angeles Angels of Anaheim*. Thus, in a sense, Anaheim seeks even less than the preservation of status quo.[2] The balance of equities analysis clearly favors the preservation of the status quo. For seven seasons, Disney called the team *Anaheim Angels*. Defendant itself called the team *Anaheim Angels* for all of last season and its entire tenure as team owner. Defendant's own delay in changing the team name shows it will not be irreparably injured if the status quo is preserved – specifically that the new name be temporarily enjoined – until the case is heard on the merits.

Anaheim, on the other hand, will be irreparably harmed if Defendant is allowed to use the name *Los Angeles Angels of Anaheim* through the

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[2] Whenever Anaheim refers to maintaining the status quo, it is referring to prohibiting the use and implementation of the name *Los Angeles Angels of Anaheim* or *Los Angeles Angels* by Defendant. Anaheim recognizes that Defendant may change the team's name provided the new name does not deny Anaheim the benefits which the parties intended at the time the contract was negotiated to identify the team with Anaheim.

2005 baseball season before trial. For the past eight years, Anaheim has generated goodwill as the *Angels* have, with significant prestige and grace, attracted the attention of the nation, and become identified with *Anaheim*. There is no question Anaheim will be irreparably injured if it must wait for a trial – or even an appeal – before its contractual right is enforced. Names and reputations take time to build, but are destroyed in an instant. Eight years of benefits from Anaheim's extraordinarily expensive contractual bargain will be destroyed if the status quo is not preserved. The contract that was to bring fame to Anaheim will instead bring shame.

The trial court itself never suggested that Anaheim would not be greatly harmed by the proposed name. In denying Anaheim's motion, the trial court was apparently persuaded that the mere possibility of "fixing" monetary damages was incompatible with preliminary injunctive relief. But the possibility of fixing damages does not at all preclude injunctive relief. Preliminary injunctions are appropriate even when fixing damages is possible, so long as ascertaining their amount would be hard. And courts have *uniformly* found that fixing damages is hard when the conduct threatens things like brand names, trademarks, and reputations.

There is simply no way damages would compensate for Defendant's contract breach here. How can Anaheim and its taxpayers be compensated for the fact that millions and millions of Americans – many of whom have never been to California and who are planning tourist trips, booking hotels,

and some of whom are reserving convention space – will hear about the exploits of the *Los Angeles Angels of Anaheim* or the *Los Angeles Angels*? This case provides the paradigm for injunctive relief: great harm is threatened to one party which is likely to prevail, and the other party has far less to lose by a preservation of the status quo.

The baseball season starts soon. Paraphrasing Lord Tennyson, it is spring and a fan's fancy turns to thoughts of baseball. Anaheim respectfully asks this Court to consider this petition and the record below, and to grant immediate relief in the interests of justice, contract law, Anaheim's tourist industry, and its reputation.

GROUNDS FOR REVIEW

1. Code of Civil Procedure section 904.1(a)(6) provides for appellate review of orders granting or denying motions for preliminary injunction. Pro-Family Advocates v. Gomez (1996) 46 Cal.App.4th 1674, 1678. Code of Civil Procedure section 1086 provides for writ review when the right to appeal does not afford a sufficiently "plain, speedy, and adequate" remedy. United Farm Workers Organizing Committee v. Superior Court (1971) 4 Cal.3d 556, 563-564.

PARTIES

2. Anaheim is the petitioner, and the named plaintiff in the lawsuit entitled City of Anaheim vs. Angels Baseball, LP, Orange County

Case No. 05CC01902. Anaheim is a charter city and municipal corporation located in Orange County, California.

3. Respondent is the Superior Court of the State of California for Orange County, California.

4. Angels Baseball, LP ("Defendant") is the real party in interest, and the named defendant in the case. Defendant is a California limited partnership doing business in Orange County, California.

PROCEEDINGS BELOW

Case Overview

5. On May 15, 1996, Anaheim and Disney entered into the Amended and Restated Lease Agreement. (Petitioner's Appendix ("PA"), 003 and 017.) Disney had owned the franchise rights to the Major League Baseball team known as the *California Angels*. (PA, 002.) And Anaheim owned the stadium, within its borders, where the *California Angels* had played for over 30 years. (PA, 0226.)

6. Under the Lease Agreement, Anaheim agreed to commit over $30 million to renovate the stadium, in addition to (among other concessions) allowing Disney to operate and profit from the year-round operation of the stadium. (See, e.g., PA, 004 and 217.) Under the Lease Agreement, Disney agreed that the team would play in Anaheim's stadium at least until 2016, and also agreed to "change the name of the team [from

California Angels] to include the name 'Anaheim' therein." (PA, 004.) Pursuant to the contract, Disney named the team the *Anaheim Angels* – which continued to be the team's official name until January 3, 2005. (Id.)

7. In 2003, after the *Anaheim Angels* won the World Series, Defendant purchased all of Disney's rights and interests to the Major League Baseball franchise. (PA, 005.) Defendant accordingly became the successor-in-interest to Disney's rights and obligations under the Lease Agreement. (Id.) In its first year owning the team, Defendant systematically reduced the team's identification with Anaheim, removing references to "Anaheim" on the team's jerseys, ticket stubs, and advertising. (PA, 006-007 and 0215.)

8. On January 3, 2005, Defendant abruptly and without prior notice to Anaheim, issued a press release: "Pleased be advised that our name has now been changed from Anaheim Angels to Los Angeles Angels of Anaheim, effective today. When scheduling, *please use LA in place of ANA*, and if you should play against both us and the Dodgers, we would [be] characterized by LAA." (PA, 008 and 0228, emphasis added.)

9. On January 5, 2005, Anaheim filed its complaint. (PA, 001.)

Anaheim's Ex Parte Application for a Temporary Restraining Order

10. On January 7, 2005, Anaheim and Defendant appeared before Judge Polos on Anaheim's ex parte application for a temporary restraining order. The trial court denied the application. (PA, 0764.)

Anaheim's Motion for a Preliminary Injunction

11. On January 21, 2005, Anaheim and Defendant appeared before Judge Polos on Anaheim's motion for preliminary injunction. (PA, 1190.)

12. The trial court stated that "The City of Anaheim has failed to show a reasonable probability of prevailing on the merits. And the City of Anaheim has failed to meet its burden of showing irreparable harm." (PA, 1232.) The trial court further stated that "the issue as to whether there was a breach of the covenant of good faith and fair dealing by putting another geographical name in front of the name 'Angels' and then 'Anaheim' after that *is still open for the court*, and *it's still open* as to whether monetary damages are appropriate under those circumstances, and what damages those are." (PA, 1232, emphasis added.)

13. In explaining its reasoning, the trial court stated that Anaheim was not likely to prevail on the merits because Defendant has "technically, technically complied" with Section 11(f) of the parties' agreement. (PA, 1234.) In finding that Anaheim was not threatened with irreparable harm,

the trial court stated, "What we're talking about in the present case is the branding rights to the City to show that the City is a premiere tourist destination." (PA, 1235.) The court continued, "I don't think there's anything unique or special about branding a particular name to promote it. It could be expensive to do, but there's nothing unique that requires a preliminary injunction." (Id.) The trial court further stated that there "is insufficient evidence that it would be extremely difficult, notwithstanding declaration of Dr. Doti, that it would be extremely difficult to value the loss." (PA, 1236.)

14. On February 15, 2005, Anaheim's city council voted to pursue all available remedies, including appellate relief.

APPLICABLE LAW

15. Trial courts balance two factors in determining the propriety of a motion for preliminary injunction: (a) the parties' respective chances of prevailing on the merits and (b) the parties' respective interests in preliminary relief. See generally Butt v. State (1992) 4 Cal.4th 668, 677-678.

PRAYER FOR RELIEF

Anaheim prays that this Court:

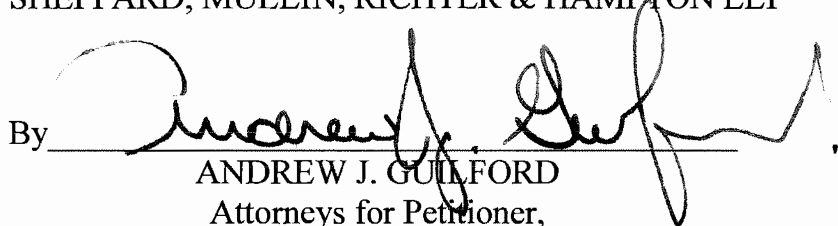
16. Issue a writ of mandamus directing the Respondent Superior Court to set aside and vacate its order of January 21, 2005 which denied

Anaheim's motion for preliminary injunction, and to direct the Respondent Superior Court to enter an order granting Anaheim's motion.

17. In the alternative, remand the matter to the Respondent Superior Court to set aside and vacate its order of January 21, 2005 with instructions to reconsider its decision in light one or more of the following: (a) the reasonable expectation of Disney and Anaheim governs the interpretation of the Lease Agreement rather than a hyper-technical interpretation; (b) the possibility of fixing monetary damages does not preclude preliminary injunctive relief; and (c) the supplemental declaration of Antonio G. Tavares can be considered.

Dated: February 28, 2005

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By 

ANDREW J. GUILFORD
Attorneys for Petitioner,
City of Anaheim

VERIFICATION

I, Andrew J. Guilford, declare as follows:

I am one of the attorneys for Petitioner City of Anaheim. I have read the Petition for Writ of Mandate and know its contents. The facts alleged in the Petition are within my own knowledge and I know these facts to be true. Because of my familiarity with the relevant facts pertaining to the trial court proceedings, I, rather than the Petitioner, verifies this Petition.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 28, 2005, at Costa Mesa, California.

Andrew J. Guilford

MEMORANDUM OF POINTS AND AUTHORITIES

PRELIMINARY STATEMENT

Relatively few cities have the privilege and honor of being identified with a professional baseball team. Fewer still have enjoyed the emotional connection to their home team's victory in the World Series. On purely monetary terms, the record reflects that private companies pay tens of millions of dollars just to be identified with stadiums and bowl games. (PA, 0221.) And a city's association to a team dwarfs that of a company's association to a stadium or a bowl game. Fans relate emotionally to teams, and the names of teams get mentioned more often, far more often.

And no less than private companies, which benefit from advertising their trademarks, cities benefit from promoting their reputations – particularly cities that rely on tourism like Anaheim does. The record reflects that Anaheim receives over $60,000,000 from its largest source of revenue – its hotel occupancy tax. (PA, 0216.) The record further reflects that Anaheim has spent hundreds of millions of dollars making Anaheim easier to visit, and more beautiful to see. (Id.) Anaheim is the home of Disneyland, California Adventure, Downtown Disney, and Arrowhead Pond of Anaheim, among other attractions. (Id.) Anaheim is clearly a city dependent on tourism, and its national reputation thus drives its largest industry, and its largest employers.

Though Orange County is the fifth most populated county in the nation, and though Anaheim is in the heart of Orange County's tourist, sports, and entertainment industry, Anaheim is a relatively small city, one of about 40 relatively small cities in the county. Thus Anaheim's association to Major League Baseball gives it a prestige that it would not otherwise have. Such is the primary effect of being associated with the nation's most historied professional sport. And Anaheim is in particular need of the prestige as, among other things, it tries to fill the tenth largest convention center in the country. (PA, 0216.)

But Anaheim not only depends on its identification with the *Angels*, it deserves it because its taxpayers paid for it. Indeed, writ review is especially appropriate here because a determination of the merits in this case is so relatively straight-forward, and so largely legal. The decision mostly turns on the uncontradicted evidence about a single sentence in the parties' lease agreement. While substantial evidence was submitted below, it is largely undisputed and mostly confirms common sense. (See PA, 0204-0227.) Indeed Defendant failed to file a single declaration which contradicted Anaheim's evidence on intent. The parties did not intend, and it otherwise would be in bad faith, to highlight a location other than Anaheim in the team's name.

The analysis that follows tracks this Court's analysis, starting with a discussion of this Court's authority, followed by a discussion of the balance

of equities, closing with a discussion of the parties' respective chances of prevailing.

LEGAL ARGUMENT

1. THIS COURT HAS BROAD AUTHORITY TO ISSUE THE REQUESTED RELIEF

This Court has the authority to grant the requested relief. A writ of mandate is available where the petitioner does not have a "plain, speedy, and adequate remedy, in the ordinary course of law." Code Civ. Proc. § 1986. Although a trial court's decision on a motion for preliminary injunction is appealable (Code Civ. Proc. § 904.1(a)(6)), a writ of mandate is appropriate to prevent harm to the petitioner during the lengthy appellate process. See County of Butte v. Superior Court (1985) 176 Cal.App.3d 693, 696 (supporting writ review because "the delay inherent in the appeals process renders [the appeal] inadequate").

In fact numerous courts have confirmed the propriety of writ review of a preliminary injunction ruling when the appellate process would otherwise threaten irreparable harm. See, e.g., Langford v. Superior Court (1987) 43 Cal.3d 21, 24, 27; Robbins v. Superior Court (1985) 38 Cal.3d 199, 205; Bouvia v. Superior Court (1986) 179 Cal.App.3d 1127, 1134-1135; and Boehm v. Superior Court (1986) 178 Cal.App.3d 494, 496-498.

2. THE TRIAL COURT'S RULING IMPLICATES BOTH AN ABUSE OF DISCRETION REVIEW AND AN INDEPENDENT REVIEW

The standard for reviewing preliminary injunction rulings is the abuse of discretion standard. Butt v. State (1992) 4 Cal.4th 668, 677-678. But this review can be more akin to an independent review, where the key facts of the case are largely undisputed and the issues before the court are largely legal in character. See Robbins, supra, 38 Cal.3d 199, 205 ("If, on the basis of *undisputed facts*, it is clear that the trial court abused its discretion in failing to issue the preliminary injunction, a writ of mandamus to compel issuance of the injunction is appropriate") (emphasis added); see also Saint Agnes Medical Center v. PacifiCare of California (2003) 31 Cal.4th 1187, 1196 (factual issues will be reviewed independently where "the essential facts are not disputed" and "only one inference may reasonably be drawn" from those facts).

3. THE BALANCE OF EQUITIES FAVORS PRESERVING THE STATUS QUO AND ORDERING THE PRELIMINARY INJUNCTION

As a threshold matter, the trial court appears to have mistakenly limited its authority to grant a preliminary injunction. It questioned the parties at great length about the possibility of fixing monetary damages (PA, 1212-1220), asking, for example, "could money damages be affixed?" (PA, 1219.) The trial court apparently believed that the mere possibility of fixing monetary damages precluded it from granting the preliminary

injunction. In explaining its denial of the motion, the trial court reasoned: "The court's aware that judges and juries regularly value, monetarily value difficult items, difficult issues, and such as pain and suffering, loss of consortium, loss of goodwill, breach of contract damages." (PA, 1235-1236.)

The trial court's reasoning is flawed. It would mean that, because juries and judges *can* fix damages for "pain and suffering, loss of consortium, loss of goodwill" that trial courts are powerless to enjoin conduct which causes such harm. But the mere possibility of fixing monetary damages does not at all preclude preliminary injunctive relief. Code of Civil Procedure section 526 provides for injunctive relief even if damages can be fixed, so long as "it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief."

As the court explained in Wind v. Herbert (1960) 186 Cal.App.2d 276, 285, the "concept of 'irreparable injury' which authorizes the interposition of a court of equity by way of injunction does not concern itself entirely with injury beyond the possibility of repair or beyond possible compensation in damages." The court explained, "The term 'irreparable injury' . . . means that species of damages, whether great or small, that ought not to be submitted to on the one hand or inflicted on the other." Id. at 285 (citations omitted). The court continued, "The argument that there is no 'irreparable damage,' would not be so often used by

wrongdoers if they would take the trouble to observe that the word 'irreparable' is a very unhappily chosen one, used in expressing the rule that an injunction may issue to prevent wrongs of a repeated and continuing character, or which occasion damages estimable only by conjecture and not by any accurate standard . . . . " Id. (citations omitted); see also People ex rel. Gow v. Mitchell Brothers' Santa Ana Theater (1981) 118 Cal.App.3d 863, 870-871 (the "word 'irreparable' is . . . used in expressing the rule that an injunction may issue to prevent wrongs of a repeated and continuing character").

Defendant's proposed name change is clearly a wrong of a "repeated and continuing character." It causes harm every time it is spoken – and the accumulation of harm across the tens and tens millions of baseball fans, including most Americans at least some times, is both substantial and irreparable. (See generally PA, 0204-0227.)

Assuming the trial court properly understood the legal standard, then it follows that the trial court abused its discretion. The trial court started its analysis reasonably: "What we're talking about in the present case is the branding rights to the City to show that the City is a premiere tourist destination." (PA, 1235.) But the trial court then found: "I don't think there's anything unique or special about branding a particular name to promote it. It could be expensive to do, but there's nothing unique that requires a preliminary injunction." (Id.) The trial court further concluded:

"And there is insufficient evidence that it would be extremely difficult, notwithstanding [the] declaration of Dr. Doti, that it would be extremely difficult to value the loss." (PA, 1236.)

In fact, branding Anaheim with the *Angels* is extremely "unique" and "special." Only thirty teams play in the Major Leagues. The name of professional teams are dear to the heart of their fans, and they are such a large part of American culture that they are referenced repeatedly to the audiences of radios, televisions, magazines, newspapers, and the Internet. The value to Anaheim of the lost name recognition would be extremely difficult to quantify, as would be the damage done to Anaheim's reputation by being second fiddle to Los Angeles.

Indeed, the case law runs uniformly counter to the trial court's reasoning. A California case particularly on point is Tamarind Lithography Workshop, Inc. v. Sanders (1983) 143 Cal.App.3d 571. In Tamarind, the plaintiff entered into an agreement to produce a motion picture for the defendant in consideration for the defendant's agreement to give the plaintiff screen credit for his work. Id. at 572-573. When the defendant failed to include the credit in the final product, the plaintiff sued for breach of contract and was denied injunctive relief. Id. at 573-74. The appellate court reversed the denial, holding that the harm the plaintiff would suffer was irreparable as a matter of law because (1) "public acclaim is unique and very difficult, if not sometimes impossible, to quantify in monetary terms,"

(2) "an accurate assessment of damages would be far too difficult and require much speculation," and (3) "any future exhibitions might be deemed to be a continuous breach of contract . . . ." Tamarind makes Anaheim's point as powerfully as a line drive off the bat of Vlad Guerrero.

Federal courts applying trademark law actually find that, once a likelihood of success is established, irreparable harm is *presumed*. See, e.g., PepsiCo., Inc. v. Torres (C.D. Cal. 1993) 1993 U.S. Dist. LEXIS 17588, *8 ("Trademark infringement by its very nature results in irreparable injury since the attendant loss of goodwill, reputation and business cannot adequately be quantified and the trademark owner cannot adequately be compensated."); see also Futuredontics, Inc. v. Goodman (9th Cir. 1999) 1999 U.S. App. LEXIS 26257, *4. The court in Abbott Laboratories v. Mead Johnson & Co. (7th Cir. 1992) 971 F.2d 6, 16 similarly held there is a "well-established presumption that injuries arising from [trademark law] violations are irreparable, even absent a showing of business loss." The court explained, "This presumption, it appears, is based upon the judgment that it is virtually impossible to ascertain the precise economic consequences of intangible harms, such as damage to reputation and loss of goodwill, caused by such violations." Id.

Like the plaintiff in Tamarind, Anaheim's right to be branded with the Angels gives it publicity that is "unique and very difficult" to "quantify in monetary terms." The truncated name *Los Angeles Angels* deprives

Anaheim of any name recognition at all. The longer name *Los Angeles Angels of Anaheim* embarrasses and insults Anaheim by suggesting it is not good enough for the Major Leagues. Anaheim paid for the right to the spotlight and Defendant's proposed name would put Anaheim off the stage.

The trial court had more than ample evidence to find that Anaheim had a greater interest in obtaining preliminary relief than Defendant had in avoiding it. The proposed name disparages Anaheim by suggesting it is too small or is otherwise undeserving of its identification to a Major League Baseball team. The proposed name also falsely suggests a congruence between Anaheim and Los Angeles, ignoring Anaheim's location in Orange County which has its own culture, industries, and history. At the very least, the proposed name dilutes Anaheim's contractual right to be branded as the team's hometown. Defendant, on the other hand, waited well over a year before changing the team's name. (PA, 005.) It will not be irreparably damaged if it waits a little longer.

As a final point, Anaheim's irreparable harm is established as a matter of law by Section 35 of the parties' Lease Agreement. (PA, 097-098.) See Evid. Code § 622 ("Facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest."). Section 35 provides that the parties' obligations are, "with the exception of monetary or financial obligations or undertakings, unique." And the section provides that "damages arising

from any such breach would not be an adequate remedy." It further provides that the appropriate remedy would be "specific performance, any other injunctive relief, or any other court order to enforce the performance by such defaulting party . . . ." Thus the trial court's ruling contravenes the parties' own agreement. (Id.)

In short, the discretion of a trial judge is "a legal discretion, which is subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal where no reasonable basis of the action is shown." Gonzales v. Personal Storage, Inc. (1997) 56 Cal.App.4th 464, 479. No reasonable basis supports the trial court's finding that "the City of Anaheim has failed to meet its burden of showing irreparable harm." (PA, 1232.)

4. ANAHEIM IS MORE LIKELY THAN DEFENDANT TO PREVAIL ON THE MERITS

Defendant has read into Section 11(f) of the parties' contract – so clearly intended to identify the team with Anaheim – the discretion to instead highlight Los Angeles, Anaheim's largest competitor. The trial court's ruling simply does not withstand scrutiny. The merits of Anaheim's two related and distinct claims – for breach of the express terms in the contract and breach of the implied covenant of good faith – are discussed separately below.

4.1 **DEFENDANT BREACHED THE EXPRESS TERMS OF THE LEASE AGREEMENT**

Section 11(f) is the only section in the agreement directly on point. (PA, 073.) Disney and Anaheim agreed:

> Tenant will change the name of the Team to include the name "Anaheim" therein, such change to be effective no later than the commencement of the 1997 season.

The trial court was apparently persuaded that Defendant "technically, technically complied" with the lease agreement because all the agreement required was that Anaheim be "include[d]" in the team's name. (PA, 1234.) And as Defendant points out, Anaheim is included in *Los Angeles Angels of Anaheim* – right there in the back, after the team's mascot and the reference to that other, bigger city.

Under Defendant's theory, and the trial court's reasoning, the following would also be contractually permissible:

- "The Angels Who Are Embarrassed to be Associated with Anaheim"
- "The Angels of the Disgusting City of Anaheim"
- "The Angels Formerly Known as the Team Identified with Anaheim"
- "The Angels Who Vastly Prefer Los Angeles to Anaheim"

- "The Angels of Bush League Anaheim"

Yet we sense and know that the law does not permit such absurdities. Technical compliance with a contract has never trumped the reasonable expectation of the parties. See, e.g., Denver D. Darling v. Controlled Env't Constr. (2001) 89 Cal.App.4th 1221, 1237 ("Neither law nor equity requires that every term and condition of an agreement be set forth in the contract . . . . unexpressed provisions of the contract may be inferred from the writing, external facts may be relied upon, and custom and usage may be resorted to in an effort to supply a deficiency if it does not alter or vary the terms of the agreement."); see also SDC/Pullman Partners v. Tolo Inc. (1997) 60 Cal.App.4th 37, 46.

Identifying the parties' true intent is not difficult here. As a preliminary matter, we know how Disney performed under this section. It changed the team name from *California Angels* to *Anaheim Angels*. (PA, 004.) And as the California Supreme Court has explained, "actions speak louder than words." Crestview Cemetery Assn. v. Dieden (1960) 54 Cal.2d 744, 754 ("Words are frequently but an imperfect medium to convey thought and intention. When the parties to a contract perform under it and demonstrate by their conduct that they knew what they were talking about the courts should enforce that intent.").

Furthermore, declarations of the persons who actually participated in the negotiation of the Lease Agreement were submitted in connection with

the preliminary injunction proceedings. (See PA, 0204 – 0227.) All of these declarations were submitted by Anaheim and were not contradicted by Defendant. These declarations are the only evidence from the persons involved in the lease negotiations concerning the intent of the parties beyond the words of the Lease Agreement itself. This uncontradicted evidence of the intent behind Section 11(f) based upon these declarations is as follows:

1. The parties discussed and agreed that the purpose, intent, and benefit of the name change provision was to closely identify Anaheim with the team so that the city would have the benefit of the nationwide exposure and publicity that this would bring to Anaheim which would, in turn, promote Anaheim as a destination center for tourism, conventions, sports, and entertainment. In other words, they intended to promote Anaheim nationwide as a Major League city. This is clearly set forth in, not only the declarations of the principal negotiators of the Lease Agreement from Anaheim (see Ruth Declaration, ¶ 3-5; Daly Declaration, ¶¶ 4-6 at PA, 0206-0207 and 0225-0226), but also in the declaration of a neutral participant,

James Doti, president of Chapman University. (See Doti Declaration, ¶ 5 at PA, 0212.)[3]

2. Anaheim, at some point in the negotiations, requested that the name change provision provide that the name be changed to the *Anaheim Angels* beginning with the 1997 season. The declaration of Anaheim City Manager, Jim Ruth, states that Tavares explained to him that Disney rejected this because a future owner may want to change the nickname to something other 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. (See Ruth Declaration, ¶ 5, at PA, 0206.)

Thus, the only evidence from the persons actually involved in the negotiations concerning the intent of Section 11(f) is uncontradicted. It fully reinforces Anaheim's position that Anaheim was to be the only geographic name in the team name, fulfilling the purpose of identifying Anaheim with the team and to promote Anaheim throughout the nation as a Major League city. In short, in response to the powerful evidence pitched

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3 And the intent was confirmed by Disney's negotiator, Antonio Tavares, who was the President of Disney Baseball Enterprises (See section 4.3, below, for a discussion of the supplemental Tavares declaration, which was not considered by the trial court.)

by Anaheim, Defendant swung and missed like a batter facing a nasty slider from Frankie Rodriguez.

The parties never discussed or even contemplated that Section 11(f) would be interpreted to allow the names of two cities to compete for their association with the *Angels*. (Ruth Declaration, ¶ 4; Daly Declaration, ¶ 6, at PA, 204 and 226.) Disney itself had every incentive to promote Anaheim. It owned numerous properties located in Anaheim, including Disneyland and the Disney Hotel, and it had plans to develop California Adventure and Downtown Disney. Anaheim's intent under the contract is obvious, but Disney itself had a future linked to Anaheim, and its intent is obvious as well.

The absence of a clause *expressly* forbidding Defendant's proposed name is not at all surprising. Disney and Anaheim were not contracting in a vacuum of possibility. They were contracting in an industry which had a *unanimous* custom in naming teams with only one location. The current list of names reflects the custom unambiguously:

Arizona Diamondbacks
Atlanta Braves
Baltimore Orioles
Boston Red Sox
Chicago Cubs
Chicago White Sox
Cincinnati Reds
Cleveland Indians
Colorado Rockies
Detroit Tigers
Florida Marlins

Houston Astros
Kansas City Royals
Los Angeles Angels *of Anaheim*
Los Angeles Dodgers
Milwaukee Brewers
Minnesota Twins
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
Texas Rangers
Toronto Blue Jays
Washington Nationals

(PA, 0195.) Both the custom and its deviant are obvious even from a glance at this list – more so when each name is read individually. With the exception of Defendant's team, all the teams are identified with a single location.

In contravening custom, Defendant breached the contract. See, e.g., Hayter Trucking, Inc. v. Shell Western E&P, Inc. (1993) 18 Cal.App.4th 1, 15-16 ("When an established usage is known to the parties to a transaction, it becomes a *rule of law* which the courts will recognize in determining the rights of parties whose relations come within the usage, absent a controlling statute.") (emphasis added). Anaheim had every reason and right to expect its contractual partner would abide by the industry's custom.

Defendant has not only veered from the industry custom in naming, it has consciously manipulated a related custom to actively disassociate the team from Anaheim. In a January 3, 2005 email to all other major league teams, Defendant decreed that the abbreviation for the team not reference "ANA" when referring to the team on things like schedules and tickets. Defendant wrote, "When scheduling, please use LA in place of ANA, and if you should play against both us and the Dodgers, we would [be] characterized by LAA." (Smith Declaration, ¶ 10; Sewell Email (Exhibit A), at PA, 0228.) This blatant rejection of Anaheim is a blatant breach of the contract.

In the sporting world, these three-letter abbreviations are used to quickly identify team names when informing fans of scores and of stats. (PA, 218.) The abbreviations are broadcast on the bottom of television sets, scrolled down the pages of newspapers, and flashed on electronic billboards at sporting venues. (Id.) The customary use of just three letters reinforces the custom in professional sports of identifying a professional team with just one location. Three letters can only identify so many words, after all. The custom thus establishes more directly what is practically obvious in any event: The name *Los Angeles Angels of Anaheim* is going to be truncated to *Los Angeles Angels* in a variety of contexts – some of which (like the three letter abbreviations) are technologically inescapable.

Defendant itself has obviously chosen to exploit this custom to identify the team with Los Angeles.

Contract law gives Anaheim every right to expect Disney, and later Defendant, to follow industry custom in identifying the team with only one location. See generally Ermolieff v. R.K.O. Radio Pictures, Inc. (1942) 19 Cal.2d 543, 550 ("to accomplish a purpose of paramount importance in interpretation of documents, namely, to ascertain the true intent of the parties, it may well be said that the usage evidence does not alter the contract of the parties, but on the contrary gives the effect to the words there used as intended by the parties").

In short, the trial court committed error in relying on technicalities when the purpose of the provision, and the intent of the parties, was so terribly and obviously plain.[4]

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[4] The trial court also referenced Section 41(u) in its concluding marks. (PA, 1234.) But Section 41(u) does not preserve the trial court's reasoning. To explain, some leases require a tenant only to pay rent and, as long as the tenant does so, the tenant has no obligation to actually occupy the premises. But this lease was negotiated to require the tenant to continue its business operations during the full term of the lease. See generally Miller & Starr, California Real Estate (3rd Edition) vol. 7, § 19.53, p. 147.) Section 41(u) is a typical continued operations clause that makes it clear that one of the bargained for benefits of the Lease Agreement is the exhibition of Major League baseball games at the Stadium. Section 41(u) thus relates to the Tenant's (Defendant's) occupying the Baseball Stadium and the Team's playing its home games therein. Section 41(u) has nothing to do with the Defendant's obligation under Section 11(f).

4.2 DEFENDANT ALSO BREACHED THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

California law implies an additional obligation on contracting parties beyond what is merely expressed. "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." Egan v. Mutual of Omaha Ins. Co. (1979) 24 Cal.3d 809, 818. The implied covenant "requires each contracting party to refrain from doing anything to injure the right of the other to receive the benefits of the agreement." Id. In diluting the team's identification to Anaheim, and giving greater prominence to its competitor, Defendant has dramatically breached the implied covenant of good faith and fair dealing here.

The implied covenant has been applied in California courts for over 50 years. In Matzen v. Horwitz (1951) 102 Cal.App.2d 884, the plaintiff had left town to join the military, and the defendant contractually agreed only to "maintain and preserve" the practice. Id. at 886. When the defendant diverted patients to his own practice, the court found for the plaintiff. It held, "[I]t is not necessary that such a covenant be spelled out in order to ensure that one party will not take advantage of a situation such as that presented in this action." Id. at 892. In the same way, it was not necessary for Anaheim and Disney to "spell out" Disney's obligation not to include "Anaheim" in the team name as a secondary appendage. Under

California law, Anaheim was entitled to trust in the good faith and fair dealing of Disney and its successor.

The implied covenant contravenes the very notion that "technical" compliance with a contract is sufficient. See Love v. Fire Ins. Exchange (1990) 221 Cal.App.3d 1136, 1153 ("the covenant is implied . . . to prevent a contracting party from engaging in conduct which (*while not technically transgressing the express covenants*) frustrates the other party's rights to the benefits of the contract") (emphasis added). Stated another way, the covenant ensures that parties bind themselves not only to a contract's technicalities, but to the "spirit of the bargain." See R.J. Kuhl Corp. v. Sullivan (1993) 13 Cal.App.4th 1589, 1602.

The covenant is particularly appropriate in cases like this, where a contracting party has some discretion to affect the interests of the other party. As the court held in Hicks v. E.T. Legg & Associates (2001) 89 Cal.App.4th 496, 508, "The covenant of good faith and fair dealing finds particular application in situations where one party is invested with a discretionary power affecting the rights of another. Such power must be exercised in good faith." The court further explained that "the covenant requires the party holding such power to exercise it 'for any purpose within the reasonable contemplation of the parties at the time of formation – to capture opportunities that were preserved upon entering the contract, interpreted objectively.'" Hicks, 89 Cal.App.4th at 508 (citations omitted).

It is obvious Anaheim contracted to be identified as the team's home, and the benefit of its bargain was in the national exposure which would result from that identification. Defendant thus ignored the "spirit of the bargain" in naming the team to highlight a separate city in a separate county. Defendant cannot reasonably argue that it used its discretion "within the reasonable contemplation of the parties."

The trial court stated that Defendant's breach of the implied covenant "is still open for the court" and thus failed to find that Anaheim will likely prevail on this claim. (PA, 1332.) With the clock ticking, and millions of taxpayer dollars at stake, the trial court erred in failing to bite the bullet on this claim to find Anaheim was more likely than not to prevail on the merits. Anaheim was clearly bargaining for the name recognition given to locations associated with Major League Baseball teams. Defendant used its discretion to embarrass Anaheim and deny Anaheim the exposure for which it plainly bargained.

4.3 DEFENDANT WAS UNFAIRLY ADVANTAGED WHEN THE TRIAL COURT ACCIDENTALLY CONSIDERED EXHIBIT 27 BUT DID NOT CONSIDER THE SUPPLEMENTAL TAVARES DECLARATION

The parties' intent was confirmed by the individual at Disney who signed the Lease Agreement on Disney's behalf – Antonio G. Tavares. Mr. Tavares' declaration was not considered by the trial court. (PA, 1196.) This is because Anaheim offered to submit the declaration after the hearing

on the temporary restraining order where the parties agreed to present additional evidence only for limited purposes. (PA, 0796.)

But the trial court's failure to consider this declaration must be considered an irregularity in the proceeding. This is because the trial court accidentally did consider evidence which Defendant submitted under the same circumstances – evidence which the trial court rejected for the same reason it rejected Mr. Tavares' declaration.

To explain, the trial court sustained Anaheim's objections to Defendant's Exhibits 27 and 28 at the preliminary injunction hearing. (PA, 1197.) But Defendant referred to Exhibit 27 as a "smoking gun" (PA, 1194), and the trial court accidentally referred to it in its reasoning. (PA, 1233.) Exhibit 27 evidenced the parties' rejection of a version of Section 11(f) which explicitly required the team to be called "Anaheim Angels." (PA, 1233.) Though the trial court indicated this evidence was not necessary to its conclusions, the cat was obviously out of the bag, and the bell had been rung. (Id.)

The Tavares declaration which the trial court did not read and did not consider at all (PA, 1196) entirely rebuts the presumption Defendant urged on Exhibit 27, and which the trial court apparently accepted. Tavares plainly establishes that Disney's desire to get leeway in naming the team had *absolutely nothing* to do with the parties' contemplation that the name would include two cities. In fact Tavares specifically declared that adding a

second name would defeat the parties' reasonable expectations. (PA, 1183-1189.) The trial court thus should have considered the Tavares declaration to the same extent it considered Exhibit 27. The declaration further closes the already tight loop on the parties' actual intent:

> "Never did we contemplate that the team name would include another geographic name in addition to Anaheim, as this would be inconsistent with the purpose of Section 11(f): to give Anaheim prominence and closely identify Anaheim with the team so that Anaheim would be publicized when the baseball team was publicized." (PA, 1186.)

In light of the trial court's accidental consideration of Defendant's Exhibit 27, this Court may decide the trial court should reconsider its decision in light of the Tavares declaration which was submitted at the same time but not considered.

CONCLUSION

The stakes in this case are high, but the principles are simple. Anaheim clearly met its burden that it was entitled to preliminary relief to prohibit Defendant from changing the name of the team. The merits of the case fall plainly on the side of Anaheim as the name *Los Angeles Angels of Anaheim* literally invites laughter for its internal inconsistency and reliance on loophole shrewdness. The equities are also plainly on the side of

Anaheim as the proposed name damages and disparages Anaheim's reputation, and vastly undercuts the benefits of its expensive bargain. Writ review is particularly appropriate in cases like these where the public's interest is high, and the trial court has failed to protect the rights of a party likely to prevail and which is threatened with irreparable and substantial injury.

Dated: February 28, 2005

Respectfully submitted,

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By

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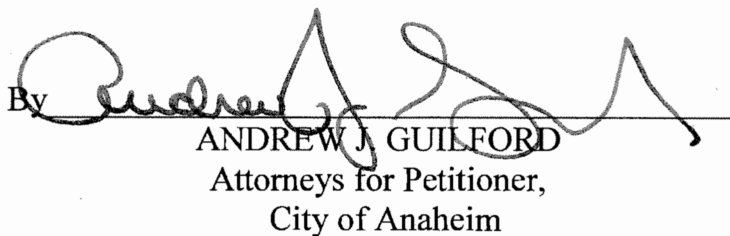
CERTIFICATE OF WORD COUNT

The text of this brief consists of 8,124 words as counted by Microsoft Office's word-processing program used to generate the brief.

Dated: February 28, 2005

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By 

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange; I am over the age of eighteen years and not a party to the within entitled action; my business address is 650 Town Center Drive, 4th Floor, Costa Mesa, California 92626-1993.

On **February 28, 2005**, I served the following document(s) described as **PETITION FOR WRIT OF MANDAMUS OR OTHER APPROPRIATE RELIEF FROM ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION; AND MEMORANDUM OF POINTS AND AUTHORITIES** on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows on the attached Service List.

☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Costa Mesa, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY OVERNIGHT DELIVERY:** I served such envelope or package to be delivered on the same day to an authorized courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier.

☐ **BY FACSIMILE:** I served said document(s) to be transmitted by facsimile pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 714-513-5130. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The sending facsimile machine (or the machine used to forward the facsimile) issued a transmission report confirming that the transmission was complete and without error. Pursuant to Rule 2008(e), a copy of that report is attached to this declaration.

☒ **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the office of the addressee(s).

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

☐ **FEDERAL:** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **February 28, 2005**, at Costa Mesa, California.

Anne C. Ramey

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