

1 RUTAN & TUCKER, LLP  
MICHAEL RUBIN (State Bar No. 62588)  
2 TODD 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  
6 JACK L. WHITE (State Bar No. 46149)  
City Attorney, City of Anaheim  
200 S. Anaheim Boulevard, Suite 356  
7 Anaheim, CA 92805  
Telephone: 714-765-5169  
8 Facsimile: 714-765-5123

9 Attorneys for Plaintiff  
CITY OF ANAHEIM

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER  
12

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

15 Plaintiff,

16 vs.

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

19 Defendants.

Case No.: 05CC01902

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

**EX PARTE APPLICATION FOR ORDER  
TO SHOW CAUSE AND TEMPORARY  
RESTRAINING ORDER; DECLARATION  
OF NOTICE; AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Ex Parte Hearing

Date: Jan. 7, 2005  
Time: 9:00 a.m.  
Dept.: C26

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TABLE OF CONTENTS

	<u>Page</u>
I. SUMMARY OF ARGUMENT .....	4
II. ARGUMENT .....	5
A. The Court has Authority and Discretion to Issue a Temporary Restraining Order Upon <i>Ex Parte</i> Application. ....	5
B. The City Has a Reasonable Probability of Prevailing on the Merits.....	7
C. The City Will Suffer Irreparable Harm if the Temporary Restraining Order and Injunction are Not Issued; A TRO Will Not Cause the Defendant to Experience Any Harm Greater than the Harm the City is Suffering. ....	15
III. CONCLUSION .....	18

TABLE OF AUTHORITIES

Page(s)

STATE CASES

1

2

3

4 *Baypoint Mortgage Corp. v. Crest Premium Real Estate Investments Retirement Trust*

5 (1985) 168 Cal.App.3d 818..... 7

6 *Body-Steffner Co. v. Flotill Products* (1944)

6 63 Cal.App.2d 555 [147 P.2d 84]..... 9

7 *Brownfield v. Daniel Freeman Marina Hospital* (1989)

8 208 Cal.App.3d 405 ..... 15

9 *Butt v. State* (1992)

9 4 Cal.4th 668 ..... 6

10 *Callahan v. Stanley* (1881)

11 57 Cal. 476 ..... 9

12 *Chico Feminist Women's Health Ctr. v. Scully* (1989)

12 208 Cal.App.3d 230 ..... 6

13 *City of Needles v. Griswold* (1992)

14 6 Cal.App.4th 1881 ..... 15

15 *Cohen v. Board of Supervisors* (1985)

15 40 Cal.3d 277 ..... 6, 7

16 *Del Taco, Inc. v. University Real Estate Partnership V* (2003)

17 111 Cal.App.4th 16 ..... 5

18 *Ermolieff v. R.K.O. Radio Pictures, Inc.* (1942)

18 19 Cal.2d 543 [122 P.2d 3] ..... 9

19 *Floystrup v. City of Berkeley Rent Stabilization Board* (1990)

20 219 Cal.App.3d 1309 ..... 14

21 *Higgins v. California Petroleum etc. Co.* (1898)

21 120 Cal. 629 [52 P. 1080] ..... 9

22 *Hunt v. Phinney* (1960)

23 177 Cal.App.2d 212 ..... 15

24 *IT Corp. v. Imperial* (1983)

24 35 Cal.3d 63 ..... 6, 7

25 *Jacobs v. Tenneco West, Inc.* (1986)

26 186 Cal.App.3d 1413 ..... 14

27 *Jenny Lind Co. v. Bower* (1858)

27 11 Cal. 194 ..... 9

28

STATE CASES (Cont.)

1

2

3 *Karsh v. Haiden* (1953)  
120 Cal.App.2d 75 ..... 15

4

5 *Laird v. Steinmann* (1950)  
97 Cal.App.2d 781 ..... 15

6 *Landmark Holding Group v. Superior Court* (1987)  
193 Cal.App.3d 525 ..... 6

7

8 *Lutz v. Western Iron & Metal Co.* (1923)  
190 Cal. 554 ..... 15

9 *MCA Records, Inc. v. Newton-John* (1979)  
90 Cal.App.3d 18 ..... 15

10

11 *Midwest Television, Inc. v. Scott, Lancaster, Mills & Atha, Inc.* (1988)  
205 Cal.App.3d 442 ..... 10

12 *Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging Co.* (1968)  
69 Cal.2d 33 ..... 9

13

14 *Pearson v. State Social Welfare Board* (1960)  
54 Cal.2d 184 [5 Cal.Rptr. 553, 353 P.2d 33] ..... 9

15 *People ex rel. Gow v. Mitchell Brothers' Santa Ana Theater* (1981)  
118 Cal.App.3d 863 ..... 15, 17

16

17 *R.J. Kuhl Corp. v. Sullivan* (1993)  
13 Cal.App.4th 1589 ..... 14

18 *Scripps Health v. Marin* (1999)  
72 Cal.App.4th 324 ..... 6

19

20 *Wise v. Reeve Electronics, Inc.* (1960)  
183 Cal.App.2d 4 ..... 10

21 *Youngblood v. Wilcox* (1989)  
207 Cal.App.3d 1368 ..... 7

22

STATE STATUTES

23

24 Civil Code  
Section 1636 ..... 12, 14  
Section 1644 ..... 9, 14  
Section 1655 ..... 10, 14

25

26 Code of Civil Procedure  
Section 526(a) ..... 6  
Section 527 ..... 6  
Section 527(c) ..... 6  
Section 1861 ..... 9

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Page(s)

MISCELLANEOUS

2 *Civil Procedure Before Trial* (4th ed. CEB)  
Section 32.36 ..... 6

*Annot.*, 89 A.L.R. 1228 ..... 9

*California Judges Benchbook: Before Trial* (CJER 1995),  
p. 711, § 14.11 ..... 6

Corbin, *The Interpretation of Words and the Parol Evidence Rule* (1965)  
50 Cornell L.Q. 161, 187 ..... 9

*Note* (1942) 30 Cal.L.Rev. 679 ..... 9

Rest.2d, Contracts,  
Section 219 ..... 9  
Section 221 ..... 10

*Witkin*, 1 Summary of California Law (9th ed.)  
Section 696 ..... 9

California Rules Court  
Rule 359 ..... 6

1 I, Michael Rubin, declare as follows:

2 1. I am a partner at the law firm of RUTAN & TUCKER, LLP, counsel for Plaintiff  
3 City of Anaheim ("the City") in the above-captioned action. I am an attorney in good standing  
4 with the State Bar of California. I have personal knowledge of the matters set forth herein, and  
5 could and would competently testify thereto under oath in a court of law if called upon to do so.

6 2. On January 5, 2005, the City filed the Complaint in the above-captioned action, a  
7 copy of which will be provided to the Court concurrently with the filing of this application. In  
8 summary, the City's Complaint alleges that Defendant has violated Section 11(f) of the 1996  
9 Lease Agreement between the City and Defendant Angels Baseball, L.P. --- previously known as  
10 Anaheim Angels, L.P. The lease provision required the tenant to change the name of its Major  
11 League Baseball team to include the name "Anaheim" therein. This requirement was  
12 implemented in 1996 by the managing partner of Anaheim Angels, LP, Disney Baseball  
13 Enterprises, Inc. ("Disney") by changing the team name, "California Angels", to the "Anaheim  
14 Angels." Both parties understood that the purpose of the name change was to provide Anaheim  
15 with nationwide exposure by closely identifying Anaheim with the baseball team and thereby  
16 promote Anaheim as a tourism, convention, sports and entertainment destination. On January 3,  
17 2005, after Disney sold the team to an entity controlled by Arturo Moreno, Defendant breached  
18 the Lease Agreement by issuing a press lease announcing the team has changed its official name to  
19 the "Los Angeles Angels of Anaheim." This was the final step in a two phased marketing plan  
20 implemented by Defendant. The first phase, implemented in 2004, was to systematically exclude  
21 references to Anaheim in the team name so as to disassociate Anaheim from the Angels brand.  
22 The second phase, now being implemented, is to officially change the team name to Los Angeles  
23 Angels in order to create a brand to be identified with the Los Angeles community, rather than  
24 Anaheim or Orange County. This final phase, if not restrained by the Court, will deprive Anaheim  
25 of the nationwide exposure and promotion of its name in conjunction with its tourism, convention,  
26 entertainment and sports industries, the bargained for benefits of the name change. In making this  
27 name change, Defendant has violated the covenant of good faith and fair dealing implied in every  
28 contract whereby each party has a duty not to do anything which will deprive the other parties of

1 the benefits of the contract. If the Defendant is not enjoined from implementing the name change  
2 pending a hearing on a preliminary injunction, Defendant is likely to order and disseminate  
3 tickets, media guides, billboard and other advertising, merchandise, press releases, and various  
4 other items that make the name change a fait accompli for the 2005 baseball season. Defendant is  
5 likely to instruct other major league baseball teams, the media and third parties: (1) to eliminate  
6 use of the Anaheim Angels name; and (2) to institute use of the Los Angeles Angels or Los  
7 Angeles Angels of Anaheim name.

8 3. The City seeks an Order to Show Cause and Temporary Restraining Order to enjoin  
9 and restrain Defendant Angels Baseball, L.P., and its affiliated entities, officers, employees,  
10 agents, and/or contractors, and all persons acting under, in concert with, or for it, from any actions  
11 or conduct to implement a change in the name of the baseball team, that has been officially named  
12 the Anaheim Angels from 1997 to 2004, to the Los Angeles Angels of Anaheim, including but not  
13 limited to any actions or conduct to use the name Los Angeles Angels or Los Angeles Angels of  
14 Anaheim as the current team name in its advertising, publicity, tickets, parking passes, media  
15 guides, calendars, contracts, uniforms, merchandising, souvenirs, website, or other mediums  
16 where the current team name is identified or used. The City has filed a "[Proposed] Order to  
17 Show Cause and Temporary Restraining Order" concurrently herewith.

18 4. The name, address, and telephone number of the attorney for Defendant Angels  
19 Baseball, LP is:

20 Todd C. Theodora  
21 Stephan, Oringer, Richman & Theodora  
22 535 Anton Boulevard, Ninth Floor  
23 Costa Mesa, California 92626  
24 Telephone: 714.549.6220

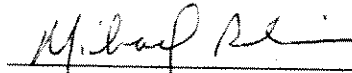
25 5. On January 6, 2005 I notified Defendant's attorney before 10:00 a.m. by letter sent  
26 via facsimile transmission that the City would be applying *ex parte* in this Department of this  
27 Court on January 7, 2005 at 9:00 a.m. for the temporary restraining order described above in this  
28 declaration.

6. I understand that Defendant's attorney intends to oppose the City's application for  
the temporary restraining order.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

Executed on January 6, 2005 at Costa Mesa, California.



---

Michael Rubin  
Attorney for Plaintiff  
CITY OF ANAHEIM

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. SUMMARY OF ARGUMENT

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

1 brand to be identified with the Los Angeles community, rather than Anaheim or Orange County.  
2 (Morgan Decl., ¶ 8; Smith Decl., ¶ 10; Sewell Email [Exhibit A]; Morgan Ltr. to Kuhl, 12/17/04  
3 [Exhibit F].) The token inclusion of Anaheim at the tail end of the team name, overshadowed by  
4 Los Angeles at front and center, is nothing more than a transparent device to relegate Anaheim to  
5 the scrapheap of useless appendages. This is evident from Defendant's email notice to all other  
6 major league teams on January 3, 2005 to use "LA" instead of "ANA" when referring to the team  
7 on schedules, etc. (Smith Decl., ¶ 10; Sewell Email [Exhibit A].) This final phase, if not  
8 restrained by the Court, will deprive Anaheim of the nationwide exposure and promotion of its  
9 name in conjunction with its tourism, convention, entertainment and sports industries, the  
10 bargained for benefits of the name change. (Ruth Decl., ¶ 10; Smith Decl., ¶ 10, 12; Doti Decl.,  
11 ¶ 6; Sewell Email [Exhibit A].)

12 In making this name change, Defendant has violated the covenant of good faith and fair  
13 dealing implied in every contract whereby each party has a duty not to do anything which will  
14 deprive the other parties of the benefits of the contract. (*Del Taco, Inc. v. University Real Estate*  
15 *Partnership V* (2003) 111 Cal.App.4th 16, 22.) If Defendant is not enjoined from implementing  
16 the name change pending a hearing on a preliminary injunction, Defendant is likely to order and  
17 disseminate tickets, media guides, billboard and other advertising, merchandise, press releases,  
18 and various other items that make the name change a *fait accompli* for the 2005 baseball season.  
19 Defendant is likely to instruct other major league baseball teams, the media and third parties: (1)  
20 to eliminate use of the Anaheim Angels name; and (2) to institute use of the Los Angeles Angels  
21 or Los Angeles Angels of Anaheim name. (Smith Decl., ¶¶ 10, 12; Sewell Email [Exhibit A].) In  
22 Section 35 of the 1996 Lease Agreement, the parties expressly acknowledged that the non-  
23 financial obligations of the other party are unique and that the parties shall be entitled to specific  
24 performance and injunctive relief to enforce the performance of the agreement.

## 25 II. ARGUMENT

### 26 A. The Court has Authority and Discretion to Issue a Temporary Restraining 27 Order Upon *Ex Parte* Application.

28 A court may issue a temporary restraining order ("TRO") to prohibit certain acts by the

1 defendant and to preserve the status quo pending a hearing on whether the plaintiff is entitled to a  
2 preliminary injunction. (Code Civ. Proc. § 527; *Chico Feminist Women's Health Ctr. v. Scully*  
3 (1989) 208 Cal.App.3d 230, 237, n. 1; *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 334;  
4 *California Judges Benchbook: Before Trial* (CJER 1995), p. 711, § 14.11; 2 *Civil Procedure*  
5 *Before Trial* (4th ed. CEB), § 32.36.) A TRO remains in effect only until the court issues or  
6 denies a preliminary injunction. (*Landmark Holding Group v. Superior Court* (1987) 193  
7 Cal.App.3d 525, 529, 238; *California Judges Benchbook: Before Trial* (CJER 1995), pp. 711-  
8 712, § 14.11.)

9 A TRO may be obtained by *ex parte* application. (Code Civ. Proc. § 527(c); Cal. Rules  
10 Court, Rule 359(g); *California Judges Benchbook: Before Trial* (CJER 1995), p. 712, § 14.11.)

11 A TRO or preliminary injunction may be granted when a case presents any of the  
12 following circumstances:

13 (1) When it appears by the complaint that the plaintiff is entitled to the relief  
14 demanded, and the relief, or any part thereof, consists in restraining the commission  
or continuance of the act complained of, either for a limited period or perpetually.

15 (2) When it appears by the complaint or affidavits that the commission or  
16 continuance of some act during the litigation would produce waste, or great or  
irreparable injury, to a party to the action.

17 (3) When it appears, during the litigation, that a party to the action is doing, or  
18 threatens, or is about to do, or is procuring or suffering to be done, some act in  
violation of the rights of another party to the action respecting the subject of the  
19 action, and tending to render the judgment ineffectual.

20 (4) When pecuniary compensation would not afford adequate relief.

21 (5) Where it would be extremely difficult to ascertain the amount of compensation  
which would afford adequate relief.

22 (Code Civ. Proc., § 526(a).)

23 The test most commonly applied by courts in determining whether to issue a TRO or  
24 preliminary injunction considers two interrelated factors: (i) the likelihood that the plaintiff will  
25 prevail on the merits at trial; and (ii) the interim harm that the plaintiff will suffer if the injunction  
26 is not issued compared to the interim harm that the defendant will suffer if it is. (*Butt v. State*  
27 (1992) 4 Cal.4th 668, 677-678; *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286; *IT*  
28 *Corp. v. Imperial* (1983) 35 Cal.3d 63, 69-70; *California Judges Benchbook: Before Trial* (CJER

1 1995), p. 719, § 14.30.) Although some cases consider additional factors, such as “irreparable  
2 harm” or “inadequacy of legal remedies,” the Supreme Court has noted that these purported  
3 requirements are simply different ways of describing the same “interim harm” factor noted above.  
4 (*Cohen*, 40 Cal.3d at 286, n. 5.)

5 The issuance of a TRO or preliminary injunction is within the sound discretion of the trial  
6 court. As the California Supreme Court has stated:

7 The law is well settled that the decision to grant a preliminary injunction rests in  
8 the sound discretion of the trial court. . . . The authorities are numerous and  
9 uniform to the effect that the granting or denial of a preliminary injunction . . . *even*  
10 *though the evidence with respect to the absolute right therefor may be*  
11 *conflicting*, rests in the sound discretion of the trial court, and that the order may  
12 not be interfered with on appeal, except for an abuse of discretion.

13 *A trial court will be found to have abused its discretion only when it has exceeded*  
14 *the bounds of reason or contravened the uncontradicted evidence.*

15 (*IT Corp.*, 35 Cal.3d at 69 (emphasis added; citations and internal quotation marks omitted).)

16 Section 35 of Lease Agreement specifically provides for injunctive relief to enforce the  
17 performance of its obligations. (See Complaint, ¶ 24 [Exhibit A].)

18 **B. The City Has a Reasonable Probability of Prevailing on the Merits.**

19 When determining whether to issue a TRO or preliminary injunction, the first factor courts  
20 consider is whether the plaintiff has a reasonable probability of prevailing on the merits at trial.  
21 The issuance of a preliminary injunction does not determine any of the merits of the controversy.  
22 (*Baypoint Mortgage Corp. v. Crest Premium Real Estate Investments Retirement Trust* (1985) 168  
23 Cal.App.3d 818; 823.) Nor does the issuance of a preliminary injunction require a finding the  
24 party seeking the preliminary injunction will necessarily prevail on the merits. (*Id.* at 824.)  
25 Rather, a trial court’s TRO or preliminary injunction will be affirmed so long as it was “not  
26 beyond the bounds of reason” for the trial court to conclude that the plaintiff was likely to prevail  
27 on the merits. (*Youngblood v. Wilcox* (1989) 207 Cal.App.3d 1368, 1375.)

28 In summary, the City’s Complaint seeks to enforce section 11(f) of the Lease that was  
entered into between the City and Defendant in 1996 by preventing Defendant from implementing  
the change in name of its Major League Baseball team from the “Anaheim Angels” to the “Los  
Angeles Angels of Anaheim. (Complaint, pp. 9-16.) That section reads:

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

3 (Lease, p. 46, § 11(f) [Exhibit B].) Both parties understood that the purpose of the name change  
4 was to provide Anaheim with nationwide exposure by closely identifying Anaheim with the  
5 baseball team and thereby promote Anaheim as a tourism, convention, sports and entertainment  
6 destination. (Ruth Decl. ¶ 3; Doti Decl. ¶ 5; Morgan Decl., ¶¶ 3-4; Daly Decl., ¶¶ 4-5.) This  
7 intention and purpose was evidenced by the conduct of Disney (as the team's managing partner) in  
8 changing the team name to the "Anaheim Angels." (Complaint, pp. 4-5; Ruth Decl., ¶¶ 2-6; Smith  
9 Decl., ¶¶ 3-4; Daly Decl., ¶¶ 3-6.) In fact, Disney publicly announced that the new name would be  
10 "Anaheim Angels" even before the Lease Agreement was signed. (Ruth Decl., ¶ 3; Daly Decl.,  
11 ¶¶ 5-6.) At a joint press conference in mid-1996 announcing the deal, the Anaheim Mayor, on the  
12 podium with the Disney officials, publicly stated that the team that was called California Angels  
13 for the last 30 years would from now on be called the Anaheim Angels. (Daly Decl., ¶ 6.)

14 The mutual intention to closely identify Anaheim with the Angels is further evidenced by  
15 Disney's course of conduct in implementing the Lease Agreement from 1996 through early 2003  
16 whereby Disney publicized the name Anaheim Angels prominently in its marketing of the team,  
17 its printing of the Anaheim Angels name on tickets, media guides, team photos, merchandise,  
18 public announcements, public broadcasting of games, team web site, and, in 2002, Disney even  
19 went beyond the usage made of the California Angels name prior to 1997 by putting the Anaheim  
20 Angels name on the players' road uniforms. (Ruth Decl., ¶ 6; Smith Decl., ¶ 5.)

21 It was expected that the Anaheim Angels name would provide the City the kind of  
22 identification around the country as the New York Yankees provided New York and the  
23 Pittsburgh Pirates provided Pittsburgh and the St. Louis Cardinals provided St. Louis and the  
24 Boston Red Sox provided Boston, among many other cities whose names have become identified  
25 with major league baseball teams. (Ruth Decl., ¶ 5.) It was never contemplated that the Lease  
26 Agreement could be implemented by naming the team the Los Angeles Angels of Anaheim, since  
27 this would not only be nonsensical but it would be totally contrary to the intent of closely  
28 identifying Anaheim with the team to promote Anaheim as a tourism, convention, sports and

1 entertainment destination. (Ruth Decl., ¶ 4.) Placing Anaheim at the tale end of such a ludicrous  
2 name, which identifies another City at the front of the name, relegates Anaheim to the status of a  
3 useless appendage.

4 When parties give words in a contract special meaning by usage, that special meaning  
5 “*must be followed.*” (Civ. Code § 1644.) A “usage” is a “habitual or customary practice.”  
6 (Rest.2d, Contracts, § 219; Witkin, 1 *Summary of Cal. Law* (9th ed.), § 696.) Courts have  
7 interpreted words according to the special meaning and usage given them by the contracting  
8 parties even when that usage was contrary to what the defendant characterized was the “plain” or  
9 “ordinary” meaning of those words. As noted by the California Supreme Court:

10 Extrinsic evidence of trade usage or custom has been admitted to show that the  
11 term “United Kingdom” in a motion picture distribution contract included Ireland  
12 (*Ermolieff v. R.K.O. Radio Pictures, Inc.* (1942) 19 Cal.2d 543, 549-552 [122 P.2d  
13 3]); that the word “ton” in a lease meant a long ton or 2,240 pounds and not the  
14 statutory ton of 2,000 pounds (*Higgins v. California Petroleum etc. Co.* (1898) 120  
15 Cal. 629, 630-632 [52 P. 1080]); that the word “stubble” in a lease included not  
16 only stumps left in the ground but everything “left on the ground after the harvest  
17 time” (*Callahan v. Stanley* (1881) 57 Cal. 476, 477-479); that the term “north” in a  
18 contract dividing mining claims indicated a boundary line running along the  
19 “magnetic and not the true meridian” (*Jenny Lind Co. v. Bower* (1858) 11 Cal.  
20 194, 197-199) and that a form contract for purchase and sale was actually an  
21 agency contract. (*Body-Steffner Co. v. Flotill Products* (1944) 63 Cal.App.2d 555,  
22 558-562 [147 P.2d 84]). See also Code Civ. Proc., § 1861; Annot., 89 A.L.R. 1228;  
23 Note (1942) 30 Cal.L.Rev. 679.)

24 (*Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 39, n.  
25 6.)<sup>1</sup>

26 <sup>1</sup> In *G.W. Drayage*, 69 Cal.2d at 38-39, the Supreme Court articulately explained why the  
27 special meaning that contracting parties give to words through their usage must prevail over the  
28 alleged “ordinary” meaning of those words:

29 If words had absolute and constant referents, it might be possible to discover contractual  
30 intention in the words themselves and in the manner in which they were arranged. Words,  
31 however, do not have absolute and constant referents. “A word is a symbol of thought but has  
32 no arbitrary and fixed meaning like a symbol of algebra or chemistry, . . .” (*Pearson v. State  
33 Social Welfare Board* (1960) 54 Cal.2d 184, 195 [5 Cal.Rptr. 553, 353 P.2d 33].) The  
34 meaning of particular words or groups of words varies with the “. . . verbal context and  
35 surrounding circumstances and purposes in view of the linguistic education and experience of  
36 their users and their hearers or readers (not excluding judges). . . . A word has no meaning  
37 apart from these factors; much less does it have an objective meaning, one true meaning.”  
38 (*Corbin, The Interpretation of Words and the Parol Evidence Rule* (1965) 50 Cornell L.Q.  
161, 187.) Accordingly, the meaning of a writing “. . . can only be found by interpretation in  
the light of all the circumstances that reveal the sense in which the writer used the words. The  
exclusion of parol evidence regarding such circumstances merely because the words do not

1           Moreover, stipulations that are necessary to make a contract conform to usage must be  
2 implied when interpreting that contract. (Civ. Code § 1655.) Such usage or custom may be  
3 looked to, both to explain the meaning of language and to imply terms where no contrary intent  
4 appears from the terms of the contract. (*Id.*; *Midwest Television, Inc. v. Scott, Lancaster, Mills &*  
5 *Atha, Inc.* (1988) 205 Cal.App.3d 442, 451; *Wise v. Reeve Electronics, Inc.* (1960) 183  
6 Cal.App.2d 4, 9; Rest.2d, Contracts § 221.)

7           The City specifically bargained for the “Anaheim Angels” name change to obtain the  
8 unique and special exposure, goodwill, and reputation that other cities receive from being  
9 associated with a Major League Baseball team. (Daly Decl., ¶ 4, 6; Ruth Decl., ¶ 3-5; Smith  
10 Decl., ¶ 6-8.) Because the City markets itself as a premiere destination for tourism, conventions,  
11 sporting events, and other entertainment, it was extremely important for the City to be identified  
12 with the team as the “Anaheim Angels” to obtain that unique exposure, goodwill, and reputation.  
13 (Ruth Decl., ¶¶ 3-5; Smith Decl., ¶¶ 6-8; Morgan Decl., ¶¶ 2-4; Daly Decl., ¶¶ 4, 6.)

14           It was the parties’ mutual intention and understanding that to provide the City with the  
15 unique exposure, goodwill, and reputation that it sought, the new “Anaheim Angels” name would  
16 be used in the same manner that the “California Angels” name had previously been used. (Daly  
17 Decl., ¶ 6; Ruth Decl., ¶ 4.) Accordingly, “Anaheim” was included in the team name on the  
18 team’s tickets, parking passes, game schedules, calendars, media guides, website, billboards, press  
19 releases, newspaper, television and radio advertising, publicity, play-by-play broadcasting,  
20 souvenirs, merchandise, team stationery, printed checks and other mediums as a matter of routine.  
21 (Ruth Decl., ¶ 6; Smith Decl., ¶ 3; Daly Decl., ¶ 6.)

22           The parties never intended that Section 11(f) of the Lease would allow the team to be  
23 affiliated with any city other than Anaheim. (Daly Decl., ¶ 6; Ruth Decl., ¶ 4.) Every major  
24

---

25           appear ambiguous to the reader can easily lead to the attribution to a written instrument of a  
26 meaning that was never intended.” (Citations omitted.)

27           ... The fact that the terms of an instrument appear clear to a judge does not preclude the  
28 possibility that the parties chose the language of the instrument to express different terms. That  
possibility is not limited to contracts whose terms have acquired a particular meaning by trade  
usage, but exists whenever the parties’ understanding of the words used may have differed  
from the judge’s understanding.

1 league baseball team has *one* city or state name as the *first part* of its team name.<sup>2</sup> (Ruth Decl.,  
2 ¶ 4; Smith Decl., ¶ 4; *see also* [www.mlb.com](http://www.mlb.com) [listing Major League Baseball team names].) At  
3 the time the parties contracted, there were *no teams* that had *more than one* such city or state  
4 name as part of its team name—nor had there been any until just days ago when Defendant  
5 purported to change its name to the Los Angeles Angels of Anaheim. (Ruth Decl., ¶ 4; *see also*  
6 [www.mlb.com](http://www.mlb.com) [listing Major League Baseball team names].) The parties never contemplated  
7 having *two* geographic names in the team name, as such a scheme would be at odds with the well-  
8 known custom and practice in Major League Baseball of including only *one* geographic name, and  
9 placing that one geographic name in front of the team nickname. Moreover, such a scheme would  
10 be totally contrary to the intent of identifying Anaheim with the team to boost Anaheim’s  
11 reputation. (*Id.*; *see also* footnote 1, below.) Even more nonsensical would have been a  
12 discussion of including the name of a city located in *another county* where the team *was not*  
13 *located*—*e.g.*, Los Angeles—in the team name. (*Id.*)

14       Indeed, including the name of any city other than Anaheim in the team name—and even  
15 worse, putting the name of that city *ahead* of Anaheim in the team name—would dilute and  
16 deprive the City of the unique and special prominence, goodwill, and reputation that other cities  
17 receive from being *exclusively* associated with a Major League Baseball team, such as the Los  
18 Angeles Dodgers, New York Yankees, and Boston Red Sox. (Ruth Decl., ¶ 5; Morgan Decl., ¶ 4;  
19 Daly Decl., ¶¶ 4, 6; *see also* footnote 1, below.)

20       As alleged in the Complaint, and supported by the declarations filed concurrently herewith,  
21 Defendant has not only changed the team’s name from the “Anaheim Angels” to the “Los Angeles  
22 Angels of Anaheim,” but, after the 2003 change of ownership, systematically *excluded* the use of  
23 the name “Anaheim” in its promotion and operation of the team. (Smith Decl., ¶ 5.) This  
24 systematic exclusion of the use of “Anaheim” from the team’s promotional and operational

25 \_\_\_\_\_  
26 <sup>2</sup> *E.g.*, Atlanta Braves, Baltimore Orioles, Boston Red Sox, Chicago Cubs, Chicago White Sox,  
27 Cincinnati Reds, Cleveland Indians, Detroit Tigers, Houston Astros, Kansas City Royals, Los  
28 Angeles Dodgers, Milwaukee Brewers, New York Mets, New York Yankees, Oakland A’s,  
Philadelphia Phillies, Pittsburgh Pirates, San Diego Padres, San Francisco Giants, Seattle  
Mariners, St. Louis Cardinals, Tampa Bay Devil Rays, Toronto Blue Jays, Washington D.C.  
Nationals—and until just days ago the Anaheim Angels, now the Los Angeles Angels of  
Anaheim. (*See* [www.mlb.com](http://www.mlb.com) [official website for Major League Baseball].)

1 activities was a top-down directive issued by Mr. Arturo Moreno, the President of the entity that  
2 owns and control's Defendant's managing partner. (*Id.*) Accordingly, Defendant has excluded  
3 "Anaheim" from its game tickets, parking passes, media guides, merchandise, public  
4 announcements, team photographs, website, promotional calendar, checks, stationary, and  
5 invoices just to name a few. (*Id.*)

6 Defendant has continued its systematic effort to exclude Anaheim from use in the team  
7 name through its implementation of the team's new name, the "Los Angeles Angels of Anaheim."  
8 Attached to the Declaration of Greg Smith is a true and correct copy of an electronic mail  
9 transmission that emanated from the team's Media Relations Representative, Marty Sewell.  
10 (Smith Decl., ¶ 10; Sewell Email [Exhibit A].) The email was sent to representatives of major  
11 league baseball teams throughout the country on January 3, 2005 and advises them as follows:

12 Pleased be advised that our name has now been changed from Anaheim Angels to  
13 Los Angeles Angels of Anaheim, effective today. When scheduling, please use LA  
14 in place of ANA, and if you should play against both us and the Dodgers, we would  
characterized by LAA.

15 (*Id.*) Thus, Defendant is seeking to further exclude Anaheim from its team name by altering the  
16 designation location for the team's home games on schedules throughout the country from ANA  
17 (Anaheim) to LA (Los Angeles). (*Id.*) This means that in television newscasts, for example, all  
18 line scores will be reported as LA (Los Angeles) instead of as ANA (Anaheim). It also means that  
19 scoreboards in other major league stadiums throughout the country will list the scores of Angel  
20 games as LA instead of ANA.

21 As alleged in the Complaint, and supported by the declarations cited above and filed  
22 concurrently herewith, Defendant's systematic exclusion of "Anaheim" from its use of the team  
23 name in its promotional and operational activities, and its renaming of the team from "Anaheim  
24 Angels" to the "Los Angeles Angels of Anaheim," violates Section 11(f) of the Lease.  
25 (Complaint, ¶¶ 21-34.) Civil Code section 1636 requires that "[a] contract must be so interpreted  
26 as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far  
27 as the same is ascertainable and lawful."

28 As indicated in the declarations of the persons primarily responsible for negotiating the

1 Lease, during the eight years following the signing of the Lease (*i.e.*, from 1997 through 2004),  
2 the parties' conduct, course of dealing, custom, practice, and usage evidenced that the parties  
3 specially meant, intended, and understood that Section 11(f) of the Lease required:  
4 (i) that the team's name be changed from "California Angels" to the "Anaheim Angels;"  
5 (ii) that, consistent with the ordinary custom and practice in Major League Baseball, the  
6 team would have the name of only one city—Anaheim (*see* footnote 1, above); and  
7 (iii) that the new "Anaheim Angels" team name would be used as the team's previous  
8 "California Angels" name had been used—*i.e.*, that "Anaheim Angels" would be included on the  
9 team's tickets, parking passes, game schedules, calendars, media guides, billboards, press releases,  
10 newspaper, television and radio advertising, publicity, play-by-play broadcasting, souvenirs,  
11 merchandise, team stationery, printed checks and other mediums as a matter of routine.  
12 (Daly Decl., ¶¶ 2-6; Ruth Decl., ¶¶ 2-6; Smith Decl., ¶¶ 3-4.)

13 As indicated by the authorities cited above, the parties' usage and consistent course of  
14 conduct over the last eight years since the Lease was signed, and the custom and practice relating  
15 to team names in Major League Baseball, "***must be followed***" in interpreting Section 11(f) of the  
16 Lease. Accordingly, Defendant's systematic exclusion of "Anaheim" from its use of the team  
17 name, and renaming of the team from the "Anaheim Angels" to the "Los Angeles Angels of  
18 Anaheim"—both in stark deviation from Defendant's conduct before it was acquired by entities  
19 controlled by Mr. Arturo Moreno—must be viewed as a violation of Section 11(f) of the Lease.

20 There is no merit to the argument that Defendant is in "technical" compliance with Section  
21 11(f) of the Lease by renaming the team "Los Angeles Angels ***of Anaheim***"—thereby nominally  
22 retaining "Anaheim" in the team name, but in a nonsensical and demeaning manner. If Defendant  
23 could comply with its obligations under the Lease with such a ludicrous name, then, as noted in a  
24 quote of Carl Bjerre of the University of Oregon in a December 30, 2004 LA Times article, the  
25 Defendant could comply by proposing a name change to "The Los Angeles Angels, a team of  
26 really great players who happen to play their games in a city we grudgingly acknowledge is called  
27 Anaheim."

28 The Lease means what the parties intended and understood it to mean as evidenced by

1 Defendant's consistent eight-years usage of the "Anaheim Angels" team name, and the ordinary  
2 custom and practice relating to team names in Major League Baseball—e.g., that a baseball team  
3 has no more than one city or other geographic name in its name. (Civ. Code §§ 1636, 1644, 1655;  
4 *see also* footnote 1, above.) Defendant cannot argue with a straight face that at the time of  
5 contracting, the parties intended and understood that—in direct conflict with Major League  
6 Baseball's custom and practice—Defendant would have what *no other* Major League Baseball  
7 team has—i.e., a team name that includes the names of *two* cities. This is even more compelling  
8 when it is understood that Anaheim gave up tens of millions of dollars in concessions to make the  
9 deal which required the name change. (Ruth Decl., ¶¶ 8-9; Smith Decl., ¶¶ 8-9.)

10         Permitting Defendant's deviation from the parties' well-established usage of Section 11(f)  
11 of the Lease based on hyper-technical, verbal hairsplitting would plainly dilute and deprive the  
12 City of the benefits of its bargain and would be inconsistent with parties acknowledged intent of  
13 closely identifying Anaheim with the team so as to promote Anaheim as a tourism, convention,  
14 sports and entertainment destination. Specifically, it would dilute and deprive the City of the same  
15 unique type of exposure, goodwill, and reputation that Los Angeles (Dodgers), New York  
16 (Yankees), Boston (Red Sox), San Francisco (Giants), and other major cities enjoy through their  
17 identification with Major League Baseball teams.

18         Defendant's attempt to evade the "spirit" of the Lease, while apparently attempting to  
19 contend that it has not technically violated the "letter" of the Lease by relegating "Anaheim" to the  
20 tail of the new team name, is precisely the type of behavior that courts have consistently held  
21 violates the covenant of good faith and fair dealing:

22         *Subterfuges and evasions violate the obligation of good faith in performance*  
23 *even though the actor believes his conduct to be justified.* But the obligation goes  
24 further: bad faith *may be overt or may consist of inaction*, and fair dealing may  
25 require more than honesty. A complete catalogue of types of bad faith is  
impossible, but the following types are among those which have been recognized in  
judicial decisions: *evasion of the spirit of the bargain* . . . .

26 (*R.J. Kuhl Corp. v. Sullivan* (1993) 13 Cal.App.4th 1589, 1602 [emphasis added]; *see also*  
27 *Floystrup v. City of Berkeley Rent Stabilization Bd.* (1990) 219 Cal.App.3d 1309, 1319 n. 8 ;  
28 *Jacobs v. Tenneco West, Inc.* (1986) 186 Cal.App.3d 1413, 1418 n. 3 .)

1 Based on the foregoing authorities and the declarations of the parties primarily responsible  
2 for negotiating and implementing the Lease, the City has demonstrated that it has at least a  
3 “reasonable probability” of succeeding on the merits of its claims.

4 C. **The City Will Suffer Irreparable Harm if the Temporary Restraining Order  
5 and Injunction are Not Issued; A TRO Will Not Cause the Defendant to  
6 Experience Any Harm Greater than the Harm the City is Suffering.**

6 When courts examine whether a plaintiff will suffer irreparable harm if a TRO or  
7 preliminary injunction does not issue, courts often look to whether an adequate legal remedy is  
8 available to the plaintiff. A plaintiff usually establishes that its legal remedies are inadequate by  
9 showing that the defendant’s wrongful act constitutes an actual or threatened injury that cannot be  
10 compensated by an ordinary damage award. (*Brownfield v. Daniel Freeman Marina Hosp.* (1989)  
11 208 Cal.App.3d 405, 410.) A threat of irreparable injury exists where it is extremely difficult to  
12 estimate damages, or where the threatened injury is of a repeated and continuing nature. (*People*  
13 *ex rel. Gow v. Mitchell Brothers’ Santa Ana Theater* (1981) 118 Cal.App.3d 863, 870-871.)  
14 Conduct that threatens a **loss of goodwill** has been held to be proper grounds for issuance of a  
15 temporary restraining order and preliminary injunction. (*MCA Records, Inc. v. Newton-John*  
16 (1979) 90 Cal.App.3d 18, 23 [affirming issuance of preliminary injunction to stop threatened  
17 breach of contract that would result in loss of goodwill]; *Hunt v. Phinney* (1960) 177 Cal.App.2d  
18 212, 216 [affirming issuance of injunction to avoid loss of good will, and stating that goodwill “is  
19 property and as such will be protected by the courts”]; *Karsh v. Haiden* (1953) 120 Cal.App.2d  
20 75, 83; *Laird v. Steinmann* (1950) 97 Cal.App.2d 781, 782, 786; *Lutz v. Western Iron & Metal Co.*  
21 (1923) 190 Cal. 554, 558, 560-561; *City of Needles v. Griswold* (1992) 6 Cal.App.4th 1881, 1185-  
22 1886.)

23 As indicated, the City did not bargain for the “Anaheim Angels” name change to receive  
24 quantifiable monetary benefits. Rather, the City bargained for the unique exposure, goodwill, and  
25 reputation that a city obtains from being closely identified with a Major League Baseball team.  
26 (Daly Decl., ¶¶ 4, 6; Ruth Decl., ¶ 5.) The City committed **tens of millions** of dollars of Lease  
27 concessions to the baseball team to obtain a Lease that provided the City this benefit. (Ruth Decl.,  
28 ¶¶ 8-9; Smith Decl., ¶¶ 6-9.)

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

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

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

1 adequately compensated in mere dollars.

2 In addition, as the City of Anaheim's principal liaison with the operational personnel of the  
3 baseball team, Greg Smith has become familiar with the timing requirements relating to printing  
4 of season tickets, schedules, promotional materials and ordering of merchandise for seasonal sales.  
5 (Smith Decl., ¶ 12.) The baseball season begins in April, and these types of items must be ordered  
6 and distributed well before the baseball season begins. (*Id.*) If a TRO is not issued immediately  
7 to prevent the baseball team from implementing its announced name change to the Los Angeles  
8 Angels of Anaheim, then Defendant is likely to order and disseminate tickets, media guides,  
9 billboard and other advertising, merchandise, press releases, and various other items that make the  
10 name change a *fait accompli* for the 2005 baseball season. Further, Defendant is likely to—and  
11 already has begun—to instruct other major league baseball teams, the media and third parties: (1)  
12 to eliminate use of the Anaheim Angels name; and (2) to institute use of the Los Angeles Angels  
13 or Los Angeles Angels of Anaheim name. (Smith Decl., ¶ 10; Sewell Email [Exhibit A].) This  
14 would cause great and irreparable harm to the City by depriving it of the unique exposure,  
15 goodwill, and reputation it bargained for under the Lease. (Ruth Decl., ¶ 10; Smith Decl., ¶ 10.)

16 In summary, it is appropriate for the Court to issue a TRO to avoid irreparable harm to the  
17 City based on: (i) the repeated and continuing nature of Defendant's violation of the Lease; (ii)  
18 the unique and special quality of the bargained-for benefits of which Defendant is depriving the  
19 City; and (iii) the extreme difficulty in quantifying the value of the unique exposure, goodwill, and  
20 reputation that the City will lose from no longer being closely identified with a Major League  
21 Baseball team. (*Mitchell Brothers*, 118 Cal.App.3d at 870-871 ["the word 'irreparable' is . . . used  
22 in expressing the rule that an injunction may issue to prevent wrongs of a repeated and continuing  
23 character, or which occasion damages estimable only by conjecture and not by any accurate  
24 standard"].)

25 By contrast, if a TRO and, later, an injunction are issued, Defendant will not suffer any  
26 harm greater than that facing the City. Defendant need only continue to do what it has previously  
27 done—*i.e.*, use the "Anaheim Angels" team name, and to stop representing that its name has been  
28 changed. (*See* [Proposed] Order to Show Cause and Temporary Restraining Order filed

1 concurrently herewith.) Defendant cannot seriously argue that maintaining the same "Anaheim  
2 Angels" name that it has used since 1997 constitutes a "harm" or "injury" greater than the  
3 deprivation of the unique prominence, goodwill, and reputation that the City sought to obtain at  
4 the expense of tens of millions of taxpayer dollars. (Ruth Decl., ¶¶ 8-10; Smith Decl., ¶¶ 6-10.)


5 **III. CONCLUSION**

6 Both parties understood that the purpose of the name change to the "Anaheim Angels" in  
7 1996 was to provide Anaheim with nationwide exposure by closely identifying Anaheim with the  
8 baseball team and thereby promote Anaheim as a tourism, convention, sports and entertainment  
9 destination. (Ruth Decl., ¶ 3; Doti Decl., ¶ 5; Daly Decl., ¶¶ 4-5.) The identification of Anaheim  
10 with the Angels baseball team is of immense importance and value to the City of Anaheim be-  
11 cause Anaheim is a world-wide tourism, convention, sports and entertainment center. Defendant  
12 is attempting to deprive Anaheim of the benefits of the 1996 Lease Agreement by now changing  
13 the team name to the Los Angeles Angels of Anaheim. While Defendant perceives that it can grab  
14 a marketing benefit by discarding Anaheim and associating itself with Los Angeles, Defendant has  
15 done so in violation of the covenant of good faith and fair dealing, whereby each party has a duty  
16 not to do anything which will deprive the other parties of the benefits of the contract. This  
17 covenant is so fundamental, that it is implied in every contract. Defendant, whose baseball team  
18 won a classic world series as the Anaheim Angels, presents the court with a classic violation of  
19 this covenant.

20 As expressly authorized by Section 35 of the 1996 Lease Agreement, Anaheim respectfully  
21 requests that this Court issue the [Proposed] Order to Show Cause and Temporary Restraining  
22 Order filed concurrently herewith.

23 Dated: January 6, 2005

RUTAN & TUCKER, LLP

24  
25 By:   
26 Michael Rubin  
27 Attorney for Plaintiff CITY OF ANAHEIM  
28