No. 17-1079

IN THE

# Supreme Court of the United States

JORDAN WYCKOFF, DARWIN COX, INDIVIDUALLY AND ON BEHALF OF ALL THOSE SIMILARLY SITUATED,

*Petitioners,*

v.

OFFICE OF THE COMMISSIONER OF BASEBALL, ET AL.,

*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit**

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

For nearly a century, this Court has consistently held that the business of baseball is exempt from antitrust scrutiny. Petitioners allege that Respondents impermissibly restricted the labor market for baseball scouts, but do not contest that the challenged conduct falls within the business of baseball. Because there is no argument that the lower courts misapplied this Court's precedent, and the circuit courts all agree on the baseball exemption's scope, this case does not merit the Court's review. But if this Court were to conclude that review is appropriate, the question presented would be as follows:

Whether, despite decades of Congressional acceptance that the "business of baseball" is exempt from antitrust regulation, this Court should overrule *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922); *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953); and *Flood v. Kuhn*, 407 U.S. 258 (1972) and narrow the exemption to cover only baseball's reserve system.

## RULE 29.6 STATEMENT

The Office of the Commissioner of Baseball, which does business as Major League Baseball ("MLB"), is an unincorporated association. As such, it has no corporate parent, and no publicly held corporation owns 10% or more of MLB.

Angels Baseball LP is a California limited partnership. The general partner of Angels Baseball LP is Moreno Baseball, LP, which is a California limited partnership. There is no publicly held company that owns 10% or more of Angels Baseball LP or Moreno Baseball LP.

AZPB Limited Partnership is a Delaware limited partnership. The general partner of AZPB Limited Partnership is AZDB I, LLC, which is a Delaware limited liability company. There is no publicly held company that owns 10% or more of AZPB Limited Partnership or AZDB I, LLC.

Athletics Investment Group LLC DBA Oakland Athletics Baseball Company is a California limited liability company. Athletics Investment Group LLC is wholly owned by Athletics Holdings LLC, which is a Delaware limited liability company. There is no publicly held corporation that owns 10% or more of Athletics Holdings LLC.

Atlanta National League Baseball Club, LLC is a Georgia limited liability company. Atlanta National League Baseball Club, LLC is wholly owned by Braves Baseball Holdco, LLC, which is a Delaware limited liability company. Braves Baseball Holdco, LLC is wholly owned by Braves Holdings, LLC, which is a Delaware limited liability company. Braves Holdings, LLC is wholly owned by Liberty Media Corporation, which is a Delaware corporation that is publicly held

through a series of tracking stocks, including the Liberty Braves Tracking Stock, which tracks the businesses operated by Braves Holdings, LLC and its subsidiaries.

Baltimore Orioles Limited Partnership is a Maryland limited partnership. The general partner of Baltimore Orioles Limited Partnership is Baltimore Orioles, Inc., which is a Maryland corporation. There is no publicly held corporation that owns 10% or more of Baltimore Orioles Limited Partnership or Baltimore Orioles, Inc.

The Baseball Club of Seattle, LLLP is a Washington limited liability limited partnership. The managing general partner of The Baseball Club of Seattle, LLLP is Mariners Baseball LLC, which is a Washington limited liability company. The limited partner of The Baseball Club of Seattle, LLLP is Mariners Investment LLC, which is a Washington limited liability company. Mariners Baseball LLC and Mariners Investment LLC are each wholly owned by First Avenue Entertainment LLLP, which is a Washington limited liability limited partnership. Nintendo of America, Inc. owns 10% or more of First Avenue Entertainment LLLP. Nintendo of America is wholly owned by Nintendo Company Ltd., which is a publicly held Japanese corporation.

The Boston Red Sox Baseball Club Limited Partnership is a Massachusetts limited partnership. The general partner of The Boston Red Sox Baseball Club Limited Partnership is NESV, LLC, which is a Delaware limited liability company. There is no publicly held corporation that owns 10% or more of The Boston Red Sox Baseball Club Limited Partnership or NESV, LLC.

Chicago Cubs Baseball Club, LLC, is a Delaware limited liability company. Chicago Cubs Baseball Club, LLC is wholly owned by Chicago Baseball Holdings, LLC, which is a Delaware limited liability company. Chicago Baseball Holdings, LLC is wholly owned by Chicago Entertainment Ventures, LLC, which is a Delaware limited liability company. There is no publicly held corporation that owns 10% or more of Chicago Entertainment Ventures, LLC.

Chicago White Sox, Ltd. is an Illinois limited partnership. The general partner of Chicago White Sox, Ltd. is Chisox Corporation, which is Delaware corporation. There is no publicly held corporation that owns 10% or more of Chicago White Sox, Ltd. or Chisox Corporation.

The Cincinnati Reds LLC is a Delaware limited liability company. There is no corporate parent or publicly held corporation that owns 10% more of The Cincinnati Reds LLC.

Cleveland Indians Baseball Company, LLC is an Ohio limited liability company. There is no corporate parent or publicly held corporation that owns 10% more of Cleveland Indians Baseball Company, LLC.

Colorado Rockies Baseball Club, Ltd. is a Colorado limited partnership. The general partner of Colorado Rockies Baseball Club Ltd. is Colorado Baseball 1993, Inc., which is a Colorado corporation. There is no publicly held corporation that owns 10% or more of Colorado Rockies Baseball Club, Ltd. or Colorado Baseball 1993, Inc.

Detroit Tigers, Inc. is a Michigan corporation. There is no corporate parent or publicly held corporation that owns 10% or more of Detroit Tigers, Inc.

Houston Astros, LLC is a Texas limited liability company. Houston Astros, LLC is wholly owned by HBP Team Holdings, LLC, which is a Delaware limited liability company. HBP Team Holdings, LLC is wholly owned by Houston Baseball Partners, LLC, which is a Delaware limited liability company. There is no publicly held corporation that owns 10% or more of Houston Baseball Partners, LLC.

Kansas City Royals Baseball Corporation is a Missouri corporation. There is no corporate parent or publicly held corporation that owns 10% or more of Kansas City Royals Baseball Corporation.

Los Angeles Dodgers LLC is a Delaware limited liability company. Los Angeles Dodgers LLC is wholly owned by Los Angeles Dodgers Holding Company LLC, which is a Delaware limited liability company. Los Angeles Dodgers Holding Company LLC is wholly owned by LA Holdco LLC, which is a Delaware limited liability company. There is no publicly held corporation that owns 10% or more of LA Holdco LLC.

Miami Marlins, L.P. has been renamed WSC03, LP. WSC03, LP is a Delaware limited partnership. The general partner of WSC03, LP is Double Play Company, which is a Nova Scotia corporation. There is no publicly held company that owns 10% or more of WSC03, LP or Double Play Company.

Milwaukee Brewers Baseball Club, Limited Partnership is a Wisconsin limited partnership. The general partner of Milwaukee Brewers Baseball Club, Limited Partnership is Milwaukee Brewers Holdings LLC, which is a Wisconsin limited liability company. There is no publicly traded company that owns 10% or more of Milwaukee Brewers Baseball Club, Limited Partnership or Milwaukee Brewers Holdings LLC.

Minnesota Twins, LLC is a Delaware limited liability company. There is no corporate parent or publicly held corporation that owns 10% more of Minnesota Twins, LLC.

New York Yankees Partnership is an Ohio limited partnership. There is no corporate parent or publicly held corporation that owns 10% or more of New York Yankees Partnership.

Padres L.P. is a Delaware limited partnership. The general partner of Padres L.P. is Padres GP, LLC, which is a Delaware limited liability company. Padres GP, LLC is wholly owned by SoCal SportsNet, LLC, which is a Delaware limited liability company. There is no publicly held corporation that owns 10% or more of Padres L.P. or SoCal SportsNet, LLC.

The Phillies is a Pennsylvania limited partnership. There is no corporate parent or publicly held corporation that owns 10% or more of The Phillies.

Pittsburgh Associates is a Pennsylvania limited partnership. The general partner of Pittsburgh Associates is Pittsburgh Baseball Holdings, Inc., which is a Pennsylvania corporation. There is no publicly held company that owns 10% or more of Pittsburgh Associates or Pittsburgh Baseball Holdings, Inc.

Rangers Baseball LLC is a Delaware limited liability company. Rangers Baseball, LLC is wholly owned by Rangers Baseball Express, LLC, which is a Delaware limited liability company. There is no publicly held corporation that owns 10% or more of Rangers Baseball Express, LLC.

Rogers Blue Jays Baseball Partnership is an Ontario general partnership. The partners of Rogers Blue Jays Baseball Partnership are Rogers Sports

Holdings, Inc. and Blue Jays Holdco, Inc., each of which is an Ontario corporation. Rogers Sports Holdings, Inc. and Blue Jays Holdco, Inc. are each wholly owned by Rogers Media Inc., which is an Ontario corporation. Rogers Media Inc. is wholly owned by Rogers Communications Inc., which is a publicly held Ontario corporation.

San Francisco Giants Baseball Club LLC is a Delaware limited liability company. San Francisco Giants Baseball Club LLC is wholly owned by San Francisco Baseball Associates LLC, which is a Delaware limited liability company. There is no publicly held corporation that owns 10% or more of San Francisco Baseball Associates LLC.

St. Louis Cardinals, LLC is a Missouri limited liability company. St. Louis Cardinals, LLC is wholly owned by SLC Holdings, L.L.C., which is a Missouri limited liability company. There is no publicly held corporation that owns 10% or more of SLC Holdings, L.L.C.

Sterling Mets, L.P. is a Delaware limited partnership. The general partner of Sterling Mets, L.P. is Mets Partners, Inc., which is a New York corporation. There is no publicly held corporation that owns 10% or more of Sterling Mets, L.P. or Mets Partners, Inc.

Tampa Bay Rays Baseball Ltd. is a Florida limited partnership. The general partner of Tampa Bay Rays Baseball Ltd. is 501SG, LLC, which is a Delaware limited liability company. There is no publicly held company that owns 10% or more of Tampa Bay Rays Baseball Ltd. or 501SG, LLC.

Washington Nationals Baseball Club, LLC is a Delaware limited liability company. Washington

Nationals Baseball Club, LLC is wholly owned by Nine Sports Holdings LLC, which is a Delaware limited liability company. There is no publicly held corporation that owns 10% or more of Nine Sports Holdings LLC.

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## INTRODUCTION

Petitioners Jordan Wyckoff and Darwin Cox ask this Court to overturn long-settled precedent. Nearly 100 years ago, this Court held that the "business of baseball" is exempt from antitrust regulation. Since then, again and again, this Court has looked to Congress's positive inaction and ruled that any antitrust regulation of baseball must come from Congress, not from this Court. For its part, Congress has held dozens of hearings concerning federal antitrust scrutiny of baseball. As to one particular subject—certain Major League player labor issues—Congress accepted this Court's invitation and exercised its power to impose antitrust regulation. But as to the remainder of the business of baseball, including labor issues regarding baseball scouts and other club employees, Congress affirmatively chose not to disturb the exemption. Nor is there any recurring confusion or conflict among the lower courts on the exemption of baseball from antitrust law; indeed, every circuit court that has considered the question has consistently followed this Court's rulings and applied the exemption to the "business of baseball."

Petitioners challenge practices related to the employment of scouts—practices that are plainly part of the business of baseball. And Petitioners do not contend otherwise. Instead, unable to avoid the well-established scope of the exemption, Petitioners argue that the Court should narrow the exemption to cover only baseball's "reserve system" or repeal it entirely. Faced with this Court's long-recognized deference to Congress on the exemption's scope, Petitioners' primary justification for judicial narrowing is that Congress has not done what Petitioners want—subject any aspect of the business of baseball to antitrust

regulation since the 1998 Flood Act. Pet. 10 ("At this late date, it is beyond doubt that any clarification or narrowing of baseball's antitrust exemption will only come from this Court."). But Congress's positive inaction regarding the exemption is a reason to leave it undisturbed, not—as Petitioners seek—to narrow or overrule it.

Because Petitioners do not present any issue meriting this Court's review, the Petition should be denied.

## STATEMENT OF THE CASE

### A. Petitioners and their allegations.

This is an antitrust case brought by two former, professional-baseball scouts against Major League Baseball, its current and former Commissioners, and the 30 clubs.[1] As Petitioners allege in their Second Amended Complaint, "Scouts evaluate baseball players' skills." Resp. App. 27a-28a. "They assess baseball players and project the players' abilities to perform at the major league level." *Id*. Scouts report their assessments and projections of players to the clubs, and that information "allows" the clubs "to decide which players to pursue through free agency, the draft, and other player acquisition means." *Id.* 28a. A "scout who is good at evaluating baseball players has great value" because clubs "place importance on the acquisition and development of baseball players." *Id.* 38a.

Petitioner Wyckoff alleges that he worked as a part-time scout for the Kansas City Royals for only one season, from October 2012 to October 2013, scouting

[1] For convenience, the Respondents will be referred to as Major League Baseball or MLB.

amateur and professional players. *Id.* 42a, 44a. When Wyckoff's one-year "contract expired, the Royals chose not to renew it for another year." *Id.* 44a. Petitioner Cox alleges that he worked as a "Scouting Supervisor" for the Colorado Rockies from 1991 through 2011, scouting amateurs and professional Minor League teams. *Id.* 45a-46a. "In December 2011, the Colorado Rockies did not renew Mr. Cox's contract." *Id.* 45a.

Petitioners allege that Respondents have conspired to decrease competition in the labor market for scouts in two ways. First, Petitioners allege that each club agree[d] not to "poach" or "cold call" scouts for "lateral [employment] positions" while scouts are under contract with another club, and relatedly, that each club "agreed not to discuss employment opportunities with scouts employed" by other clubs "without permission of the employing" club. *Id.* 4a. Petitioners point to Major League Rule 3(k), which states that if an interested club wishes to negotiate employment terms with players, coaches, or managers while they are currently under contract with another club, the interested club must first obtain the permission of the employing club. *Id*. 4a-5a. Other major professional sports have similar policies, and they are generally referred to as "anti-tampering rules."[2] According to its

[2] *See* NBA Constitution at Art. 35A(e) at 47–48, https:// perma.cc/4SKL-5EQQ (barring any "person" from "directly or indirectly" attempting to "entice, induce, [or] persuade . . . any Coach, Trainer, General Manager or any other person who is under contract . . . to enter into negotiations for or relating to his services or negotiate or contract for such services, or . . . otherwise interfere with any such employer-employee relationship"); NFL Anti-Tampering Policy at 4–13, https:// perma.cc/3CD4-RH3L (describing detailed protocol that generally requires "interested club" to seek permission from "employer club" before

own terms, the purpose of Rule 3(k) is to "preserve discipline and competition, and to prevent . . . enticement." *Id.* 34a. Petitioners assert that MLB and the clubs apply Rule 3(k) to scouts. *Id.* 34a.

Second, Petitioners challenge MLB's so-called "Offset Policy." The "Offset Policy" is an alleged agreement between the clubs to mitigate or offset compensation owed to scouts who are dismissed by one club (while on a guaranteed contract) and then hired by another club. *Id.* 31a-33a. According to their own allegations, neither Petitioner was injured by the "Offset Policy"—or even subject to it—because neither was terminated during a guaranteed contract, nor hired by a new club during the guaranteed contract's remaining term.[3]

Based on these allegations, Petitioners brought antitrust causes of action under the federal Sherman Act and New York's Donnelly Act. MLB moved to dismiss the claims as barred by the antitrust exemption.[4]

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discussing an employment "opportunity" with someone who already "under contract"). *See also* Collective Bargaining Agreement between NHL and NHLPA (Sept. 16, 2012 – Sept. 15, 2022) at Art. 7.3 (page 15), https:// perma.cc/7KPN-WJDS (barring player who is under contract from "enter[ing] into negotiations with another Club").

[3] Petitioners lack standing to challenge the alleged "Offset Policy." "Standing represents a jurisdictional requirement which remains open to review at all stages of the litigation." *Nat'l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 255 (1994).

[4] Petitioners also brought wage-and-hour claims under the Fair Labor Standards Act, and those claims were also dismissed below. Pet. App. 8a–9a; 40a–41a. Petitioners do not ask this Court to review that dismissal.

### B. The lower courts held that Petitioners' claims were barred by baseball's antitrust exemption.

On September 29, 2016, the district court granted Major League Baseball's motion and dismissed Petitioners' antitrust claims. The district court analyzed a series of precedential decisions on the antitrust exemption (Pet. App. 23a–34a), before holding that it was bound by Supreme Court and Second Circuit precedent (Pet. App. 34a–39a). "Since 1922, . . . federal courts have recognized an exemption from antitrust regulation for the business of baseball." Pet. App. 24a (citing *Fed. Baseball*, 259 U.S. at 208–09). The district court entertained Petitioners' argument that the Supreme Court had somehow narrowed its prior rulings when it affirmed the antitrust exemption in 1972, and concluded that the assertion "cannot be credibly argued." Pet. App. 36a.

Petitioners appealed the district court's decision. On August 31, 2017, the Second Circuit issued an eight-paragraph summary order affirming the judgment of the district court. Like all other circuits to consider the issue, the Second Circuit recognized an "exemption from antitrust regulation for the business of baseball." Pet. App. 4a. The court announced that, "[i]n light of the binding precedent from the Supreme Court and from this Circuit, and the limited exception created by Congress in the Curt Flood Act, we refuse Plaintiffs' invitation to adopt a narrower reading of baseball's antitrust exemption here." Pet. App. 5a. The court further acknowledged that Petitioners' "own allegations foreclose their argument that they are not involved in the business of baseball." *Id.* As a result, "the complained-of conduct fails to state a claim for

which relief can be granted under existing precedent." Pet. App. 6a.

## REASONS FOR DENYING THE PETITION

### A. There is no material conflict in the lower courts.

Petitioners tacitly admit that there is no split amongst the lower courts on the scope of the exemption (Pet. 9). ***Every*** federal court of appeals to address the scope of the antitrust exemption has unanimously held that it covers the entire "business of baseball," and not just the reserve system.[5] Thirty-three federal

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[5] CA1: *Triple-A Baseball Club Assocs. v. Ne. Baseball, Inc.*, 832 F.2d 214, 216 n.1 (1st Cir. 1987) (noting—in dictum—that baseball's antitrust exemption would exempt league decision on relocation of Minor League club).

CA2: *Wyckoff v. Office of the Comm'r of Baseball, et al.*, Pet. App. 1a-6a (exempting MLB's relationship with scouts); *Salerno v. Am. League of Prof'l Baseball Clubs*, 429 F.2d 1003, 1005 (2d Cir. 1970) (exempting MLB's relationship with umpires).

CA7: *Right Field Rooftops, LLC v. Chi. Cubs Baseball Club, LLC*, 870 F.3d 682, 689 (7th Cir. 2017) (exempting club's conduct regarding the public display of baseball games); *Charles O. Finley & Co., Inc. v. Kuhn*, 569 F.2d 527, 541 (7th Cir.) (exempting Commissioner's veto of player trade), *cert. denied*, 439 U.S. 876 (1978).

CA9: *Miranda v. Selig*, 860 F.3d 1237, 1242-43 (9th Cir.) (exempting the reserve clause as applied to Minor League players), *cert. denied*, 138 S. Ct. 507 (2017), *reh'g denied*, 138 S. Ct. 1045 (2018); *City of San Jose v. Office of the Comm'r of Baseball*, 776 F.3d 686, 689-90 (9th Cir.) (exempting MLB's process for deciding requests for club relocation), *cert. denied*, 136 S.Ct. 36 (2015); *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101, 1103 (9th Cir. 1974) (per curiam) (exempting MLB's decision to locate Major League club in Minor League territory); *Portland Baseball Club, Inc. v. Baltimore Baseball Club, Inc.*, 282 F.2d 680 (9th Cir. 1960).

court of appeals judges have considered the question, and none has agreed to limit the scope of the exemption. The circuit courts correctly refused attempts to narrow the exemption to the reserve system based on a proper reading of this Court's exemption decisions.

In 1922, the Court held that the Clayton and Sherman Acts do not apply to the business of baseball. *Fed. Baseball Club of Baltimore v. Nat'l League of Pro'f'l Baseball Clubs*, 259 U.S. 200, 208-09 (1922). Justice Oliver Wendell Holmes, writing for a unanimous court, concluded that baseball was not interstate commerce and therefore was not regulated by the Sherman Act.[6] *Id*. at 208. Since then, the Court has consistently reaffirmed that "the business of baseball" is beyond the "scope" of antitrust regulation. *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953) (per curiam); *Flood v. Kuhn*, 407 U.S. 258, 275 (1972). Put simply, the "Supreme Court has held three times that 'the business of baseball' is exempt from the federal antitrust laws." *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 541 (7th Cir. 1978). And each time, "the Supreme Court intended to exempt the business of baseball, not any particular facet of that business, from the federal antitrust laws." *Id.*

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CA11: *Major League Baseball v. Crist*, 331 F.3d 1177, 1183 (11th Cir. 2003) (exempting MLB's process for franchise contraction); *Prof'l Baseball Schs. & Clubs, Inc. v. Kuhn*, 693 F.2d 1085, 1085–86 (11th Cir. 1982) (exempting Minor League "franchise location system").

[6] Petitioners attack the unanimous *Federal Baseball* opinion, but as Justice Alito has noted, *Federal Baseball* was consistent with then-binding law on what did—and did not—constitute interstate commerce. Justice Samuel A. Alito, Jr., "The Origin of the Baseball Antitrust Exemption: *Fed. Baseball Club of Baltimore, Inc. v. Nat'l League of Prof'l Baseball Clubs*," 34 J. Sup. Ct. Hist. 183, 193 (2009).

Petitioners maintain—contrary to a century of precedent—that the exemption was intended to apply only to baseball's "reserve clause."[7] *See* Pet. 1. This unjustifiably narrow reading of the exemption is easily debunked. Various petitioners have challenged a wide array of baseball's business practices, but the Supreme Court has rejected ***all*** of those challenges, no matter what aspect of the "business of baseball" was targeted. First, in *Federal Baseball*, the petitioner claimed that baseball "conspired to monopolize the base ball business" and had "destroyed the Federal League by buying up some of the constituent clubs." *Fed. Baseball*, 259 U.S. at 207. The Court dismissed those claims.

Next, in *Toolson*, petitioners challenged a number of different league rules, including restrictions on: territories for Major and Minor League clubs, changes to those territories, club debt, exhibition games with banned players, uniform player contracts, and the reserve clause in those uniform contracts. *See* Petitioner's Opening Brief, *Toolson*, 346 U.S. 356 (No. 18), 1953 WL 78316, at *5–9 (Sept. 16, 1953).[8] The

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[7] Petitioners state—incorrectly—that the "reserve clause" no longer exists in baseball. Pet 2. Although Major League Baseball no longer employs the reserve clause, it remains a part of Minor League Baseball employment contracts. In *Miranda*, four Minor Leaguers recently challenged this Minor League reserve clause on antitrust grounds. *Miranda v.* Selig, No. 14-cv-05349-HSG, 2015 WL 5357854, at *1 (N.D. Cal. Sept. 14, 2015; *aff'd* 860 F.3d 1237 (9th Cir.), *cert. denied*, 138 S. Ct. 507 (2017), *reh'g denied*, 138 S. Ct. 1045 (2018). The district court dismissed their claims under the exemption. *Id.* at *2. The Ninth Circuit affirmed the decision, and this Court recently denied the plaintiffs' petition for certiorari and for rehearing. *Id.*

[8] For the reserve system, the specific rule targeted was the same type of anti-tampering rule at issue here, except applied to

Supreme Court rejected all of those challenges, stating simply that "Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." *Toolson*, 346 U.S. at 357.

More recently, in *Flood*, the Court focused its discussion on the "reserve system" because petitioner challenged only the "reserve system," including the reserve clause located in player contracts.[9] Petitioner's Brief, *Flood*, 407 U.S. 258 (No. 71-32), 1971 WL 133753, at *4 (Dec. 17, 1971). The Court applied the exemption to the only issue before it, but did not hold that the exemption was limited to the reserve system. Instead, the Supreme Court rejected petitioner's claims as falling squarely within the antitrust exemption for the "business of baseball." *Flood*, 407 U.S. at 285.

Over the last half century in the entire federal system, only one district court has ever held that the antitrust exemption is narrowly limited to the reserve clause. *Piazza v. Major League Baseball*, 831 F. Supp. 420, 435-38 (E.D. Pa. 1993). And in the 25 years since, every single federal court to consider the *Piazza* opinion has rejected both its reasoning and its conclusions.[10] There is no uncertainty, let alone a split

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players rather than scouts: "no club shall negotiate with a player under contract with, or on the reserve list of, another club without the latter club's express consent." Respondents' Brief, *Toolson*, 346 U.S. 356 (No. 18), 1953 WL 78318, at *3 (Oct. 2, 1953).

[9] The petitioner in *Flood* made allegations targeting MLB's anti-tampering rules for players, similar to those that Petitioners here allege were applied to scouts. Petitioner's Brief, *Flood*, 1971 WL 133753, at *6; *Flood v. Kuhn*, 316 F. Supp. 271, 274 n.5 (S.D.N.Y. 1970) (quoting the anti-tampering rule).

[10] *See, e.g.*, *Major League Baseball v. Butterworth*, 181 F. Supp. 2d 1316, 1324 n.4 (N.D. Fla. 2001), *aff'd sub nom., Crist*, 331 F.3d

in authority, regarding the scope of the antitrust exemption in the federal system.

In the absence of disagreement among the circuits, Petitioners suggest that the Court should grant certiorari based on the fact that, 24 years ago, the Florida Supreme Court held the exemption to be narrower than "the business of baseball." Pet. 9–10 (citing *Butterworth v. Nat'l League of Prof'l Baseball Clubs*, 644 So. 2d 1021, 1025 (Fla. 1994)). But in the decades since the Florida Supreme Court issued its *Butterworth* opinion, no federal court to consider it—and no state court outside of Florida—has held that the Florida Supreme Court correctly interpreted federal law.[11] *Butterworth*'s impact is particularly muted given that the Sherman and Clayton Acts grant exclusive jurisdiction to the federal courts, so *Butterworth* has no precedential effect on federal antitrust law. *See Gen. Inv. Co.* v. *Lake Shore & M.S. Ry. Co.*, 260 U.S. 261, 287 (1922).

Petitioners also point to three district court cases as purportedly rejecting an "expansive view" of the exemption. Pet. 12–13. But none of these cases held that the exemption covers only the reserve clause.

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1177 (11th Cir. 2003); *McCoy v. Major League Baseball*, 911 F. Supp. 454, 457 (W.D. Wash. 1995); *New Orleans Pelicans Baseball, Inc. v. Nat'l Assoc. of Prof'l Baseball Leagues, Inc.*, Civ. A. No. 93-253, 1994 WL 631144, at *9 (E.D. La. Mar. 1, 1994); *Morsani v. Major League Baseball*, 79 F. Supp. 2d 1331, 1335 n.12 (M.D. Fla. 1999). In addition, circuit courts, both before and after *Piazza*, have correctly rejected the same argument for narrowly construing the antitrust exemption. *See San Jose*, 776 F.3d at 689; *Crist*, 331 F.3d at 1181; *Finley*, 569 F.2d at 541.

[11] *Crist*, 331 F.3d at 1181 n.10; *Morsani*, 79 F. Supp. 2d at 1334 n.10; *McCoy*, 911 F. Supp. at 458; *Minnesota Twins P'ship v. State ex rel. Hatch*, 592 N.W.2d 847, 854 n.16, 856 (1999).

*Laumann v. Nat'l Hockey League*, 56 F. Supp. 3d 280, 297 (S.D.N.Y. 2014) (declining "to apply the exemption to a subject that is not central to the business of baseball, and that Congress did not intend to exempt"); *Postema v. Nat'l League of Prof'l Baseball Clubs*, 799 F. Supp. 1475, 1489 (S.D.N.Y. 1992) (holding that "[t]he Court must therefore determine whether baseball's employment relations with its umpires are 'central enough to baseball to be encompassed in the baseball exemption.'"); *Henderson Broad. Corp. v. Houston Sports Ass'n, Inc.*, 541 F. Supp. 263, 265 (S.D. Tex. 1982) (same). Even if the logic of those district-court opinions was applied in this case, Petitioners complaint would still be barred by baseball's antitrust exemption because the employment of baseball scouts is "central" to the business of baseball. As the district court below concluded in an alternative holding, "the instant case requires no fine analysis to determine whether the activity in question is central to the 'business of baseball . . . . The employment relationship between baseball scouts and Franchises is central to the 'business of baseball.'" Pet. App. 37a.

In short, there is no conflict in the lower courts. As Petitioners recognize, "the vast majority of lower courts have held that the exemption created by the U.S. Supreme Court extends more broadly to the 'business of baseball.'" Pet. 9 (quoting *Crist*, 331 F.3d at 1181 n.10). Faced with this uniformity, Petitioners cannot manufacture a "split" by citing decades-old opinions that have been uniformly rejected by every court to consider them.

### B. This Court has repeatedly held that only Congress can abolish the antitrust exemption, which it has not done.

For more than half a century, this Court has reaffirmed baseball's antitrust exemption based on *stare decisis*, baseball's reliance interest, and the Court's express deference to Congress. *See Flood*, 407 U.S. at 285; *Radovich v. Nat'l Football League*, 352 U.S. 445, 451-52 (1957); *United States v. Int'l Boxing Club*, 348 U.S. 236, 241-43 (1955); *United States v. Shubert*, 348 U.S. 222, 230 (1955); *Toolson*, 346 U.S. at 357. Now, Petitioners ask the Court to reject all of those bases and to defy Congress.

#### 1. Congress's "positive inaction" reflects support for the exemption and precludes this Court from overruling it.

Starting in 1953, this Court has consistently held that if the exemption is to be altered or curtailed, only Congress can do so. *Toolson*, 346 U.S. at 357; *see also Flood*, 407 U.S. at 283, 285; *Radovich*, 352 U.S. at 451; *Int'l Boxing*, 348 U.S. at 244; *Shubert*, 348 U.S. at 229–30. As Petitioners are forced to acknowledge, "this Court said in *Toolson* and *Flood* that the fate of the exemption lies not with the courts but with Congress." Pet. 2. Although Petitioners dedicate much of their petition to scornful rhetoric attacking prior precedent, the Court has repeatedly heard—and rejected—such criticism: "If there is any inconsistency or illogic in all this, it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not by this Court." *Flood*, 407 U.S. at 284. Specifically, this Court recognized that Congress's deliberate decision not to repeal the exemption amounted to "something other than mere congressional silence and passivity," and instead constituted

"positive inaction," reflecting that "Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." *Id.* at 283–84, 285.

In response to this clear and unbroken line of Supreme Court decisions, Petitioners suggest that Congress's refusal to narrow or repeal the entire exemption is somehow an invitation for the Court to do so. Pet. 10. The opposite is true.

In 1998, Congress enacted the Curt Flood Act, which provided Major League players with antitrust recourse for injuries related to their employment. 15 U.S.C. § 26b(a). Congress explicitly declined to repeal the exemption for any other aspect of the business of baseball, including claims by those "employed in the business of organized professional baseball." 15 U.S.C. § 26b(b)(5). Congress mandated that this provision "shall not be strictly or narrowly construed." 15 U.S.C. § 26b(d)(5). Several courts have interpreted the Act's enumeration of specific areas where Congress was ***not*** repealing the exemption as confirmation that Congress understood that the exemption applies to them, and that Congress wanted to keep it that way.[12] For example, the Ninth Circuit—considering the Flood Act's explicit reference to franchise relocation—explained:

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[12] *See, e.g. Miranda*, 2015 WL 5357854, at *2 (holding that Congress "expressly declined to modify the antitrust exemption with respect to practices relating to or affecting the employment of Minor League baseball players, while, at the same time, withdrawing that exemption from practices concerning the employment of major league baseball players"); *Morsani*, 79 F. Supp. 2d at 1335 n.12 ("Congress explicitly preserved the exemption for all matters 'relating to or affecting franchise expansion, location or relocation'") (quoting 15 U.S.C. § 26a(b)(3)).

> The exclusion of franchise relocation from the Curt Flood Act demonstrates that Congress (1) was aware of the possibility that the baseball exemption could apply to franchise relocation; (2) declined to alter the status quo with respect to relocation; and (3) had sufficient will to overturn the exemption in other areas.

*San Jose*, 776 F.3d at 691.

Congress, in the same subsection discussing franchise relocation, also identified at least two areas that cover Petitioners' claims. First, Congress identified "any conduct, acts, practices, or agreements" in the "business of organized professional baseball relating to or affecting employment to play baseball at the minor league level" or any "organized professional baseball amateur or first-year player draft." 15 U.S.C. § 26b(b)(1). Second, Congress identified "the relationship between persons in the business of organized professional baseball and umpires or other individuals who are employed in the business of organized professional baseball by such persons." 15 U.S.C. § 26b(b)(5). Those two areas cover this case. Scouting relates to amateur players, and their selection in the draft to become Minor League players. And professional-baseball scouts are "employed in the business of organized professional baseball." As with franchise relocation, Congress "was aware of the possibility that the baseball exemption could apply to [these categories]," but "declined to alter the status quo with respect to [them]." *San Jose*, 776 F.3d at 691.

By seeking the judicial narrowing or repeal of the exemption, Petitioners are inviting the Court to defy Congress. Petitioners claim that "Congress did not intend the Flood Act to be interpreted as an indication

of its views about the continued vitality or extent of the baseball exemption." Pet. 8.[13] But this Court has explained that Congress's repeated consideration of bills to repeal the antitrust exemption was "something other than mere congressional silence and passivity"—it was "positive inaction." *Flood*, 407 U.S. at 283–84. The Court found it particularly relevant that, in the 19 years between its decisions in *Toolson* and *Flood*, "more than 50 bills [were] introduced in Congress relative to the applicability or nonapplicability of the antitrust laws to baseball." *Id.* at 281. Similarly, in the years since *Flood*, Congress has held ***45 hearings*** related to the business of baseball, most of which discussed baseball's antitrust exemption. *See* Resp. App. 57a-62a.

When "legislative history reveals clear congressional awareness" of a judicially-created antitrust exemption, and then "Congress specifically address[es] this area"—while leaving the exemption "undisturbed"—this "lends powerful support to [the] continued viability" of the exemption. *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409, 419 (1986). Since 1953, this Court has consistently stated that only Congress can reverse the antitrust exemption, but Congress has decided not to. Nothing Petitioners

[13] Petitioners point to a handful of legislative statements that note that "[w]hatever the law was the day before this bill passes in those other areas [beyond Major League player labor issues] it will continue to be after the bill passes." Pet. 10–11. These statements do not support Petitioners' proposed narrowing or elimination of the exemption. When Congress passed the Curt Flood Act in 1998, every federal court of appeals to consider the question had concluded that baseball's antitrust exemption applied to the entire "business of baseball," and not just the reserve system.

have offered provides any reason for this Court to retract that commitment to the legislative branch.

### 2. This Court has already recognized that the exemption should be maintained as a matter of stare decisis.

Petitioners are not the first to ask the Court to reconsider its holding that the business of baseball is exempt from antitrust law unless and until Congress decides otherwise. This Court has already reexamined its prior decisions and concluded that the exemption is "fully entitled to the benefit of *stare decisis*." *Flood*, 407 U.S. at 282.[14]

Petitioners argue that the Court should cabin the exemption to the reserve system because exemptions from the antitrust laws must be construed narrowly. But the Supreme Court has already construed baseball's antitrust exemption to cover the "business of baseball." So Petitioners are just asking this Court to reverse itself.

Ultimately, abandoning any pretense that the Court's prior decisions support their position, Petitioners directly ask the Court to abandon its prior precedent. Petitioners rely on *State Oil Co. v. Khan*, and its progeny, *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* to suggest that *stare decisis* is inapplicable because this is an antitrust case. Pet. 2 (citing 522 U.S. 3 (1997) and 551 U.S. 877 (2007)). Neither case is applicable here. In both *Khan* and *Leegin*, the Court overturned an old *per se* rule of

[14] And in just the last three years, two additional parties have sought certiorari over questions regarding the exemption's continued vitality, and the Court has declined in both instances. *See Miranda*, 138 S.Ct. 507 (2017), *reh'g denied*, 138 S. Ct. 1045 (2018); *San Jose*, 136 S. Ct. 36 (2015).

illegality in favor of the more flexible rule of reason. Thus, in both of those cases, the Court loosened the regulation of antitrust law; it did not expand antitrust regulation to activity that was previously exempt. When this Court issues a decision that takes previously illegal conduct and makes it potentially legal, it does not raise the same *stare decisis* concerns as a decision that would eliminate an antitrust exemption and expose an entire industry to retroactive damages.

### 3. MLB's reliance interests would be harmed by retroactive reversal of the antitrust exemption.

"Vast efforts ha[ve] gone into the development and organization of baseball" and "enormous capital ha[s] been invested in reliance on its permanence." *Radovich*, 352 U.S. at 450. MLB and its club owners made many of those investments with the knowledge that the clubs could coordinate without fear of facing a "flood of litigation" and "the harassment that would ensue." *Id.* at 450–51. Cumulatively, MLB and its club owners have invested billions of dollars in the industry: to purchase franchises, to maintain the Minor Leagues, to train and develop amateur players, and to market baseball worldwide. Those investments were made under this Court's proclamation that the antitrust exemption would serve as an "umbrella over baseball." *Id.* at 450. Yet, in this very case, Petitioners seek to penalize MLB for relying on this Court's decisions.

Petitioners try to minimize MLB's reliance by arguing that the "scouting market" is "an aspect of the business never before addressed in any case." Pet.

15.[15] The fact that the employment of scouts has not previously been challenged as outside the "business of baseball" does not demonstrate a lack of MLB's reliance on the exemption—it is evidence of the exemption's obvious application. There is no credible argument that the employment of scouts is anything other than "the business of baseball." In fact, Petitioners themselves alleged that MLB and the clubs "collectively control all or virtually all of the market" for scouting services because they are "essentially the only employer of baseball scouts in the United States." Resp. App. 37a-38a. The absence of earlier scout-challenges to the exemption merely indicates that the law is settled. Courts had not previously addressed whether the employment of scouts is the "business of baseball" because no one thought it could be anything else.

### C. This case presents a poor vehicle to review the question presented.

Petitioners' question presented is narrow: "[w]hether the antitrust 'exemption' this Court recognized for baseball's reserve system extends to Major League

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[15] Petitioners further argue that MLB has no reliance interest in the exemption covering the employment of scouts because scouts did not exist when the exemption "was first recognized." Pet. 15. Petitioners are wrong on the history, as scouts have advised clubs on player acquisitions since at least the beginning of the 20th century. *See, e.g.,* Baseball Hall of Fame, https://perma.cc/WSY4-YDGV (describing the careers of Ted Sullivan, Larry Sutton, and Dick Kinsella). In any event, it is undisputed that clubs employed scouts when the Court reaffirmed the exemption in *Toolson* and *Flood*. And the exemption is not limited to the "business of baseball" as it existed in 1922. Rather, the Court has recognized that professional baseball "has been allowed to develop and to expand unhindered by federal legislative action." *Flood*, 407 U.S. at 283.

Baseball's employment practices for non-players like baseball scouts." Pet. i. The question is premised on a faulty legal assumption—that the Court has only recognized the exemption for the reserve clause (*see* Section A)—and, regardless, is easily answered. As explained above, every circuit court to consider the issue has held that the exemption applies to the "business of baseball," not any particular facet of it.

But even if the Court wished to evaluate more generally the scope of the "business of baseball," the facts of Petitioners' case do not present that liminal question. In their detailed complaint, Petitioners admitted that scouts provide critical services that go to the heart of the game itself. A scout's core function is to "assess baseball players and project the players' abilities to perform at the major league level." Resp. App. 27a-28a. Amateur scouts evaluate potential Major League players to "allow[]" the clubs "to decide which players to pursue through free agency, the draft," or "other player acquisition means." *Id.* 28a. As the district court correctly held, "it is clear from the allegations of [the Complaint] that scouts' identification and targeting of particular players greatly influences the [club's] decisions about which players to hire and what team to field." Pet. App. 38a. The court reasoned that scouts' "duties—and the [clubs'] employment relationships with these critical components of the highly competitive player acquisition effort—are thus an integral part of the 'business of baseball.'" *Id.*

In short, MLB's use of the antitrust exemption to defend its practices regarding the employment of scouts is not some unexpected development that necessitates Supreme Court review. To the contrary, the clubs' employment of scouts rests at the heart of the "business of baseball." Because Petitioners' own

complaint placed their allegations squarely within the business of baseball, this case is a particularly poor vehicle for testing the exemption's scope.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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April 16, 2018

# APPENDIX

**APPENDIX A**

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

[Filed 10/19/15]

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Case No. 1:15-CV-5186-PGG

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JORDAN WYCKOFF, DARWIN COX, Individually and on Behalf of All Those Similarly Situated,

*Plaintiff*,

vs.

OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as MAJOR LEAGUE BASEBALL; ALLAN H. SELIG; ROBERT D. MANFRED, JR.; KANSAS CITY ROYALS BASEBALL CORP.; MIAMI MARLINS, L.P.; SAN FRANCISCO BASEBALL ASSOCIATES LLC; BOSTON RED SOX BASEBALL CLUB L.P.; ANGELS BASEBALL LP; CHICAGO WHITE SOX LTD.; ST. LOUIS CARDINALS, LLC; COLORADO ROCKIES BASEBALL CLUB, LTD.; THE BASEBALL CLUB OF SEATTLE, LLLP; THE CINCINNATI REDS, LLC; HOUSTON BASEBALL PARTNERS LLC; ATHLETICS INVESTMENT GROUP, LLC; ROGERS BLUE JAYS BASEBALL PARTNERSHIP; CLEVELAND INDIANS BASEBALL CO., L.P.; CLEVELAND INDIANS BASEBALL CO., INC.; PADRES L.P.; SAN DIEGO PADRES BASEBALL CLUB, L.P.; MINNESOTA TWINS, LLC; WASHINGTON NATIONALS BASEBALL CLUB, LLC; DETROIT TIGERS, INC.; LOS ANGELES DODGERS LLC; LOS ANGELES DODGERS HOLDING COMPANY LLC; STERLING METS L.P.; ATLANTA NATIONAL LEAGUE BASEBALL CLUB, INC.; AZPB L.P.; BALTIMORE ORIOLES, INC.; BALTIMORE ORIOLES, L.P.;

THE PHILLIES; PITTSBURGH ASSOCIATES, L.P.; NEW YORK YANKEES P'SHIP; TAMPA BAY RAYS BASEBALL LTD.; RANGERS BASEBALL EXPRESS, LLC; RANGERS BASEBALL, LLC; CHICAGO CUBS BASEBALL CLUB, LLC; MILWAUKEE BREWERS BASEBALL CLUB, INC.; MILWAUKEE BREWERS BASEBALL CLUB, L.P.;

*Defendants.*

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CLASS ACTION

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SECOND AMENDED COMPLAINT FOR VIOLATIONS OF THE SHERMAN ACT AND FOR VIOLATIONS OF FEDERAL WAGE AND HOUR LAWS

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JURY TRIAL DEMANDED

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## I. NATURE AND BACKGROUND OF SUIT

1. Defendants[1] collectively form and govern a classic cartel known as Major League Baseball ("MLB"). Defendants' cartel has operated for over 100 years, and the cartel has conspired to exploit labor throughout its history. The exploitative practices continue today, and they have harmed Plaintiffs Jordan Wyckoff and Darwin Cox while they worked as MLB scouts in Defendants' industry.

2. This antitrust and wage-and-hour action challenges two aspects of Defendants' exploitative practices.

3. First, this action challenges Defendants' industry-wide agreements to fix and suppress the compensation of employees providing scouting services. Specifically, Defendants have colluded to decrease competition in the labor market for these employees by, among other things: (1) agreeing not to recruit, poach, or cold call scouts employed by other Franchise Defendants for lateral positions; (2) agreeing not to discuss employment opportunities with scouts employed by other Franchise Defendants without permission of the employing Franchise; and (3) agreeing to offset compensation paid to scouts who were dismissed by other Franchises but still paid contractually mandated compensation.

4. For some employees, the conspiracy is made explicit in the Major League Rules ("MLR")—which govern Defendants' business and are attached to this complaint.[2] MLR 3(k) espouses a naked horizontal

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[1] The term "Defendants" applies to all defendants named in this Complaint.

[2] *See* Ex. A.

restraint for employees such as minor league coaches, managers, and other instructors: it mandates that while an employee is employed by a Defendant, "there shall be no negotiations or dealings respecting employment, either present or prospective" between that employee and another Defendant.

5. Defendants have not only applied and enforced this mandate to minor league coaches, managers, and other instructors. Instead, they have also applied and enforced the horizontal restraint against Defendants' scouts.

6. These agreements had the purpose of restricting competition in the market for baseball scouting services, and the intended and actual effect of these agreements was to fix and suppress scout compensation and impose unlawful restrictions on scouts' employment mobility. Defendants' conspiracy and agreements restrained trade and are per se unlawful under federal law. Plaintiffs seeks injunctive relief and damages for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

7. Second, this suit challenges Defendants' illegal wage-and-hour practices. Defendants routinely permit, encourage, and require their scouts to work far in excess of forty hours per week, but they do not pay overtime wages for that work. They have misclassified their scouts as exempt and fail to pay proper wages for work performed. In addition, Defendants have failed to ensure that their scouts' work hours were properly recorded and compensated.

8. This suit seeks to recoup the damages sustained by Defendants' scouts as a result of Defendants' collusive and illegal wage practices. It seeks to recover nationwide antitrust damages resulting from the

restricted competition for labor, limited opportunities for career advancement, and suppressed salaries in the industry. And it seeks to recover damages through a nationwide FLSA collective action for the failure to pay overtime pay.

9. This suit also seeks to enjoin the cartel from subjecting future MLB scouts to Defendants' illegal practices.

## II. JURISDICTION, VENUE, AND COMMERCE

10. Plaintiffs bring this action to recover damages and to obtain injunctive relief from Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1 and Section 340 of New York's Donnelly Act, N.Y. Gen. Bus. L. § 340. Plaintiff Jordan Wyckoff also brings claims to recover damages and to obtain injunctive relief under Section 207 of the FLSA, 29 U.S.C. § 207.

11. This Court has subject matter jurisdiction with respect to Plaintiffs' federal claims pursuant to 28 U.S.C. §§ 1331 and 1337, and pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26, and Section 216 of the FLSA, 29 U.S.C. § 216(b), and jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction). Plaintiffs' state law claims are closely related to the federal claims and form part of the same case or controversy under Article III of the United States Constitution.

12. This Court also has jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy for the Proposed Class (defined below) exceeds $5,000,000, and there are members of the Proposed Class who are citizens of a different state than Defendants.

13. Defendants' conduct had and continues to have a direct, substantial, and reasonably foreseeable effect on interstate commerce. Defendants transact substantial business in multiple states and require their employees who provide scouting services to do business on their behalf in multiple states. Defendants routinely use instruments of interstate commerce, such as interstate railroads, highways, waterways, wires, wireless spectrum, and the U.S. mail, to carry out their operations.

14. Venue is proper in the Southern District of New York pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, because Defendants can be found in this District and all Defendants transact substantial business in this District. Indeed, the Office of the Commissioner of Baseball, which oversees the cartel and does business as MLB, is located in the Southern District of New York. At least two other Defendants also reside in New York City. All Defendants regularly travel to New York for business and transact substantial other business in New York for great monetary benefit.

15. Venue is also proper under 28 U.S.C. § 1391(b), (c) and (d) for the same reasons identified in the preceding paragraph, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

16. The Court has personal jurisdiction over Defendants pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, since venue is proper under the same Clayton Act provision for all Defendants. It also has personal jurisdiction because of the substantial, continuous business that all Defendants conduct in New York, and because the action arises out of or relates to Defendants' conduct in New York. Again, MLB, which

oversees the cartel and enforces the cartel's agreements, is headquartered in New York, and two other Defendants are headquartered in New York. All Defendants are coconspirators who participated in and benefitted from the conspiracy, much of which took place in New York, and they knew it would have an effect in New York.

17. All causes of action asserted in this Complaint are closely related to one another and each accrued under the same common set of facts and share a common nucleus of operative facts. Each cause of action emanates from the same uniform contract, from the same policies and practices, as applied to the same group of employees.

## III. THE PARTIES

### *Plaintiffs*

18. Plaintiff and representative plaintiff Jordan Wyckoff is a former MLB scout who worked in the Kansas City Royals' organization from October 2012 to October 2013. Mr. Wyckoff suffered injuries to his business and property because of the violations described in this complaint, and he is a covered employee within the meaning of the FLSA. Mr. Wyckoff currently resides in Brooklyn, New York.

19. Plaintiff Darwin Cox is a Texas resident who was employed by Defendant Colorado Rockies Baseball Club Ltd. as well as Defendant MLB as an Area Scouting Supervisor until December 2011.

### *Defendants*

20. The Office of the Commissioner of Baseball, d/b/a MLB. The Office of the Commissioner of Baseball, doing business as MLB, is an unincorporated association comprised of the thirty MLB clubs ("the

Franchises").[3] MLB has unified operation and common control over the Franchises, as well as agent corporations such as Major League Baseball Properties, Inc. and Major League Baseball Enterprises, Inc.[4] All do business as MLB. Its principal place of business is located in New York, New York.

21. As described more thoroughly below, MLB oversees Defendants' cartel and has developed a unified constitution and unified rules to implement and enforce the illegal, collusive agreements. It has participated and continues to participate in the conspiracy to suppress labor competition for scouts and other employees, which harmed Plaintiffs.

22. MLB also closely monitors and controls many fundamental employment aspects of Defendants' scouts and other employees, including, *inter alia*, hiring, contracts, periods of wage payment and nonpayment, record-keeping, and other working conditions. Under the broad meaning of "employ" used by the FLSA and the applicable state laws, MLB employed Plaintiffs and all similarly situated employees.

23. Robert D. Manfred, Jr. is the current Commissioner of Baseball. He became Commissioner in January of 2015 after previously serving as MLB's Chief Operating Officer.

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[3] *See* Ex. A, Major League Constitution ("MLC"), Art. II § 1; *see also* ECF No. 25, *City of San Jose*, et al. v. *Officer of the Commissioner of Baseball*, et al., No. 13-cv-02787-RMW, at n. 2 (N.D. Cal. August 7, 2013).

[4] These entities are not named as Defendants at this time but Plaintiffs reserve the right to name these entities as Defendants if information obtained during the course of this lawsuit connects these entities to the illegal conduct alleged.

24. The Commissioner is the "Chief Executive Officer of Major League Baseball."[5] Serving in this capacity, Mr. Manfred has the power to, among other things, discipline players, announce rules and procedures, and preside over meetings.[6]

25. Mr. Manfred also has "executive responsibility for labor relations."[7] Since he oversees all labor matters, Mr. Manfred is also assumedly the chief decision maker when it comes to forming labor practices involving MLB scouts, and he owes a duty to the owners to act in their best interest. Moreover, Mr. Manfred implements, enforces, and often directs the development of MLB's rules, guidelines, and policies concerning the employment of the industry's employees.

26. Mr. Manfred also serves as MLB's agent in numerous other areas. For instance, Mr. Manfred serves as "the fiscal agent of the Major League Central Fund"; has the power to "negotiate and enter into settlement agreements" for nationwide broadcasting rights; can receive funds "made payable to the Commissioner as agent for the Clubs"; and can even invest central funds on behalf of the Defendants.[8]

27. The MLB owners elect the Commissioner of Baseball by a vote.[9] They also pay the Commissioner's salary.[10]

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[5] Ex. A, MLC Art. II § 2.

[6] MLC Art. II §§ 2, 3.

[7] MLC Art. II § 2.

[8] MLC Art. X; *see also* MLR 30 (saying that all funds in the hands of the Commissioner are joint funds of the MLB Clubs).

[9] MLC Art. II §§ 8, 9.

[10] MLC Art. II § 8.

28. Before being named Commissioner, Mr. Manfred served as Chief Operating Officer of MLB. He "reported directly to the Commissioner and oversaw all the traditional functions of the Commissioner's Office, including labor relations, baseball operations, finance, administration and club governance."[11]

29. While serving in both executive capacities, acting jointly and on his own behalf, Mr. Manfred participated and continues to participate in the conspiracy to suppress labor competition for scouts and similar employees.

30. Under the broad meaning of "employ" and "employer" used by the FLSA and the applicable state laws, which allow an executive to be held jointly and severally liable, Mr. Manfred also employed (and/or continues to employ) Plaintiffs and all similarly situated employees. Mr. Manfred oversaw and oversees many aspects central to MLB scouts' employment, including, *inter alia*, the terms of the uniform contracts, the approval of contracts, policies related to salaries, and various disciplinary measures.

31. Allan H. "Bud" Selig preceded Mr. Manfred as Commissioner of Baseball. The previous paragraphs describing Mr. Manfred's duties and powers as Commissioner also apply to Mr. Selig's reign as Commissioner.

32. In his capacity as chief executive, acting jointly and on his own behalf, Mr. Selig participated in the conspiracy to suppress labor competition for scouts and similar employees.

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[11] *MLB Executives*, MLB.com, http://mlb.mlb.com/mlb/official_info/about_mlb/executives.jsp?bio=manfred_rob (last visited July 1, 2015).

33. Under the broad meaning of "employ" and "employer" used by the FLSA and the applicable state laws, which allow an executive to be held jointly and severally liable, Mr. Selig also employed Plaintiffs and all similarly situated employees. Mr. Selig oversaw many aspects central to MLB scouts' employment, including, *inter alia*, the terms of the uniform contracts, the approval of contracts, policies related to salaries, and various disciplinary measures.

34. **Franchise Defendants.** The below named MLB franchises are defendants in this lawsuit and referred to collectively as the "Franchise Defendants." The Franchise Defendants each employed (or acted in the interest of an employer toward) Plaintiffs or other similarly situated current and former employees providing scouting services, and (directly or indirectly, jointly or severally) controlled and directed the terms of employment and compensation of Plaintiffs or other similarly situated current and former employees. All participated and continue to participate in the conspiracy alleged in this action, so all caused Plaintiffs injury.

35. *Kansas City Royals.* Kansas City Royals Baseball Corp. (d/b/a "Kansas City Royals") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Kansas City Royals participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) Plaintiff Jordan Wyckoff and similarly situated employees.

36. *Miami Marlins.* Miami Marlins, L.P. (d/b/a "Miami Marlins") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Miami Marlins participated and continue

to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees. The Miami Marlins were known and operated as the Florida Marlins until changing its name in 2012. Plaintiffs are informed and believe that the Miami Marlins is the successor in interest to the Florida Marlins franchise.

37. *San Francisco Giants*. San Francisco Baseball Associates LLC (d/b/a "San Francisco Giants") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the San Francisco Giants participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

38. *Boston Red Sox.* Boston Red Sox Baseball Club L.P. (d/b/a "Boston Red Sox") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Red Sox participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

39. *Toronto Blue Jays.* Rogers Blue Jays Baseball Partnership (d/b/a "Toronto Blue Jays") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Toronto Blue Jays participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

40. *Chicago White Sox.* Chicago White Sox Ltd. (d/b/a "Chicago White Sox") is an MLB Franchise. As

a member of Major League Baseball, acting jointly and on its own behalf, the Chicago White Sox participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

41. *Cleveland Indians.* Cleveland Indians Baseball Co., L.P., and Cleveland Indians Baseball Co, Inc., (d/b/a "Cleveland Indians") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Cleveland Indians participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

42. *Houston Astros.* Houston Baseball Partners LLC (d/b/a "Houston Astros") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Houston Astros participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

43. *Los Angeles Angels of Anaheim.* Angels Baseball LP (d/b/a "Los Angeles Angels of Anaheim") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Los Angeles Angels of Anaheim participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

44. *Oakland Athletics.* Athletics Investment Group, LLC (d/b/a "Oakland Athletics") is an MLB Franchise. As a member of Major League Baseball, acting jointly

and on its own behalf, the Oakland Athletics participated and continues to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

45. *Seattle Mariners.* The Baseball Club of Seattle, LLLP (d/b/a "Seattle Mariners") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Seattle Mariners participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

46. *Cincinnati Reds.* The Cincinnati Reds, LLC (d/b/a "Cincinnati Reds") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Cincinnati Reds participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

47. *St. Louis Cardinals.* St. Louis Cardinals, LLC (d/b/a "St. Louis Cardinals") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the St. Louis Cardinals participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

48. *Colorado Rockies.* Colorado Rockies Baseball Club, Ltd. (d/b/a "Colorado Rockies") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Colorado Rockies participated and continue to participate in the

conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) Plaintiff Darwin Cox and similarly situated employees.

49. *San Diego Padres.* Padres L.P., and the San Diego Padres Baseball Club, L.P. (d/b/a "San Diego Padres") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the San Diego Padres participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

50. *Minnesota Twins.* Minnesota Twins, LLC (d/b/a "Minnesota Twins") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Minnesota Twins participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

51. *Washington Nationals.* Washington Nationals Baseball Club, LLC (d/b/a "Washington Nationals") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Washington Nationals participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

52. *Detroit Tigers.* Detroit Tigers, Inc. (d/b/a "Detroit Tigers") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Detroit Tigers participated and continue to

participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

53. *Los Angeles Dodgers.* Los Angeles Dodgers LLC and Los Angeles Dodgers Holding Company LLC., (d/b/a "Los Angeles Dodgers") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Los Angeles Dodgers participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

54. *New York Mets.* Sterling Mets L.P. (d/b/a "New York Mets") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the New York Mets participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

55. *Atlanta Braves.* Atlanta National League Baseball Club, Inc. (d/b/a "Atlanta Braves") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Atlanta Braves participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

56. *Arizona Diamondbacks.* AZPB L.P. (d/b/a "Arizona Diamondbacks") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Arizona Diamondbacks participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar

employees, and employed (or continue to employ) similarly situated employees.

57. *Baltimore Orioles.* Baltimore Orioles, Inc., and Baltimore Orioles, L.P., (d/b/a "Baltimore Orioles") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Baltimore Orioles participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

58. *Philadelphia Phillies.* The Phillies L.P. (d/b/a "Philadelphia Phillies") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Philadelphia Phillies participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

59. *Pittsburgh Pirates.* Pittsburgh Associates, LP, (d/b/a "Pittsburgh Pirates") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Pittsburgh Pirates participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

60. *New York Yankees.* New York Yankees Partnership (d/b/a "New York Yankees") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the New York Yankees participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

61. *Tampa Bay Rays.* Tampa Bay Rays Baseball Ltd. (d/b/a "Tampa Bay Rays") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Tampa Bay Rays participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

62. *Chicago Cubs.* Chicago Cubs Baseball Club, LLC (d/b/a "Chicago Cubs") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Chicago Cubs participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

63. *Milwaukee Brewers.* Milwaukee Brewers Baseball Club, Inc., and Milwaukee Brewers Baseball Club, L.P., (d/b/a "Milwaukee Brewers") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Milwaukee Brewers participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

64. *Texas Rangers.* Rangers Baseball Express, LLC, and Rangers Baseball, LLC, (d/b/a "Texas Rangers") is an MLB Franchise. As a member of Major League Baseball, acting jointly and on its own behalf, the Texas Rangers participated and continue to participate in the conspiracy to suppress labor competition for scouts and similar employees, and employed (or continue to employ) similarly situated employees.

## IV. CLASS ACTION ALLEGATIONS

65. Plaintiffs bring the antitrust claims in this action on behalf of themselves and all others similarly situated (the "Proposed Class") pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3). The class is defined as follows:

> All natural persons employed by Defendants on a salaried basis as scouts (whether as a part-time scout, amateur scout, professional scout, international scout, cross-checker, supervisor scout, or other similar employee who provides scouting services) during the period from four years before the filing of this action until its resolution (the "Class Period"). Excluded from the Proposed Class are any and all judges and justices, and chambers' staff, assigned to hear or adjudicate any aspect of this litigation.

66. The Proposed Class is so numerous that joinder of all members is impracticable. Plaintiffs do not yet know the exact size of the Proposed Class because such information is in the exclusive control of Defendants. Based upon the nature of the class and commerce involved, Plaintiffs believe that there are at least 1,600 Proposed Class members, and that Proposed Class members are geographically dispersed throughout the United States.

67. Plaintiffs' claims are typical of the claims of the other members of the Proposed Class. Plaintiffs and the members of the Proposed Class were subject to the same or similar employment restraints and compensation practices arising out of Defendants' common course of illegal conduct. Plaintiffs and the Proposed Class have sustained similar types of damages as a result of these common practices.

69. Many common questions of law and fact exist as to all members of the Proposed Class, including but not limited to:

(a) whether Defendants' conduct violated the Sherman Act or other antitrust acts;

(b) whether Defendants' conspiracy or associated agreements constitute a per se violation of the Sherman Act or other antitrust acts;

(c) whether Defendants' conspiracy or associated agreements restrained trade, commerce, or competition for skilled labor among Defendants;

(d) whether Plaintiff and the Proposed Class suffered antitrust injury or were threatened with injury;

(e) the difference between the total compensation Plaintiff and the Proposed Class received from Defendants and the total compensation Plaintiff and the Proposed Class would have received from Defendants in the absence of Defendants' illegal acts, contracts, combinations, and conspiracy; and

(f) the type and measure of damages suffered by Plaintiff and the Proposed Class.

70. Plaintiffs will fairly and adequately protect the Proposed Class's interests because they possess the same interests and suffered the same general injuries as class members. Plaintiffs have also retained counsel competent and experienced in class action litigation, including antitrust and wage-and-hour litigation.

71. The numerous common questions enumerated above—along with other questions of law and fact

common to the Class—predominate over any individualized questions.

72. A class action is superior to other available methods for adjudication because joinder is impracticable. Prosecuting separate actions by individual members of the Proposed Class would impose heavy burdens on the courts and parties and would create a risk of inconsistent adjudications of common questions of law and fact. A class action, however, would achieve substantial judicial economies and assure uniformity of decision as to similarly situated persons without sacrificing procedural fairness. Plaintiffs do not anticipate any difficulty in the management of this action as a class action.

73. Also, the Proposed Class has a high degree of cohesion and the amounts at stake for Proposed Class members—while substantial in the aggregate—are often not great individually. As individuals, Proposed Class members would lack resources to vigorously litigate against Defendants' powerful cartel, and many current and even former employees would hesitate to bring an individual action out of fear of retaliation.

74. Lastly, final injunctive relief is appropriate to the Proposed Class as a whole; Defendants have acted and continue to act on grounds generally applicable to the Proposed Class.

## V. COLLECTIVE ACTION ALLEGATIONS

74. Plaintiff Jordan Wyckoff brings the FLSA claims on behalf of himself and all persons similarly situated who elect to opt into this action and who work or have worked for Defendants as MLB scouts on or after July 2, 2012 (the "MLB Scout Collective").

75. Plaintiff Wyckoff and other MLB scouts are similarly situated in that they are subject to Defendants' common compensation policies, patterns, or practices, including without limitation Defendants' policy, pattern, or practice of permitting, encouraging, or requiring MLB scouts to work more than 40 hours per week without paying overtime wages for that work, and without ensuring that all of their work hours were properly recorded and compensated.

76. The Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiff Wyckoff and the members of the MLB Scout Collective. While the exact numbers of employees in the MLB Scout Collective are unknown, Plaintiff Wyckoff is informed and believes that it will consists of over one thousand similarly situated individuals who have been, will be, or continue to be employed as scouts by Defendants, and who were not paid entitled overtime pay and sometimes were not paid the minimum wage. This Collective would benefit from the issuance of a court-supervised notice of the lawsuit and the opportunity to join the lawsuit.

## VI. FACTUAL ALLEGATIONS

### A. The booming business of MLB in both trade and commerce.

77. MLB is the preeminent baseball league in the world. Its games are broadcast in 233 countries and territories in 17 different languages.[12] During the 2014 season, over 75 million fans paid to attend MLB games.

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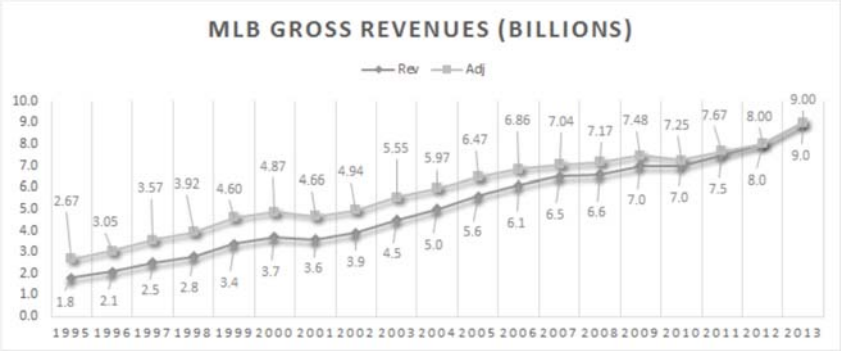
[12] *MLB International*, MLB.com, http://mlb.mlb.com/mlb/international/mlbi_index.jsp (last visited June 25, 2015).

78. Annual revenues have grown each of the last several years.[13] In 2012, revenue for the League surpassed $7.5 billion. In 2013, revenue was approximately $8 billion. And in 2014, revenue was approximately $9 billion. Since 1995, gross revenues for the league have grown by over 320%:




http://blogs-images.forbes.com/maurybrown/files/2014/12/MLBGrossRev1995-2014.jpg (last visited July 30, 2015).

79. MLB games are televised through broadcast deals with national network partners (including FOX, ESPN, and TBS) as well as local media rights deals negotiated by individual Franchises.

80. Franchises share revenue from these broadcast rights deals as well as other revenue streams (*e.g.*, merchandise).

81. As a result of this explosive financial growth, Franchise values for the thirty MLB teams have grown as well. In 2014 alone, Franchise values increased by 48 percent. The New York Yankees are

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[13] *See* Maury Brown, *Major League Baseball Sees Record $9 Billion In Revenues For 2014*, Forbes (Dec. 10, 2014), http://www.forbes.com/sites/maurybrown/2014/12/10/major-league-baseball-sees-record9-billion-in-revenues-for-2014/.

now the most valuable sports franchise in the United States with an estimated value of $3.2 billion; the average value of the thirty Franchises stands at $1.2 billion each.[14]

82. During the Class Period, Defendants employed Proposed Class members throughout the United States, including in New York and this judicial district. Their conduct substantially affected interstate commerce throughout the United States and caused antitrust injury throughout the United States.

B. The structure and governance of the MLB cartel

83. MLB was formed and is operated pursuant to the Major League Constitution ("MLC"). The MLC is an agreement among the Franchises, which created MLB and provides terms and obligations for the association of Franchises.

84. MLB is an unincorporated association, which does business as "Major League Baseball" and has as its members the Major League Baseball Franchises.

85. The Chief Executive Officer of the MLB is the Commissioner. The Commissioner has executive responsibility for labor relations as set forth in the MLC. Through the MLC, the Commissioner has the power to enforce agreements and to discipline and penalize employees. The Commissioner has, and exercises, the ability to control important aspects of the Franchises' recruiting of scouts, and the terms and compensation of scouts.

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[14] Mike Ozanian, *MLB Worth $36 Billion As Team Values Hit Record $1.2 Billion Average*, Forbes (Mar. 25, 2015), http://www.forbes.com/sites/mikeozanian/2015/03/25/mlb-worth-36-billion-as-team-values-hit-record-1-2-billion-average/.

86. MLB is financed pursuant to rule and/or agreement of the Franchises.

87. MLB's organizational structure includes a body known as the Major League Executive Council ("Executive Council") which is composed of the Commissioner and eight Franchises, four from each league.[15] The Commissioner is the Chairman of the Executive Council.

88. The Executive Council's duties include "cooperat[ing], advis[ing] and confer[ring] with the Commissioner and other offices, agencies and individuals in an effort to promote and protect the interests of the Clubs...."[16] Further, The Executive Council "survey[s], investigate[s] and submit[s] recommendations for change in, elimination of, addition to or amendments to any rules, regulations, agreements, proposals or other matters in which the Major League Clubs have an interest and particularly in respect to: . . . Rules and regulations determining relationships between players and Clubs and between Clubs, and any and all matters concerning players' contracts or regulations. . . ."[17] MLB also submits audited financial statements and a proposed budget to the Executive Council annually for approval.

89. The Franchises and the Commissioner have four annual "Major League Meetings." The Commissioner or the Executive Council or any Franchise may propose to the Franchises "the adoption, amendment or rescission of any rule, resolution or other matter for

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[15] *See* MLC Art. III § 1.

[16] MLC Art. III § 2.

[17] *Id.*

action at the Major League Meeting."[18] Such meetings provide ample opportunity for Defendants to discuss, agree to, and carry out Defendants' collusive activities in relation to scouts' employment terms and practices.

C. Defendants' employment of scouts.

90. Despite this substantial growth in revenue, Defendants have a long history of exploiting workers dating to the nineteenth century. Although MLB franchises are competitors, they have joined together to form uniform rules and policies, such as the Major League Rules, many of which govern the employment of various types of workers. This combination allows them to control and allocate markets, including labor markets. The MLB franchises even formed an unincorporated association to control the combination, which the public knows as MLB. This combination is the very definition of a cartel, with MLB being the explicit enforcer of the combination.

91. Just recently, the Department of Labor announced numerous investigations into Defendants' employment practices, terming their inexcusable employment practices as "endemic" to the industry. Defendants also face several private actions emanating from their employment practices. The exploitative employment practices reach numerous types of employees, including scouts.

92. Defendants collectively employ well over one thousand scouts.

93. Scouts evaluate baseball players' skills. They attend baseball games (including, for example, high school games, college games, minor league games, and major league games) and watch players to rate their

[18] MLC Art. V § 1.

skills in a variety of categories such as fielding, hitting for power and average, and running. Scouts also record players' pitching and/or hitting mechanics and develop comprehensive evaluations and projections of players' abilities. Depending on the type of scout, a scout might evaluate either amateur players, professional players, or both. But regardless, the basic job duties of the scout are similar. They assess baseball players and project the players' abilities to perform at the major league level, and they present that information to the Franchises.

94. Scouts are responsible for reporting to the Franchises their assessments of players' skills and projections of the players' services. They evaluate players' skills using a 20-to-80 scale. Each skill category is evaluated. For instance, a position player is evaluated on skills such as running, hitting for power, hitting for average, fielding, and arm strength. If a scout believes a player to be at the major league average in one of these categories of skills, the scout grades that skill as a 50. A grade below 50 means that the skill is below average, and a grade above 50 means it is above average, with 80 being the max.

95. Accurately projecting baseball players' future production at the major league level allows the Franchises to decide which players to pursue through free agency, the draft, and other player acquisition means. Scouts thus provide information to the Franchises that guide the Franchises' decisions on how to rank players to be acquired. Importantly, however, scouts do not sign players, make final or executive decisions on which players to sign, determine compensation for players, or provide similar services which are generally delegated to other front office personnel.

96. Although the information (and skills required to present good information) are important and valuable to the Franchises, the information provided by scouts is not directly related to the business of baseball or any revenue stream received by the Franchises or MLB. Scouts provide no in-game services or perform any service or function required to stage a professional baseball game. Thus, while scouting information is useful to the Franchise Defendants, it is not essential.

97. Most scouts incur significant travel while performing their job duties, and they do so throughout much of the year. When scouting amateur players, scouts travel extensively to showcases and amateur tournaments, and to games and practices at high schools, junior colleges, and four-year colleges. Some scouts also travel extensively internationally to evaluate international amateur players. And when scouting professional players, the scout travels extensively to a number of different locations to evaluate players, sometimes domestically, and sometimes internationally. It is not uncommon for a scout to spend more than 175 days on the road each year.

98. During peak work periods, scouts work exhaustive hours. They must evaluate players while attending games or watching videos of games, and they must write reports. Even without including travel, it is not unusual for a scout to work over fifty hours per week many weeks. When travel is included, many weeks exceed sixty hours per week.

99. These employment practices are true to all types of scouts—whether a scout of amateur or pro players, and whether an area scout, a part-time scout, a crosschecker, or other similar employee providing scouting services.

100. Scouts' employment relationship with their Franchise and MLB is governed by form contracts "prescribed by the Commissioner" ("Scout Contracts").[19] The Commissioner requires Scout Contracts to be in the form of the "Uniform Employee Contract" (which is not limited to use in connection with scouts). The Scout Contracts incorporate the MLRs and the MLC, which seek to "defin[e] relations between clubs and their employees" and to provide MLB and the Commissioner with "broad powers of control and discipline." This means that MLB and the Commissioner of Baseball retain ultimate control over the types of contracts these employees enter into, and they also control many of the conditions of employment.

101. Further, Scout Contracts expressly require Scouts to agree to comply "with all decisions of the Commissioner pursuant to the provisions of the [Major League Constitution] and [Major League Rules] and, to the extent applicable, the Professional Baseball Agreement or other agreement in effect between the [Franchises] and one or more Minor Leagues or Minor League Associations."

102. Scout Contracts are typically for a one-year term.

103. An executed copy of such contracts must "be filed with the Commissioner or the Commissioner's designee for approval within 10 days after the execution of the contract."[20] In this way, the Commissioner is able to ensure compliance with the agreements between Defendants.

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[19] Ex. A, MLR 3(i).

[20] *Id.*

104. The uniform contract also dictates that the employee will be subject to MLB's drug policy and tobacco policy, and will be subject to discipline by MLB and the Commissioner of Baseball. It additionally dictates when and how salaries will be paid, which requires MLB and the Commissioner's approval.

105. The standard Scout Contract prohibits scouts from providing scouting services to other Franchises and includes a "Loyalty" provision which requires Scouts to agree to:

> a. "serve [the employing Franchise] diligently and faithfully, and to observe and comply with all rules and regulations of [the employing Franchise] and the Commissioner."
>
> b. "maintain the confidentiality of all confidential information, including but not limited to scouting information acquired during the [scout's] employment [under the Scout Contract], and to preserve such information for the exclusive benefit of [the employing Franchise]."

106. Although scouts' player evaluations are generally considered to constitute such "confidential information," different Franchises' scouts routinely share information such as their thoughts on players' skills and projections.

107. Scout Contracts may be terminated by the employing Franchise upon ten days written notice but the dismissed scout must be paid the remaining salary during the term of his or her Scout Contract.

108. In December 2002, the Labor Relations unit of the Office of the Commissioner circulated a memorandum to the Franchise owners, Chief Operating

Officers, General Managers, Field Managers and employees covered by the Uniform Employee Contract (including Scouts), notifying them of a new policy agreed to by the Franchises and enforced by MLB and the Commissioner. The new policy (the "Offset Policy") applies to the situation where a scout is dismissed from one Franchise and hired by another while still receiving compensation from the dismissing Franchise. Under this policy, the hiring Franchise agrees to require the scout to provide his or her contract with the dismissing Franchise. The amount of any compensation due to the scout by the dismissing Franchise is then reduced by the amount paid to the scout by the hiring Franchise.

109. The Offset Policy further imposes a requirement on the scout and the hiring Franchise to bargain the scout's compensation in good faith. If the dismissing Franchise alleges that the compensation is unreasonably low, MLB will investigate and determine whether the scout is being paid at a "reasonable" rate based on:

a. the scout's experience, past accomplishments and compensation history;

b. the scout's compensation with the dismissing Franchise;

c. compensation normally paid by the hiring Franchise to employees of similar experience and accomplishments in the position for which the employee was hired;

d. compensation paid by other Franchises to employees in similar positions to the one for which the employee was hired;

e. background of the negotiations between the employee and the hiring Franchise; and

f. any other pertinent considerations.

110. If MLB determines that the compensation paid to the scout by the hiring Franchise is too low, the Commissioner directs the hiring Franchise to re-contract with the scout at the level of compensation that the Commissioner establishes as fair and reasonable and adjusts the liability of the dismissing Franchise accordingly.

111. Absent this Offset Policy, dismissed scouts could more easily negotiate agreements with new Franchises and receive higher compensation including both the wages owed by the dismissing Franchise and the hiring Franchise.

112. The Offset Policy creates an unnecessary disincentive for potential hiring Franchises to hire a scout. Absent this policy, a scout could negotiate a lower salary from the hiring Franchise (because the scout is still being paid under his prior contract) and create the opportunity to be resigned at the end of the term.

113. In addition, absent the Offset Policy, Franchises would be less inclined to dismiss scouts because they would know they would have to pay the scouts for the full term regardless of whether another Franchise signed them.

D. The conspiracy to suppress labor competition.

114. MLB scouts do not belong to a union. These employees thus lack the ability to bargain collectively for better wages and working conditions, and it has made them powerless to combat Defendants' prolonged, collusive behavior.

115. On the contrary, Defendants routinely act collectively since they operate as a cartel. Although Defendants are horizontal competitors who must compete for fans and employees, they have colluded to lessen competition in a number of areas. The MLRs and Constitution explicitly describe much of the collusion, and MLB and the Commissioner (along with the Executive Council) sit atop the cartel and enforce the collusive agreements. The collusion has allowed Defendants to suppress industry-wide competition for skilled labor, and it has subsequently allowed Defendants to suppress the industry-wide compensation provided to skilled workers.

116. Again, all scouts must sign uniform contracts that must be approved by MLB and the Commissioner. These contracts incorporate the MLRs and Constitution. One of the MLRs is an explicit horizontal agreement to suppress competition for workers. Rule 3(k) dictates the following:

> To preserve discipline and competition, and to prevent the enticement of players, coaches, managers and umpires, there shall be no negotiations or dealings respecting employment, either present or prospective, between any player, coach or manager and any Major or Minor League Club other than the Club with which the player is under contract, or acceptance of terms, or by which the player is reserved or which has the player on its Negotiation List, or between any umpire and any baseball employer other than the baseball employer with which the umpire is under contract, or acceptance of terms, unless the Club or baseball employer with which the person is connected shall have, in writing,

> expressly authorized such negotiations or dealings prior to their commencement.[21]

117. The Rule only mentions players, coaches, managers, and umpires, but Defendants apply the Rule much more broadly. For instance, Defendants also apply the Rule to those employees who provide scouting services to suppress the competition for these employees.

118. Scouting contracts typically last for one year. If a scout is under contract with a Defendant ("Team A") then the scout cannot talk about employment opportunities with any other Defendant until the contract expires. Conversely, another Defendant ("Team B") cannot cold call that scout to discuss an employment opportunity until the contract expires.

119. Either the scout or the other Defendant ("Team B") must receive permission from a high-level manager of Team A—like a scouting director—before discussing such employment opportunities. The Franchises have a tacit agreement not to permit such discussions unless the scout is being considered for a promotion. For example, Team A will not grant Team B permission to communicate about potential employment opportunities unless Team B plans to promote the scout to a higher position. If the move will be a horizontal move in a similar capacity, Team A will not grant permission. Even if the move is a promotion, Team A will sometimes not grant permission. It is not unheard of for Team A to either fire or not rehire the employee simply for asking for permission.

120. Defendants often take the agreements even further, especially when one Defendant's executive

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[21] Ex. A, MLR 3(k).

becomes the executive of another Defendant. For instance, in August 2014 the San Diego Padres hired A.J. Preller as their top baseball officer—their General Manager. Preller had previously worked for the Texas Rangers. When the Padres hired Preller away from the Rangers, they agreed that Preller would not poach any employees from the Rangers absent certain pre-designated exceptions. Other Defendants have reached similar agreements.

121. Although scouts can, themselves, seek permission to pursue opportunities with other Franchises, as a practical matter, scouts do not do so for two reasons. First, the Franchises do not post job openings. Coupled with the Franchises' collusive agreements not to cold-call each other's employees, the failure to post job openings makes it effectively impossible for scouts to be aware of other opportunities. Second, even if a scout were aware of an available position, scouts are required to seek permission to pursue the opening before pursuing it. This requirement has a chilling effect on scout interest in pursuing such opportunities because, once a scout makes known to his Franchise that he is looking for other positions, the scout's future employment with his existing Franchise is placed in jeopardy.

122. MLB and the Commissioner sit atop the cartel, and it is believed that they enforce these agreements through disciplinary measures. Indeed, MLB and the Commissioner craft the MLRs, enforce the MLRs, and approve all uniform employee contracts.

123. Defendants' limited exemption from antitrust laws does not shield them from the collusive activity described in this Complaint. Unlike Defendants' agreements to limit competition for baseball player services, which are essential to staging professional

baseball games and enhance the vitality and viability of baseball, Defendants' use of these same anticompetitive restrictions as applied to scouting services serves no essential function in staging professional baseball games nor does such anticompetitive conduct enhance the vitality or viability of baseball.

124. Simply put, Defendants' anticompetitive conduct here falls outside the realm of the limited exemption.

E. The effects on the labor market for skilled employees providing scouting services.

125. Defendants are essentially the only employer of baseball scouts in the United States, and they are likely the dominant employer of baseball scouts in the world. College baseball teams do not employ the equivalent of MLB scouts, and domestically no other independent baseball league employs the equivalent of MLB scouts. With few exceptions, if you want to work as a baseball scout in the United States, you must work for one of the Defendants.[22]

126. Thus, Defendants collectively control all or virtually all of the market for the purchase of baseball scouting services regardless whether the scouts evaluate talent at the amateur or professional level or in the high school leagues, recreational or club leagues, college leagues, minor leagues, major leagues, or other professional or amateur leagues worldwide. With such control, Defendants had the power, collectively, to maintain the price of baseball scouting

[22] Although baseball scouting services require work be performed throughout the world, scouts predominantly come from the United States.

services and used that market power to suppress such prices through the scheme alleged herein.

127. Within this labor market, Defendants compete with each other for skilled labor, i.e., for talented scouts. Defendants place importance on the acquisition and development of baseball players, and so a scout who is good at evaluating baseball players has great value.

128. In a properly functioning and lawfully competitive labor market, each Defendant would openly compete for these employees by soliciting current employees of one or more other Defendants (i.e., attempting to "poach" other Defendants' scouts). A properly functioning market would involve "cold calling": the practice by which a prospective employer freely communicates with prospective employees—even if the employee does not express interest.

129. For example, if Team B believes that a certain scout performs his job well, then Team B would be free to contact that scout about an employment opportunity. Conversely, if a scout employed by Team A perceives Team B to be a better organization—whether because of increased wages, better benefits, or otherwise—then the scout would be free to communicate with Team B about potential employment.

130. Poaching and cold calling are thus important aspects of a lawfully competitive labor market. Companies perceive other, rival companies' current employees, especially those who are not actively seeking other employment, in a more favorable way for at least two reasons.

131. First, a rival company's current employees have more value because current, satisfied employees are perceived to be more qualified, harder working,

and more stable than those employees who are unemployed or who are actively seeking employment. Thus, a company seeking to hire a new employee will lessen the risks associated with hiring a new employee by seeking to hire a rival's employee. Defendants' rules inhibit such lateral hiring of current employees because, unless Team A grants permission, Team B cannot talk to Team A's current scout about an employment opportunity; Team B can only do so if the scout is no longer under contract with Team A, at which time the scout will likely be viewed by Team B as less valuable.

132. Second, hiring a rival company's current employee will inflict a cost on the rival by removing a dependable employee from the rival. Thus, the practice not only results in a gain for the hiring company but also harms a competitor, which results in a larger net gain for the hiring company. Defendants' rules inhibit this practice because, unless Team B receives permission, it essentially only allows Team B to hire Team A's scout if Team A decides not to re-hire the scout, meaning that the subsequent hiring will not inflict the same cost on the rival.

133. For these reasons, cold calling and poaching are useful and key competitive tools for companies seeking to recruit employees, especially employees with unique skills and abilities such as scouts. With scouting contracts expiring at a similar annual time throughout the industry, the effects of this restraint are heightened even more.

134. These practices significantly impact employee compensation in many ways. For example, an employee of Team A will lack information regarding Team B's pay packages unless cold calling and open

communications are permitted; without such information, the employee lacks leverage when negotiating with Team A. Similarly, if an employee for Team A receives an offer for higher compensation from Team B, the employee can either accept Team B's offer or attempt to negotiate a pay increase with Team A. Either way, the employee's compensation increases.

135. An employee of Team A who receives information regarding potential compensation from a rival employer will also likely inform other Team A employees. Those Team A employees can then also use that information to negotiate pay increases or move to another employer—even if they did not receive a cold call.

136. The increased mobility combined with the increased information and transparency regarding compensation levels tends to increase compensation across all current employees in the labor market. After all, there is pressure amongst rival employers to match or exceed the highest compensation package offered by rivals in order to gain and retain skilled labor. Further, the possibility of losing talent to a rival means companies will take steps to reduce the risks of poaching by assuring that employees are not undercompensated.

137. Again, these effects on compensation are not limited to particular individuals who receive cold calls or who wish to speak to a rival company about an employment opportunity. The effects instead impact all similarly situated employees because of the effect on information flow and on competition for labor.

138. It is believed that Defendants maintain baseline compensation levels for different employee categories that apply to employees within the categories.

Thus, they seek to maintain parity within certain job categories (for example, among junior scouts relative to scouts with more experience scouting) and across job categories. It is also believed that Defendants monitor salaries paid by other Defendants within these job categories.

139. Thus, by suppressing competition for labor, Defendants' compensation baselines are decreased, and overall compensation packages are decreased across the market. The prohibitions on cold calling and on talking with a rival Defendant therefore deleteriously affect the compensation of all employees in the labor market.

140. The origins of Defendants' prohibitions are unknown, but it is believed that they have been in place for decades. This longstanding policy has consequently greatly affected compensation packages in the labor market in a negative manner.

F. Defendants engaged in willful violations of the FLSA

141. The restrained labor market is also rife with wage-and-hour abuses. All of the work that Plaintiff Wyckoff and the other similarly situated scouts have performed has been assigned by Defendants, or Defendants have been aware of should have been aware of all of the work that Plaintiff Wyckoff and other MLB Scouts have performed.

142. As part of their regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a policy, pattern, or practice of violating the FLSA. This policy, pattern, or practice includes but is not limited to: (1) willfully failing to pay Plaintiff Wyckoff and other MLB Scouts proper overtime wages for hours they worked in excess of 40

hours in a workweek; and (2) willfully failing to record and properly compensate for all of the time that Plaintiff Wyckoff and other MLB Scouts have worked for the benefit of Defendants.

143. Defendants are aware or should have been aware that the FLSA requires them to pay Plaintiff and other MLB Scouts for all hours worked, and to pay them an overtime premium for hours worked in excess of 40 hours per workweek.

144. Defendants' conduct alleged herein has been widespread, repeated, and consistent, and it is contrary to the FLSA.

G. The effect of Defendants' illegal conduct on Plaintiffs

(a) *Plaintiff Wyckoff*

145. On October 31, 2012, Jordan Wyckoff signed a Major League Club Uniform Employee Contract with the Kansas City Royals to be a scout. As a uniform contract, it incorporated the MLRs and MLC, and it required the approval of the Commissioner's office. The contract was to expire on October 31, 2013.

146. The Royals assigned Mr. Wyckoff the duties of scouting players in the Northeast. He was based in New Jersey but was also assigned states such as New York, Massachusetts, Connecticut, New Hampshire, and Vermont. He first scouted amateur players, but then he also scouted professional players after the amateur draft took place in June of 2013.

147. The Royals paid Mr. Wyckoff a salary of $15,000 for the entire year, paid semi-monthly in conformance with the uniform contract supplied and approved by MLB. Thus, he earned around $300 per week. They termed him a "part-time" scout but

actually expected him to work full time and perform the same duties as other full-time scouts.

148. Mr. Wyckoff worked throughout the year, with his busiest months being from January to June. He tirelessly traveled throughout New Jersey, New York, and the rest of his assigned territory to evaluate amateur players. He attended high school and college practices and games, and he attended showcases for amateur players. When evaluating a player and ultimately writing a report on a player, he attempted to gain as much information as possible.

149. During these peak months, he often worked in excess of forty hours per week. Yet he was paid the same semi-monthly salary—he was not paid overtime pay when his hours exceeded forty hours per week.

150. An example of a workweek during a peak month is as follows. On Monday, May 13, 2013, Mr. Wyckoff drove from Madison, New Jersey to Horseheads, New York to evaluate a potential prospect and to administer eye and psychological testing. He then drove to Buffalo, New York, to meet and evaluate another potential prospect.

151. The next day, he evaluated potential college prospects during pregame workouts and a game at the University of Buffalo. He then traveled to Setauket, New York, and, on Wednesday, evaluated another potential prospect. On Thursday, he traveled back to Madison, New Jersey. Once there, he wrote reports on the many potential prospects that he had evaluated. He also finalized video that he had taken of the prospects and uploaded it to the server.

152. On Friday, Saturday, and Sunday, he then evaluated potential prospects during a college series between St. John's University and Seton Hall

University. He evaluated players during both pregame workouts and the actual games.

153. During this seven-day period beginning on May 13, 2013, Mr. Wyckoff estimates that he worked close to 60 hours, including required travel time. He was only paid approximately $300 for that week, which means he was paid around $5 or $5.50 per hour that week (below the minimum wage required by law). He was not paid an overtime rate even though he worked far more than forty hours that week.

154. Mr. Wyckoff worked many such weeks, especially during the peak months. He never received overtime compensation for exceeding forty hours in a workweek, and his wages often fell below the minimum required by the law.

155. Higher level scouts, such as crosscheckers, supervised his work. Other high-ranking officials, such as the scouting director, assistant general managers, and the general manager also supervised his work and used the information he provided.

156. When Mr. Wyckoff's contract expired, the Royals chose not to renew it for another year. By the time this occurred, the other Defendants had already made the decision to re-hire most or all of their own scouts, so there were very few other scouting positions available. Also, since he was no longer employed, he may not have been perceived as favorably as he was when employed as a scout. He was unable to find a scouting job with another team.

157. The anticompetitive restraint on the labor market consequently affected him in at least two ways. First, it led to suppressed compensation of only $15,000 because of the lower compensation baselines (discussed above) caused by less information in the

labor market and suppressed labor competition in the market. And second, it prevented Mr. Wyckoff from discussing potential employment opportunities with other Defendants before his uniform contract expired, which ultimately made it more difficult to find employment with another Defendant once the Royals failed to renew his contract.

158. Thus, like all members of the Proposed Class, Mr. Wyckoff felt the effects of the cartel's illegal practices. Through the uniform contracts, MLRs, Constitution, and industry practices, Defendants conspired to reduce compensation and mobility by suppressing competition for skilled labor to Mr. Wyckoff's detriment.

(b) *Plaintiff Cox*

159. From 1991 through 2011, Darwin Cox worked as a Scouting Supervisor[23] for the Colorado Rockies. Each year, Mr. Cox signed a Major League Club Uniform Employee Contract setting forth the terms of his employment. As a uniform contract, it incorporated the MLRs and MLC, and it required the approval of the Commissioner's office. In December 2011, the Colorado Rockies did not renew Mr. Cox's contract.

160. From 2001 to 2011, Mr. Cox was assigned to the North Texas, Oklahoma and Kansas region.

161. Mr. Cox was paid approximately $63,500 in 2011.

162. Mr. Cox worked throughout the year. His principal job duties involved scouting amateurs, but

[23] Although his title was "Scouting Supervisor" he did not supervise any other scouts or employees. "Scouting Supervisor" was merely the term the Colorado Rockies used to describe full time scouts.

after the draft each year, he was assigned to scout five minor league teams in Texas. While scouting amateurs, he attended high school and college practices and games, and he attended showcases for amateur players. When evaluating a player and ultimately writing a report on a player, he attempted to gain as much information as possible.

163. The Colorado Rockies did not renew his contract when it expired in 2011.

164. The anticompetitive restraint on the labor market consequently affected him in at least two ways. First, it led to suppressed compensation because of the lower compensation baselines (discussed above) caused by less information in the labor market and suppressed labor competition in the market. And second, it prevented Mr. Cox from discussing potential employment opportunities with other Defendants before his uniform contract expired, which ultimately made it more difficult to find employment with another Defendant.

165. Thus, like all members of the Proposed Class, Mr. Cox felt the effects of the cartel's illegal practices. Through the uniform contracts, MLRs, Constitution, and industry practices, Defendants conspired to reduce compensation and mobility by suppressing competition for skilled labor to Mr. Cox's detriment.

## VII. CLAIMS FOR RELIEF

### Violations of Section 1 of the Sherman Act

### (Brought by Plaintiffs on Behalf of the Class)

166. Plaintiffs, on their own behalf and on behalf of all those similarly situated, re-allege and incorporate by reference all preceding allegations in all preceding paragraphs.

167. Defendants entered into and engaged in unlawful agreements in restraint of the trade and commerce described above. These actions violated and continue to violate Section 1 of the Sherman Act, 15 U.S.C. § 1. Since at least four years before the filing of this action, the trusts formed by Defendants' cartel have restrained trade and commerce in violation of Section 1 of the Sherman Act, and the behavior continues today.

168. Defendants' agreements have included concerted action and concerted undertakings with the purpose and effect of (a) fixing the compensation of Plaintiffs and the Proposed Class at artificially low levels; and (b) eliminating, to a substantial degree, competition among Defendants for skilled labor.

169. As a direct and proximate result of Defendants' combinations and contracts to restrain trade and eliminate competition for skilled labor, Plaintiffs and members of the Proposed Class have suffered injury to their property and have been deprived of the benefits of free and fair competition on the merits.

170. Defendants' unlawful agreements have had the following effects, among others: (a) competition among Defendants for skilled labor has been suppressed, restrained, and eliminated; and (b) Plaintiffs and class members have received lower compensation from Defendants than they otherwise would have received in the absence of Defendants' unlawful agreements, and, as a result, Plaintiffs and the Proposed Class have been injured in their property and have suffered damages in an amount to be proved at trial.

171. Each Defendant's agreements or conspiratorial acts were authorized, ordered, or done by their respective officers, directors, agents, employees, or

representatives while actively engaged in the management of each Defendant's affairs.

172. Defendants' agreements, combinations and/or conspiracies are *per se* violations of Section 1 of the Sherman Act.

173. Accordingly, Plaintiffs and the Proposed Class seek three times their damages caused by Defendants' violations of Section 1 of the Sherman Act, the costs of bringing suit, reasonable attorneys' fees, and a permanent injunction enjoining Defendants from ever again entering into similar agreements in violation of Section 1 of the Sherman Act.

Violations of New York's Donnelly Act

(Brought by Plaintiffs on Behalf of the Class)

174. Plaintiffs, on their own behalf and on behalf of all those similarly situated, re-allege and incorporate by reference all preceding allegations in all preceding paragraphs.

175. Defendants entered into and engaged in unlawful agreements in restraint of the trade and commerce described above. These actions violated and continue to violate New York's Donnelly Act, N.Y. Gen. Bus. L. § 340. Since at least four years before the filing of this action, the contracts, agreements, arrangements, or combinations formed by Defendants' cartel have restrained trade, commerce, and the furnishing of services in violation of the Donnelly Act, and the behavior continues today.

176. Defendants' agreements and arrangements have included concerted action and concerted undertakings with the purpose and effect of (a) fixing the compensation of Plaintiffs and the Proposed Class at artificially low levels; and (b) eliminating, to a

substantial degree, competition among Defendants for skilled labor.

177. With MLB overseeing the cartel and enforcing its rules, agreements, and arrangements from its headquarters in New York, much illicit behavior occurred (and continues to occur) in New York. Defendants conduct significant business in New York. Thus, the illicit behavior has significantly impacted trade and commerce in New York.

178. As a direct and proximate result of Defendants' combinations and contracts to restrain trade and eliminate competition for skilled labor, Plaintiffs and members of the Proposed Class have suffered injury to their property and have been deprived of the benefits of free and fair competition on the merits.

179. Defendants' unlawful agreements have had the following effects, among others: (a) competition among Defendants for skilled labor has been suppressed, restrained, and eliminated; and (b) Plaintiffs and class members have received lower compensation from Defendants than they otherwise would have received in the absence of Defendants' unlawful agreements, and, as a result, Plaintiffs and the Proposed Class have been injured in their property and have suffered damages in an amount to be proved at trial.

180. Each Defendant's agreements or conspiratorial acts were authorized, ordered, or done by their respective officers, directors, agents, employees, or representatives while actively engaged in the management of each Defendant's affairs.

181. Defendants' agreements, combinations and/or conspiracies are *per se* violations of the Donnelly Act.

182. Accordingly, Plaintiffs and the Proposed Class seek three times their damages caused by Defendants' violations of the Donnelly Act, the costs of bringing suit, reasonable attorneys' fees, and a permanent injunction enjoining Defendants from ever again entering into similar agreements in violation of the Donnelly Act.

FLSA Minimum Wage and Overtime Violations

(Brought by Plaintiff Wyckoff on Behalf of the Collective)

183. Plaintiffs, on their own behalf and on behalf of all those similarly situated, re-allege and incorporate by reference all allegations in all preceding paragraphs.

184. As detailed above, Defendants have engaged in a long-standing and widespread violation of the FLSA. The FLSA's minimum wage and overtime requirements, 29 U.S.C. §§ 201 et seq., and the supporting regulations, apply to all Defendants and protect Plaintiff Wyckoff and the Collective.

185. At all relevant times, Plaintiff Wyckoff and all the Collective's members were (and/or continue to be) employees within the meaning of 29 U.S.C. § 203(e), and were (and/or continue to be) employed by covered enterprises and/or entities engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 203(e), (r) and (s). The work also regularly involves interstate commerce.

186. At all relevant times, MLB and the Kansas City Royals jointly employed Plaintiff Wyckoff and members of the Collective, and MLB and the Franchise Defendants jointly employed and continue to

employ members of the Collective within the broad meaning of 29 U.S.C. §§ 203(d) and (g).

187. Defendants constructed, implemented, and engaged in a policy and/or practice of failing to, at times, pay Plaintiff Wyckoff and some members of the Collective the applicable minimum wage for all hours the MLB scouts worked on behalf of Defendants, and continue to engage in such a policy and practice.

188. Further, Defendants constructed, implemented, and engaged in a policy and practice that failed to ever pay Plaintiff Wyckoff and the Collective the applicable overtime wage for all hours MLB scouts worked beyond the normal, forty-hour workweek, and continue to engage in such a policy and practice.

189. As a result of these minimum wage and overtime violations, Plaintiff Wyckoff and the Collective have suffered and continue to suffer damages in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. § 216(b).

190. The Defendants' pattern of unlawful conduct was and continues to be willful and intentional, or the Defendants at least acted with reckless disregard. The Defendants were and are aware, or should have been aware, that the practices described in this Complaint are unlawful. The Defendants have not made a good-faith effort to comply with the FLSA with respect to the compensation of Plaintiff Wyckoff and all similarly situated MLB scouts. Instead, the Defendants knowingly and/or recklessly disregarded federal wage-and-hour laws.

191. All similarly situated MLB scouts are entitled to collectively participate in this action by choosing

to "opt-in" by consenting to join this action. 29 U.S.C. § 216(b).

FLSA Recordkeeping Requirements

(Brought by Plaintiff Wyckoff on Behalf of the Collective)

192. Plaintiffs, on their own behalf and on behalf of all those similarly situated, re-allege and incorporate by reference all allegations in all preceding paragraphs.

193. Defendants failed (and continue to fail) to make, keep, and preserve accurate records with respect to Plaintiff Wyckoff and all similarly situated MLB scouts, including hours worked each workday and total hours worked each workweek, as required by the FLSA, 29 U.S.C. § 211(c), and supporting federal regulations.

194. The lack of recordkeeping has harmed Plaintiff Wyckoff and the Collective and creates a rebuttable presumption that the employees' estimates of hours worked are accurate.[24]

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own and on behalf of all other similarly situated persons, seek the following relief:

- That at the earliest possible time, Plaintiffs be allowed to give notice of this collective action, or that the Court issue such notice, to members of the MLB Scout Collective, as defined above. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their

[24] *See Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687–88 (1946).

right to join this lawsuit if they believe they were denied (and/or continue to be denied) proper wages;

- Unpaid minimum wages and overtime wages, that have accrued and continue to accrue until the resolution of this action, and an additional and an equal amount as liquidated damages pursuant to the FLSA and the supporting regulations;
- Statutory damages for Defendants' recordkeeping violations pursuant to federal law;
- Certification of the Proposed Class, as set forth above, pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- A finding that Defendants have violated Section 1 of the Sherman Act by engaging in an illegal trust, contract, combination, or conspiracy, and that Plaintiffs and the members of the Class have been damaged and injured in their business and property as a result of this violation;
- A finding that the alleged combinations and conspiracy be adjudged and decreed as per se violations of the Sherman Act;
- Treble damages awarded under the Sherman Act to Plaintiffs and the members of the Proposed Class for the damages sustained by them as a result of Defendants' conduct;
- A finding that Defendants have violated New York's Donnelly Act by engaging in an illegal contract, agreement, arrangement, or combination, and that Plaintiffs and the members of the Class have been damaged and injured in their

business and property as a result of this violation;

- A finding that the alleged combinations and conspiracy be adjudged and decreed as per se violations of the Donnelly Act;
- Treble damages awarded under the Donnelly Act to Plaintiffs and the members of the Proposed Class for the damages sustained by them as a result of Defendants' conduct;
- Judgment entered against Defendants for the amount to be determined and as permitted by law and equity;
- Designation of Plaintiffs as class representatives of the Class, designation of counsel of record as Class Counsel, and a reasonable incentive payment to Plaintiffs;
- Pre-judgment and post-judgment interest as permitted by law;
- A declaratory judgment that the practices complained of herein are unlawful under the FLSA, the Sherman Act, and the Donnelly Act;
- An injunction requiring Defendants to pay all statutorily required wages pursuant to federal law and an order enjoining Defendants from continuing or reinstating their unlawful policies and practices as described within this Complaint;
- Reasonable attorneys' fees and costs of the action;
- Such other relief as this Court shall deem just and proper.

## IX. DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure Rule 38(a), Plaintiffs demand a jury trial as to all issues triable by a jury.

DATED: October 19, 2015

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## APPENDIX B

### Congressional Hearings on Business of Baseball (1972–2018)

1. *Professional Sports Blackouts: Hearing Before the H. Comm. on Interstate and Foreign Commerce, Subcomm. on Communications and Power,* 93rd Cong., 1st Sess. (1973).

2. *Rights of Professional Athletes: Hearing Before the H. Comm. on the Judiciary*, *Subcomm. on Monopolies and Commercial Law*, 94th Cong., 1st Sess. (1975).

3. *Professional Sports and the Law: Hearing Before the H. Comm. on Professional Sports*, 94th Cong., 2d Sess. (1976).

4. *Inquiry into Professional Sports: Hearing Before the H. Comm. on Professional Sports*, 94th Cong., 2d Sess. (1976).

5. *Inquiry into Professional Sports: Hearing Before the H. Comm. on Professional Sports*, 94th Cong., 2d Sess. (1976).

6. *Rights of Professional Athletes: Hearing Before the H. Comm. on the Judiciary, Subcomm. on Monopolies and Commercial Law*, 95th Cong., 1st Sess. (1977).

7. *Sports Anti-blackout Legislation: Hearing Before the H. Comm. on Interstate and Foreign Commerce, Subcomm. on Communications*, 95th Cong., 2d Sess. (1978).

8. *Sports Anti-blackout Legislation: Hearing Before the H. Comm. on Interstate and Foreign Commerce, Subcomm. on Communications and Power*, 96th Cong., 1st Sess. (1979).

9. *Antitrust Policy and Professional Sports: Hearing Before the H. Comm. on the Judiciary, Subcomm. on Monopolies and Commercial Law*, 97th Cong., 1st & 2d Sess. (1981).

10. *Antitrust Policy and Professional Sports: Hearing Before the H. Comm. on the Judiciary, Subcomm. on Monopolies and Commercial Law*, 97th Cong., 1st & 2d Sess. (1982).

11. *Professional Sports Antitrust Immunity: Hearing Before the Sen. Comm. on the Judiciary*, 97th Cong., 2d Sess. (1982).

12. *Professional Sports Antitrust Immunity: Hearing Before the Sen. Comm. on the Judiciary*, 98th Cong., 1st Sess. (1983).

13. *Professional Sports Team Community Protection Act: Hearing Before the H. Comm. on Energy and Commerce, Subcomm. on Commerce, Transportation, and Tourism*, 98th Cong., 2d Sess. (1984).

14. *Professional Sports Team Community Protection Act: Hearing Before the Sen. Comm. on Commerce, Science, and Transportation*, 98th Cong., 2d Sess. (1984).

15. *Professional Sports: Hearing Before the H. Comm. on Energy and Commerce, Subcomm. on Commerce, Transportation, and Tourism*, 99th Cong., 1st Sess. (1985).

16. *Professional Sports Antitrust Immunity: Hearing Before the Sen. Comm. on the Judiciary*, 99th Cong., 1st Sess. (1985).

17. *Professional Sports Community Protection Act of 1985: Hearing Before the Sen. Comm. on Commerce, Science, and Transportation*, 99th Cong., 1st Sess. (1985).

18. *Professional Sports Antitrust Immunity: Hearing Before the Sen. Comm. on the Judiciary*, 99th Cong., 2d Sess. (1986).

19. *Antitrust Implications of the Recent NFL Television Contract: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 100th Cong., 1st Sess. (1987).

20. *Professional Sports Antitrust Immunity: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 100th Cong., 2d Sess. (1988).

21. *Competitive Issues in the Cable Television Industry: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 100th Cong., 2d Sess. (1988).

22. *Sports Programming and Cable Television: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 101st Cong., 1st Sess. (1989).

23. *Competitive Problems in the Cable Television Industry: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 101st Cong., 1st Sess. (1990).

24. *Cable Television Regulation (Part 2): Hearing Before the H. Comm. on Energy and Commerce, Subcomm. on Telecommunications and Finance*, 101st Cong., 2d Sess. (1990).

25. *Sports Programming and Cable Television: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 101st Cong., 2d Sess. (1991).

26. *Prohibiting State-Sanctioned Sports Gambling: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Patents, Copyrights, and Trademarks*, 102nd Cong., 1st Sess. (1991).

27. *Baseball's Antitrust Immunity: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 102nd Cong., 2d Sess. (1992).

28. *Baseball's Antitrust Immunity: Hearing Before the H. Comm. on the Judiciary, Subcomm. on Economic and Commercial Law*, 103rd Cong., 1st Sess. (1993).

29. *Key Issues Confronting Minor League Baseball: Hearing Before the H. Comm. on Small Business*, 103rd Cong., 2d Sess. (1994).

30. *Baseball's Antitrust Exemption (Part 2): Hearing Before the H. Comm. on the Judiciary, Subcomm. on Economic and Commercial Law*, 103rd Cong., 2d Sess. (1994).

31. *Impact on Collective Bargaining of the Antitrust Exemption, Major League Play Ball Act of 1995: Hearing Before the H. Comm. on Education and Labor, Subcomm. on Labor-Management Relations*, 103rd Cong., 2d Sess. (1994).

32. *Professional Baseball Teams and the Anti-trust Laws: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Monopolies, and Business Rights*, 103rd Cong., 2d Sess. (1994).

33. *The Court-Imposed Major League Baseball Antitrust Exemption: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Business Rights, and Competition*, 104th Cong., 1st Sess. (1995).

34. *Antitrust Issues in Relocation of Professional Sports Franchises: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Antitrust, Business Rights, and Competition*, 104th Cong., 1st Sess. (1995).

35. *The Court-Imposed Major League Baseball Antitrust Exemption: Hearing Before the Sen. Comm. on Antitrust, Business Rights, and Competition*, 104th Cong., 1st Sess. (1995).

36. *Professional Sports Franchise Relocation: Hearing Before the H. Comm. on the Judiciary*, 104th Cong., 2d Sess. (1996).

37. *Professional Sports: The Challenges Facing the Future of the Industry: Hearing Before the Sen. Comm. on the Judiciary*, 104th Cong., 2d Sess. (1996).

38. *Major League Baseball Reform Act of 1995: Hearing Before the Sen. Comm. on the Judiciary*, 104th Cong., 2d Sess. (1996).

39. *Major League Baseball Antitrust Reform: Hearing Before the Sen. Comm. on the Judiciary*, 105th Cong., 1st Sess. (1997).

40. *Stadium Financing and Franchise Relocation Act of 1999: Hearing Before the Sen. Comm. on the Judiciary*, 106th Cong., 1st Sess. (1999).

41. *Baseball's Revenue Gap: Pennant for Sale?: Hearing Before the Sen. Comm. on the Judiciary*, 106th Cong., 2d Sess. (2000).

42. *Fairness in Antitrust in National Sports (Fans) Act of 2001: Hearing Before the H. Comm. on the Judiciary*, 107th Cong., 1st Sess. (2001).

43. *The Application of Federal Antitrust Laws to Major League Baseball: Hearing Before the Sen. Comm. on the Judiciary*, 107th Cong., 2d Sess. (2002).

44. *Out at Home: Why Most Nats Fans Can't See Their Team on TV: Hearing Before the H. Comm. on Gov't Reform*, 109th Cong., 2d Sess. (2006).

45. *Exclusive Sports Programming: Examining Competition and Consumer Choice: Hearing Before the Sen. Comm. on Commerce, Science and Transportation, 110th Cong.*, 1st Sess. (2007).