No. 25-

IN THE

Supreme Court of the United States

DANIEL CONCEPCION, ALDEMAR BURGOS, AND SIDNEY DUPREY CONDE, INDIVIDUALLY AND ON BEHALF OF ALL THOSE SIMILARLY SITUATED,

Petitioners,

v.

OFFICE OF THE COMMISSIONER OF BASEBALL, AN UNINCORPORATED ASSOCIATION DOING BUSINESS AS MAJOR LEAGUE BASEBALL, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. WHETHER THIS COURT'S DECISION IN *FEDERAL BASEBALL CLUB OF BALTIMORE V. NATIONAL LEAGUE OF PROFESSIONAL BASE BALL CLUBS*, 259 U.S. 200 (1922) AND ITS PROGENY SHOULD BE REVERSED?

2. WHETHER THE CURT FLOOD ACT, 15 U.S.C. § 26b IS UNCONSTITUTIONAL ON ITS FACE AND/OR AS APPLIED IN VIOLATION OF THE EQUAL PROTECTION CLAUSE BY PURPORTEDLY DENYING EQUAL PROTECTION AGAINST ANTITRUST VIOLATIONS OF THE SHERMAN ACT TO MINOR LEAGUE BASEBALL PLAYERS BUT AFFORDING THOSE ANTITRUST PROTECTIONS TO MAJOR LEAGUE BASEBALL PLAYERS?

3. WHETHER A PARTY WHO FAILS TO "OBJECT" PURSUANT TO 28 U.S.C. § 636, TO A MAGISTRATE'S REPORT AND RECOMMENDATION ("R & R")—WHICH IS BASED SOLELY ON THIS COURT'S PRECEDENT, AND WHICH CAN ONLY BE REVERSED BY THIS COURT—WAIVES IT'S RIGHT TO SEEK REIVEW OF THAT DECISION BY THIS COURT?

LIST OF PARTIES

Petitioners are DANIEL CONCEPCION, ALDEMAR BURGOS, AND SIDNEY DUPREY CONDE, Individually and on Behalf of All Those Similarly Situated.

Respondents are OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as MAJOR LEAGUE BASEBALL, ROB MANFRED; ALLAN HUBER "BUD" SELIG; KANSAS CITY ROYALS BASEBALL CLUB, LLC.; MARLINS TEAMCO LLC; 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.; BASEBALL CLUB OF SEATTLE, LLLP; THE CINCINNATI REDS, LLC; HOUSTON ASTROS LLC; ATHLETICS INVESTMENT GROUP, LLC; ROGERS BLUE JAYS BASEBALL PARTNERSHIP; CLEVELAND GUARDIANS BASEBALL COMPANY, LLC; 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 CO.; STERLING METS L.P.; ATLANTA NATIONAL LEAGUE BASEBALL CLUB, LLC; AZPB L.P.; BALTIMORE ORIOLES, INC.; BALTIMORE ORIOLES, L.P.; THE PHILLIES; PITTSBURGH ASSOCIATES; 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.

RELATED PROCEEDINGS

1. *Daniel Concepcion, et al. v. Office of the Commissioner of Baseball*, Magistrate's Report and Recommendation of the U.S. District Court for the District of Puerto Rico entered on May 31, 2023.

2. *Daniel Concepcion, et al. v. Office of the Commissioner of Baseball, et al.*, Opinion and Judgment of the U.S. District Court for the District of Puerto Rico entered on June 21, 2023 and June 22, 2023.

3. *Daniel Concepcion, Individually and on Behalf of All Those Similarly Situated, et al. v. Office of the Commissioner of Baseball, et al.*, Judgment of the United States Court of Appeals for the First Circuit entered on May 19, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Daniel Concepcion, Aldemar Burgos, And Sidney Duprey Conde (collectively "Petitioners"), individually and on behalf of the class they represent hereby petition for a writ of certiorari to review the May 19, 2025 judgment of the United States Court of Appeals for the First Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit that was entered on May 19, 2025 is unreported. (App. A) The opinion and judgment of the U.S. District Court for the District of Puerto Rico were entered on June 21, 2023 (App. C) and June 22, 2023 (App. D) respectively. The Magistrate's Report and Recommendation was filed on May 31, 2023 (App. B).

JURISDICTION

The judgment of the United States Court of Appeals for the First Circuit was entered on May 19, 2025. This Court has jurisdiction of this timely petition under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1 and 2, are reproduced at App. E. The Curt Flood Act of 1998, 15 U.S.C. § 26b, is reproduced at App. E. The relevant portion of the Fifth Amendment to the United States Constitution is reproduced at App. E. The relevant portion of 28 U.S.C. § 636(C) is reproduced at App. E.

STATEMENT OF CASE

This is a punitive class action brought by professional minor league baseball players against the Commissioner of Baseball and the constituent Major League Baseball Clubs (collectively "MLB") for their admitted conspiracy to uniformly fix, at below market levels, the salaries they paid to Minor League baseball players (prior to 2023)[1] in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1&2). As a result of Respondents' monopsony antitrust violations Minor League baseball players received (prior to 2023) salaries at levels far below what they would have received in a competitive market.

The MLB owners, while conceding their anti-competitive wage fixing conspiracy, claim they are exempt from the reach of the federal antitrust laws as a result of the non-statutory, judicially created, so called "business of baseball exemption." However, there was, and is, no valid statutory business of baseball exemption and there should not be any judicially created business of baseball exemption.

The purported judicially created exemption in *Federal Baseball Club of Baltimore v. National League of*

1. In 2022, after Petitioners filed this lawsuit, minor leaguers formed a union. In 2023, the union entered into a collective bargaining agreement which raised the salaries of minor league players *going forward*. It did not resolve the minor leaguers' pre-2023 antitrust and damage claims asserted in this class action case. The fact that minor leaguers salaries almost doubled after the filing of this lawsuit and collective bargaining is strong evidence that minor leaguers' wages were artificially depressed as a result of MLB's antitrust wage-fixing violations.

Professional Base Ball Clubs, 259 U.S. 200 (1922) and its progeny no longer has, if ever it had, any basis in reality and should be eliminated by this Court which created it. The circumstances extant in 1922 when this Court issued *Federal Baseball* have changed exponentially. The "business of professional baseball" is a $16 billion a year industry. The legal underpinning of that decision—that professional baseball did not involve interstate commerce—has since been rejected, by *this Court* in *Flood v. Kuhn*, 407 U.S. 258, 282 (1972).

However, hundreds of thousands of minor league players have been damaged over the past 103 years by those erroneous decisions. Prior to 2023, tens of thousands of Minor League baseball players were harmed by receiving anti-competitive "slave wages" and tens of thousands more minor leaguers will continue to be harmed in the future unless and until this Court corrects this "aberration" and "anomaly" that it created one hundred and three years ago. See Amicus Brief of Major League Baseball Players Association filed in *Tri-City ValleyCats Inc. v. Office of Commissioner of Baseball*, Supreme Court Case No. 23-283, 2023 WL 6940226 at *14-15.

Stare decisis for an almost universally acknowledged erroneous decision "of dubious validity" (*Radovich v. National Football League*, 352 U.S. 445, 450 (1957) does not justify continuing to allow "the business of baseball" precedent to stand at the expense of minor leaguers so that 30 billionaire owners can retain and continue to reap billions of dollars of unlawful profits. Baseball is the only professional sport where the owners are allowed to conspire to suppress the compensation they pay their players. All other professional sports owners

are liable under the antitrust laws if they seek to restrain competition for player compensation. *NCAA v. Alston*, 594 U.S. 69, 94, 141 S. Ct. 2141, 2159 (2021).

The antitrust laws were enacted for precisely the present type of situation, to promote competition including for the services of athletes so that they receive a fair competitive wage for their services. *Radovich v. National Football League*, 352 U.S. 445, 452 (1957).

The doctrine of *stare decisis* should not be applied, and does not apply where, as here, the circumstances that may have once applied to the prior decision no longer apply and/or are no longer reasonable, particularly in the ever-evolving field of antitrust jurisprudence. *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877, 899-907 (2007); 1 BLACKSTONE COMMENTARIES 69-70 (Univ. of Chicago Press 1979); JAMES KENT, COMMENTARIES ON AMERICAN LAW 477 (O.W. Holmes, Hr. ed., Fred B. Rothman & Co. 1989).

The Curt Flood Act Is Unconstitutional

This is also a case of first impression regarding the facial and as applied unconstitutionality of the Curt Flood Act, 15 U.S.C. § 26b, which purports to deny minor league baseball players the equal protection of the antitrust laws (to a non-wage-fixed competitive wage) enjoyed by major league baseball players (and all other professional athletes).

This case also highlights the federal circuit courts' split as to whether a party waives its right to appellate review by failing to file a futile objection to a Magistrate's

report and recommendation based on binding Supreme Court precedent which only this Court can change.

INTRODUCTION

In enacting the federal antitrust laws Congress intended to free interstate commerce from the evils produced by combinations and conspiracies composed of employers of all kinds. *Paramount Pictures, Inc. v. United Motion Picture Theater Owners, et al.*, 98 F.2d 714, 719 (3rd Cir. 1937).

The purpose of the antitrust laws, is to "protect competition not competitors." *Natrona Services, Inc. v. Continental Oil Co.*, 598 F.2d 1294, 1297-1298 (9th Cir. 1979). The antitrust laws were never intended to protect billionaire baseball owners from competing for the services of baseball players. To the contrary, the "fundamental purpose of the Sherman Act is to secure equality of opportunity and to protect the public against evils commonly incident to the destruction of competition through monopolies and combinations in restraint of trade." *Paramount Famous Lasky Corp. v. United States*, 282 U.S. 30, 42 (1930); *NCAA v. Alston*, 141 S.Ct. 2141, 2167 (2021) ["the NCAA's decision to build a massive money raising enterprise on the backs of student athletes who are not fairly compensated"—cannot be justified]; *Chicago Professional Sports Association*, 93 F.3d 593, 600 (7th Cir. 1996); *FTC v. Superior Court Trial Lawyers Assn.*, 493 U.S. 411, 424; *Texaco Inc. v. Dagher*, 547 U.S. 1, 5 (2006).

Respondents force all Minor League players to sign a uniform standardized contract, which sets a non-negotiable, below market salary for Minor Leaguers.

The Minor Leaguer either signs it or he cannot pursue his profession as a professional baseball player. Prior to 2023, he had no bargaining power, no union, no collective bargaining agreement, no arbitration agreement, no strike capability, no free agency, and according to the Respondent baseball clubs, no antitrust basis to sue the baseball clubs for redress for their admitted conspiracy to fix, at below market levels, the salaries minor league baseball players can receive.

The Respondents are either members of or govern the cartel known as Major League Baseball ("MLB"). In order to monopolize minor leaguers, restrain and depress minor league players' salaries and prevent them from receiving compensation for their name, image or likeness ("NIL") ["all rights to Player's name, voice, signature, biographical information, and likeness belong to the club" … UPC, Paragraph XIV], the MLB cartel inserted a provision (known as the reserve clause) into all minor league players' contracts that allows each Respondent team to retain for seven (7) years the contractual rights to players and restrict their ability to negotiate with other teams for their baseball services. The reserve clause preserves MLB's minor league system of artificially low salaries and nonexistent contractual mobility in violation of § 2 of the Sherman Act.

It also denied minor leaguers the right to any compensation for the use of their names, image, or likeness ("NIL") just as the NCAA and universities, in violation of the antitrust laws, prohibited their student-athletes the ability to benefit and be compensated for their NILs. *House v. NCAA*, 545 F. Supp. 3d 804 (N.D. Cal. 2021).

Through collusion, MLB keeps minor league player salaries at poverty levels. Instead of permitting minor league teams to compete to attract and retain talent, MLB offers all minor leaguers a non-negotiable, standard seven-season contract. Uniform salaries are tied to the minor league level of competition, with players in triple-A receiving higher salaries than those in single-A. Despite finally obtaining unionization of players in 2022 and a collective bargaining agreement in 2023, minor leaguers' average salaries remain capped at poverty levels. For instance, "Triple-A salaries only increased from $17,500 to $35,800. (See J.J. Cooper, *MLB, Minor League Players Reach Deal on First MiLB CBA*, Baseball Am. (Mar. 29, 2023), https://www.baseball america.com/stories/mlb-minor-league-players-reach-deal-on-first-milb-cba/.) See Amicus Brief of Open Markets in *TriCity Valleycats Inc. v. the Office of the Commissioner of Baseball*, Supreme Court case No. 23-283, 2023 WL 7042332 at *10-11.

This action challenges—and seeks to remedy—Respondents' pre 2023 and future violations of the federal antitrust laws and the use of their illegal cartel to institute and maintain the reserve clause and UPC as a means to stifle competition and suppress compensation (and deny compensation for the use of their NILs) that minor leaguers received, which would be significantly higher absent Respondents' antitrust violations.

MLB moved to dismiss Petitioners' first amended complaint arguing that MLB is exempt from the antitrust laws as a result of this Court's judicially created so-called "business of baseball" exemption. The District Court referred the motion to the United States Magistrate who issued a report and recommendation dismissing the

case as a matter of law based on undisputed facts and the binding precedent of this Court's trilogy of decisions in *Federal Baseball, Toolson and Flood*, that respondents wage fixing (and NIL violations) were immune from antitrust enforcement (App. B).

Petitioners did not file formal objections to the Magistrate's R&R, which would have been futile, because they would have been exactly the same legal "objections" as asserted to the Magistrate in Petitioners' opposition to MLB's motion to dismiss i.e. that this Court's "business of baseball" antitrust exemption was wrong and should be abrogated. Petitioners knew the District Court and the First Circuit would be duty bound to apply the very Supreme Court precedents Petitioners were trying to have abrogated, since intermediate courts must adhere to controlling decisions of this Court (*Hutto v. Davis*, 454 U.S. 370, 375, 102 S. Ct. 703, 70 L. Ed. 2nd 556 (1982); *Miranda v. Selig*, 860 F. 3rd 1237, 1242 (no matter how misguided the judges may think it to be (*Id.* at 1243) until it is explicitly overruled by this Court. *Id.* (Petitioners First Circuit Motion for Reversal, Document No. 00118040362, p. 1, n. 1). That is exactly what Petitioners were seeking in filing this case and why "objecting" to the Magistrate's R & R to dismiss based on this Court's "business of baseball" would have been futile. Petitioners filed this case in order to obtain review by this Court so it could grant certiorari and abrogate its "business of baseball" antitrust exemption (*Id.*).

On June 21, the District Court, after its own review, adopted the Magistrate's R & R and dismissed the case based on the "business of baseball" exemption. (App. C).

Petitioners timely filed their appeal to the First Circuit. On May 19, 2025, the First Circuit entered its judgment (App. A) erroneously refusing to consider, but effectively affirming the dismissal, as it was duty-bound to do, even if Petitioners had "objected" to the Magistrate's R & R, based on the binding "business of baseball" antitrust exemption created by this Court.

The First Circuit, in conflict with its own precedent in *United States v. Rivera-LeBaron*, 410 Fed. Appx. 352, 353 (1st Cir. 2011), and in conflict with the Ninth Circuit in *Marin-Torres v. State of Washington*, 194 Fed. Appx. 564, 565 (9th Cir. 2006) and the Second Circuit in *Deleon v. Strock*, 234 F.3d 84, 86 (2nd Cir. 2000), and in conflict with this Court's holding in *Thomas v. Arn*, 474 U.S. 140, 155-156 (1985), erroneously held that Petitioners' failure to object to the unassailable binding legal precedent of this Court set forth in the Magistrate's R & R, precluded appellate review of the District Court's decision.

This Court should grant certiorari to resolve the circuit courts split regarding § 636 "waiver" of a right to appeal the merits of an unobjected-to magistrate decision in such a situation.

REASONS FOR GRANTING CERTIORARI

1. Certiorari should be granted so this Court can correct the erroneous decision it made 103 years ago in *Federal Baseball Club of Baltimore v. National League of Professional Base Ball Clubs*, 259 U.S. 200 (1922) and followed by its progeny in its *Toolson and Flood* decisions. Those decisions have harmed and will continue to harm

tens of thousands of minor league baseball players by depriving them of billions of dollars of competitive wages.

2. This Court should also grant certiorari to determine the subsidiary included issue of first impression—the unconstitutionality of the Curt Flood Act, 15 U.S.C. § 26b—which deprives minor leaguers of the equal protection of the anti-trust laws.

3. This Court should also grant certiorari to resolve the conflict among the circuit courts as to whether a party's 28 U.S.C. § 636(C) failure to raise a futile objection to a magistrate's R & R, which R & R, is based purely on undisputed facts and binding Supreme Court precedent, is a waiver of the party's right to appeal to seek certiorari to have this Court abrogate and correct its erroneous precedent.

SUMMARY OF ARGUMENT

The Respondents' undisputed conspiracy to fix, at non-competitive, below market levels, the compensation they pay minor league baseball players violates Sections 1 and 2 of the Sherman Act. There is no valid statutory exemption from the antitrust laws for the "business of baseball" applicable to minor league baseball players. There is no longer (if there ever was) any valid basis for any judicially created exemption for the "business of baseball", especially in the area of antitrust jurisprudence. Since circumstances have dramatically changed, there is no *stare decisis* bar to applying the antitrust laws to baseball. *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877, 899-907 (2007).

The Curt Flood Act, 15 U.S.C. § 26b does not preclude minor leaguers from Sherman Act protections. Rather it leaves for this Court to decide that issue. *Miranda v. Selig supra at 1242-1243*. If the Curt Flood Act does preclude minor leaguers from the Sherman Act protection, as the Ninth Circuit held in *Miranda v. Selig supra*, 860 F.3d 1237, 1242 [the Curt Flood Act established that the conduct . . . of persons affecting employment of *Major League* baseball players . . . are subject to the antitrust laws. However, it exclusively maintains the baseball exemption . . . related to . . . the employment of minor league baseball players] then the Curt Flood Act is unconstitutional, in violation of the equal protection clause, to the extent it purports to deny minor leaguers' protections under the Sherman Act while allowing those protections for major league baseball players.

ARGUMENT

I. THERE IS NO "BUSINESS OF BASEBALL EXEMPTION" FROM THE ANTITRUST LAWS THAT ALLOWS RESPONDENTS TO CONSPIRE TO FIX THE SALARIES PAID TO MINOR LEAGUE PLAYERS

A. No Exemption From Antitrust Laws For Horizontal Wage Fixing of Minor League Baseball Players' Salaries

It is undisputed that the Respondents, and all of them, have conspired and continue to conspire to fix the salaries they pay their Minor League players.

Section 1 of the Sherman Act, 15 U.S.C. § 1, provides in pertinent part:

> Every contract, combination . . . or conspiracy, in restraint of trade or commerce . . . is declared to be illegal.

The courts, including this Court, have repeatedly held that it is a violation of section 1 of the Sherman Act, 15 U.S.C. § 1, and section 4 of the Clayton Act, 15 U.S.C. § 15, for competitors to conspire to fix the compensation paid to employees in a sports or entertainment industry. *Radovich v. National Football League*, 352 U.S. 445, 451-452 (1957) [were we considering the question of baseball for the first time upon a clean slate we would have no doubts]; *Mackey v. National Football League*, 543 F.2d 606, 617 (8th Cir. 1976) [citing cases in other professional sports where conspiracies to suppress player compensation held to violate antitrust laws.]

MLB has championed the "business of baseball" exemption to immunize its decision to collectively fix the wages and non-negotiable terms and conditions of employment, including no right to NIL compensation, that all minor league players must endure. If any other professional sport-indeed, any other industry not subject to sectoral regulation-operated this way, its cartel would have been broken up long ago, and its executives could have faced criminal prosecution and prison time. *Cf. Natl Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141, 2169 (2021) (Kavanaugh, J., concurring) ("The NCAA is not above the law."); Hon. Samuel A. Alito, Jr., *The Origin of the Baseball Antitrust Exemption:* Federal Baseball

Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, 34 J. Sup. Ct. Hist. 183, 192 (2009).

There is no statutory exemption in the Sherman Act exempting "business of baseball" (or minor league baseball) from the antitrust laws. Rather, the so-called "business of baseball" exemption was created by this Court in three cases: *Federal Baseball Club of Baltimore v. National League of Professional Base Ball 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). Those decisions have been severely criticized even by Justices of this Court. Those decisions need to be overturned.

In *Federal Baseball*, the issue was whether the business of giving exhibitions of baseball constituted interstate commerce. This Court held that it was not interstate commerce and therefore not subject to the Sherman Act. *Federal Baseball Club of Baltimore*, 259 U.S. at 209.

That decision has been soundly criticized. In fact, the sole underpinning for that decision—that the business of giving exhibitions of baseball is not interstate commerce—has since been rejected by this Court in *Flood v. Kuhn*, 407 U.S. 258, 282 (1972) ["Professional baseball is a business and it is engaged in interstate commerce." (Emphasis added).]. Therefore, *Federal Baseball* should have no precedential value.

In *Toolson*, supra, this Court, in a one paragraph per curiam decision, held "[w]ithout reexamination of the underlying issues" of the underlying cases on review, that

based on the authority of *Federal Baseball*, "Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." *Toolson*, 346 U.S. at 357. There was no analysis and no basis for that holding. As made clear by Justice Burton's dissent in *Toolson*, there was no statutory exemption for baseball in the Sherman Act whereas there were express exemptions from federal antitrust laws created by Congress for other industries such as labor organizations, farm cooperatives, and insurance. ["Congress, however, has enacted no express exemption from that [Sherman] Act of any sport. . . ."], *Toolson*, 346 U.S. at 364 and n.11.

The majority in *Toolson* simply stated that because Congress had allowed the baseball business to develop based on the *Federal Baseball* decision, that the business of baseball was exempt from the federal antitrust laws. Of course, as Justice Burton correctly pointed out in his dissent in *Toolson*, 346 U.S. at 364, Congress had already enacted legislation—the Sherman Act—that brought the "business of baseball" within the ambit of federal antitrust laws, i.e., Congress, by *not* expressly exempting baseball, *had* subjected baseball, including minor league baseball, to the antitrust laws.

In *Flood v. Kuhn*, 407 U.S. 258 (1972), this Court, in a four to three majority decision (in which Chief Justice Burger voted with the majority but agreed with the dissent), reluctantly upheld the reserve clause applicable to *major league* baseball players' contracts as exempt from federal antitrust laws based on *stare decisis*—even though that judicially-created exemption was an "anomaly" and an "aberration"—because Congress had acquiesced in that judicially-created exemption. *Id.* at

282. Justice Douglas (who had voted with the majority in *Toolson* but who later stated he had "lived to regret it") stated in his dissent in *Flood* that upholding the exemption based on the *Federal Baseball* decision "is a derelict in the stream of the law that *we*, its creators, should remove." *Id.* at 286. (emphasis added)

Indeed, *Federal Baseball* had not even considered the reserve clause. *Federal Baseball* was erroneously based solely on professional baseball not being interstate commerce. *Flood* relied on *Federal Baseball* even though the *Flood* court rejected the sole underpinning (that baseball was not interstate commerce) for the *Federal Baseball* decision. *Flood v. Kuhn*, 407 U.S. 258, 282 (1972). Thus, the *Flood* Court based its decision to uphold a judicially-created exemption from the federal antitrust laws for baseball based on a *stare decisis* foundation that it held was unfounded.

B. This Court, Not Congress, Should Correct Its Legal Errors

The majority in *Flood* felt it was for Congress to enact legislation to undo what the Court had, by judicial interpretation, erroneously created out of whole cloth 50 years earlier, because baseball had supposedly relied on this Court's mistaken prior decisions and because Congress had not seen fit to take any action to correct it.

But it is this Court's job to correct its erroneous decisions. *Flood v. Kuhn*, (Douglas dissent) 407 U.S. 258, 286, 292-93 ["We do not lightly overrule our prior constructions of federal statutes, but when our errors deny substantial federal rights, like the right to compete freely

and effectively to the best of one's ability as guaranteed by the antitrust laws, we must admit our error and correct it. We have done so before and we should do so again here. See, e.g., *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971); *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235, 241, 90 S.Ct. 1583, 1587, 26 L.Ed.2d 199 (1970)."].

The duty for this Court to correct its legal errors is especially applicable in the field of antitrust decisions which Congress has left to the courts to correct as a sort of federal common law. *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, supra 551 U.S. at 899 ["[T]he general presumption that legislative changes should be left to Congress has less force with respect to the Sherman Act"]. As Justice Douglas stated in his powerful dissent in *Flood*, supra 407 U.S. at 288:

> The Court's reliance upon congressional inaction disregards the wisdom of *Helvering v. Hallock*, 309 U.S. 106, 119-121 . . . where we said:
>
> 'Nor does want of specific Congressional repudiations . . . serve as an implied instruction by Congress to us not to reconsider, in the light of new experience . . . those decisions . . .

C. Stare Decisis Should Not Apply To This Case

The doctrine of *stare decisis* does not save the purported "business of baseball" antitrust exemption. A core principle underlying *stare decisis* is that courts

do not make the law, but rather declare what the law is. *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 549 (1991); *Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.).

Consequently, "precedents are not sacrosanct." *Patterson v. McClean Credit Union*, 491 U.S. 164, 172 (1989); *Payne v. Tennessee*, 501 U.S. 808 (1991) ("Stare decisis is not an inexorable command; rather, it is a principle of policy and not a mechanical formula of adherence to the latest decision.").

This petition is a primary example of when this Court should not feel compelled to apply *stare decisis* to uphold fundamentally erroneous precedents that, in making new law, departed from the Sherman Act.

In *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007), this Court rejected similar *stare decisis*, Congressional inactions, and reliance arguments that had constrained it in *Flood*. In *Leegin*, this Court overruled its earlier (96-year-old) antitrust decision in *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. 373 (1911) (that vertical resale price maintenance is subject to a per se antitrust analysis) and held that such vertical resale price maintenance is instead subject to "rule of reason" antitrust analysis. In refusing to be bound by *stare decisis* and Congress's 96- year inaction, this Court held at 899-907:

> *Stare decisis* is not as significant in this case, however, because the issue before us is the scope of the Sherman Act. (Citation omitted).

> ("[T]he general presumption that legislative changes should be left to Congress has less force with respect to the Sherman Act"). From the beginning the Court has treated the Sherman Act as a common-law statute. (Citations omitted). ("In antitrust, the federal courts . . . act more as common-law courts than in other areas governed by federal statute"). Just as the common law adapts to modern understanding and greater experience, so too does the Sherman Act's prohibition on "restraint[s] of trade" evolve to meet the dynamics of present economic conditions.

See also State Oil Co. v. Khan, 522 U.S. 3, 19 (1997) and *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235, 240-242 (1970) ["*Stare decisis* is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable. . . . Furthermore, in light of developments subsequent to *Sinclair*, . . . it has become clear that the *Sinclair* decision does not further but rather frustrates realization of an important goal of our national labor policy."]

The same reasoning in not blindly applying outmoded, erroneous reasoning to an antitrust case applies (with even more force) here. As in *Leegin*, the precedent here is over 100 years old. The economic realities have changed greatly and *Federal Baseball* does not further, but rather frustrates, the important goal of enforcing price fixing violations.

There is no valid economic reason to adhere to the old wrong law. Subsequent decisions, *Mackey v. National*

Football League, 543 F.2d 606, 617 (8th Cir. 1976) and this Court's decisions in *Radovich v. National Football League*, supra, *United States v. Shubert*, 348 U.S. 222, 228 (1955), *United States v. Int'l Boxing Club of N.Y.*, 348 U.S. 236, 241-242 (1955), and *Mandeville Island Farms v. Am. Crystal Sugar Co.*, 334 U.S. 219 (1948) and others, like *NCAA v. Alston supra* at 594 U.S. 69, 95 at 110, 141 S. Ct. 2141 *(J. Kavanaugh, concurring)* have proved the earlier baseball decision wrong. Here, as in *Leegin*, the prior baseball trilogy of case(s) conflict with subsequent Supreme Court precedent, i.e., antitrust laws have repeatedly been held to apply to invalidate horizontal conspiracies to restrain athletes' salaries, in football, hockey, basketball, etc. *Mackey*, supra, 543 F.2d at 617 and cases cited therein.

D. Professional Baseball's Judicially Created Antitrust Exemption Usurps Congress's Legislative Authority.

The judicially created antitrust exemption from the Sherman Act applicable only to the "business of baseball" amounts to the usurpation of Congressional authority See Amicus Brief of Senator Lee and [then Senator] Rubio et al. in *Tri-City ValleyCats Inc.*, Supreme Court Case No. 23-283, 2023 WL 7042328 at *13-14. It was created by this Court in *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922) and rests on three wrongly decided cases.

This Court has continued to maintain the antitrust exemption that relied upon that holding, asserting that Congress's lack of legislative response to the 1922 case was evidence that its wrongness had been legislatively

approved. This fundamentally misapplies judicial power and misinterprets the legislative power. Congressional inaction is not a constitutionally cognizable exercise of the legislative power, let alone approval of a facially incorrect judicial decision. These failures have allowed a single sport to evade the antitrust laws and engage in anticompetitive behavior with impunity, weakening the strength of the antitrust laws and contravening the will of the people as expressed by their elected representatives.

Federal Baseball and the cases that followed, in addition to being wrong on the law, represent a usurpation of the legislative \power vested by the Constitution in Congress alone. Although it retains the prerogative to do so, it is not incumbent upon Congress to fix the Court's mistakes. First and foremost, it is the Court's duty to fix its own mistakes. *Amici* ask the Court to avail itself of that opportunity here. Congress alone has the power to create exemptions to the antitrust laws. The Court should grant certiorari in this case to correct its error of judicial overstep based on a misinterpretation, reverse *Federal Baseball* and its progeny, and remove the judicially-created antitrust exemption wrongly granted to professional baseball.

The combined effect of the Court's errors in *Federal Baseball* and its progeny has been the violation of the separation of powers where the court has usurped Congress's legislative authority. Article I of the Constitution vests all legislative power in Congress alone. U.S. Const. art I., § 1 ("All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."). The Court wrongly assumed this power for itself when it exempted the business of professional baseball from the

federal antitrust laws and then, despite acknowledging the error of that decision, inferred Congressional assent to that usurpation from Congressional silence.

Congressional inaction, such as that illustrated in the Curt Flood Act, is at best ambiguous. It often "lacks persuasive significance because it is indeterminate; several equally tenable inferences may be drawn from such inaction." *Halliburton v. Erica P. John Fund, Inc.*, 573 U.S. 258, 300 (2014)

E. No Reasonable Reliance

As for the MLB owners' supposed "reliance" on an antitrust exemption, so they can continue to keep and reap billions in ill-gotten gains, the equities do not justify the MLB owners not returning those ill-gotten gains. Justice Douglas and Justice Marshall got it right:

> Baseball is today big business that is packaged with beer, with broadcasting, and with other industries.
>
> The owners, whose records many say reveal a *proclivity for predatory practices*, do not come to us with equities. The equities are with the victims of the reserve clause. I use the word 'victims' in the Sherman Act sense, since a contract which forbids anyone to practice his calling is commonly called an unreasonable restraint of trade. (Emphasis added).

Flood v. Kuhn, supra 407 U.S. at 287.

Respondents have not seriously relied on the so-called antitrust exemption. Since *Flood*, subsequent collective bargaining agreements, and free agency for major league ballplayers has rendered the so-called antitrust exemption for major leaguers virtually meaningless. ("*The Curt Flood Act of 1998: A Hollow Gesture After All These Years?*", 9 Marquette Sports Law Review 314, 342 (1999)). Certainly, after the Messermith/McNally free agency arbitrations and later having to pay $280 million for colluding to suppress salaries, the MLB owners must have known that it was only a matter of time before minor league players would also eventually assert antitrust claims for the restraints on their salaries.

Like most antitrust violators, the MLB owners have been knowingly violating the antitrust laws regarding minor league salaries, not because they really believe that there is an antitrust exemption for baseball, but because they think they are powerful enough with their lobbying efforts to get away with it and because violating the antitrust laws simply makes business sense even if they eventually get caught. They can suppress minor leaguers' wages for years, the players are poor and have no congressional voice[2] to fight the owners, and if they somehow do, the time and expense of fighting the owners would cause the players to settle for a fraction of their real damages, thereby allowing the owners to keep most of their antitrust gains.

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2. MLB owners are the only sports team owners that have a political action committee to lobby for them, which perhaps explains why Congress has not acted. (https://www.fec.gov/data/committee/C00368142/).

Since *Federal Baseball*, every other professional sports league has been held to be subject to the antitrust laws in order to protect players from the owners' restraints of trade. *See Mackey*, supra, 543 F.2d 606 at 617 and cases cited therein. The MLB owners must have known it was inevitable that this Court would end their gravy train.

The ones being harmed in this case by *Federal Baseball* and its progeny are the minor league players. While their owners get richer and richer and everyone in baseball gets more money (even major leaguers) as a result of the minor leaguers' efforts, the minor leaguers are still forced to work for essentially slave wages with no opportunity to better their compensation, all because of *Federal Baseball* and its progeny. As Justice Thurgood Marshall stated in his dissent in *Flood*, supra, 407 U.S. at 289-292:

> To non-athletes it might appear that petitioner was virtually enslaved by the owners of major league baseball clubs who bartered among themselves for his services. But, athletes know that it was not servitude that bound petitioner to the club owners; it was the reserve system.
>
> . . .
>
> 'Antitrust laws in general, and the Sherman Act in particular, are the Magna Charta of free enterprise. They are as important to the preservation of economic freedom and our free- enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms. . . . Implicit in such freedom is the

> notion that it cannot be foreclosed with respect to one sector of the economy because certain private citizens or groups believe that such foreclosure might promote greater competition in a more important sector of the economy.' *United States v. Topco Associates, Inc.*, 405 U.S. 596, 610, 92 S.Ct. 1126, 1135, 31 L.Ed.2d 515 (1972).

There is no rational basis for exempting the business of baseball from the constraints of the antitrust laws. Minor leaguers should have protection against the owners' antitrust violations. Prior to 2023, minor leaguers had no union or collective bargaining that might obviate or lessen the need for antitrust protection, so the antitrust laws are their only means of obtaining competitive compensation for their work.

One major effect of baseball's carte blanche exemption from the antitrust laws can be seen in the conditions under which minor league baseball players operate as they chase after their dreams of becoming Major League Baseball ("MLB") players. The conspiracy to restrict minor league baseball players from maximizing their earning potential becomes even more apparent when their working conditions are compared to minor league hockey, the NBA Development League ("NBA D-League") and NFL practice squad players, all of whom have protection from antitrust violations because *Federal Baseball* and its progeny do not apply to them.

During the relevant period, most minor league baseball players earned between $3,000 and $7,500 for an entire year. The player cannot negotiate with the team

that drafted him or with other teams for a higher salary, and he is under team control for seven years because the antitrust laws do not protect him.

In stark contrast to the salary of a minor league baseball player, an NFL practice squad player earned a minimum of $6,600 *per week* for the 2015 season. This means that a player on the practice squad for the entire year will earn $105,600 and "any player on [an NFL] practice squad shall be completely free to negotiate and sign a player contract with another club at any time during the league year."

In the NBA D-League, the official minor league of the NBA, there are three different salary categories: a tier A salary is $25,000 per year, a tier B salary is $19,000 per year, and a tier C salary is $13,000 per year. Even the lowest salary designation for a D- League player is double what most minor league baseball players earn and D-League players receive that for far fewer games.

In minor league hockey, the minimum salary for higher level minor league hockey players is $42,375 per year, with the average annual salary being more than $90,000 per year. (www.providencejournal.com/article/20150221/NEWS/150229777).

F. Justice

The baseball exemption should be overturned because there is the simple matter of justice. When a practice or law is not right, it is for the courts to correct it. The courts have been the bastion of last resort for the oppressed and discriminated against. Laws that treat unfavored

persons differently have been corrected (sometimes after long periods) by this Court. *Stare decisis* has not been a barrier to correcting a law or precedent that has been applied incorrectly. Thus, in *Brown v. Board of Ed. of Topeka, Shawnee County, Kan.*, 347 U.S. 483 (1954), this Court erased the discriminatory concept of "separate but equal" enunciated nearly sixty years earlier in *Plessy v. Ferguson*, 163 U.S. 537 (1896).

And again recently, in *Obergefell v. Hodges*, (2015) 135 S. Ct. 2584, it was this Court, not Congress, that finally gave homosexuals equal marriage rights.

In this case, this Court can and should correct one hundred and three years of deprivation and apply the existing antitrust laws to provide equal protection to the minor league players as they are required to be applied to vindicate the victims of antitrust violations.

II. THE CURT FLOOD ACT IS UNCONSTITUTIONAL

This Court should also grant certiorari to determine the unconstitutionality of the Curt Flood Act, 15 U.S.C. § 26b.

The Curt Flood Act does not make the other antitrust laws (Sherman Act and Clayton Act) inapplicable to minor league baseball players. It leaves those antitrust laws intact and applicable to minor leaguers. *See The Curt Flood Act of 1998: The Players' Perspective*, Marianne McGettigan, 9 Marquette Sports Law Review 379 at 379 (1999)). ["Congress was careful to specify that this legislation says nothing about the application of the antitrust laws except with regard to the employment of

Major League Players. Whatever the law was as to other individuals or circumstances on October 28, 1998, it remained unchanged on October 28, 1998 . . . this aspect of the bill reflects a significant disagreement between the parties about the extent to which baseball's so-called antitrust exemption continues to exist".]

Congress chose to take no definitive stance on the issue of a baseball antitrust exemption for minor leaguers and left it to the courts to decide the question of whether the other existing federal antitrust laws (Sherman and Clayton Acts) apply to minor league players. Thus, the Curt Flood Act, 15 U.S.C. § 26b, provides in pertinent part:

> (b) No court shall rely on the enactment of this section [§26b] as a basis for changing the application of the antitrust laws . . . This section does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to, any conduct, acts, practices, or agreements that do not directly relate to or affect employment of major league baseball players to play baseball at the major league level . . .
>
> . . .
>
> (c) Only a *major league baseball player* has standing to sue *under this section [26b].* (Emphasis added).
>
> . . .

Thus, it is clear that the Curt Flood Act does not affect, restrict, limit, or eliminate any rights a minor league player has to pursue antitrust violations under sections 1 and 2 of the Sherman Act, (15 U.S.C. §§ 1, and 2) or under section 4 of the Clayton Act, (15 U.S.C. §§ 15, 26). The Curt Flood Act merely adds another antitrust provision pursuant to which major leaguers can sue to redress antitrust violations; it does not remove any rights minor league players (or major league players) have under the Sherman and Clayton Acts.

Although the Curt Flood Act eliminated the baseball exemption in the market for Major League player services, the baseball exemption will nonetheless continue to have a significant impact on Minor League players in the labor market.

This Court has found in federal labor law a "nonstatutory" antitrust exemption that applies to restraints in the labor market in the presence of a collective bargaining relationship. See generally *Brown v. Pro Football, Inc.*, 518 U.S. 231 at 235-36 (1996). In *Brown*, this Court held that the nonstatutory labor exemption protected a multi-employer bargaining unit's decision to impose a specific salary scale on a group of employees represented by a union, even after the parties' collective bargaining agreement expired and the union and employers had negotiated to impasse.

As a result, if Minor League players were to choose for whatever reason in the future to cease being represented by a union, or if Major League Baseball were to otherwise take action that affected players *outside of the collective bargaining process*, Major League Baseball would lose

its nonstatutory labor exemption. In that situation, if the judicially-created baseball exemption were eliminated, Minor League players would be able to avail themselves of the same antitrust rights as employees in any other industry. (See Amicus Brief of *Major League Baseball Players Assn. in Tri-City ValleyCats Inc. v. Office of Commissioner of Baseball*, Supreme Court Case No. 23-283, 2023 WL 6940226 *14-15).

The Curt Flood Act Is An Unconstitutional Denial of Equal Protection of the antitrust laws to minor league baseball players

If, as MLB owners argue, the Curt Flood Act actually provides antitrust protection for major leaguers but denies it for minor leaguers, then it is an unconstitutional federal statute violative of the due process and equal protection provisions of the Fifth Amendment of the Constitution. *Califano v. Westcott*, 443 U.S. 76, 89 (1979); *Vance v. Bradley*, 440 U.S. 93, 97 (1979); *Hester v. Harris*, 631 F.2d 53, 54-56 (5th Cir. 1980).

The Curt Flood Act is facially and is being applied unequally to persons similarly situated in violation of minor league players' constitutional rights to equal protection of the law. If, as MLB argues, the Curt Flood Act creates antitrust protection for major league players but does not for minor league players, then the Curt Flood Act is unconstitutional on its face and as applied. It violates minor league players' equal protection rights under the Fifth Amendment.

In its decision below, the Ninth Circuit held that the Curt Flood Act provides antitrust remedies to major

league players but not for minor league players for MLB owners' antitrust violations, even though both groups are similarly situated. [The Curt Flood Act established that . . . acts . . . relating to employment of major league baseball players . . . are subject to the antitrust laws. However, it explicitly maintained the baseball exemption for anything related to the employment of minor baseball players. . . ." MLB's farming structure belies the claim that major and minor league baseball are separate and distinct in a meaningful way for the purposes of the Sherman Act."] *Miranda v. Selig*, 860 F.3d 1237, 1242 (9th Cir. 2017).

Thus, the Curt Flood Act purports to discriminate between similarly situated classes by affording antitrust remedies and protections to major league baseball players while denying those same antitrust remedies and protections to minor league players. There is no rational basis for Congress to protect major league baseball players from MLB owners' antitrust violations but not minor league players from those same antitrust violations. To the contrary, it is the minor leaguers, who have no other means to protect themselves, that need the protection. It is totally irrational to strip them of protection yet provide it to major leaguers who don't need it.

The Curt Flood Act is also unconstitutional as applied. The Ninth Circuit has incorrectly held that the Petitioners here and the class of minor league baseball players they represent cannot bring their price fixing antitrust claims against MLB for its antitrust violations, but that major league baseball players can.

Finally, Petitioners' petition for writ of certiorari should be granted because the Curt Flood Act is

unconstitutionally vague. Petitioners contend that 15 U.S.C. § 26b is clear in providing another source of antitrust protection to major leaguers, and does nothing to take away the existing Sherman Act antitrust protections for minor league players (or anyone else) (*See* 9 Marquette Sports Law Review supra at 379; and Senator Hatch, Senate Hearings on Curt Flood Act, 144 Cong. Rec. 18175 (1998) the Act "is absolutely neutral with respect to the state of the antitrust laws between all entities and in all circumstances other than the area of employment as between major league owners and [major league] players"). The Ninth Circuit reads 15 U.S.C. § 26b differently, i.e., as taking away from minor league baseball players the statutory protections of the Sherman Act. *Miranda v. Selig*, supra 860 F.3d at 1242. Thus, at a minimum, the Curt Flood Act is unconstitutionally vague as to whether it leaves in place minor leaguers' rights under the Sherman Act or whether it takes them away.

This is a case of first impression for this Court as to the constitutionality of the Curt Flood Act, 15 U.S.C. § 26b. This Court should grant certiorari so that it can resolve this important constitutional question and interpretation of the Curt Flood Act. *Fed. Trade Comm'n v. Nat'l Cas. Co.*, 357 U.S. 560, 562 (1958).

The "Business of Baseball" Exception Renders the Sherman Act, Section 1 Unconstitutional

If there really is a "business of baseball" exception to § 1 of the Sherman Act, then it is unconstitutional. By exempting Minor League Players from the protections of the antitrust laws and the protections against wage fixing but providing such protection to all other professional

athletes, it unconstitutionally deprives minor league baseball players of equal protection of the antitrust laws for no rational reason.

Therefore, this Court should grant certiorari so that it can correct the very harmful error it made 103 years ago in *Federal Baseball* and its progeny, which have harmed tens of thousands of minor league baseball players and which continues to harm thousands of them today and will continue to harm thousands in the future until that error is corrected.

III. CERTIORARI SHOULD BE GRANTED TO RESOLVE THE CONFLICT BETWEEN THE CIRCUITS REGARDING WAIVER OF REVIEW UNDER 28 U.S.C. § 636

The federal courts of appeal are split on whether failure to object to a magistrate R & R waives the right to appeal the decision, especially where the R & R is based solely on undisputed facts (or no facts) and is based solely on binding Supreme Court precedent so that it would be futile to object to the R & R since the district court and court of appeal cannot abrogate binding Supreme Court precedent. (*Hutto v. Davis*, 454 U.S. 370, 375, 102 S. Ct. 703, 70 L. Ed. 2nd 556 (1982).

Other courts of appeals *have* excused a waiver and decided the appeal on the merits where filing objections would have been a futile rehash of the same legal arguments. *Marin-Torres v. State of Washington*, 194 Fed. Appx. 564, 565 (9th Cir. 2006); *Baraga-Suarez v. United States*, 30 F. Supp.3d 91, 98 (D. P. R. 2014) [where objections are a rehash of arguments made to magistrate, review is for plain error].

Other courts of appeals can, and often do, excuse the waiver, and review the district court decision on the merits in the interests of justice (*Thomas v. Arn* supra 474 U.S. at 155) where only issues of law are involved, the legal issues are reviewed on appeal *de novo* for plain error. *In re National Collegiate Student Loan Trust*, 971 F.3d 433-435 (3rd Cir. 2020)

Other courts of appeal have excused a waiver where, as here, the magistrate's R & R were based on issues of law and the district court reviewed the record, pleadings, and those legal issues despite no filed objections. *DeLeon v. Strack*, 234 F.3d 84, 86 (2nd Cir. 2000) [no fear of sandbagging the district court when the district court has reviewed the record and R & Rs on its own]

In *Thomas v. Arn*, 474 U.S. 140 at 155 (1985), this Court "emphasiz[ed] that, because the rule is a nonjurisdictional waiver provision, the Court of Appeals may excuse the default in the interest of justice". See also Justice Brennan's dissent in *Thomas* 474 U.S. 140 at 156, noting that pursuant to the Magistrate's Act, a party who fails to object to the magistrate's report loses his/her right to *de novo* review by the district court, but does not provide that a party's failure to file objections deprives him of *any* review by the district court or by the court of appeals. In fact, the district court judge "retains the power and indeed the obligation [under 28 U.S.C. § 636(b)(1)(C)] to accept, reject or modify the magistrate's findings and leaves unaffected a party's right to appeal the judgment of the district court to the court of appeals, citing *Lorin Corp. v. Goto & Co.*, 700 F.2d 1202, 1206 (8th Cir. 1983).

This court should grant certiorari to make clear that a party does not waive it's right to Supreme Court review by failing to object to a magistrate's report and recommendation that is based solely on binding Supreme Court precedent which cannot be abrogated by any intermediate court; only by this Court.

CONCLUSION

Major League Baseball recently instituted instant replay so that important umpire calls could be reviewed to ensure that the correct decision was made, and if not, to correct it. This Court should grant certiorari to review its *Federal Baseball* and progeny decisions to ensure that the right decisions were made and to correct them if an error was made.

Therefore, for the reasons set forth above, Petitioners' petition for writ of certiorari should be granted so these important issues can be resolved.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, FILED MAY 19, 2025

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 23-1558

DANIEL CONCEPCION, INDIVIDUALLY AND ON BEHALF OF ALL THOSE SIMILARLY SITUATED; ALDEMAR BURGOS, INDIVIDUALLY AND ON BEHALF OF ALL THOSE SIMILARLY SITUATED; SIDNEY DUPREY CONDE, INDIVIDUALLY AND ON BEHALF OF ALL THOSE SIMILARLY SITUATED,

Plaintiffs-Appellants,

v.

OFFICE OF THE COMMISSIONER OF BASEBALL, D/B/A MLB; ROBERT D. MANFRED, JR.; ALLAN HUBER "BUD" SELIG; KANSAS CITY ROYALS BASEBALL CLUB, LLC, D/B/A KANSAS CITY ROYALS; MARLINS TEAMCO LLC, D/B/A MIAMI MARLINS; SAN FRANCISCO BASEBALL ASSOCIATES LLC, D/B/A SAN FRANCISCO GIANTS; BOSTON RED SOX BASEBALL CLUB LIMITED PARTNERSHIP, D/B/A BOSTON RED SOX; ANGELS BASEBALL LP, D/B/A LOS ANGELES ANGELS OF ANAHEIM; CHICAGO WHITE SOX, LTD., D/B/A CHICAGO WHITE SOX; ST. LOUIS CARDINALS, LLC, D/B/A ST. LOUIS CARDINALS; COLORADO ROCKIES BASEBALL CLUB, LTD., D/B/A COLORADO ROCKIES; THE BASEBALL CLUB OF SEATTLE, LLLP, D/B/A SEATTLE MARINERS; THE CINCINNATI REDS, LLC, D/B/A CINCINNATI REDS; ATHLETICS INVESTMENT GROUP LLC, D/B/A

Appendix A

OAKLAND ATHLETICS BASEBALL COMPANY; ROGERS BLUE JAYS BASEBALL PARTNERSHIP, D/B/A TORONTO BLUE JAYS; PADRES, L.P., D/B/A SAN DIEGO PADRES; MINNESOTA TWINS, LLC, D/B/A MINNESOTA TWINS; WASHINGTON NATIONALS BASEBALL CLUB, LLC, D/B/A WASHINGTON NATIONALS; DETROIT TIGERS, INC, D/B/A DETROIT TIGERS; LOS ANGELES DODGERS LLC, D/B/A LOS ANGELES DODGERS; LOS ANGELES DODGERS HOLDING COMPANY LLC, D/B/A LOS ANGELES DODGERS; STERLING METS, L.P., D/B/A NEW YORK METS; ATLANTA NATIONAL LEAGUE BASEBALL CLUB, LLC, D/B/A ATLANTA BRAVES; AZPB LIMITED PARTNERSHIP, D/B/A ARIZONA DIAMONDBACKS; BALTIMORE ORIOLES, INC., D/B/A BALTIMORE ORIOLES; BALTIMORE ORIOLES LIMITED PARTNERSHIP, D/B/A BALTIMORE ORIOLES; PHILLIES, D/B/A PHILADELPHIA PHILLIES; PITTSBURGH ASSOCIATES, D/B/A PITTSBURGH PIRATES; NEW YORK YANKEES PARTNERSHIP, D/B/A NEW YORK YANKEES; TAMPA BAY RAYS BASEBALL LTD., D/B/A TAMPA BAY RAYS; RANGERS BASEBALL EXPRESS LLC, D/B/A TEXAS RANGERS; RANGERS BASEBALL LLC, D/B/A TEXAS RANGERS; CHICAGO CUBS BASEBALL CLUB, LLC, D/B/A CHICAGO CUBS; MILWAUKEE BREWERS BASEBALL CLUB, INC., D/B/A MILWAUKEE BREWERS; MILWAUKEE BREWERS BASEBALL CLUB, L.P., D/B/A MILWAUKEE BREWERS; CLEVELAND GUARDIANS BASEBALL COMPANY, LLC, D/B/A CLEVELAND GUARDIANS; HOUSTON ASTROS, LLC, D/B/A HOUSTON ASTROS,

Defendants-Appellees.

Appendix A

Before
Montecalvo, Kayatta, and Rikelman,
Circuit Judges.

JUDGMENT

Entered: May 19, 2025

Plaintiffs-appellants are former minor-league baseball players. In the underlying action, they alleged that they had received egregiously low compensation from their teams because of monopolistic practices carried out under the "antitrust exemption" afforded to Major League Baseball. A magistrate judge in the United States District Court for the District of Puerto Rico evaluated their complaint under the provisions of Federal Rule of Civil Procedure 12 and issued a report recommending dismissal of all claims asserted (the "R&R"). Plaintiffs-appellants did not file any written objection to the R&R, 28 U.S.C. § 636(b)(1)(C), despite receiving a clear warning on the necessity of doing so to preserve appellate rights. The district court ultimately adopted the R&R and dismissed the case. This appeal followed. Defendants-appellees have moved for summary disposition under 1st Circuit Local Rule 27.0(c). *See Garayalde-Rijos* v. *Municipality of Carolina*, 747 F.3d 15, 22 (1st Cir. 2014) (discussing the waiver that generally occurs when a properly warned party fails to file objections to an R&R). Plaintiffs-appellants oppose and cross-move for summary disposition in their favor.

Plaintiffs-appellants urge this court to excuse their failure to file objections to the R&R. They argue that the

importance of the questions of law presented warrants a decision on the merits. Assuming, *arguendo*, that a failure to comply with § 636(b)(1)(C) can be excused because of the claimed importance of implicated legal questions, plaintiffs-appellants have failed to demonstrate that such relief is in order under the specific circumstances presented. *See generally Valencia* v. *United States*, 923 F.2d 917, 922 n.5 (1st Cir. 1991) (court may excuse waiver "'in the interests of justice'") (quoting *Thomas* v. *Arn*, 474 U.S. 140, 155 (1985)). We specifically disagree with plaintiffs-appellants' suggestion that presentation of relevant issues to the district court by way of objections to the R&R would have been "futile and a waste of . . . time." Resp. to Mtn. for Summ. Disp. at 11; *see Cortes-Rivera* v. *Dep't of Corr. & Rehab. of Com. of Puerto Rico*, 626 F.3d 21, 27 (1st Cir. 2010) (concluding that waiver should not be excused and stating, "Important issues of statutory interpretation require adequate briefing in all levels of the federal court system . . . .").

Defendants-appellees' motion for summary disposition is **GRANTED**, plaintiffs-appellants' motion for summary disposition is **DENIED**, and the appeal is **DISMISSED** based on the waiver that occurred when plaintiffs-appellants failed to file written objections to the R&R.

By the Court:

/s/_____
Anastasia Dubrovsky, Clerk

APPENDIX B — REPORT AND RECOMMENDATION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO, FILED MAY 31, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 22-1017 (MAJ/BJM)

DANIEL CONCEPCION, *et al.*,

Plaintiffs,

v.

OFFICE OF THE COMMISSIONER OF BASEBALL, *et al.*,

Defendants.

Filed May 31, 2023

REPORT AND RECOMMENDATION

Plaintiffs Daniel Concepcion ("Concepcion"); Aldemar Burgos ("Burgos"); and Sidney Duprey-Conde ("Duprey-Conde") (collectively "the Players") brought a purported class action lawsuit against the Office of the Commissioner of Baseball ("the Commissioner's Office"); Major League Baseball's ("MLB's") current commissioner, Robert D. Manfred, Jr. ("Commissioner Manfred"); MLB's former commissioner, Allan Huber "Bud" Selig ("Former-Commissioner Selig"); and all thirty MLB teams ("the

Teams") (collectively "Defendants"). Docket No. ("Dkt.") 35.

The Players allege MLB and the Teams are a cartel that colluded to depress their wages during their time as minor league baseball players. *Id.* ¶¶ 1-2. This, they contend, violated the Sherman Antitrust Act, the Fair Labor Standards Act ("FLSA"), and Puerto Rico wage and hour laws. *Id.*¶¶ 151-242. This court has federal question jurisdiction. Defendants moved to dismiss on both procedural and substantive grounds, Dkt. 51, and the Players responded. Dkt. 55. The Players then moved to supplement their response and file a memorandum in support. Dkts. 56, 57. Defendants replied to the Players' response, Dkt. 58, and responded to their supplemental motion. Dkt. 61. They then filed a notice of supplemental authority. Dkt. 66. These motions were referred to me for a report and recommendation. Dkt. 80.

For the foregoing reasons, Defendants' motion to dismiss should be **GRANTED.**

BACKGROUND

The following facts are drawn from the amended complaint, Dkt. 35. Where there are legitimate conflicts apparent in the record regarding factual assertions, I have noted these conflicts. Plaintiffs have frequently mixed legal assertions with factual assertions in their filings; I have considered the intermingled factual assertions where possible, but I have excised conclusory legal assertions from this section. *See, e.g.*, *Papasan v. Allain*, 478 U.S.

265, 286 (1986) (when considering a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation").

Concepcion, Burgos, and Duprey-Conde played minor league baseball in the Kansas City Royals, San Diego Padres, and San Francisco Giants organizations respectively. Dkt. 35 at 12-14. Concepcion played from 2010 to 2016, Burgos played from 2015 to 2019, and Duprey-Conde played from 2016 to 2018. *Id.* Under his contract, Concepcion worked and played baseball in Idaho, North Carolina, and Kentucky. *Id.* at 11-12. Burgos played "rookie" and "A ball" for the Padres organization between 2015 and 2019. *Id.* at 12. Defendants assert this means his teams were in Arizona, California, Washington State, and Indiana, Dkt. 51 at 2, and the Players do not offer contrary information. Duprey-Conde played in the Giants organization from 2016 to 2018. Dkt. 35 at 13. The Players were drafted in Puerto Rico, received and signed their contracts in Puerto Rico, were paid in Puerto Rico, and performed training and conditioning in the Commonwealth. *Id.* at 12-15.

MLB is an unincorporated association comprised of the thirty teams and has "unified operation and common control over the [Teams]." *Id.* ¶ 31. However, each of the Teams is an MLB Franchise and the Teams are "separately owned and operated." *Id.* ¶¶ 42-72, 143. Former-Commissioner Selig served as the Commissioner of Baseball from 1998 to August 2014 when Commissioner Manfred succeeded him. *Id.* ¶¶ 33-34. The Commissioner oversees all labor matters and acts as the owners' chief agent in forming minor league labor practices. *Id.* ¶ 37.

Appendix B

To play minor league baseball, players from Puerto Rico must participate in MLB's draft. *Id.* ¶ 109. Once selected by a team, players may not bargain with any other team. *Id.* ¶ 110. Here, the Players were paid less than $15,000 per year during each year they played. *Id.* Though they worked an average of 60 hours per week, they received no overtime pay and the Teams did not keep records of their hours worked. *Id.* at 12-15. And though the Players were required to participate in MLB's Spring Training, they were not compensated for this time. *Id.* ¶ 28. The Players believe these low salaries are imposed uniformly across the minor leagues. *Id.* ¶ 25. The MLB rules, adopted and renewed annually, do not permit the Players to negotiate a higher salary. *Id.* ¶ 26.

Per the MLB rules, all teams use the same uniform player contract when signing minor league players. *Id.* ¶ 15. Players must sign this contract to play in the minor leagues. *Id.* ¶ 16. All contracts must be filed with the Commissioner for approval. *Id.* Each contract contains a reserve clause allowing a player's team to retain the contractual rights to that player and restrict their ability to negotiate with other teams. *Id.* ¶ 4. Pursuant to the reserve clause, a player's uniform contract can be renewed by whichever team he plays for at season's end. *Id.* ¶¶ 4, 79. It can be renewed up to six times before a player becomes a free agent. *Id.*

APPLICABLE LEGAL STANDARDS

Defendants move to dismiss the Players' claims under Federal Rules of Civil Procedure Rules 12(b)(1), 12(b)(2), 12(b)(5), and 12(b)(6).

Appendix B

Under Rule 12(b)(1), which governs motions to dismiss for lack of subject-matter jurisdiction, the "party invoking the jurisdiction of a federal court carries the burden of proving its existence." *P.R. Tel. Co. v. Telecomm's Reg. Bd. of P.R.*, 189 F.3d 1, 7 (1st Cir. 1999). When deciding whether subject-matter jurisdiction exists, the court follows two general rubrics: (1) when a defendant challenges the legal sufficiency of the facts alleged, the court credits plaintiffs' factual allegations and draws reasonable inferences in his or her favor; and (2) when the defendant challenges the truth of facts alleged by the plaintiff and offers contrary evidence, the court weighs the evidence. *Valentín v. Hosp. Bella Vista*, 254 F.3d 358, 363 (1st Cir. 2001). "While the court generally may not consider materials outside the pleadings on a Rule 12(b)(6) motion, it may consider such materials on a Rule 12(b)(1) motion." *Gonzalez v. United States*, 284 F.3d 281, 288 (1st Cir. 2002).

On a Fed. R. Civ. P. Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of proving the court's jurisdiction over the defendant. *See Negrón-Torres v. Verizon Commc'ns, Inc.*, 478 F.3d 19, 23 (1st Cir. 2007). The plaintiff must make a prima facie showing by proffering "evidence that, if credited, is enough to support findings of all facts essential to personal jurisdiction." *Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 290 F.3d 42, 51 (1st Cir. 2002). The defendant may put forward undisputed facts to rebut the plaintiff 's prima facie showing, but any factual disputes are construed in the plaintiff 's favor when deciding the jurisdictional question. *Id.* The court, however, does not "credit conclusory allegations or draw

farfetched inferences." *Ticketmaster-New York v. Alioto*, 26 F.3d 201, 203 (1st Cir. 1994).

Rule 12(b)(5) provides that a defendant may move to dismiss for insufficient service of process. Fed. R. Civ. P. 12(b)(5). A motion under Rule 12(b)(5) is an appropriate mechanism to seek dismissal when a plaintiff fails to comply with Rule 4's procedures for service of process, including a plaintiff 's failure to serve process within the 90-day time limit set forth in Fed. R. Civ. P. 4(m). *Mann v. American Airlines*, 324 F.3d 1088 (9th Cir. 2003); *Fernández-Salicrup v. Figueroa-Sancha*, 2011 WL 13135962, at *1 (D.P.R. May 2, 2011). "A motion under Fed. R. Civ. P. 12(b)(5) . . . differ[s] from other motions permitted by Rule 12(b) in that [it] provide[s] the district court a course of action other than simply dismissing the case. . . . In other words, the court may convert the motion to dismiss under Fed. R. Civ. P. 12(b)(5) into a motion to quash service of process without dismissing the action." *Rivera Otero v. Amgen Mfg. Ltd.*, 317 F.R.D. 326, 328 (D.P.R. 2016) (citations omitted). "A motion to dismiss under Rule 12(b)(5) will only be granted if the defect is prejudicial to the defendant." *Fernández-Salicrup*, 2011 WL 13135962, at *1 (citations omitted). The burden of proof to establish proper service of process rests with the plaintiff. *Saez Rivera v. Nissan Mfg. Co.*, 788 F.2d 819, 821 (1st Cir. 1986); *Diaz-Rivera v. Supermercados Econo Inc.*, 18 F. Supp. 3d 130, 133 (D.P.R. 2014).

When faced with a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6), the court "accept[s] as true all well-pleaded

facts alleged in the complaint and draws all reasonable inferences therefrom in the pleader's favor" to determine if the complaint states a claim for which relief can be granted. *Santiago v. Puerto Rico*, 655 F.3d 61, 72 (1st Cir. 2011). The court "may augment these facts and inferences with data points gleaned from documents incorporated by reference into the countercomplaint, matters of public record, and facts susceptible to judicial notice." *Starr Surplus Lines Ins. Co. v. Mountaire Farms Inc.*, 920 F.3d 111, 114 (1st Cir. 2019) (quoting *Haley v. City of Boston*, 657 F.3d 39, 46 (1st Cir. 2011)) (internal quotations omitted). In undertaking this review, the court must first "'isolate and ignore statements in the complaint that simply offer legal labels and conclusions or merely rehash cause-of-action elements[,]' then 'take the complaint's well-pled (i.e., non-conclusory, non-speculative) facts as true, drawing all reasonable inferences in the pleader's favor, and see if they plausibly narrate a claim for relief.'" *Zell v. Ricci*, 957 F.3d 1, 7 (1st Cir. 2020) (alteration in original) (quoting *Zenón v. Guzmán*, 924 F.3d 611, 615-16 (1st Cir. 2019)). "Plausible . . . means something more than merely possible," and gauging the plausibility of a claim for relief is "a 'context-specific' job" that requires drawing on "'judicial experience and common sense.'" *Schatz v. Republican State Leadership Comm.*, 669 F.3d 50, 55 (1st Cir. 2012) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)).

DISCUSSION

Defendants move to dismiss all claims for lack of personal jurisdiction. Dkt. 51 at 11. Additionally, they

argue the claims against Former-Commissioner Selig must be dismissed because he was not served with a summons. *Id.* Further, they contend this district is an improper venue. *Id.* If this court asserts jurisdiction and finds it is a proper venue, Defendants argue the Players' antitrust claims are barred by the statute of limitations and, even if not, the business of baseball is exempt from such claims. *Id.* Further, they contend the Players' federal and Puerto Rico wage and hour claims must be dismissed because the Players only alleged to have worked for three of the Teams (the Kansas City Royals, San Diego Padres, and San Francisco Giants), the claims are barred by the statute of limitations, and the Players did not work in Puerto Rico. I address each claim in turn.

I. Personal Jurisdiction and Venue

Defendants argue this court lacks personal jurisdiction over all of them. Dkt. 51 at 15-23. The Players disagree. Dkt. 55 at 2-4. I recommend finding this court has jurisdiction over the three teams that hired the Players: the Kansas City Royals, San Francisco Giants, and San Diego Padres.

A. General Jurisdiction

The Players argue Defendants purposely target and recruit Puerto Rican residents in Puerto Rico to work in the continental United States which subjects Defendants to general jurisdiction in this forum. Dkt. 57 at 13 (citing *F. Fin. Grp. Liab. Co. v. President, Fellows of Harvard Coll.*, 173 F. Supp. 2d 72, 87 (D. Me. 2001)). Specifically,

they allege Defendants either employ scouts in, or send them to, Puerto Rico to evaluate and solicit Puerto Rican baseball players. *Id.* They allege Defendants then recruit and sign these players in Puerto Rico. *Id.* Accepting these allegations as true, the Players fail to establish general jurisdiction.

"In a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is proper." *F. Fin. Grp. Liab. Co.*, 173 F. Supp. 2d at 87 (citing *Rodriguez v. Fullerton Tires Corp.*, 115 F.3d 81, 83 (1st Cir. 1998) (further citations omitted). The plaintiff must make a prima facie showing of personal jurisdiction by citing to specific evidence in the record. *Id.* (citing *Boit v. Gar-Tec Products*, 967 F.2d 671, 675 (1st Cir. 1992)).

"A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)). In "an exceptional case . . . a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State." *Daimler AG v. Bauman*, 571 U.S. 117, 139 n.19 (2014) (citing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952)). In *Perkins*, a mining company based in the Philippines

ceased its operations there after Japan invaded during World War II and its president moved to Ohio, "where he kept an office, maintained the company's files, and oversaw the company's activities." 342 U.S. at 448.

Here, the Players cite no evidence that any Defendant is headquartered in Puerto Rico. Instead, they argue the Defendants either employ or send scouts to recruit players who sign contracts in Puerto Rico. Dkt. 57 at 13. Though they cited *F. Fin. Grp. Liab. Co.* for the proposition that these activities suffice to assert general jurisdiction, the court there asserted jurisdiction after the defendant waived their argument contesting it. 173 F. Supp. 2d at 87. Defendants point to a Minnesota case in which the court found scouting and occasional games in that state did not suffice to assert general jurisdiction over the National Hockey League ("NHL") and an NHL franchise. Dkt. 51 at 7 (citing *Collyard v. Washington Capitals*, 477 F. Supp. 1247, 1250 n.3 (D. Minn. 1979)). Further, they note a Maine court found a college's recruitment, acceptance of, and subsequent communications with prospective students in a forum state failed to establish general jurisdiction in that state. *Id.* at 8 (citing *Densmore v. Colby-Sawyer Coll.*, 2016 WL 9405316, at *4 (D. Me. Mar. 1, 2016), *report and recommendation adopted*, 2016 WL 1261050 (D. Me. Mar. 29, 2016). The Players argue both cases are irrelevant because the defendants there did not recruit people in the forum state to be employees. Dkt. 57 at 13. However, *Collyard* addressed scouting for a professional sports team, precisely the employee-recruitment behavior that the Players rely on here. Accordingly, both cases support declining to assert general jurisdiction.

Moreover, the First Circuit held a hospital was not subject to general jurisdiction in a forum state where it was registered to do business, employed one person, participated in regional patient transfer program, contracted with another hospital, and treated a "substantial number" of residents. *Cossaboon v. Maine Med. Ctr.*, 600 F.3d 25, 33, 39 (1st Cir. 2010). The *Cossaboon* court noted the plaintiff there did not allege the hospital employed healthcare professionals who provided services in the forum state. *Id.* at 33. Because the Puerto Rican baseball players here did not play baseball in Puerto Rico, that reasoning applies here. Accordingly, scouting, recruiting, and signing ballplayers in Puerto Rico does not suffice to subject MLB and the Teams to general jurisdiction in this forum.

I note the Players contend Defendants are estopped from arguing there is no personal jurisdiction because they have refused to provide any discovery regarding their business or contacts with Puerto Rico. Dkt. 57 at 34. However, "[a] plaintiff who seeks jurisdictional discovery must make 'a colorable claim of jurisdiction.'" *Motus, LLC v. CarData Consultants, Inc.*, 23 F.4th 115, 128 (1st Cir. 2022) (citing *United States v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 625-27 (1st Cir. 2001)). To do so, it "must identify a non-frivolous dispute about facts that may yield a sufficient predicate for in personam jurisdiction." *Id.* (citing *Blair v. City of Worcester*, 522 F.3d 105, 111 (1st Cir. 2008)). No such dispute exists here because, even crediting the Players' allegations, I recommend finding this court cannot assert general jurisdiction over Defendants.

B. Specific Jurisdiction

To establish specific jurisdiction, the Players must demonstrate:

> (1) [their] claim directly arises out of or relates to the defendant's forum activities; (2) the defendant's forum contacts represent a purposeful availment of the privilege of conducting activities in that forum, thus invoking the benefits and protections of the forum's laws and rendering the defendant's involuntary presence in the forum's courts foreseeable; and (3) the exercise of jurisdiction is reasonable.

LP Sols. LLC v. Duchossois, 907 F.3d 95, 102 (1st Cir. 2018). I examine each element of this inquiry and recommend this court assert jurisdiction over the Kansas City Royals, San Francisco Giants, and San Diego Padres.

i. Relatedness

"To show relatedness, [the Players] must produce evidence that shows [their] 'cause of action either arises directly out of, or is related to, the defendant's forum-based contacts.'" *Id.* (citing *Harlow*, 432 F.3d at 61) (further citations omitted). Though the inquiry is guided by causation principles, it is a "flexible, relaxed standard." *Sawtelle v. Farrell*, 70 F.3d 1381, 1389 (1st Cir. 1995) (quoting *Pritzker v. Yari*, 42 F.3d 53, 61 (1st Cir. 1994)). First Circuit courts do not use proximate cause per se

when the parties' relationship results from a contractual agreement or business relationship. *Doyle v. Merz N.A., Inc.*, 405 F. Supp. 3d 186, 192 (D. Mass. 2019) (citing *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 715 (1st Cir. 1996)). "In employment disputes, an employment's predominant location is critical in deciding issues of personal jurisdiction." *Id.* (citing *Cossart v. United Excel Corp.*, 804 F.3d 13, 20-21 (1st Cir. 2015)).

Here, the Players all admit they were hired to play for minor league teams located in the continental United States. Dkt. 35 at 11-14. However, they argue Defendants targeted, recruited, solicited, and coerced them into signing their contracts in Puerto Rico. Dkt. 57 at 15. They argue these activities were sufficiently related to their claims. *Id.* The Players cite *Villalobos v. N. Carolina Growers Ass'n, Inc.*, 42 F. Supp. 2d 131 (D.P.R. 1999), a case in which this court found agricultural growers' recruitment of Puerto Rico workers sufficiently related to those workers' subsequent claims for lying about the terms of employment and violating the agreements. *Id.* at 134, 140. Here, similarly, the Players allege the Royals, Giants, and Padres recruited them in Puerto Rico and the terms of their employment agreements constitute the basis of their claims. Accordingly, the activities of those three defendants are sufficiently related to the Players' claims.

ii. Purposeful Availment

Next, the Players must also show that Defendants' contact with Puerto Rico constitutes purposeful availment of the benefits and protections afforded by this forum's

laws. *See Phillips Exeter Academy v. Howard Phillips Fund*, 196 F.3d 284, 288 (1st Cir. 1999). This inquiry considers both voluntariness and foreseeability. *Adelson v. Hananel*, 510 F.3d 43, 50 (1st Cir. 2007). To find a defendant purposely availed itself of a forum, its contacts must not be "random, fortuitous, or attenuated." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (citations and internal quotations omitted).

A party's contacts are voluntary when they are deliberate and "not based on the unilateral actions of another party or a third person." *Nowak*, 94 F.3d at 716. A single contact can suffice, so long as it is substantial. *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957) ("It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State."). "Accordingly, *McGee* stands for the proposition that 'minimum contacts' is not necessarily a numbers game; a single contract can fill the bill." *Pritzker*, 42 F.3d at 61. The *Villalobos* court found purposeful availment by growers who submitted orders to an interstate clearance system aware that those orders would be forwarded to surplus labor areas such as Puerto Rico. 42 F. Supp. 2d at 140. Here, the case for purposeful availment is even stronger because the Royals, Giants, and Padres allegedly knew these Players were in Puerto Rico. By scouting and hiring these workers here, those organizations purposefully availed themselves of this forum. *See id.* at 140-41.

iii. Reasonableness

Even if a plaintiff can establish minimum contacts between a defendant and the forum state, "the court's exercise of jurisdiction 'must comport with fair play and substantial justice.'" *Phillips v. Prairie Eye Ctr.*, 530 F.3d 22, 29 (1st Cir. 2008) (further citations omitted). To determine whether the exercise of jurisdiction meets this standard, this court must consider the so-called "gestalt" factors:

> (1) the defendant[s'] burden of appearing [in the forum state], (2) the forum state's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the judicial system's interest in obtaining the most effective resolution of the controversy, and (5) the common interests of all sovereigns in promoting substantive social policies.

Cossart, 804 F.3d at 22 (citation omitted). Defendants argue it would be burdensome to defend themselves in a jurisdiction where none of them are located. Dkt. 51 at 23. However, because an out-of-state trial nearly always involves additional cost and difficulty, the first factor is only relevant where the defendant demonstrates a "special or unusual burden." *Bluetarp Fin. v. Matrix Constr. Co.*, 709 F.3d 72, 83 (1st Cir. 2013) (quoting *Hannon v. Beard*, 524 F.3d 275 (1st Cir. 2008)). Travel to Puerto Rico is not considered an unusual burden for a defendant. *Pritzker*, 42 F.3d 53 at 64.

Next, Defendants argue Puerto Rico has no interest in this dispute because none of Plaintiffs' claims arise out of activities that occurred in Puerto Rico. Dkt. 51 at 23. However, the *Villalobos* court found Puerto Rico had an interest in adjudicating disputes between Puerto Rican workers who, based on recruitment activities in Puerto Rico, travelled to the United States mainland for work. *See also Burger King*, 471 U.S. at 473 (citing *McGee*, 355 U.S. at 223) (noting that a state has a "manifest interest" in adjudicating disputes of residents for harms inflicted by out-of-state actors).

The remaining factors all favor exercising jurisdiction in Puerto Rico. The Players, the majority of whom live in Puerto Rico, have a strong interest in obtaining convenient and effective relief for their alleged wrongs. *See Villalobos*, 42 F. Supp. 2d at 141. Because the recruiting allegedly occurred in Puerto Rico, and most of the Players remain Puerto Rico residents, the judicial system's interest in obtaining the most effective resolution of the controversy weighs in favor of exercising personal jurisdiction. *Id.* Lastly, "it is in the common interests of all sovereigns for Defendants to be subject to personal jurisdiction in Puerto Rico, because such a practice promotes the substantive social policies of holding employers engaged in interstate commerce accountable in all jurisdictions in which they solicit employees." *Id.* Accordingly, I recommend finding this court has jurisdiction over the Kansas City Royals, San Francisco Giants, and San Diego Padres.

C. Conspiracy

The Players argue the remaining defendants are subject to this court's jurisdiction because all defendants are part of a conspiracy and the acts of one or more conspirators in furtherance of the violative conspiracy directed at the forum, and perpetuating the conspiracy in the forum, are binding on all conspirators. Dkt. 57 at 23. Essentially, the Players argue all defendants are each other's agents and actions by one subject all of them to the specific personal jurisdiction of this court. *Id.* (citing *Greater Newburyport Clamshell All. v. Pub. Serv. Co. of New Hampshire*, 1983 WL 489274, at *2 (D. Mass. May 25, 1983)). They argue the First Circuit endorsed the logic of this theory by applying agency principles to assert jurisdiction in *Daynard*, 290 F.3d at 53. Dkt. 57 at 24.

Defendants respond that *Greater Newburyport* is an aberration and has been disregarded by other courts in this circuit. Dkt. 58-1 at 9. This court has noted that "conspiracy jurisdiction has not been clearly recognized in this circuit." *Goya Foods Inc. v. Oy*, 959 F. Supp. 2d 206, 211 (D.P.R. 2013) (citing *Glaros v. Perse*, 628 F.2d 679, 682 n.4 (1st Cir. 1980); *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 307 F. Supp. 2d 145, 158 (D. Me. 2004)). Another court stated "[o]ther than the *Greater Newburyport* case, no District of Massachusetts or First Circuit case has ever relied on, or explicitly adopted, the conspiracy theory of personal jurisdiction." *In re Lernout & Hauspie Sec. Litig.*, 2004 WL 1490435, at *8 (D. Mass. June 28, 2004). And a New Hampshire court more recently expressed skepticism writing "the

Supreme Court has labeled the conspiracy doctrine in the venue context as having 'all the earmarks of a frivolous albeit ingenious attempt to expand the [venue] statute.'" *Ayasli v. Korkmaz*, 2020 WL 4287923, at *13 (D.N.H. July 27, 2020) (citing *New England Coll. v. Drew Univ.*, 2009 WL 395753, at *3 (D.N.H. Feb. 17, 2009) (quoting *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 384 (1953)). Accordingly, I recommend declining to apply it here. Further, as discussed below, even if this court has jurisdiction over the remaining defendants, I recommend dismissing the Players claims for other reasons.

For the reasons discussed, I recommend the Players' claims against all Defendants, except the Kansas City Royals, San Francisco Giants, and San Diego Padres be **DISMISSED without prejudice** for lack of personal jurisdiction.

D. Service of Process on Former-Commissioner Selig

Though I recommend dismissing the Players' claims against Former-Commissioner Selig for lack of personal jurisdiction, I also note that Defendants argue Former-Commissioner Selig was improperly served. Dkt. 51 at 24. "If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). The Players admit Former-Commissioner Selig was not served within 90 days and no waiver of service

was executed on his behalf. Dkt. 57 at 25. The Players' attorney says he mistakenly forgot to send a waiver of service for Former-Commissioner Selig when he sent waivers for the other defendants to their attorney. *Id.* The Players further argue Former-Commissioner Selig has suffered no prejudice because he is represented by the same attorney who executed waivers on behalf of the other defendants. *Id.*

This is not the first time service of process has been an issue in this case. After the Players' attorney requested a 30-day extension to serve another defendant, this court granted that request "in the interest of justice and to promote judicial economy." Dkt. 5 at 2. I note that "an overwhelming majority of federal courts have issued a discretionary extension of time to serve the summons and complaint under Rule 4(m), without showing 'good cause.'" *Id.* At 2-3 n.1 (citing *Carmona Delgado v. Administración de Servicios Médicos de Puerto Rico*, 2020 WL 11627597, at *2 (D.P.R. Aug. 5, 2020) (further citation omitted)). However, because I already recommended dismissing the Players' claims against Former-Commissioner Selig for lack of personal jurisdiction, I see no reason to recommend granting such an extension here. Thus, the failure to properly serve Former-Commissioner Selig further supports my recommendation that the Players' claims against him should be dismissed without prejudice.

E. Venue

I further note that Defendants assert this district is an improper venue. Dkt. 51 at 29-30. The analysis applied

in determining a challenge to venue under Rule 12(b)(3) follows the personal jurisdiction analysis employed in a motion under Rule 12(b)(2). *See Equipo de Baloncesto Capitanes de Arecibo, Inc. v. Premier Basketball League, Inc.*, 706 F. Supp. 2d 195, 197 (D.P.R. 2010) (citing *Steen Seijo v. Miller*, 425 F. Supp. 2d 194, 198 (D.P.R. 2006)). In that analysis, above, I recommended finding this court could assert personal jurisdiction over the Kansas City Royals, San Diego Padres, and San Francisco Giants. Accordingly, I recommend finding this court is a proper venue for the Players' claims against those three defendants.

II. The Antitrust Claims

Defendants and the Players dispute whether the statute of limitations for these claims has run. *See* Dkt. 51 at 24-28; Dkt. 57 at 26-28. They also debate whether baseball's antitrust exemption applies to this case. Dkt. 51 at 30-33; Dkt. 57 at 29-33. I recommend dismissing Concepcion's claims as untimely. And I recommend dismissing Burgos and Duprey-Conde's claims due to baseball's antitrust exemption.

A. Statute of Limitations

"The basic rule is that damages are recoverable under the federal antitrust acts only if suit therefor is 'commenced within four years after the cause of action accrued,' . . . plus any additional number of years during which the statute of limitations was tolled." *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 401 U.S. 321, 338 (1971)

(citing 15 U.S.C. § 15b). Though they signed contracts in 2010, 2015, and 2016, the Players argue they may still bring their claims because they were paid pursuant to those contracts within the statute of limitations and because the statute of limitations was tolled while another suit was pending. I address each claim below.

i. Continuing Violation

The Players argue that, when an antitrust wage fixing violation results in periodic violative payments, the four-year statute of limitations starts anew with each payment. Dkt. 57 at 26 (citing *Xechem v. Bristol-Meyers Squibb Co.*, 372 F.3d 899, 902 (7th Cir. 2004); *In re Relafen Antitrust Litigation* 286 F. Supp. 2d 56, 62 (D. Mass. 2003)). The *Xechem* court observed, "[t]he period of limitations for antitrust litigation runs from the most recent injury caused by the defendants' activities rather than from the violation's inception." 372 F.3d at 902 (citing *Zenith*, 401 U.S. 321). The plaintiffs in *Xechem* alleged a pharmaceutical company improperly prolonged its monopoly by filing multiple new patent applications just as its exclusive right to sell a drug was set to expire. *Id.* at 900. The court held "these new acts extended the period during which [the defendant] held a monopoly, causing additional antitrust injury." *Id.* at 902. Accordingly, it held the plaintiffs could proceed with claims challenging those additional patent applications because "each discrete act with fresh adverse consequences starts its own period of limitations." *Id. In re Relafen* acknowledged that, in price-fixing conspiracies, "a monopolist that 'continues to use the power it has gained illicitly [through predatory

pricing] to overcharge its customers . . . has no claim on the repose that a statute of limitations is intended to provide.'" 286 F. Supp. 2d at 62 (citing *Berkey Photo Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 295 (2d Cir. 1979)). However, the *In re Relafen* court found the activity at issue there, litigating a sham lawsuit, did not constitute a continuing violation. *Id.*

Defendants argue the Players failed to set forth specific facts to show their claim is not time-barred. This, they contend, required the players to cite an "overt act" within the limitations period that was "part of the violation and that injures the plaintiff." Dkt. 58-1 at 12 (citing *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 189 (1997)). Additionally, they contend the Players were required to show more than damages from the ongoing effects of some past act. *Id.* (citing *Goldman v. Sears, Roebuck & Co.*, 607 F.2d 1014, 1018 (1st Cir. 1979)). Defendants argue the allegedly violative payments that occurred in December 2018 and August 2019 appear nowhere in the complaint. *Id.* at 12-13. Accordingly, they argue the Players failed to plead a timely antitrust claim.

Though the complaint does not state the exact dates and amounts the Players were paid, it outlines the years they played minor league ball and states they were paid less than $15,000 during each year. Dkt. 35 at 12-15. It subsequently alleges these payments were the product of an illegal conspiracy. Dkt. 35 at 51-54. "The general rules of pleading require a short and plain statement of the claim showing that the pleader is entitled to relief. . . . This short and plain statement need only give the defendant

fair notice of what the . . . claim is and the grounds upon which it rests." *Gargano v. Liberty Intern. Underwriters, Inc.*, 572 F.3d 45, 48 (1st Cir. 2009) (internal citations and quotation marks omitted). Though the complaint may have benefited from additional specificity, Defendants did not need to know the exact months when the Players were paid to determine that the Players may raise a continuing violation issue. Further, because the remaining defendants were the entities that paid the Players, this information was presumably already known to them.

Thus, I turn to Defendants' argument that the allegedly violative payments were merely the ongoing effects of some past act barred by the statute of limitations. Dkt. 58-1 at 12 (citing *Klehr*, 521 U.S. at 189). *Klehr* held that when a price-fixing conspiracy lasts for several years, "'each overt act that is part of the violation and that injures the plaintiff,' e.g., each sale to the plaintiff, 'starts the statutory period running again, regardless of the plaintiff 's knowledge of the alleged illegality at much earlier times.'" 521 U.S. at 189 (citations omitted). The First Circuit has not addressed what constitutes an overt act in the wage fixing context. A Maryland court found this test met when meatpackers alleged that their employers continuously refreshed the statute of limitations by repeatedly sharing compensation information amongst each other. *Jien v. Perdue Farms, Inc.*, 2020 WL 5544183, at *14 (D. Md. Sept. 16, 2020). And a California court found allegations that the defendants there adhered to anticompetitive wage agreements were insufficient to state a continuing violation without allegations of wrongful communications between the employers or other new or

independent actions. *In re Animation Workers Antitrust Litig.*, 87 F. Supp. 3d 1195, 1212 (N.D. Cal. 2015).

Taking the Players allegations as true, as is required at this stage, they plausibly alleged Defendants shared compensation data amongst each other. They stated MLB rules required Defendants to file the Players' contracts with MLB's commissioner for approval. Dkt. 35 ¶ 16. Further, Defendants allegedly renewed these contracts annually. *Id.* ¶ 15. Like the meatpackers in *Jien*, this repeated communication amongst the defendants refreshed the statute of limitations because it facilitated the sharing of compensation information amongst them. Accordingly, I recommend finding the Players adequately alleged a continuing violation.

Concepcion, Duprey-Conde, and Burgos stopped playing minor league baseball in 2016, 2018, and 2019 respectively. Dkt. 35 at 12-13. Though the Players allege Defendants annually renewed and filed their contracts with MLB's Commissioner, thus sharing their compensation information amongst each other, it is unclear from their complaint when this act occurred each year. The Players filed their amended complaint on June 5, 2022. They do not address whether this complaint relates back to their original complaint, filed January 11, 2022. Dkt. 1. Assuming Concepcion's last contract was filed in 2016, his claims are still barred by the four-year statute of limitations. Because it is unclear when in 2018 Dupre-Conde's contract was filed, his claim may or may not barred by the statute of limitations. Taking the facts in the light most favorable to him, it is at least plausible his

claim is not time-barred. Under no circumstances would Burgos's claim for a contract filed in 2019 be barred by the statute of limitations.

ii. Tolling

Concepcion argues his claims are nevertheless not time-barred because they were tolled by a 2016 lawsuit. Dkt. 57 at 27-28 (citing *Miranda v. Selig*, 2015 WL 5357854 (N.D. Cal. 2017)). In *Miranda*, the same lawyers bringing this action sued MLB and the Teams in the Northern District of California on behalf of a purported class of minor leaguers. *See* 2015 WL 5357854. That court dismissed their claims, the Ninth Circuit affirmed, and the Supreme Court denied certiorari. *See id.*; *Miranda v. Selig*, 860 F.3d 1237 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 507 (2017). Concepcion argues his claims were tolled from the time the lawsuit was filed until the Supreme Court denied certiorari. Dkt. 57 at 27.

> *American Pipe* [*& Constr. Co. v. Utah,* 414 U.S. 538 (1974)] tolls the statute of limitations during the pendency of a putative class action, allowing unnamed class members to join the action individually or file individual claims if the class fails. But *American Pipe* does not permit the maintenance of a follow-on class action past expiration of the statute of limitations.

China Agritech, Inc. v. Resh, 138 S. Ct. 1800, 1804 (2018). Concepcion did not join the *Miranda* class action and did not file an individual claim after the class action

was dismissed. *China Agritech* explicitly differentiates between individual claims, which are tolled while a class action is pending, and subsequent class actions, which are not. *Id.* at 1806-07 (explaining that economy of litigation favors delaying individual claims until after a class certification denial, but efficiency favors early assertion of competing class representative claims). Accordingly, *Miranda* did not toll the statute of limitations for this purported class action suit. Though Concepcion argues the *Miranda* court never reached class certification because it dismissed the case on other grounds, "the tolling effect of a motion to certify a class applies only to individual claims, no matter how the motion is ultimately resolved." *In re Celexa & Lexapro Mktg. & Sales Pracs. Litig.*, 915 F.3d 1, 17 (1st Cir. 2019). Because *Miranda* did not toll Concepcion's antitrust claims, his claims are barred by the statute of limitations.

Accordingly, I recommend Defendants' motion to dismiss Concepcion's antitrust claims for damages and injunctive relief against the Kansas City Royals be **GRANTED**. Those claims should be **DISMISSED with prejudice**.

B. Baseball's Antitrust Exemption

That leaves Duprey-Conde, and possibly Burgos, with viable Sherman Act claims. Nevertheless, the Supreme Court held just over a century ago that the Clayton and Sherman Acts do not apply to the business of baseball. *Fed. Baseball Club of Baltimore, Inc. v. Nat'l League of Pro. Baseball Clubs*, 259 U.S. 200 (1922). It has upheld

that decision twice, citing professional baseball's reliance on it. *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953); *Flood v. Kuhn*, 407 U.S. 258 (1972). Also in *Flood*, "the Court stressed that Congress had acquiesced in the baseball exemption and thus 'by its positive inaction . . . clearly evinced a desire not to disapprove [it] legislatively.'" *City of San Jose v. Off. of the Com'r of Baseball*, 776 F.3d 686, 689 (9th Cir. 2015) (citing *Flood*, 407 U.S. at 283-84). In 1998, Congress enacted the Curt Flood Act, which repealed baseball's antitrust exemption only for disputes relating to the employment of Major League players. 15 U.S.C. § 26b(a). However, it explicitly affirmed that the exemption covered the rest of the business of baseball, including employment of minor league players, the amateur draft, or "any reserve clause as applied to minor league players." 15 U.S.C. § 26b(b)(1).

As discussed, the same lawyers who brought this case previously filed a strikingly similar claim in the Northern District of California. *See* Complaint, *Miranda v. Selig*, 2015 WL 5357854 (N.D. Cal. 2017) (No. 14-5349), 2014 WL 6865661. After it was dismissed, they appealed to the Ninth Circuit, which held "that minor league baseball—particularly the employment of minor league baseball players and the requirement that they sign a uniform contract containing a reserve clause—falls squarely within baseball's exemption from federal antitrust laws." *Miranda*, 860 F.3d at 1242, *cert. denied*, 138 S. Ct. 507.

Undeterred, the Players argue here the business-of-baseball exemption lacks merit given the Court's decisions in *Nat'l Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141 (2021) and *Dobbs v. Jackson Women's Health Org.*,

142 S. Ct. 2228 (2022). Dkt. 57 at 29-32. Further, they point to proposed Congressional legislation to end the exemption and the Department of Justice's statement of interest in another case arguing the baseball exemption is aberrational and rests on a repudiated rationale. *Id.* at 33, 36-54. I address each argument in turn and recommend finding that none allows this court to overturn 100 years of Supreme Court precedent.

Alston examined claims by current and former college athletes that the National Collegiate Athletics Association ("NCAA") violated federal antitrust law. 141 S. Ct. 2141. Writing for a unanimous majority, Justice Gorsuch noted the Court "once dallied with something that looks a bit like an antitrust exemption for professional baseball." *Id.* at 2159. However, he found it has refused to extend that decision to other sports leagues and has acknowledged criticisms calling the decision "unrealistic," "inconsistent," and "aberration[al]." *Id.* (citing *Flood*, 407 U.S. at 282). He concluded that the Court "has already recognized that the NCAA itself is subject to the Sherman Act." *Id.* The Players argue this language signals the Supreme Court is ready to eliminate baseball's antitrust exemption. Dkt. 57 at 30. Maybe so, but that is not a decision this court can make. *See Hohn v. United States*, 524 U.S. 236, 252-53 (1998) ("Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality.").

The Players also argue the Court's recent decision in *Dobbs*, overruling *Roe v. Wade*, 410 U.S. 113 (1973) and

Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833 (1992), supports their argument that stare decisis does not warrant upholding "egregiously wrong" cases. *Id.* at 30 (citing *Dobbs*, 142 S. Ct. at 2242). However, even accepting that argument, nothing in *Dobbs* authorizes lower courts, such as this one, to overrule Supreme Court precedent.

Next, though the Players note a pair of senators are proposing legislation to end the business-of-baseball exception, this court may not treat that proposed legislation as the law itself. Current law exempts minor league players from antitrust protections. *See* 15 U.S.C. § 26b(b)(1). Lastly, the Players argue the Department of Justice filed a statement of interest in a recent case urging a district court to narrowly interpret baseball's antitrust exemption. Dkt. 57 at 33 (citing Dkt. 57 at 36-54). In that case, four minor league teams sued the 30 major league teams on behalf of themselves and 36 other minor league teams who lost their affiliations with major league teams when MLB restructured its minor league system. *Nostalgic Partners, LLC v. Off. of Comm'r of Baseball*, 2022 WL 14963876 (S.D.N.Y. Oct. 26, 2022). After noting the Department of Justice's statement, the court found the claims there fell within even a narrow interpretation of the exemption, because "minor league affiliations are central to the business of baseball." *Nostalgic Partners*, 2022 WL 14963876, at *7. Similarly, the requirement that minor leaguers sign a uniform contract containing a reserve clause "falls squarely within baseball's exemption from federal antitrust laws." *Miranda*, 860 F.3d at 1242.

Accordingly, I recommend Defendants' motion to dismiss Duprey-Conde and Burgos's antitrust claims for damages and injunctive relief (Counts One through Three) against the San Francisco Giants and San Diego Padres be **GRANTED**. Those claims should be **DISMISSED with prejudice**.[1]

III. Declaratory Relief

I note the Players seek declarations from this court that the Curt Flood Act and business-of-baseball exemption are unconstitutional. Dkt. 35 ¶¶ 179-85. As discussed above, the Supreme Court has repeatedly upheld the business-of-baseball exemption and this court lacks any authority to question that precedent.

The Curt Flood Act states the exemption does not apply to the employment of major leaguers, but does apply to minor leaguers. *See* 15 U.S.C. § 26b(a)-(b)(1). The Players argue this violates the Equal Protection Clause of the Fourteenth Amendment. Dkt. 35 ¶ 180. In *Miranda*, the Ninth Circuit cited the Curt Flood Act when dismissing minor league players' antitrust claims without undertaking an equal protection analysis. 860 F.3d at 1241-42. In their petition for certiorari arguing in part that the Curt Flood Act was unconstitutional, those players acknowledged they did not raise the act's constitutionality with the Ninth Circuit. Dkt. 57 at 97 n.4. As discussed, their petition was denied. *Miranda v.*

1. The same rationale provides an additional ground to dismiss Concepcion's antitrust claims for damages and injunctive relief with prejudice.

Selig, 138 S. Ct. 507 (2017). No other court has determined whether the Curt Flood Act's differential treatment of major league and minor league players passes equal protection scrutiny.

As an initial matter, the Equal Protection Clause of the Fourteenth Amendment only applies to the states. *See* U.S. Const. amend. XIV, § 1. ("[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws."). However, the Court has interpreted the Due Process Clause of the Fifth Amendment to test federal classifications under the same standard of review. *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954), *supplemented sub nom. Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955). Further, it has expressly stated that "[e]qual protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment." *Buckley v. Valeo*, 424 U.S. 1, 93 (1976). Thus, I will assume the Players' citation to the Fourteenth Amendment suffices to bring their equal protection claim under the Fifth Amendment.

"Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage," courts assume such classifications are constitutional "and require only that the classification challenged be rationally related to a legitimate state interest." *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) "[T]hose attacking the rationality of the legislative classification have the burden 'to negative every conceivable basis which might support it.'" *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993)

(quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973)). Equal protection does not "require a legislature to articulate its reasons for enacting a statute," and the "conceived reason[s]" put forth in support of the statute in litigation do not need to be the same as those that "actually motivated the legislature." *Id.*

Congress passed the Curt Flood Act "to state that major league baseball players are covered under the antitrust laws" that protect other professional athletes. Curt Flood Act of 1998, Pub. L. No. 105-297, § 2, 112 Stat 2824 (1998). Further, it sought to clarify the act "does not change the application of the antitrust laws in any other context or with respect to any other person or entity." *Id.* In its statement of purpose, Congress did not explain why it sought to exclude minor leaguers from those protections. However, the legislative history shows Congress reiterated the Curt Flood Act exempted minor league players before passing it to ensure the "continued economic success of minor league baseball." 105 Cong. Rec. H9946 (daily ed. Oct. 7, 1998) (Chabot, Steve). In doing so, Congress noted that minor league baseball was played in over 150 towns across the country. 105 Cong. Rec. H9943 (daily ed. Oct. 7, 1998) (Hyde, Henry J.).

In *Dukes*, the Supreme Court upheld a New Orleans ordinance banning all pushcart food vendors in the French Quarter who had not continuously operated there for eight or more years. 427 U.S. at 299. The Court accepted the city's claim that vendors detracted from the charm and beauty of the historic area, disturbed tourists, and "might thus have a deleterious effect on the economy of the city."

Id. at 304-305. It found the distinction between new and old vendors legitimate because newer vendors were less likely to have "built up substantial reliance interests in continued operation." *Id.* at 305.

Here, Congress could rationally have determined that extending antitrust protection to minor league players would undermine the financial viability of minor league baseball teams and thus damage the economies of the numerous towns where they play. The Players argue it was irrational of Congress to provide antitrust protection to major league baseball players who don't need it, while excluding minor league players who lack other means to protect themselves. Dkt. 57 at 99. However, rational-basis review "is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *Heller v. Doe by Doe*, 509 U.S. 312, 319 (1993). The Players did not address Congress's reasoning that minor league teams could not afford to operate if their players benefitted from antitrust protections and that communities where those teams play would suffer as a result. Thus, they failed to meet their burden to "negative every conceivable basis" that could support Congress's classification. *See id.* at 320 (citing *Lehnhausen*, 410 U.S. at 364).

Accordingly, I recommend the Defendants motion to dismiss the Players' requests for declaratory relief from the Curt Flood Act and business-of-baseball exemption be **GRANTED**. Those claims should be **DISMISSED with prejudice**.

IV. FLSA Claims

The Players allege their wages violated the FLSA. Dkt. 35 ¶¶ 186-217. Defendants argue the Players' FLSA claims are barred by the statute of limitations and the Save America's Pastime Act ("SAPA"). Dkt. 51 at 28-29. Alternatively, they contend the Players lack standing to bring those claims against any defendant besides the Kansas City Royals, San Francisco Giants, and San Diego Padres. *Id.* at 35-37. I agree with Defendants' first argument. Further, I already recommended dismissing claims against all Defendants except the Kansas City Royals, San Francisco Giants, and San Diego Padres. Accordingly, I do not reach Defendants' argument regarding standing.

A. Timing

Under the FLSA, an action "may be commenced within two years after the cause of action accrued . . . except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued." 29 U.S.C. § 255(a). Concepcion, Duprey-Conde, and Burgos stopped playing minor league baseball in 2016, 2018, and 2019 respectively. Dkt. 35 at 12-13. Though the Players make no argument that Concepcion and Duprey-Conde may somehow bring their claims, they contend that Defendants conceded Burgos's claims are not barred by the statute of limitations. Dkt. 57 at 28. While true, Burgos cannot bring claims for wage and hour violations that occurred after March 23, 2018, when Congress passed the SAPA exempting baseball players from the FLSA.

See Senne v. Kansas City Royals Baseball Corp., 591 F. Supp. 3d 453, 489 (N.D. Cal. 2022)); *see also* 29 U.S.C. § 213(a)(19). Further, the statute of limitations is, at most, three years and Burgos's claims were filed in 2022. Thus, any claims he had prior to March 23, 2018 are barred by the three-year statute of limitations. Accordingly, I recommend Defendants' motion to dismiss the Players' FLSA claims be **GRANTED**. Those claims should be **DISMISSED with prejudice**.

V. Puerto Rico Wage and Hour Claims

Defendants argue the Players may not assert their Puerto Rico wage and hour claims because those claims are barred by the Commonwealth's statute of limitations and because they did not perform work in Puerto Rico. Dkt. 51 at 38-39; Dkt. 58-1 at 13. Because I agree with their first argument, I do not reach the second.

Plaintiffs allege this court has federal question jurisdiction. Dkt. 35 ¶ 96. Because this is not a diversity case, the power of the federal court to hear and to determine state law claims depends on the presence of at least one "substantial" federal claim in the lawsuit. *Newman v. Burgin*, 930 F.2d 955, 963 (1st Cir. 1991) (citing *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966)). Federal jurisdiction thus hinges on the Players' Sherman Act and FLSA claims. "As a general principle, the unfavorable disposition of a plaintiff 's federal claims at the early stages of a suit, well before the commencement of trial, will trigger the dismissal without prejudice of any supplemental state-law claims." *Rodriguez v. Doral*

Mortg. Corp., 57 F.3d 1168, 1177 (1st Cir. 1995); *see also Martinez v. Colon*, 54 F.3d 980, 990 (1st Cir. 1995) (finding "jurisdictional basis for plaintiff 's pendent claims under Puerto Rico law evaporated" after summary judgment granted for federal claims). The proceedings here are at the motion to dismiss stage. As such, dismissal of the Players' federal claims favors dismissal of their Puerto Rico claims without prejudice.

However, "[i]n an appropriate situation, a federal court may retain jurisdiction over state-law claims notwithstanding the early demise of all foundational federal claims." *Rodriguez*, 57 F.3d at 1177. "[T]he exercise of supplemental jurisdiction in such circumstances is wholly discretionary." *Id.* When deciding whether to exercise supplemental jurisdiction, courts consider a balance of factors, including, "judicial economy, convenience, fairness and comity." *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 350 n.7 (1988) (citing *Gibbs*, 383 U.S. at 726-27); *see also Mercado-Garcia v. Ponce Federal Bank*, 979 F.2d 890, 896 (1st Cir. 1992). These factors generally favor "relinquish[ing] jurisdiction when state issues predominate, whether in terms of proof, of the scope of the issues raised, or the comprehensiveness of the remedy sought." *Carnegie-Mellon*, 484 U.S. at 350 n.7 (citing *Gibbs*, 383 U.S. at 726). *See also Fabregas v. ITT Intermedia, Inc.*, 13 F. Supp. 2d 225, 229 (D.P.R.1998). However, as discussed below, the Players' supplemental claims are time-barred. Accordingly, these factors support exercising supplemental jurisdiction and dismissing these claims with prejudice.

"The running of the statute of limitations on a pendent claim, precluding the filing of a separate suit in state court, is a salient factor to be evaluated when deciding whether to retain supplemental jurisdiction." *Rodriguez*, 57 F.3d at 1177. Defendants state Puerto Rico workers must bring claims within one year. Dkt. 51 at 28-29 (citing 29 L.P.R.A. § 250j) ("An employee's suit to claim wages against his employer under this chapter, . . . or under any contract or law, shall prescribe within a term of one (1) year."). However, prior to a 2017 amendment, the statute of limitations was three years. *See* 29 L.P.R.A. § 250j, Amendments. Further, in 2022, the Puerto Rico legislature reinstated the three-year statute of limitations. *See* 2022 P.R. Laws Act 41 (H.B. 1244) ("The statute of limitations for an employee to file a wage claim against his employer under this Act or a mandatory decree whether approved now or in the future, in accordance with this Act or any contract or law shall be three (3) years."). This law took effect on July 20, 2022. *Id.* The statute of limitations for these laws begins running from the time the employee ceased working for the employer. *See id.*; 29 L.P.R.A. § 250j.

As discussed, Concepcion, Duprey-Conde, and Burgos stopped playing minor league baseball in 2016, 2018, and 2019 respectively. Dkt. 35 at 12-13. Concepcion's three-year statute of limitations thus expired in 2019. Duprey-Conde and Burgos's time to file under the then-relevant one-year statute of limitations expired in 2019 and 2020 respectively. The Players filed this action in 2022. Thus, all their claims are barred by the statute of limitations. Accordingly, I recommend Defendants' motion to dismiss the Players' minimum wage and unpaid overtime claims

be **GRANTED** and those claims should be **DISMISSED with prejudice**.

CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss the complaint should be **GRANTED**.

The Players' Sherman Act, FLSA, and Puerto Rico wage and hour claims against all Defendants, except the Kansas City Royals, San Francisco Giants, and San Diego Padres, should be **DISMISSED without prejudice.** Their Sherman Act, FLSA, and Puerto Rico wage and hour claims against the Kansas City Royals, San Francisco Giants, and San Diego Padres should be **DISMISSED with prejudice**.

The Players' claims for declaratory relief from the Curt Flood Act and baseball's antitrust exemption should be **DISMISSED with prejudice**.

This report and recommendation is filed pursuant to 28 U.S.C. 636(b)(1)(B) and Rule 72(d) of the Local Rules of this Court. Any objections to the same must be specific and must be filed with the Clerk of Court **within fourteen days** of its receipt. Failure to file timely and specific objections to the report and recommendation is a waiver of the right to appellate review. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Davet v. Maccorone*, 973 F.2d 22, 30-31 (1st Cir. 1992); *Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985 (1st Cir. 1988); *Borden v. Sec'y of Health & Human Servs.*, 836 F.2d 4, 6 (1st Cir. 1987).

IT IS SO RECOMMENDED.

In San Juan, Puerto Rico, this 31st day of May, 2023.

s/ Bruce J. McGiverin
Bruce J. McGiverin
United States Magistrate Judge

APPENDIX C — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO, FILED JUNE 21, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 22-1017 (MAJ/BJM)

DANIEL CONCEPCION, *et al.*,

Plaintiffs,

v.

OFFICE OF THE COMMISSIONER OF BASEBALL, *et al.*,

Defendants.

Filed June 21, 2023

OPINION AND ORDER

Before the Court is a Report and Recommendation ("R & R") issued by Magistrate Judge Bruce J. McGiverin, (**ECF No. 83**) recommending the Court grant Defendants' Motion to Dismiss. (**ECF No. 51**).

The R & R was issued on May 31, 2023, and objections were due by June 14, 2023. No objections have been filed. After reviewing the R & R, and all the pleadings

on the record, the Court finds the R & R well-reasoned, grounded in fact and law, and free of "plain error." *See M. v. Falmouth School Department*, 847 F.3d 19, 25 (1st Cir. 2017) ("Absent objection ... a district court has a right to assume that the affected party agrees to the magistrate's recommendation.") (cleaned up); *Nogueras-Cartagena v. United States*, 172 F.Supp.2d 296, 305 (D.P.R. 2001) ("Court reviews [unopposed] Magistrate's Report and Recommendation to ascertain whether or not the Magistrate's recommendation was clearly erroneous."). The Court, therefore, ACCEPTS and ADOPTS the R & R in full.

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (**ECF No. 51**) is **GRANTED**. Plaintiffs' Sherman Act, Fair Labor Standards Act, and Puerto Rico wage and hour claims against all Defendants, except the Kansas City Royals, San Francisco Giants, and San Diego Padres, are **DISMISSED without prejudice**. The claims against the Kansas City Royals, San Francisco Giants, and San Diego Padres are **DISMISSED with prejudice**. Plaintiffs' claims for declaratory relief from the Curt Flood Act and baseball's antitrust exemption are also **DISMISSED with prejudice**.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 21st day of June, 2023.

/s/_____
María Antongiorgi-Jordán
United States District Judge

APPENDIX D — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO, FILED JUNE 22, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 22-01017 (MAJ/BJM)

DANIEL CONCEPCION, *et al.*,

Plaintiffs,

v.

OFFICE OF THE COMMISSIONER OF BASEBALL, *et al.*,

Defendants.

Filed June 22, 2023

JUDGMENT

In accordance with the Opinion and Order entered on June 21, 2023 (**ECF No.** 84), judgment is entered **DISMISSING without prejudice** Plaintiffs' Sherman Act, Fair Labor Standards Act, and Puerto Rico wage and hour claims against all Defendants, except the Kansas City Royals, San Francisco Giants, and San Diego Padres. The claims against the Kansas City Royals, San Francisco Giants, and San Diego Padres are **DISMISSED with prejudice**. Plaintiffs' claims for declaratory relief from the Curt Flood Act and baseball's antitrust exemption are also **DISMISSED with prejudice**.

This case is now closed for statistical purposes.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 22nd day of June 2023.

/s/_____
María Antongiorgi-Jordán
United States District Judge

APPENDIX E — RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

15 U.S.C. §1

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal . . .

Appendix E

15 U.S.C. §2

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony . . .

Appendix E

15 U.S.C. §26b

(a) Major league baseball subject to antitrust laws

Subject to subsections (b) through (d), the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce.

(b) Limitation of section

No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices, or agreements other than those set forth in subsection (a). This section does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to, any conduct, acts, practices, or agreements that do not directly relate to or affect employment of major league baseball players to play baseball at the major league level, including but not limited to –

(1) any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players;

(2) the agreement between organized professional major league baseball teams and the teams of the National Association of Professional Baseball Leagues, commonly known as the "Professional Baseball Agreement", the relationship between organized professional major league baseball and organized professional minor league baseball, or any other matter relating to organized professional baseball's minor leagues;

* * *

(6) any conduct, acts, practices, or agreements of persons not in the business of organized professional major league baseball.

(c) Standing to sue

Only a major league baseball player has standing to sue under this section. For the purposes of this section, a major league baseball player is . . .

(3) a person who has been a party to a major league player's contract or who has played baseball at the major league level, and who claims he has been injured in his efforts to secure a subsequent major league player's contract by an alleged violation of the antitrust laws: *Provided however,* That for the purposes of this paragraph, the alleged antitrust violation shall not include any conduct, acts, practices, or agreements of persons in the business of organized professional baseball relating to or affecting employment to

play baseball at the minor league level, including any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players . . .

Appendix E

28 U.S.C. §636

(B) a judge may also designate a magistrate judge to conduct hearings . . . and to submit to a judge . . . proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A) . . .

(C) the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) . . .

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge . . . may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

Appendix E

U.S.C. Const., amend V

No person shall . . . be deprived of life, liberty, or property, without due process of law . . .