

## **APPENDICES**

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**APPENDIX A**

**United States Court of Appeals  
For the First Circuit**

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No. 23-1589

CANGREJEROS DE SANTURCE BASEBALL CLUB,  
LLC; SANTURCE MERCHANDISING LLC; THOMAS  
J. AXON,

Plaintiffs, Appellants,

v.

LIGA DE BÉISBOL PROFESIONAL DE PUERTO  
RICO, INC.; CRIOLLOS MANAGEMENT, INC.; RA12,  
INC.; INDIOS DE MAYAGÜEZ BASEBALL CLUB  
INC.; GIGANTES DE CAROLINA BASEBALL CLUB  
INC.; LEONES DE PONCE CF INC.; JUAN A. FLORES  
GALARZA, in his official and personal capacity; IM-  
PULSE SPORTS ENTERTAINMENT CORPORATION,

Defendants, Appellees,

CONJUGAL PARTNERSHIP FLORES-DOE; JANE  
DOE,

Defendants.

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APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF PUERTO RICO

[Hon. William J. Young,\* U.S. District Judge]

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Before

Barron, Chief Judge,  
Thompson and Gelpí, Circuit Judges.

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Jeffrey K. Kessler, with whom Jeffrey J. Amato, Lauren E. Duxstad, Robert S. Pannullo, Lauren Gailey, Carlos A. Rodriguez-Vidal, Winston & Strawn LLP, and Goldman Antonetti & Cordova, LLC were on brief, for appellants.

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Francisco E. Colón-Ramírez, with whom José F. Cáceres Cardona, José M. Marxuach, Colón Ramírez LLC, Cáceres Law Offices, LLC, and Marxuach LLC were on brief, for appellees.

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July 21, 2025

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**BARRON, Chief Judge.** More than a century ago, the Supreme Court of the United States held that the Sherman Act does not apply to “[t]he business [of] giving exhibitions of base ball [sic].” Fed. Baseball Club of Balt. v. Nat’l League of Pro. Base Ball Clubs, 259 U.S. 200, 208 (1922). Since then, the Court has acknowledged the “aberration[al]” and “anomal[ous]” nature of the so-called “business of baseball” exemption from this federal

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\* Of the District of Massachusetts, sitting by designation.

antitrust statute. Flood v. Kuhn, 407 U.S. 258, 282, 285 (1972). The Court also has acknowledged the persistent criticism that shielding this “business” from that statute’s reach is “unrealistic, inconsistent, or illogical.” Id. at 282 (quoting Radovich v. Nat’l Football League, 352 U.S. 445, 452 (1957)). Nonetheless, the Court has “voiced a preference that if any change is to be made, it come by legislative action.” Id. at 283. The exemption thus remains in place.

There are questions, however, about the exemption’s scope -- questions that are at the heart of this appeal. It arises from a suit by the former owner-operator of a franchise in a professional baseball league in the Commonwealth of Puerto Rico and two limited liability corporations of which he is the sole member. The plaintiffs named as the defendants, among others, the league’s president, the league itself, and the owners of the league’s other franchises. The plaintiffs allege that, in forcing the former owner of the franchise to relinquish his control over and interest in that franchise, the defendants violated the Sherman Act, a federal civil rights statute, Puerto Rico antitrust law, Puerto Rico fair competition law, and a Puerto Rico tort statute.

The United States District Court for the District of Puerto Rico dismissed the plaintiffs’ Sherman Act claims based on the “business of baseball” exemption. It further ruled that the plaintiffs’ claims under Puerto Rico’s antitrust and fair competition laws were preempted precisely because those claims alleged conduct that constituted the “business of baseball.” The District Court also dismissed on *res judicata* grounds the plaintiffs’ remaining federal claim, which was brought pursuant to a federal civil rights law. The District Court then exercised its discretion to dismiss the plaintiffs’ other Puerto Rico law claim, which

was before it based on supplemental jurisdiction under 18 U.S.C. § 1367.

We agree with the District Court that the “business of baseball” exemption applies to the Puerto Rico professional baseball league involved in this suit. We also agree that the exemption applies to the conduct that the plaintiffs allege violated the Sherman Act. We thus affirm the dismissal of the Sherman Act claims.

We do not agree, however, with the reason that the District Court gave for dismissing the Puerto Rico anti-trust or fair competition claims, which was that they must be dismissed as preempted under the Supremacy Clause of the United States Constitution. Nor do we agree with the District Court that *res judicata* precludes the plaintiffs’ federal civil rights claim. We therefore vacate the District Court’s ruling dismissing the Puerto Rico anti-trust and fair competition claims and reverse its ruling dismissing the federal civil rights claim. Moreover, because we reverse the District Court’s ruling dismissing the plaintiffs’ federal civil rights claim, we also must reverse its ruling dismissing the remaining Puerto Rico law claim.

## I.

### A.

On July 18, 2022, the plaintiffs, Thomas J. Axon (“Axon”), Cangrejeros de Santurce Baseball Club, LLC (“Cangrejeros LLC”), and Santurce Merchandising LLC filed a complaint (the “Complaint”) in the U.S. District Court for the District of Puerto Rico. The suit named as defendants Liga de Béisbol Profesional de Puerto Rico, Inc. (the “League”); Criollos Management, Inc. (the “Criollos”); RA12, Inc. (“RA12”); Indios de Mayagüez Baseball Club, Inc. (the “Indios”); Gigantes de Carolina Baseball Club, Inc. (the “Gigantes”); Leones de Ponce CF, Inc. (the “Leones”); Impulse Sports Entertainment Corpor-

ation (“Impulse Sports”); Juan A. Flores-Galarza, in his capacity as president of the League and his personal capacity (“Flores”); Jane Doe; and the conjugal partnership existing between Flores and Jane Doe.

The Complaint included seven counts. It alleged: (1) unreasonable restraint of competition in violation of section 1 of the Sherman Act, 15 U.S.C. § 1 (Count One); (2) conspiracy to monopolize in violation of section 2 of the Sherman Act, 15 U.S.C. § 2 (Count Two); (3) unreasonable restraint of competition in violation of Puerto Rico antitrust law, P.R. Laws Ann. tit. 10, § 258 (Count Three); (4) conspiracy to monopolize in violation of Puerto Rico antitrust law, P.R. Laws Ann. tit. 10, § 260 (Count Four); (5) unfair methods of competition and deceptive acts and practices in trade and commerce in violation of Puerto Rico law, P.R. Laws Ann. tit. 10, § 259; P.R. Laws Ann. tit. 31, §§ 10801, 10803 (Count Five); (6) the tort of contracts in prejudice of a third person in violation of Puerto Rico’s General Tort Statute, P.R. Laws Ann. tit. 31, §§ 10801, 10803 (Count Six); and (7) a violation of 42 U.S.C. § 1983 based on the defendants acting with the Mayor of San Juan to deprive the plaintiffs of their property without due process (Count Seven).

## **B.**

The Complaint alleged the following facts in support of these claims.

### **1.**

The League is the “only top-tier professional baseball league in Puerto Rico.”<sup>2</sup> In October 2019, Axon, through

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<sup>2</sup> As alleged in the complaint, two other professional leagues -- the Puerto Rico Independent Baseball League and the Liga de Béisbol Superior Doble A de Puerto Rico -- operate within Puerto Rico. They “adhere to a semi-professional model,” do not attract the same “level

Cangrejeros LLC,<sup>3</sup> purchased operating control of one of the League's franchises, the Cangrejeros de Santurce (the "Cangrejeros Franchise").

On February 4, 2022, Axon became the sole member and chairman of Cangrejeros LLC. That company continued to operate the Cangrejeros Franchise. The franchise is one of the League's six, all of which are located within Puerto Rico and each of which is owned and operated separately.

The League's teams play against one another in Puerto Rico. The League's champion plays in the Caribbean Series against teams from the Dominican Republic, Mexico, and Venezuela.

Flores was at all relevant times the president of the League. In that capacity, he oversaw all the League's operations.

The Constitution of the Liga de Béisbol Profesional de Puerto Rico, Inc. (the "League Constitution") governs the League's operations. Through Section 2.01(A) of the League Constitution, the League contractually confers the rights to operate its franchises to private investor-operators.

The League's teams compete against one another on the field, and the franchises themselves compete "for fans, in-person attendance, player talent, sponsorships,

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of player talent" as the League, and "do not compete in the same relevant markets as the League."

<sup>3</sup> The complaint alleged that Cangrejeros LLC was formed on September 16, 2019. "Cangrejeros LLC was established for the purposes of (a) owning and operating the Cangrejeros de Santurce Baseball Team; and (b) transacting any and all lawful business for which a limited liability company may be organized under the Corporations Law that is incident, necessary or appropriate to accomplish the foregoing, including, without limitation, contracting for necessary or desirable services of professionals and others."



merchandise sales, radio, and streaming broadcast rights agreements.” The investor-operators do not share franchise profits with one another.

As the sole member of Cangrejeros LLC, Axon invested in the Cangrejeros Franchise. He “measurably increased player quality, improved fan experience, broadened the fan base, promoted and established new broadcasts, enhanced sponsorships, and expanded merchandising opportunities.” He also expanded broadcasting reach in the continental United States, commissioned a documentary film about his team, offered higher salaries to players, and proposed a preseason exhibition tournament.

## 2.

The Cangrejeros Franchise plays its home games at the Hiram Bithorn Stadium (the “Bithorn”) in San Juan, Puerto Rico, by virtue of an Agreement for the Administration and Operation of the Franchise, dated August 10, 2017. The Bithorn is owned and administered by the Municipality of San Juan. Miguel Romero Lugo (“Romero”) was the Mayor of San Juan at the time that the Complaint was filed. During the relevant period, the stadium suffered from, among other things, a broken scoreboard, inadequate running water, broken toilets, and a failing roof.

On February 18, 2022, Axon’s counsel sent a letter to Mayor Romero on behalf of Cangrejeros LLC. The letter addressed a leaked communication about the state of the Bithorn. It explained that Axon’s proposals to upgrade the stadium stemmed from a desire to “make the Bithorn a living and visible monument to a cornerstone of Puerto Rico’s proud history and sports culture.” (Citation modified).

Axon’s letter proposed that Cangrejeros LLC make repairs to the stadium through an estimated \$2 million investment in exchange for an exclusive fifteen-year lease

of the venue to the Cangrejeros Franchise. Mayor Romero, on behalf of San Juan, rejected this proposal in a press release.

On March 8, 2022, following Romero's press release, Cangrejeros LLC informed Flores that the conditions at the Bithorn necessitated considering relocating the franchise to another stadium in Puerto Rico. Cangrejeros LLC indicated that an option had arisen for the Cangrejeros Franchise to play its games at a stadium in better shape in the Municipality of Humacao.

At a League Board meeting on February 22, 2022, Axon advised the teams and the League that he would no longer accept a municipal sponsorship from San Juan for the Bithorn. He believed that such a sponsorship would not be adequate to ensure that necessary improvements to the stadium would be made.

In a press conference held on March 10, 2022, Axon announced this same message publicly. In this public statement, he referenced the Bithorn's defects, the negative impact of these defects on player performance and fan engagement, and San Juan's failure to correct these defects or provide adequate funds to do so. He further stated that San Juan's repeated failure to invest in the Bithorn and San Juan's unwillingness to collaborate with the Cangrejeros Franchise on proposed solutions had necessitated the contemplated movement of the team to a different stadium in another municipality.

Axon hoped the press conference would encourage the League to work with him to have San Juan fulfill its obligations to improve the stadium or, if San Juan continued to resist, to move the team to another municipality. Acting in concert with Mayor Romero and with the agreement of the other investor-operators, Flores soon thereafter took steps to force Axon to relinquish his control over the Cangrejeros Franchise.

Flores sent Axon a letter dated March 14, 2022. It indicated that Axon had engaged in conduct “detrimental to baseball” and to the League in violation of § 8.02 of the League Constitution. Flores then ordered the Cangrejeros Franchise to remove Axon both from the League Board and as a shareholder of the Cangrejeros Franchise and threatened to terminate the investor-operator agreement between Cangrejeros LLC and the League.

Flores also wrote to the Municipality of Humacao. His letter stated that the League did not endorse relocating the Cangrejeros Franchise to Humacao.

Cangrejeros LLC responded to Flores through a letter, dated March 17, 2022. In that letter, Cangrejeros LLC challenged the assertion that Axon had engaged in any acts detrimental to baseball or the League.

On March 18, 2022, Flores called a special meeting of the League Board to discuss the Cangrejeros Franchise and sanctions against Axon. Axon requested to attend, but the League Board met without him.

On March 29, 2022, Flores informed Axon that by agreement of the League Board, made up primarily of the competing investor-operators who controlled the other franchises, Axon had been suspended from all functions and participation in the Cangrejeros Franchise and the League for two years. He further informed Axon that he was fined \$5,000 and placed on probation for one year after expiration of the suspension.

### 3.

After learning of these actions, Axon sought a preliminary injunction and declaratory judgment in the Superior Court of San Juan against the League and Flores to prevent his suspension from taking effect. Axon v. Liga De Beisbol Pro. de Puerto Rico, Inc., No. SJ-2022-CV-02802 (Super. Ct. P.R. May 5, 2022). Axon alleged that permitting his suspension to take effect would freeze the

Cangrejeros Franchise’s access to capital and result in the cessation of club operations.

The Superior Court held a hearing on Axon’s motion for a preliminary injunction on April 22, 2022. Section 3.01 of the League Constitution states that “shareholders and official representatives must be accepted by the Board” to be “members” of the League. The Superior Court interpreted this provision to mean that Axon was not a “member” of the League at the time of his suspension.<sup>4</sup> The Superior Court then concluded that because Axon was not a member of the League, he was not entitled to the protections and procedures of § 3.05 and § 3.06 of the League Constitution. Those provisions specify the grounds for termination of membership and procedures for member separation. The Superior Court thus ruled that the League Board had the power to suspend Axon, as a nonmember of the League, and that Axon was not entitled to protections under the League’s constitution. Accordingly, the Superior Court denied Axon’s motion for a preliminary injunction.

#### 4.

Following the Superior Court’s ruling, Flores informed the plaintiffs on May 17, 2022, that the League was seizing the interests of Cangrejeros LLC in the

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<sup>4</sup> This outcome, according to the pleadings, resulted from Axon inadvertently removing himself from the League Board. On February 14, 2022, Axon’s personal counsel informed Flores that Lino Rivera, the Chief Operating Officer of the Cangrejeros Franchise, and Saúl Suárez, who the Complaint describes as a “Cangrejeros employee,” would be the franchise’s representatives to the League Board. On February 22, 2022, the League Board confirmed Rivera and Suárez as members representing the Cangrejeros Franchise on the League Board. Axon’s counsel believed that Axon held permanent Board membership in his role as sole member of Cangrejeros LLC; however, the League Board’s confirmation of Rivera and Suárez as representative members in fact revoked Axon’s position on the League Board.

Cangrejeros Franchise pursuant to § 3.06 of the League Constitution. Flores indicated to them that Axon's filing of a legal action -- in which Axon allegedly made false representations regarding his membership in the League -- violated the investor-operating agreement and permitted the League Board to permanently terminate the interests of Cangrejeros LLC in the Cangrejeros Franchise.

The League Board met virtually on May 31, 2022. The attendees included many of the defendants: Raul Rodríguez of the Criollos; José Feliciano and Juan Carlos Ramírez of the Indios; Javier Hernández of the Gigantes; Roberto Alomar and Marisol Irizarry of RA12; and Oscar Mislá of the Leones.

The meeting also included Rivera and Suárez as representatives of the Cangrejeros Franchise. The League Board denied Axon's request to testify at the meeting.

Rivera argued at the meeting on behalf of Cangrejeros LLC. He indicated that Axon would accept a two-year suspension in exchange for the League not terminating the investor-operator rights of Cangrejeros LLC. The League Board, however, voted to terminate the investor-operator agreement of Cangrejeros LLC and to seize all of the plaintiffs' economic and operation rights in the franchise without any compensation.

On June 5, 2022, Flores reported that the League was seeking a new investor-operator for the Cangrejeros Franchise. Flores acknowledged that two entities had expressed interest in becoming the investor-operator for the franchise in February 2022, several months before Axon had been suspended.

On or about June 13, 2022, the League announced that Impulse Sports had been selected as the new investor-operator of the Cangrejeros Franchise. Impulse Sports had filed for incorporation in Puerto Rico on May 20, 2022, eleven days before the League Board terminated

Cangrejeros LLC's interests in the Cangrejeros Franchise as an investor-operator.

After Impulse Sports gained control of the Cangrejeros Franchise, it publicized its intention to strengthen the Franchise's ties to Mayor Romero. On July 7, 2022, when Impulse Sports was introduced as the new owner of the Cangrejeros Franchise, Mayor Romero participated in the announcement and sat alongside Impulse Sports in a show of government support.

At the press conference, Impulse Sports stated that it would be "strengthening ties with the mayor." In response, Mayor Romero stated that the Bithorn stadium would be made ready for the upcoming season.

### C.

Some weeks after the press conference, Axon, Cangrejeros LLC, and Santurce Merchandising LLC filed the Complaint that gives rise to this appeal in the United States District Court for the District of Puerto Rico. On September 12, 2022, the League, later joined by some of the competing franchises, moved to dismiss the Complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). That motion argued (1) that the plaintiffs are contractually bound to litigate their claims in the local courts of Puerto Rico; and (2) that the plaintiffs' action is barred by res judicata after the plaintiffs lost their prior case filed in the local court of Puerto Rico.

Then, on October 27, 2022, the defendants moved under Federal Rule of Civil Procedure 12(b)(1) to dismiss the Complaint for lack of subject matter jurisdiction. They argued that the District Court lacked subject matter jurisdiction over the federal antitrust claims, because the relevant conduct constituted the "business of baseball," and the state claims brought under Puerto Rico antitrust law and fair competition law, for the same reason. The plaintiffs timely opposed these motions.

On June 27, 2023, the District Court granted the defendants’ motions and dismissed the case. It dismissed for want of jurisdiction the federal antitrust claims and the claims brought under Puerto Rico antitrust and fair competition laws because of the “business of baseball” exemption. It dismissed the § 1983 claim for failure to state a claim based on the doctrine of *res judicata*. It then declined to exercise supplemental jurisdiction over the remaining Puerto Rico law claim.

With respect to the federal antitrust claims, the District Court noted that it was “boldly go[ing] where no lower court has gone before” by applying the “business of baseball” exemption to the League. The District Court explained that it was doing so because it rejected the plaintiffs’ arguments that the baseball exemption applies only to Major League Baseball (MLB) and MLB’s direct affiliates, thereby becoming the first lower court since Federal Baseball to hold that the exemption may apply to a professional baseball league other than MLB or an affiliate of it.

The District Court then addressed, still with respect to the Sherman Act claims, whether “the conduct averred in the Complaint still falls outside of the ‘business of baseball’” because of the nature of the alleged conduct. The plaintiffs argued that the conduct did. The District Court rejected that argument and reasoned that:

the [p]laintiffs[‘] claims involve an alleged conspiracy involving an owner of a professional franchise that was dismissed under the League’s regulations. This involves the business of baseball. . . . The Sherman Act baseball exemption applies to the [League] and the Cangrejeros [Franchise] since they are a [sic] professional baseball team, and the antitrust claims arise in the context of the business of baseball.

After concluding that the baseball exemption barred the Sherman Act claims, the District Court also dismissed the claims under Puerto Rico antitrust and fair competition law. As to those claims, the District Court stated, in full:

[The Puerto Rico antitrust and fair competition claims] are consequently dismissed based on the Supremacy Clause as the Supreme Court held in Flood [that] “state antitrust regulation would conflict with federal policy and . . . national ‘uniformity (is required) in any regulation of baseball.’” 407 U.S. at 284 (quoting Flood v. Kuhn, 316 F. Supp. 217, 280 (S.D.N.Y. 1970)).

(Second alteration in original). The Court thus dismissed Counts Three, Four, and Five.

The District Court next addressed the plaintiffs’ § 1983 claim and concluded that claim “must be dismissed under the doctrine of res judicata.” (Citation modified). The District Court applied § 3343 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31, § 3343, and noted that to satisfy § 3343, a party must show “(i) the existence of a [final] judgment on the merits . . .; (ii) a perfect identity of thing or cause between both actions; and (iii) a perfect identity of the parties and the capacities in which they acted.” (Quoting R.G. Fin. Corp. v. Vergara-Núñez, 446 F.3d 178, 183 (1st Cir. 2006)). The District Court concluded that the earlier judgment from the San Juan Superior Court satisfied these requirements and thus barred adjudication of the plaintiffs’ § 1983 claim.

Having dismissed all the plaintiffs’ claims arising under federal law, the District Court declined to exercise supplemental jurisdiction over the remaining claim arising under Puerto Rico law, which was a contract law



claim, and dismissed the case. See Roche v. John Hancock Mut. Life Ins. Co., 81 F.3d 249, 257 (1st Cir. 1996); 28 U.S.C. § 1367. The plaintiffs thereafter timely appealed the District Court’s judgment.

## II.

We review de novo a district court’s grant of a motion to dismiss for failure to state a claim under Rule 12(b)(6) or for lack of subject matter jurisdiction under Rule 12(b)(1). Legal Sea Foods, LLC v. Strathmore Ins. Co., 36 F.4th 29, 34 (1st Cir. 2022); Lyman v. Baker, 954 F.3d 351, 359 (1st Cir. 2020). Although dismissals under Rules 12(b)(1) and 12(b)(6) are “conceptually distinct, . . . the same basic principles apply in both situations.” Lyman, 954 F.3d at 359 (quoting Hochendoner v. Genzyme Corp., 823 F.3d 724, 730 (1st Cir. 2016)).

In both contexts, we accept as true the complaint’s well-pleaded factual allegations and draw all reasonable inferences in the plaintiffs’ favor. Id.; Cheng v. Neumann, 51 F.4th 438, 443 (1st Cir. 2022). We disregard “conclusory legal allegations” and factual assertions that are “too meager, vague, or conclusory to remove the possibility of relief from the realm of mere conjecture.” Legal Sea Foods, 36 F.4th at 33 (first quoting Cardigan Mountain Sch. v. N.H. Ins. Co., 787 F.3d 82, 84 (1st Cir. 2015); and then quoting SEC v. Tambone, 597 F.3d 436, 442 (1st Cir. 2010) (en banc)).

To survive a Rule 12(b)(6) motion, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id.

Under Rule 12(b)(1), we also disregard “statements in the complaint that simply offer legal labels and conclusions or merely rehash cause-of-action elements,” and consider whether the non-conclusory, non-speculative facts support the existence of subject matter jurisdiction. Lyman, 954 F.3d at 360 (quoting Schatz v. Republican State Leadership Comm., 669 F.3d 50, 55 (1st Cir. 2012)). We may consider information attached to or incorporated into the complaint, along with facts subject to judicial notice. Id.

### III.

The plaintiffs contend that the District Court erred in dismissing their Sherman Act claims because the “business of baseball” exemption applies only to conduct that involves MLB and its affiliates. They argue in the alternative that the District Court erred in dismissing the claims because the nature of the specific conduct alleged would not constitute the “business of baseball” even if MLB and its affiliates engaged in it. We are not persuaded by either contention.<sup>5</sup>

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<sup>5</sup> The District Court held that the applicability of the exemption deprived it of subject matter jurisdiction and dismissed the federal antitrust claims under Rule 12(b)(1). The plaintiffs contend on appeal that “there is no jurisdictional issue in play” because the exemption is a merits issue, not a jurisdictional one. We agree. See Garber v. Off. of the Comm’r of Baseball, 120 F. Supp. 3d 334, 339 (S.D.N.Y. 2014) (“[T]he scope of the baseball exemption is not a jurisdictional issue. It is a threshold merits issue.”); Arbaugh v. Y&H Corp., 546 U.S. 500, 511 (2006) (“Subject matter jurisdiction in federal-question cases is sometimes erroneously conflated with a plaintiff’s need and ability to prove the defendant bound by the federal law asserted as the predicate for relief -- a merits-related determination.” (quoting 2 Moore’s Federal Practice § 12.30[1] (3d ed. 2005))). To the extent that the Eleventh Circuit has suggested that the exemption imposes a jurisdictional bar, Pro. Baseball Sch. & Clubs, Inc. v. Kuhn, 693 F.2d 1085, 1085 (11th Cir. 1982), we disagree. We thus proceed to address whether the plaintiffs’ claims must be dismissed pursuant to

**A.**

The plaintiffs bring two claims under the Sherman Act. They bring the first under section 1 of that statute. That section makes unlawful “[e]very contract . . . or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations.” 15 U.S.C. § 1. In support of this claim, the plaintiffs allege that the “[d]efendants have entered into a continuing conspiracy in unreasonable restraint of trade to boycott and exclude [the plaintiffs] from the relevant markets and to replace them with a more malleable competitor.” They also allege that the conspiracy “will reduce product quality and output in the relevant markets” and that “[i]t also has no procompetitive justification.”

The plaintiffs bring their second Sherman Act claim under section 2 of that statute. That section provides that “[e]very 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” and subject to a fine. 15 U.S.C. § 2.

The plaintiffs allege that the defendants violated section 2 of the Sherman Act because they “entered into a continuing combination or conspiracy with the specific intent of acquiring and maintaining monopoly power in the relevant markets.” They also allege that the “league and its investor-operators have a 100 percent share of the relevant markets and exercise their monopoly power by controlling entry into those markets” and that the

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Rule 12(b)(6). See Lin v. TipRanks, Ltd., 19 F.4th 28, 36 (1st Cir. 2021) (“We, of course, may affirm the District Court’s ruling on any ground manifest in the record.”).

defendants unlawfully “exclud[ed] [the plaintiffs] from the relevant markets.”

## **B.**

The plaintiffs are right that, after Federal Baseball, “[n]o other case has ever broadly interpreted the exemption to apply to entities not part of MLB.” They also are right that the exemption has received significant criticism. Flood, 407 U.S. at 282. But neither the exemption’s past application nor the longstanding criticism that it has engendered supports the conclusion that it applies only to MLB and its affiliates and so, for that reason alone, not the League.

### **1.**

Federal Baseball did not describe the “business of baseball” exemption in terms of the specific professional baseball leagues that were parties to that case or to any specific league at all. 259 U.S. at 208-09. It defined the exemption in terms of an activity -- the activity being “the business [of] giving exhibitions of base ball [sic].” Id. at 208.

The Supreme Court’s subsequent treatment of the exemption has been no different. In Toolson v. New York Yankees, Inc., for example, the Court characterized its own precedent as holding “that the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of federal antitrust laws.” 346 U.S. 356, 357 (1953) (emphasis added) (citing Fed. Baseball, 259 U.S. 200). Similarly, in Flood, the Court quoted that same language to reaffirm the exemption, 407 U.S. at 273 (quoting Toolson, 346 U.S. at 357), and so again made clear that the exemption protects the “business of providing public baseball games for profit between clubs of professional baseball players,” see id. (quoting Toolson, 346 U.S. at 357), rather than a particular entity engaged in that business.

The plaintiffs point to language from National Collegiate Athletic Ass’n v. Alston that observes that the “[Supreme] Court has refused to extend Federal Baseball’s reasoning to other sports leagues.” 594 U.S. 69, 95 (2021). In context, though, the Court was referring in that passage to leagues involved in sports other than baseball, not professional baseball leagues other than MLB. See, e.g., United States v. Int’l Boxing Club of N.Y., 348 U.S. 236, 242, 245 (1955) (recognizing the exemption applies to the “business of baseball” and declining to extend exemption to professional boxing without mentioning the MLB); Radovich, 352 U.S. at 451 (noting precedent “restrict[ed] Toolson’s coverage to baseball” but not mentioning MLB); Haywood v. Nat’l Basketball Ass’n, 401 U.S. 1204, 1205 (1971) (noting that “[b]asketball . . . does not enjoy exemption from the antitrust laws” notwithstanding the Court’s “decisions exempting baseball from the antitrust laws” (emphases added)); see also United States v. Shubert, 348 U.S. 222, 229-30 (1955) (characterizing the exemption as applying to “the baseball business” and declining to extend the exemption to other live presentations).

The plaintiffs also point to language from Radovich that indicates that the Court “specifically limit[ed] the rule” of Federal Baseball “to the facts there involved,” 352 U.S. at 451. They contend that this language shows that the exemption does not apply to a league -- like the one involved in this case -- that was not a party to Federal Baseball itself or a successor to such a party.

Radovich referred, however, to “the business of organized professional baseball” as being synonymous with “the facts there involved.” *Id.* As we have explained, the Court has consistently defined the “business of baseball” in terms of the nature of activity undertaken, rather than the identity of the entity engaged in that activity. So, we do not understand Radovich to hold that the “business of

baseball” concerns only the exact conduct involved in Federal Baseball and, for that reason, to exclude conduct involving the League. Indeed, Flood held that the MLB’s reserve clause constituted the “business of baseball,” 407 U.S. at 285, even though that league’s reserve clause obviously was not at issue in Federal Baseball.

## 2.

The plaintiffs separately argue that the exemption cannot apply to the League because “the Supreme Court’s justification for continuing to adhere to the Federal Baseball exemption in Flood was stare decisis -- a rationale that only applies to MLB’s reliance interest.” The need to protect the MLB’s reliance interest, however, was only one of the grounds that the Court gave in Flood for reaffirming the exemption.

In discussing Toolson, the Flood Court noted “Congressional awareness for three decades of the Court’s ruling in Federal Baseball, coupled with congressional inaction” and “[a] professed desire that any needed remedy be provided by legislation rather than by court decree.” 407 U.S. at 273-74. The Court noted as well that Federal Baseball had been “cited, not unfavorably, with respect to the practice of law; with respect to out-of-state contractors; and upon a general comparison reference.” Id. at 271-72 (citations omitted). Additionally, the Court in Flood indicated that the exemption “rests on a recognition and an acceptance of baseball’s unique characteristics and needs.” Id. at 282 (emphasis added).

That last rationale focuses on the attributes of the professional sport of baseball, not the specific professional league that was a party to Flood. The various grounds offered in Flood for supporting the exemption therefore fail to support the plaintiffs’ argument that the exemption’s “rationale . . . only applies to MLB’s reliance interest.” Accordingly, we reject the plaintiffs’ conten-

tion that the Supreme Court’s only justification for maintaining the exemption was MLB’s reliance interest.

**C.**

The plaintiffs alternatively contend that, even if the exemption applies to the League, the exemption “does not cover every type of anticompetitive conspiracy engaged in by a baseball league and its teams simply because the commerce restrained happens to be part of the baseball business.” They go on to argue that this “limited” exemption applies only to activities that are “‘central’ to organizing and operating a baseball league” and that the alleged conspiracy here does not fall within that more limited conception of the exemption’s scope. As we will next explain, however, we conclude that, even under the “central to” formulation, the plaintiffs have failed to show that the District Court erred in holding that the exemption applies to the plaintiffs’ Sherman Act claims.

**1.**

Before the District Court, the defendants took a seemingly sweeping view of the exemption’s scope. They appeared to argue that, insofar as the exemption applies to the League and not just MLB and its affiliates, it applies in this case simply because the League is itself a professional baseball league. As the defendants put it below, “[T]here is no doubt that [the League] is a professional baseball league in Puerto Rico . . . and thus the exemption applies.”

The plaintiffs responded by arguing that “the mere fact that the parties are involved in the baseball business . . . does not shield all of [the d]efendants’ conduct under the . . . exemption.” They argued that the “exemption only applies to protect conduct that qualifies as the ‘business of baseball,’ in the narrow manner by which that term has been defined by the courts.” The plaintiffs then asserted that the “business of baseball” only includes conduct

central to the operation of professional baseball leagues - and so not to all conduct in which the League engages -- as this understanding “is consistent with how courts have interpreted the exemption for decades.”

In fleshing out this argument, the plaintiffs cited lower court decisions from other circuits that, in their view, apply the exemption in this more limited manner. See, e.g., Henderson Broad. Corp. v. Hous. Sports Ass’n, Inc., 541 F. Supp. 263, 265 (S.D. Tex. 1982) (“[B]roadcasting is not central enough to baseball to be encompassed in the baseball exemption.”). The plaintiffs then contended that the “anticompetitive conspiracy alleged” here falls outside the scope of the exemption because it “does not involve conduct that is ‘central’ to operating a baseball league.” In their view, the alleged conspiracy “has nothing to do with player rules, rules of the game, or any other League rule or bylaw that could even arguably fall within the ‘business of baseball.’” (Emphasis added).

The District Court did not adopt the defendants’ seemingly categorical view that the exemption applies to any conduct by the League. It explained that the exemption applied in this case because the “alleged conspiracy involv[es] an owner of a professional franchise that was dismissed under the League’s regulations” and so “involves the business of baseball.” It then also observed that “the antitrust claims arise in the context of the business of baseball.”

The District Court relied on two of the precedents that the defendants cited, namely Right Field Rooftops, LLC v. Chicago Baseball Holdings, LLC, 87 F. Supp. 3d 874 (N.D. Ill. 2015), and Wyckoff v. Office of the Commissioner of Baseball, 211 F. Supp. 3d 615 (S.D.N.Y. 2016). In concluding that the exemption applied, the courts in those cases considered the nature of the conduct alleged to violate the Sherman Act and determined that it



was “central to the public display of baseball games,” Right Field Rooftops, 87 F. Supp. 3d at 885, or “an integral part of” and “central to the ‘business of baseball,’” Wyckoff, 211 F. Supp. 3d at 626-27. They also contrasted conduct of that sort with conduct that falls outside the exemption because it is “incidental” or “wholly collateral to” to the public display of baseball games. Id. at 626 (first quoting Right Field Rooftops, 87 F. Supp. 3d at 885; and then quoting City of San Jose v. Off. of the Comm’r of Baseball, 776 F.3d 686, 690 (9th Cir. 2015)).

It is arguable that, by invoking Wyckoff and Right Field Rooftops, the District Court implicitly deemed the alleged anti-competitive conduct here to be “central” or “integral to” the public display of baseball games and so, for that reason, the “business of baseball.” The District Court did not expressly characterize the conduct in those terms, however. Nor did it elaborate on why either of the cases it cited supported the legal proposition that claims fall within the exemption if they merely “arise in the context of the business of baseball,” “involv[e] an owner of a professional [baseball] franchise,” or “involve[e] . . . [l]eague regulations.” It also did not otherwise explain why those cases show that the exemption applies to the alleged conspiracy here, except by stating that “the [p]laintiffs[‘] argument . . . is overly narrow, as was the [plaintiffs’] reading of the exemption in the Right Field Rooftops case.”

In our view, therefore, it is not entirely clear that the District Court assessed the conduct alleged to violate the Sherman Act here along a “central to” versus “wholly collateral to” axis. As a result, it is not entirely clear that, in ruling that the exemption applied, the District Court determined that the conduct satisfied the “central to” test that the plaintiffs ask us to embrace.

Nonetheless, we may affirm the District Court’s dismissal of the plaintiffs’ Sherman Act claims on any ground manifest in the record. See Brox v. Hole, 83 F.4th 87, 98 (1st Cir. 2023). And, as we will next explain, we conclude that, even if we were to apply the “central to” test that the plaintiffs derive from the lower court precedents, the plaintiffs’ arguments on appeal fail to show that, under that test, the exemption has no application here.

## 2.

We recognize that extensions of the exemption beyond the factual context that gave rise to it are not permitted, because the Supreme Court has “specifically limit[ed] the rule” of Federal Baseball “to the facts there involved.” Radovich, 352 U.S. at 451. And while Radovich makes clear that those “facts” are ones that constitute “the business of baseball,” *id.*, rather than the precise facts involved in Federal Baseball itself, we can see how a decision to extend the exemption to allegedly anti-competitive conduct by a professional baseball league or its affiliates with respect to broadcasting agreements, *see Henderson*, 541 F. Supp. at 265, or agreements with concessionaires at league games, *see Twin City Sportservice, Inc. v. Charles O. Finley & Co.*, 512 F.2d 1264 (9th Cir. 1975), might be thought to violate that directive.

Such conduct is arguably “incidental” to the business of putting on games for public display in a way that, say, a professional baseball league’s enforcement of a reserve clause in players’ contracts is not, *see Flood*, 407 U.S. at 282. The latter type of league conduct -- unlike the former type -- directly impacts the product on the field because it directly impacts who the players on the field are.

Moreover, precisely because the former type of conduct does not have such a direct on-the-field impact, extending the exemption to such conduct has no obvious

stopping point. It is not easy to distinguish the markets for broadcast rights in professional baseball games or concessions in the live exhibition of such games from the markets in trading cards, video games, or league-related merchandise.

Extending the exemption to the former type of conduct thus risks expanding an already much-criticized exemption to wide swaths of economic activity just because such activity relates in some way to professional baseball. No similar risk of exemption creep appears to be presented by applying the exemption to the factual context presented here. Such an application merely shields from federal antitrust scrutiny the League's decisions to enforce its established rules for determining who will run, own, and control the League's own teams.

It is true, of course, that owners -- unlike players -- do not take the field. But the plaintiffs do not appear to be of the view that this fact in and of itself precludes the exemption's application. But see Postema v. Nat'l League of Pro. Baseball Clubs, 799 F. Supp. 1475, 1489 (S.D.N.Y. 1992) (explaining that "baseball's relations with non-players are not a unique characteristic or need of the game" and thus do not fall within the scope of the exemption), rev'd on other grounds, 998 F.2d 60 (2d Cir. 1993). As the plaintiffs recognize, the Wyckoff court held that professional baseball league personnel -- in that case, team scouts -- can be involved in the "business of baseball" due, in part, to the integral role that they play in selecting the talent that then participates on the field during those games. See 211 F. Supp. 3d at 626-27. Yet, scouts do not directly participate in the public display of the game itself, and the plaintiffs do not develop an argument that Wyckoff was wrongly decided because it treated scouts as being involved in the "business of baseball."

The plaintiffs do attempt to distinguish Wyckoff. They do so on the ground that a scout's "role [is] 'so extraordinarily unique' to the game that it [is] 'an integral part of' and 'central to the "business of baseball."'" (Quoting id.). But that ground for distinction fails because Wyckoff did not limit the applicability of the exemption to conduct that is -- or roles that are -- "'extraordinarily unique' to the game of baseball." Id. at 626. In referring to that strict potential formulation of the "central to" test, the Wyckoff court was just quoting the characterization that the plaintiffs there had offered of the role that scouts played. Id.

In addition, Wyckoff ultimately concluded that the exemption applied because the scouts' role was not "incidental" to the "business of baseball," and not because that role was "extraordinarily unique" to baseball. See id. The court came to that conclusion, in part, because "scouts' identification and targeting of particular players greatly influences the Franchises' decisions about which players to hire and what team to field." Id. at 626-27.

That reasoning is no less applicable here. If an individual's role is "central" to, or at least more than "incidental" to, the public display of baseball games when that individual's role "greatly influences the Franchise's decisions about which players to hire and what teams to field," id., then it is hard to see why the role of an owner of a professional baseball franchise would be "incidental." Owners of professional baseball franchises -- from Walter O'Malley, who owned the Brooklyn Dodgers when the team signed Jackie Robinson, to Harry Frazee, who owned the Boston Red Sox when the team traded Babe Ruth -- have been foundational figures in the development of professional baseball precisely because of their decisions "about which players to hire and what teams to field," id.

The plaintiffs themselves appear to recognize the centrality and importance of owners to, as Toolson put it, the “business of providing public baseball games for profit between clubs of professional baseball players.” 346 U.S. at 357. They allege in their own Complaint that the former owner who was ousted here “measurably increased player quality,” “invested resources to entice higher-quality baseball players to play,” and “proposed essential renovations to improve the conditions of the stadium for fans.”

We recognize that, in Piazza v. Major League Baseball, 831 F. Supp. 420 (E.D. Pa. 1993), the district court suggested that “the market for ownership interests in existing baseball teams” may not fall within the scope of the exemption. Id. at 439-440; see also id. at 441 (“[A]cquiring an ownership interest in a team may very well be no more unique to the exhibition of baseball games than is moving players and their equipment from game to game.”). But, in that case, the court also acknowledged that ownership decisions that “implicate matters of league structure . . . [could] be covered by the exemption.” Id.

In any event, the plaintiffs do not appear to deny that a league’s efforts to enforce its rules about team ownership may fall within the exemption. The plaintiffs contend only that the enforcement of the rules here is not within the exemption because, as they described it to the District Court, the enforcement does not involve a “League rule or bylaw that could even arguably fall within the ‘business of baseball.’” They do not explain, though, why the League rules at issue here are not “central” to the business of a professional baseball league. They instead merely assert -- in conclusory fashion -- that the rule that the League is alleged to have enforced in harming the plaintiffs is not within the “business of baseball” because it “had nothing to do with the necessary rules for

operating a baseball league or its ‘unique characteristics.’” Yet, as we have explained, a professional baseball league’s established rules for determining who may operate one of the teams in a baseball league would appear to have quite a lot to do with “operating a baseball league.”

The plaintiffs also invoke an amicus brief filed by the U.S. Department of Justice (DOJ) in another case that touched on the scope of the exemption. In that filing, the DOJ advanced the view that the challenged conduct in a case must be “central to the business of offering professional baseball games to the public” to fall within the scope of the exemption. Brief of the United States as Amicus Curiae in Support of Neither Party at 7, Nostalgic Partners v. Off. of the Comm’r of Baseball, 637 F. Supp. 3d 45 (S.D.N.Y. 2022) (No. 21-cv-10876).

We do not take issue here, however, with the “central to” formulation. We take issue only with the plaintiffs’ arguments that the conduct here falls outside the exemption because it fails the “central to” test. It is thus significant to us that the DOJ does not suggest in the filing at issue that the efforts of a professional baseball league to enforce its own rules for owning and controlling one of its teams is merely incidental to that business.

### 3.

Insofar as the plaintiffs mean to make the distinct argument that the exemption does not apply here because the alleged conspiracy “involv[ed] the Mayor of San Juan” -- and so involved someone who was not employed by the League -- we also are not persuaded. The plaintiffs’ Complaint alleges that Mayor Romero conspired with the League to “force Axon to relinquish his control over the Cangrejeros Franchise” because Axon had criticized the city’s “repeated failure to invest in the Bithorn [stadium] and San Juan’s unwillingness to collaborate with the Cangrejeros Franchise” and because Axon had threatened

to move the team to another city. The Complaint further alleges that the Bithorn is “emblematic of the island’s rich baseball history” and that the stadium conditions affected “players, fans, and sponsors.” Moreover, the plaintiffs acknowledge that “franchise relocation rules” are covered by the exemption.

We do not see how the involvement of the Mayor of San Juan -- the city that owns the Bithorn stadium -- makes the challenged conduct in this case any less “central” to the operations of the League, given the evident centrality of franchise location and a franchise’s stadium to the “public display of baseball games.” In addition, the plaintiffs identify no authority that suggests that a conspiracy by a professional baseball league’s franchise owners that constitutes the “business of baseball” necessarily ceases to constitute such “business” so long as a single participant in the conspiracy is not a member or employee of the league. See Major League Baseball v. Crist, 331 F.3d 1177, 1184 (11th Cir. 2003) (rejecting argument that the involvement of public entities in a professional baseball league’s activity would take that activity out of the scope of the exemption).

**D.**

Stepping back, we recognize that the “business of baseball” exemption has its origins in the Supreme Court’s determination that professional baseball games “are purely state affairs,” Fed. Baseball, 259 U.S. at 208, for purposes of assessing Congress’s powers under the Commerce Clause. We recognize as well that modern Commerce Clause doctrine does not support that same conclusion. Indeed, it offers even less support for the conclusion that Congress’s Article I powers do not extend to the sport of baseball even though they extend to other sports.

Nonetheless, the “business of baseball” exemption “has survived the Court’s expanding concept of interstate commerce,” and the Court has declined to overrule the relevant precedent despite acknowledging “that it [is] out of step with subsequent decisions reflecting present-day concepts of interstate commerce.” Flood, 407 U.S. at 275, 282; see also id. at 286 (Douglas, J., dissenting) (describing the Court’s 1922 view of commerce as “narrow” and “parochial” and recognizing that “the whole concept of commerce has changed”). We thus must apply that exemption, which, as we have explained, is for the “business of baseball” rather than for any specific professional baseball league. For the reasons we have set forth, we reject the plaintiffs’ challenge to the District Court’s decision to dismiss the Sherman Act claims based on the “business of baseball” exemption.

#### IV.

We now turn to the plaintiffs’ challenge to the District Court’s dismissal of the two claims that they brought under Puerto Rico’s antitrust law, P.R. Laws Ann. tit. 10, §§ 258, 260, and the one claim that they brought under Puerto Rico’s fair competition law, P.R. Laws Ann. tit. 10, § 259. In these three claims, the plaintiffs challenge the same conduct that provides the basis for their two Sherman Act claims.

In addressing these three Puerto Rico law claims, the District Court noted that “[t]he baseball exemption bars any federal antitrust claims issued from the complaint . . . .” It then went on to conclude that the claims “are consequently dismissed based on the Supremacy Clause as the Supreme Court held in Flood [that] ‘state antitrust regulation would conflict with federal policy and . . . “national uniformity (is required) in any regulation of baseball.”’” (Quoting Flood, 407 U.S. at 284).



The plaintiffs argue that the District Court erred in so ruling. The defendants defend the District Court’s reasoning and argue that the “antitrust claims under Puerto Rico law are preempted by the Supremacy Clause (or the Commerce Clause).”

The defendants contend that “exempting the business of baseball from federal antitrust law . . . does not mean it is subject to state antitrust law.” In support of this contention, they point out that the Supreme Court in Flood, 407 U.S. 258, and the Eleventh Circuit in Major League Baseball v. Crist, 331 F.3d 1177, dismissed the state antitrust claims in those cases after concluding that the “business of baseball” exemption applied. They also contend that the reasoning of those cases applies here because the League is engaged in the “business of baseball.”

The defendants separately contend, too, that “[t]he Commerce Clause prohibits the application of state antitrust laws” in professional sports generally. (Citing Robertson v. Nat’l Basketball Ass’n, 389 F. Supp. 867, 880 (S.D.N.Y. 1975)). They urge us to affirm the dismissal of these three claims on that alternative basis as well.

The disagreement between the parties appears to stem primarily from their divergent views about Flood’s treatment of the state law claims at issue there. We therefore begin by reviewing the relevant analysis in Flood, before then explaining why the analysis there does not support the District Court’s dismissal ruling. Accordingly, for the reasons we will set forth, we vacate the portion of the District Court’s judgment dismissing the claims brought under Puerto Rico’s antitrust and fair competition laws and remand for further proceedings.<sup>6</sup>

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<sup>6</sup> The District Court appears to have held that the applicability of the exemption deprived it of jurisdiction over the claims brought under Puerto Rico’s antitrust and fair competition laws and to have dismissed those claims under Rule 12(b)(1). As we have explained,

**A.**

In addressing the state law antitrust claims, the Supreme Court in Flood stated:

The petitioner’s argument as to the application of state antitrust laws deserves a word. [The District Court] rejected the state law claims because state antitrust regulation would conflict with federal policy and because national “uniformity (is required) in any regulation of baseball and its reserved system.” The Court of Appeals, in affirming, stated, “[A]s the burden on interstate commerce outweighs the states’ interests in regulating baseball’s reserve system, the Commerce Clause precludes the application here of state antitrust law.” As applied to organized baseball, and in the light of this Court’s observations and holding in Federal Baseball, in Toolson, in Shubert, in International Boxing, and in Radovich, and despite baseball’s allegedly inconsistent position taken in the past with respect to the application of state law, these statements adequately dispose of the state law claims.

407 U.S. at 284-85 (citations omitted) (first quoting Flood v. Kuhn, 316 F. Supp. 271, 280 (S.D.N.Y. 1970);

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however, we disagree that the exemption presents a jurisdictional bar rather than a threshold merits issue. See Garber, 120 F. Supp. 3d at 339; Arbaugh, 546 U.S. at 511. We thus proceed to evaluate the dismissal of these claims under Rule 12(b)(6). See Lin, 19 F.4th at 36. For our current review, though, it makes little practical difference for us as we would review the applicability of the exemption to these claims de novo under Rule 12(b)(6) or Rule 12(b)(1).

and then quoting Flood v. Kuhn, 443 F.2d 264, 268 (2d Cir. 1971)).

As this passage shows, the Supreme Court in Flood favorably quoted the conclusion that the court of appeals in that case had reached based on its Commerce Clause analysis: “[A]s the burden on interstate commerce outweighs the states’ interests in regulating baseball’s reserve system, the Commerce Clause precludes the application here of state antitrust law.” Id. (first alteration in original) (quoting Flood, 443 F.2d at 268). Specifically, the court of appeals had explained that, with respect to the National and American Leagues that form MLB, “each league extends over many states, and . . . if state regulation were permissible, the internal structure of the leagues would require compliance with the strictest state antitrust standard.” Flood, 443 F.2d at 268.

The court of appeals in Flood further noted that “the clubs composing the Leagues are in different cities and, for the most part, in different states” and that “the clubs cross state lines in order to make the [exhibitions] possible.” Id. at 265-66. And the court of appeals in Flood concluded that “[t]he consequent extra-territorial effect of necessary compliance [with state regulation] would be considerably more far-reaching than that in Southern Pacific Co. v. Arizona,” Flood, 443 F.2d at 268, which was a case in which the Supreme Court had ruled that the extra-territorial effects of state regulation were impermissible under the Commerce Clause, S. Pac. Co., 325 U.S. 761, 774-75 (1945).

That same passage from the Supreme Court’s decision in Flood also shows that the Supreme Court favorably cited to the district court decision there. 407 U.S. at 284-85 (quoting Flood, 316 F. Supp. at 280). The district court in Flood, like the court of appeals in that case, had relied in relevant part on a Commerce Clause-based

theory tied to the specific nature of MLB to conclude that the state law antitrust claims could not go forward. 316 F. Supp. at 280. It noted that “[s]tate and local laws may not unduly burden interstate commerce” and that “diverse state laws here would seriously interfere” with MLB’s national operations. *Id.* In doing so, it observed that “[t]here exist no competitive professional teams in North America outside” MLB and its minor leagues, and that “all [teams] . . . are subject to the broad powers of the Commissioner of Baseball.”<sup>7</sup> *Id.* at 273. It further emphasized the “single,” “unified,” and “nationwide” structure of “organized baseball.” *Id.* at 273, 279-80.

The district court in *Flood* also undertook a preemption-based analysis of the state law antitrust claims and relied on that analysis to dismiss them. *Id.* at 279. In doing so, it relied on the Supremacy Clause to hold that, because Congress had occupied the field of antitrust regulation of the “business of baseball” via the Sherman Act, the state law antitrust claims were preempted. *Id.*

The Supreme Court in *Flood*, however, cited to and quoted from only the portion of the district court’s decision in that case that addressed the dismissal of the state law claims under the Commerce Clause. *Flood*, 407 U.S. at 284 (quoting *Flood*, 316 F. Supp. at 280). And, in *Flood*, the district court had conducted the Commerce Clause analysis under the explicit assumption that the “business of baseball” exemption “fail[s] to establish or indicate a national policy regarding baseball sufficiently certain to rise to the level of federal preemption.” 316 F. Supp. at 279-280.

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<sup>7</sup> There are no allegations in the Complaint that concern when the League was established, but as far as we are aware, the League predates the *Flood* decision.

**B.**

In contending that the District Court rightly dismissed the three Puerto Rico law claims at issue, the defendants rely in significant part on the Eleventh Circuit's decision in Crist. They emphasize that Crist determined that "[a] careful reading" of the passage quoted above from Flood "yields two different theories" for why the state antitrust claims in that case had to be dismissed. 331 F.3d at 1185.

Crist first concluded that the Supreme Court's reliance in Flood on the "statement" of the district court in that case supported "a preemption theory." Id. Crist then concluded that the Supreme Court's reliance in Flood on the "statement" of the court of appeals in that case supported a Commerce Clause-based theory. Id.

Under the "preemption theory," Crist concluded that "federal antitrust policy . . . precludes the application of state antitrust law to the business of baseball." Id. at 1185 n.19. Accordingly, Crist held that the state law claims at issue there had to be dismissed because those claims alleged violations of state law based on conduct that constituted the "business of baseball." Id. at 1185-86.

Were we to understand Flood as Crist understood it, we would be obliged to affirm the District Court's dismissal of the Puerto Rico law antitrust and fair competition claims here. Those three claims, like the state law antitrust claims in Crist, allege violations of law based on conduct that constitutes the "business of baseball."

We do not see, however, how the "statement" from the district court in Flood on which the Supreme Court relied in that case supports "a preemption theory." As our earlier analysis of that "statement" explained, the Court there adopted the reasoning of the lower courts that concluded that the state law antitrust claims were prohibited

under the Commerce Clause because state regulation of conduct that would constitute the “business of baseball” -- the MLB’s enforcement of the reserve clause -- in relation to an interstate professional baseball league would impose impermissible burdens on interstate commerce.

Indeed, if the Court in Flood did rely on the “preemption theory,” then we see little reason for it to have referenced the Commerce Clause or to have embraced an analysis under that constitutional provision, as it unmistakably did. See Flood, 407 U.S. at 284. In addition, the Sherman Act normally coexists with -- rather than displaces -- state antitrust regulation, see California v. ARC Am. Corp., 490 U.S. 93, 101 (1989), as the defendants acknowledge.

True, the Supreme Court acknowledged in Flood that the district court there also found that “state antitrust regulation would conflict with federal policy.” 407 U.S. at 284. True, too, the district court engaged in an analysis of field preemption. Flood, 316 F. Supp. at 280. But Flood quoted from and cited to only the portion of the district court decision that addressed the viability of the state law claims under the Commerce Clause. 407 U.S. at 284 (quoting Flood, 316 F. Supp. at 280). So, we do not see how the Supreme Court’s reliance in Flood on the district court’s rationale in that case shows that the Supreme Court adopted a theory of field preemption as to all claims alleging a state antitrust law violation based on conduct that constitutes the “business of baseball.”

We are aware that the Supreme Court in Flood dismissed the state law claims “in light of th[e Supreme] Court’s observations and holding in Federal Baseball, in Toolson, in Shubert, in International Boxing, and in Radovich.” Id. But this feature of the Supreme Court’s decision in Flood does not alter our view that the Court based its conclusion that the state-law antitrust claims in that

case had to be dismissed based on the Commerce Clause rather than Congress having occupied the field through the Sherman Act and thereby having preempted state antitrust laws from applying to the “business of baseball.”

In referencing its “observations and holdings” in the line of cases starting with Federal Baseball, the Supreme Court is best read to have been reinforcing the conclusion that the “business of baseball” exemption does not “creat[e] a mere vacuum in national policy, leaving the states free to regulate the membership of the baseball leagues,” Flood, 316 F. Supp. at 279 (quoting State v. Milwaukee Braves, Inc., 144 N.W.2d 1, 17-18 (Wis. 1966)). Accordingly, to the extent that Flood invoked its Sherman Act line of cases in rejecting the state law antitrust claims, it appears to us that it did so only after it concluded that enforcement of state antitrust regimes as to the conduct at issue would substantially burden interstate commerce. It thus appears to have invoked that line of cases only for the purpose of confirming that Congress had not authorized states to impose those burdens. See S. Pac. Co., 325 U.S. at 769 (“Congress has undoubted power to . . . permit the states to regulate [interstate] commerce in a manner which would otherwise not be permissible [under the Commerce Clause].”).

Of course, the Court held in Flood that the state antitrust claims there were barred because state regulation of conduct that would constitute the “business of baseball” -- the MLB’s enforcement of the reserve clause -- in relation to an interstate professional baseball league would impose impermissible burdens on interstate commerce. It did not address the distinct question of whether there would be any basis for prohibiting a state law antitrust or related claim -- even if targeting conduct that would constitute the “business of baseball” -- brought against a

professional baseball league that, like the League, has franchises located solely within a single state or territory.<sup>8</sup>

The defendants do contend that the Commerce Clause nonetheless “prohibits the application of state antitrust laws not only in baseball . . . but also in other professional sports.” They rely for this contention on Robertson v. National Basketball Association, 389 F. Supp. 867, 880 (S.D.N.Y. 1975). That case concerned state antitrust claims against the National Basketball Association (“NBA”) that the district court dismissed based on what it deemed to be the “unquestionably applicable and controlling” court of appeals’ decision in Flood. Id.

In following that intermediate appellate decision in Flood, however, Robertson did not adopt a per se rule against state antitrust regulation of sports leagues. Id. It noted that “[w]hen Flood was decided, [MLB] had 24 teams operating in 24 ‘home’ cities with the teams divided into two leagues. NBA has 18 teams operating in 18 ‘home’ cities, and those teams are divided into two conferences.” Id. at 881. It also indicated that the parties agreed that “professional basketball involves substantial volumes of interstate trade and commerce.” Id.

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<sup>8</sup> “We readily acknowledge,” as the court of appeals did in Flood, the tension inherent in a ruling that the “business of baseball” exemption to federal antitrust scrutiny precludes some state regulation. See 443 F.2d at 268. On the one hand, the exemption has its roots in a determination that baseball is not interstate commerce. Fed. Baseball, 259 U.S. at 208-09. Yet that same exemption may now preclude some state regulation because a state thereby may impermissibly burden interstate commerce under the modern interpretation of the Commerce Clause. See Flood, 443 F.2d at 268 (explaining that “we are bound by [Federal Baseball], while in our disposition of the state and common law counts, we must of necessity decide this question . . . by present Commerce Clause standards and not the standards applicable in 1922”).



Thus, Robertson comports with our conclusion that Flood requires a Commerce Clause analysis of the particular league at issue in the case. It also comports with our conclusion that the Commerce Clause analysis in Flood rested in significant part on the geographic distribution of the teams involved in the league at issue in that case.

**C.**

In sum, we do not agree that, because the conduct alleged to violate Puerto Rico's antitrust and fair competition laws constitutes the "business of baseball," it follows necessarily that the claims under Puerto Rico antitrust and fair competition laws must be dismissed as preempted under the Supremacy Clause. The question remains, though, whether the application of the Puerto Rico antitrust and fair competition laws to restrain the defendants' alleged conduct would impermissibly burden interstate commerce.

In this case, those Puerto Rico laws would be applied to a professional baseball league that -- unlike the interstate MLB -- has franchises that are located solely within Puerto Rico and thus that does not "extend[] over many states," 443 F.2d at 268. Flood, however, does not make clear whether state antitrust regulation of a league operating within a state or territory could be said to impose an impermissible burden on state commerce. Accordingly, we vacate the portion of the District Court's ruling that dismisses the Puerto Rico law antitrust and fair competition claims and remand so that the District Court may consider whether those claims are precluded by the Commerce Clause. In doing so, the District Court may consider the parties' arguments as to this issue, as well as any issues of waiver.

**V.**

We also must address the plaintiffs' challenge to the District Court's judgment that their § 1983 claim "must

be dismissed under the doctrine of res judicata.” (Citation modified). With this claim, the plaintiffs allege that the defendants, “acting in concert with the mayor of the Municipality of San Juan, operated under the law and color of government authority in depriving [the plaintiffs] of their property interests in the Cangrejeros Franchise without due process of law.”

As a reminder, the District Court ruled that, under Puerto Rico law, the § 1983 claim was precluded by the prior judgment that the San Juan Superior Court issued against Axon after he challenged his temporary suspension from the League in that Commonwealth Court. We agree with the plaintiffs that this ruling cannot stand.

**A.**

The plaintiffs contend, in part, that the District Court’s ruling must be reversed because, although Puerto Rico law requires perfect identity between the parties and between the causes of action of the two suits for res judicata to apply, there was not perfect identity between the two suits at issue. The plaintiffs recognize that P.R. Laws Ann. tit. 31, § 3343, the law on which the District Court relied for its res judicata analysis, was repealed in November 2020 and so before the conduct in this case took place. They also recognize that, as the defendants explain, “[t]he 2020 edition of the Puerto Rico Civil [Code],” which by its enactment replaced and repealed § 3343, “does not contain the requirements that existed under the 1930 Civil Code” and that “the requirements set forth in the old Civil Code no longer apply.”

The plaintiffs nonetheless contend that “[i]n the district court, [the defendants] relied on case law applying § 3343” and so “cannot now renounce their position” on appeal. They also point out that the defendants “do not identify how the tests for res judicata have purportedly been changed by the 2020 Puerto Rico Civil Code or what

those new tests are” and “do not cite a single case setting forth any new test.” And, finally they maintain that the same test for res judicata that § 3343 required -- “the most perfect identity between the things, causes, and persons of the litigant,” P.R. Laws Ann. tit. 31, § 3343 -- still “lives on in the common law.” In support of this contention, they point to Santiago Ruiz v. Municipio de San Juan, No. SJ2023CV01413, 2023 WL 8615779, at \*2-3 (P.R. Cir. Nov. 28, 2023); García-Navarro v. Hogar La Bella Unión, Inc., No. 3:17-cv-01271, 2022 WL 11266460, at \*33 (D.P.R. Oct. 18, 2022); and HibiscusPR 322, LLC v. Lorenzo, No. CV 19-1854, 2021 WL 8993846, at \*8 (D.P.R. June 10, 2021).

The plaintiffs did not themselves alert the District Court to the fact that § 3343 was not operative at the time that the District Court ruled on the defendants’ motion to dismiss based on that measure. Ordinarily, we do not permit parties on appeal to raise issues that they failed to raise below. See, e.g., Camara de Mercadeo, Industria y Distribucion de Alimentos, Inc. v. Emanuelli-Hernandez, 72 F.4th 361, 365 (1st Cir. 2023). However, the defendants do not identify the plaintiffs’ failure to point out to the District Court that § 3343 was no longer the law as a ground for affirming the District Court’s ruling. To the contrary, they concede that the measure in question was not operative at the time of the District Court’s ruling, and they make no argument that, under § 3343, the District Court correctly concluded that res judicata applied.

In addition, it is not evident that the District Court did correctly apply § 3343. As the plaintiffs point out, neither the parties nor the cause of action were identical between the prior suit and this suit, and § 3343 appears to require “perfect identity” in those elements across the two cases. P.R. Laws Ann. tit. 31, § 3343.

In such circumstances, we see no reason to let the District Court's ruling stand based on a statute that it is agreed by both parties was not operative at the time that the District Court relied on it and that the District Court appears to have misapplied in any event. We thus cannot affirm the District Court's ruling insofar as it rests on § 3343.

**B.**

Seemingly cognizant of the difficulties presented by dismissing the § 1983 claims based on § 3343, the defendants urge us to affirm the District Court's judgment on alternative grounds, as we may, see Brox, 83 F.4th at 98. Neither alternative ground has merit.

**1.**

The defendants first contend that the plaintiffs forfeited their challenge to the District Court's ruling that determined that the § 1983 claim was precluded by failing to raise it below. They acknowledge that the plaintiffs did argue "that res judicata does not bar the present action," but they contend this argument related to the case as a whole and not to the § 1983 claim specifically. We are not persuaded.

It is unsurprising that the plaintiffs responded to the defendants' motion to dismiss on grounds of res judicata in the categorical fashion that they did. The defendants themselves contended to the District Court only that the entire action was barred on res judicata grounds, and they did so without making any more particularized assertion about the § 1983 claim.

In any event, the plaintiffs did assert the argument that they now advance about the parties and causes of actions not being identical between the current and prior suits. Specifically, they argued to the District Court, among other things, that the "[p]laintiffs' claims do not share a perfect identity of thing or cause with the prior

state court action” and that the “plaintiffs’ claims do not share a perfect identity of parties with those in the Superior Court action.” (Citation modified).

**2.**

The defendants also assert that we may affirm the District Court’s ruling dismissing the § 1983 claim on grounds of issue preclusion, even if *res judicata* does not apply. But the defendants did not assert this ground for dismissing the claims below, so we decline to consider it now. See In re Fin. Oversight & Mgmt. Bd., 16 F.4th 954, 962 (1st Cir. 2021) (“It is a well-settled principle in this circuit that a party may not raise on appeal issues that were not seasonably advanced (and, hence, preserved) below.” (citation modified) (quoting Toren v. Toren, 191 F.3d 23, 29 (1st Cir. 1999))).

**3.**

In sum, the sole ground that the District Court gave for dismissing the plaintiffs’ § 1983 claim is the sole one that the defendants advanced but that they themselves no longer defend. That ground rests, however, on a law that was not operative at the time that the District Court relied on it to dismiss the claim. Accordingly, we reverse the District Court’s dismissal of the plaintiffs’ § 1983 claim.

**VI.**

In consequence of our ruling as to the § 1983 claim, a federal claim remains in the plaintiffs’ case. The authority of the District Court to dismiss the remaining Puerto Rico law claim, however, kicks in only if all federal claims have been dismissed, at least given that none of the other bases for dismissal identified in 28 U.S.C. § 1367(c) are presented on appeal as grounds for affirming that claim’s dismissal. See 28 U.S.C. § 1367(c). We thus reverse the District Court’s dismissal of the remaining Puerto Rico law claim as well.

**VII.**

For the foregoing reasons, we **affirm** the District Court's grant of the motion to dismiss with regard to the federal antitrust claims. We **vacate** the District Court's grant of the motion to dismiss with regard to the claims brought under Puerto Rico's antitrust and fair competition laws. We **reverse** the District Court's grant of the motion to dismiss with regard to the claim brought under the federal civil rights statute. We also **reverse** the District Court's dismissal of the remaining claim brought under Puerto Rico law. The parties shall bear their own costs.

## APPENDIX B

**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

CANGREJEROS DE SANTURCE  
BASEBALL CLUB, LLC, SAN-  
TURCE MERCHANDISING LLC,  
and THOMAS J. AXON,

Plaintiffs,

V.

LIGA DE BÉISBOL PROFESIONAL DE PUERTO RICO, INC., CRIOLLOS MANAGEMENT, INC., RA12, INC., INDIOS DE MAYAGÜEZ BASEBALL CLUB INC., GIGANTES DE CAROLINA BASEBALL CLUB INC., LEONES DE PONCE CF INC., IMPULSE SPORTS ENTERTAINMENT CORPORATION, JUAN A. FLORES GALARZA, IN HIS CAPACITY AS PRESIDENT OF THE LIGA DE BÉISBOL PROFESIONAL DE PUERTO RICO, INC., IN HIS PERSONAL CAPACITY, AND AS A MEMBER OF THE CONJUGAL PARTNERSHIP CONSTITUTED BETWEEN HIM AND HIS SPOUSE, AND THE CONJUGAL PARTNERSHIP SO CONSTITUTED,

Defendants.

CIVIL  
ACTION  
NO.  
  
3:22-01341-  
WGY

YOUNG, D.J.<sup>1</sup>

June 27, 2023

**MEMORANDUM & ORDER****I. INTRODUCTION**

The Court here boldly goes where no lower court has gone before. Why? The Supreme Court has said so.<sup>2</sup> This Court applies the Supreme Court's much criticized<sup>3</sup>

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<sup>1</sup> Of the District of Massachusetts, sitting by designation.

<sup>2</sup> In Agostini v. Felton, the Supreme Court held the trial court "acted within its discretion in entertaining the motion with supporting allegations, but it was also correct to recognize that the motion had to be denied unless and until this Court reinterpreted the binding precedent." Agostini v. Felton, 521 U.S. 203, 237–38, 117 S. Ct. 1997, 2017, 138 L. Ed. 2d 391 (1997). The Agostini Court also reaffirmed "[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." Id. (citing Rodriguez de Quijas v. Shearson/Am. Express, Inc., 490 U.S. 477, 484 (1989) (Kennedy J.)).

<sup>3</sup> The baseball exemption is heavily criticized by courts, legal scholars, and commentators. See Nathaniel Grow, Defining the "Business of Baseball": A Proposed Framework for Determining the Scope of Professional Baseball's Antitrust Exemption, 44 U.C. DAVIS L. REV. 557 (2010) ("This lack of consensus regarding the scope of the exemption is particularly problematic because MLB regularly finds itself embroiled in antitrust disputes. For example, in August 2009, trading card manufacturer Upper Deck threatened to file an antitrust suit against MLB following MLB's decision to grant rival card manufacturer Topps an exclusive trademark license . . . in 2007, Pennsylvania Senator Arlen Specter alleged that a proposed deal between MLB and DirecTV, under which the satellite television company would have received the exclusive rights to air MLB's "Extra Innings" broadcasting package, violated antitrust law. Meanwhile, MLB's restrictive territory allocation policies--a regular source of antitrust complaints against the league--were again at issue in December 2009 when the city attorney for San Francisco threatened to sue MLB after the league considered permitting the Oakland Athletics franchise to relocate to San Jose, territory assigned to the San Francisco Giants organization. Had any of these disputes resulted in



judicial exemption to the Nation’s antitrust laws to a Puerto Rican professional baseball venture NOT associated with Major League Baseball (“MLB”).

The Plaintiffs, Cangrejeros de Santurce Baseball Club, LLC (“Cangrejeros LLC”), Santurce Merchandising LLC (“Santurce Merchandising”), and Thomas J. Axon (“Axon”), collectively “The Plaintiffs,” bring a seven count complaint against the Defendants, Liga de Béisbol Profesional de Puerto Rico, Inc. (the “League”), Criollos Management, Inc. (the “Criollos”), RA12, Inc. (“RA12”), Indios de Mayagüez Baseball Club Inc. (the “Indios”), Gigantes de Carolina Baseball Club Inc. (the “Gigantes”), Leones de Ponce CF Inc. (the “Leones”), Impulse Sports Entertainment Corporation (“Impulse Sports”), Juan A. Flores Galarza, in his capacity as president of the Liga de Béisbol Profesional de Puerto Rico, Inc., in his personal capacity (“Flores”), and as a member of the conjugal partnership constituted between him and his spouse, and the conjugal partnership so constituted (“Flores Conjugal Partnership”) and collectively, “The Defendants.” All counts are listed and described below:

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litigation, the applicability of the baseball antitrust exemption would have been unclear under both the existing judicial precedent and scholarly analysis.”); Nostalgic Partners, LLC v. Off. of Comm’r of Baseball, No. 21-CV-10876 (ALC), 2022 WL 14963876, at \*1 (S.D.N.Y. Oct. 26, 2022) (“Plaintiffs believe that the Supreme Court is poised to knock out the exemption, like a boxer waiting to launch a left hook after her opponent tosses out a torpid jab. It’s possible. But until the Supreme Court or Congress takes action, the exemption survives; it shields MLB from Plaintiffs’ lawsuit.”); J. Gordon Hylton, Why Baseball’s Antitrust Exemption Still Survives, 9 MARQ. SPORTS L.J. 391 (1999) (“Neither Congressional inertia nor the power of Organized Baseball can explain the persistence of this exemption.”). The list goes on.

**(1) Count One** alleges Violations of Section 1 of the Sherman Act: Agreement Among the Defendants in Unreasonable Restraint of Competition;

**(2) Count Two** alleges Violations of Section 2 of the Sherman Act: Conspiracy or Combination to Monopolize, Monopolization, and Attempted Monopolization;

**(3) Count Three** alleges Violations of the Antitrust Law of Puerto Rico (P.R. Laws Ann. tit. 10, § 258): Agreement Among the Defendants in Unreasonable Restraint of Competition;

**(4) Count Four** alleges Violations of the Antitrust Law of Puerto Rico (P.R. Laws Ann. tit. 10, § 260): Conspiracy or Combination to Monopolize, Monopolization, and Attempted Monopolization;

**(5) Count Five** alleges Violations of Fair Competition, P.R. Laws Ann. tit. 10, § 259, and Article 1536 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31, §§ 10801 and 10803;

**(6) Count Six** alleges Contracts in Prejudice of a Third Person;

**(7) Count Seven** alleges Violations of Civil Rights Act of 1871, 42 U.S.C. § 1983.

The Defendants first moved to dismiss the complaint for failure to state a claim, arguing that (1) the Plaintiffs are contractually bound to litigate their claims in the local courts of Puerto Rico, Def.'s Mot. Dismiss FSC ("Def's. Mot. FSC"), ECF No. 28 at 5, and (2) the Plaintiffs' action is barred by res judicata after the Plaintiffs lost their prior case filed in the local court of Puerto Rico. *Id.* at 10.

The Defendants then moved to dismiss the complaint for lack of subject matter jurisdiction on the basis that the Plaintiffs' antitrust claims must be dismissed because the "business of baseball" is exempt from antitrust regulation, which would make the federal antitrust claims fail,

thus giving this Court no subject matter jurisdiction to hear the case. Def.’s Mot. Dismiss SMJ (“Def’s. Mot. SMJ”), ECF No. 43 at 6-13.

Following the direction of the Supreme Court’s baseball exemption, this Court allows the Defendants’ motions to dismiss.

#### **A. Procedural History**

The Plaintiffs, Axon and Cangrejeros LLC, previously filed a suit against the League and its President, Mr. Juan A. Flores Galarza, seeking a preliminary and permanent injunction, and seeking declaratory relief in Puerto Rico with regards to his dismissal. Axon v. Liga De Beisbol Professional de Puerto Rico, Inc., No. SJ-2022-CV-02802 (Super. Ct. P.R. May 5, 2022). The court dismissed the complaint, reasoning that “[we] must conclude that the process followed by the President of the League complied with the contractual due process of law established by the parties in the Constitution of the [LBPPR].” Id. at 12.

The Plaintiffs filed a complaint on July 18, 2022, Pl.’s Compl. & Demand Jury Trial (“Compl.”) ECF No. 1 and bring the seven counts listed in the introduction.

The Defendants moved to dismiss this complaint for failure to state a claim on September 12, 2022, Def’s. Mot. FSC, and then again on October 27, 2022 for lack of subject matter jurisdiction. Def’s. Mot. SMJ.

Def’s. Mot. FSC was met with an opposition by the Plaintiffs filed on October 12, 2022, Pls.’ Opp’n FSC, ECF No. 40. Def’s. Mot. SMJ was met with an opposition by the Plaintiffs filed on November 10, 2022, Pls.’ Opp’n SMJ, ECF No. 49. The Defendants filed a reply on December 2, 2022, Def.’s Reply SMJ, ECF No. 53. On March 29, 2023, the Court heard argument on the motion to dismiss and took the matter under advisement. See Electronic Clerk’s Notes, ECF No. 79

## **B. Factual Background**

### **1. Facts Alleged Relating to the Antitrust Claims**

The Defendant, League, is “the only top-tier professional baseball league in Puerto Rico, currently consisting of six different franchise teams operated by separately owned investors who do not share profits and losses with each other.” Compl. ¶ 1. As well as competing on the field, the teams compete “for fans, in-person attendance, player talent, sponsorships, merchandise sales, radio, and streaming broadcast rights agreements.” Id.

The Complaint challenges, under both federal and Puerto Rico antitrust laws, “concerted behavior in unreasonable restraint of trade through which the Defendants entered into an unlawful conspiracy to boycott and exclude the Plaintiffs from competing as participants in the relevant markets for investing in and operating top-tier professional baseball teams in Puerto Rico.” Id. ¶ 2

The prologue to this alleged behavior is the purchase of operating control of Cangrejeros de Santurce professional baseball team (the “Cangrejeros Franchise”) by Axon in October 2019. Axon became the sole owner and member on February 4, 2022. Id. ¶ 3. Axon went on to improve the “competitive success of the Cangrejeros Franchise through increased levels of investment and dynamic new ways to operate and promote the team in economic competition.” Id. Axon’s “procompetitive efforts to improve the quality of the Cangrejeros Franchise were met with stiff resistance by the other teams in the League, who did not want to have to face such enhanced economic competition.” Id. ¶ 5. This resistance was allegedly characterized by a “group boycott” and the “unlawful seizure of [the] Plaintiffs’ investor-operator interest in the Cangrejeros Franchise, which was then resold to a different investor-operator, [the] Defendant Impulse Sports Entertainment Corporation (‘Impulse Sports’).” Id.

This alleged collective boycott took the form of “unlawful contracts, combinations, and/or conspiracies” that had the effect of “unreasonably restraining competition and creating and maintaining a monopoly for [the] Defendants in the relevant markets for investing in and operating top-tier professional baseball teams in Puerto Rico.” *Id.* ¶ 6. This conduct led to “significant antitrust injuries to [the] Plaintiffs in their business and property.” *Id.* These injuries are represented by “the loss of [the] Plaintiffs’ ability to derive competitive value from the ticket sales, sponsorship, concessions, merchandise, and radio and streaming broadcast rights of the Cangrejeros Franchise, and the loss of the ability to compete in the relevant markets through the operation of a professional baseball team in Puerto Rico.” *Id.* ¶ 94.

## **2. Facts Relating to Alleged Violations of the Civil Rights Act of 1871, 42 U.S.C. § 1983.**

The Plaintiffs allege the Defendants “conspired with one another and co-conspirator Romero Lugo, [the Mayor of San Juan] acting on behalf of the municipality of San Juan, to deprive Plaintiffs, without due process of law, of their property interests and rights, privileges, and immunities secured by the United States Constitution and laws of the United States under the color of government action by a municipality of Puerto Rico.” Compl. ¶ 159. Essentially, the conspiracy allegedly “deprived Axon and Cangrejeros LLC, without any due process or compensation, of their established property interest in being the investor-operator of the Cangrejeros Franchise and having control over the commercial exploitation of the team’s various rights without affording them compensation or due process of law.” *Id.* They did so to “accomplish the objective of San Juan to suppress requests by the Franchise for various improvements in its stadium, to suppress the proposal for a private investment in the stadium, and

to eliminate the possibility that the team would move to another municipality in Puerto Rico.” Id. ¶ 160.

## II. ANALYSIS

The Defendants move to dismiss the complaint for lack of subject matter jurisdiction on three grounds. First, the Plaintiffs’ antitrust claims must be dismissed because the “business of baseball” is exempt from antitrust regulation and the Puerto Rico Professional Baseball League falls squarely within the core of baseball’s antitrust exemption. Def’s. Mot. SMJ 6-10. Second, the Defendants argue the Plaintiffs’ state claims are barred by the Supremacy Clause and the Commerce Clause. Id. at 13. Finally, the Defendants argue that the Plaintiffs’ unfair competition law and tort claims fail as matter of law. Id. at 15-17.

### A. Standard of Review

As courts of limited jurisdiction, federal courts must resolve questions related to their subject-matter jurisdiction before addressing the merits of a case. Destek Grp. v. State of N.H. Pub. Utils. Comm’n, 318 F.3d 32, 38 (1st Cir. 2003). The party asserting jurisdiction has “the burden of demonstrating the existence of federal jurisdiction.” Viqueira v. First Bank, 140 F.3d 12, 16 (1st Cir. 1998). If it appears to the Court at any time that it lacks the statutory or constitutional power to adjudicate the case, it must dismiss the action, even in the absence of a challenge from any party. Arbaugh v. Y&H Corp., 546 U.S. 500, 514, (2006); Nowak v. Ironworkers Local 6 Pension Fund, 81 F.3d 1182, 1187 (2d Cir. 1996).

Federal Rule of Civil Procedure 12(b)(1) limns the appropriate mechanism for challenging a court’s subject-matter jurisdiction. Valentín v. Hosp. Bella Vista, 254 F.3d 358, 362 (1st Cir. 2001). The rule serves as a “large umbrella, overspreading a variety of different types of challenges to subject-matter jurisdiction.” Id. at 362-63.

A motion to dismiss brought under Rule 12(b)(1) is subject to a similar standard of review as a motion brought pursuant to Rule 12(b)(6). Boada v. Autoridad de Carreteras y Transportación, 680 F. Supp. 2d 382, 384 (D.P.R. 2010) (citing Negrón-Gaztambide v. Hernández-Torres, 35 F.3d 25, 27 (1st Cir. 1994)). The district court “must credit the plaintiff’s well-pled factual allegations and draw all reasonable inferences in the plaintiff’s favor.” Merlonghi v. United States, 620 F.3d 50, 54 (1st Cir. 2010) (citing Hosp. Bella Vista, 254 F.3d at 363). “[T]he Court’s inquiry, however, is not necessarily limited to the parties’ pleadings, and may include whatever evidence has been presented in the case.” Fed. Deposit Ins. Corp. v. Caban-Muñiz, 216 F. Supp. 3d 255, 257 (D.P.R. 2016) (citing Aversa v. United States, 99 F.3d 1200, 1210 (1st Cir. 1996)).

**B. The Plaintiffs’ Antitrust Claims Must Be Dismissed Because the “Business of Baseball” is Exempt From Antitrust Regulation.**

The Defendants argue the Plaintiffs’ antitrust claims must be dismissed because the “business of baseball” is exempt from antitrust regulation. Def’s. Mot. SMJ 6-10.

The Plaintiffs oppose this motion on the basis that what they call “the MLB exemption” does not apply to this case. They argue first that the anomalous MLB exemption must be narrowly construed and can only be applied to MLB and its affiliated minor leagues. Pls.’ Opp’n SMJ at 5-6. Second, that the Defendants cannot invoke the MLB exemption as the league operates as an independent baseball league that is not a minor league affiliate of MLB. Id. at 8-10. Third, that the conduct alleged does not fall within the narrow confines of the “business of baseball,” and finally, that the Defendants also cannot qualify for the MLB exemption because there is no showing that

they have relied on the existence of the exemption. Id. at 10-13.

**1. The Puerto Rico Professional Baseball League Falls Squarely Within the Core of Baseball's Antitrust Exemption.**

The Defendants start their argument by setting forth the 1922 Supreme Court decision that held that “the Clayton and Sherman Acts do not govern the business of baseball. Fed. Baseball Club, Inc. v. Nat'l League of Prof'l Baseball Clubs, 259 U.S. 200 (1922).” Def.’s Mot. SMJ at 7. The Defendants emphasize that the plaintiff in that case was “Federal Baseball, the last remaining club in the Federal League (and not Major League Baseball).” Id. They further continue to list the sustained holding in Supreme Court decisions, emphasizing “the U.S. Supreme Court has repeatedly held that the antitrust exemption applies to the ‘business of baseball.’” Id. at 10.

The Plaintiffs disagree on this crucial aspect and instead consider that “the exemption covers only MLB and its minor league affiliates and thus does not extend to the League or the Franchise Defendants.” Pls.’ Opp’n SMJ 5.

The Plaintiffs’ and the Defendants’ acknowledgment of the exemption differs first in their appellation of it. The Defendants name it throughout their motion and opposition as the “baseball antitrust exemption” while the Plaintiffs call it the “MLB exemption”. Def’s. Mot. FSC; Def.’s Mot. SMJ; Pls.’ Opp’n FSC; Pls.’ Opp’n SMJ. Words matter. As Holmes said, “[a] word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.” Towne v. Eisner, 245 U.S. 418, 425(1918). The Plaintiffs’ naming is telling: their main argument is that the exemption applies to MLB and its minor leagues only, and “[b]ecause it is established that the MLB exemption



can only be applied to MLB and its official minor league affiliates—and no other sports business—Defendants may not invoke it to protect their anticompetitive conduct here.” Pls.’ Opp’n SMJ 8. The Plaintiffs do not advance any cases to sustain their claim that the applicability of the clause only to MLB and its official minor leagues is “established.” In fact, an exhaustive search throughout all federal courts in this country does not provide for a single case using the denomination “MLB exemption”.

No federal courts have ever (before this case) expressly had to draw a distinction as to the applicability of this clause to professional leagues that are non-MLB or Minor League affiliates. Thus, this analysis focuses on interpreting the language and semantics of the major Supreme Court cases that define this exemption.

In the famous 1972 case brought by baseball player Curt Flood, the Supreme Court named the exemption as follows: “The longstanding exemption of **professional baseball** from the antitrust laws, Federal Baseball Club v. National League, 259 U.S. 200 (1922); Toolson v. New York Yankees, Inc., 346 U.S. 356 (1953) . . . .” Flood v. Kuhn, 407 U.S. 258 (1972) (emphasis added).

Its predecessor, the 1953 Toolson case heard by the same Court, affirmed its earlier ruling in Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, 259 U.S. 200, holding: “[T]his Court held that the business of providing public baseball games for profit between **clubs of professional baseball players** was not within the scope of the federal antitrust laws.” 346 U.S. 356, at 357 (emphasis added).

The wording is clear: the antitrust exemption applies to professional baseball. Had the Cangrejeros team, a professional baseball team, and the Winter League been an amateur team, the non-applicability of the exemption could have been better supported. Even with amateur

baseball, however, the District Court of Puerto Rico has been hesitant on the non-applicability of the clause when amateur players were paid a salary:

The only hesitation this Court has in a blanket application of the exemption is that the Supreme Court has expressly limited it to professional baseball, holding “we now specifically limit the rule there established [in Federal Baseball] to the facts there involved, i.e. the business of organized professional baseball.” Radovich v. National Football League, 352 U.S. 445, 451-452 (1957). In addition, the First Circuit has construed Flood, the Supreme Court’s most recent pronouncement on the exemption, as “holding that the longstanding judicially created exemption of professional baseball from the Sherman Act is an established ‘aberration’ in which Congress has acquiesced.” Data General Corp. v. Grumman Systems Support Corp., 36 F.3d 1147, 1185 n.4 (1st Cir. 1994) (emphasis added).

Although the Federation is allegedly an amateur organization, because its players are paid a salary as per the complaint, and because it is not clear that AA baseball is purely an amateur gig, the exemption for pro-ball may well be applicable. Having already determined that there is no subject matter jurisdiction under the Sherman Act, however, the Court declines to decide whether the exemption applies.

Melendez v. Federacion de Beisbol Aficionado de Puerto Rico, Civil No. 05-1040 (PG), 2005 WL 8213102, at \*3 (D. P.R. Feb. 11, 2005) (Pèrez-Giménez, J.).

In their complaint, the Plaintiffs leave no doubt as to the professional nature of the Cangrejeros team: “Defendant Liga de Béisbol Profesional de Puerto Rico, Inc.,

(the “League”) is the only top-tier professional baseball league in Puerto Rico, currently consisting of six different franchise teams operated by separately owned investors who do not share profits and losses with each other.” Compl. ¶ 1. “In October 2019, Axon, through Cangrejeros LLC, purchased operating control of the Cangrejeros de Santurce professional baseball team (the “Cangrejeros Franchise”).” *Id.* ¶ 3. Thus, the baseball exemption is applicable to Cangrejeros de Santurce, a professional baseball team.

The Plaintiffs further argue that “[e]ven if the Court finds that the MLB exemption can be extended to the League and its members . . . , the conduct averred in the Complaint still falls outside of the ‘business of baseball’ to which the Supreme Court has limited the exemption,” Pls.’ Opp’n SMJ 10, and contend that “[h]ere, the anti-competitive conspiracy alleged does not involve conduct that is ‘central’ to operating a baseball league. To the contrary, [the] Plaintiffs have alleged a conspiracy between the League, the Mayor of San Juan, and the Franchise Defendants for the anticompetitive purpose of suppressing competition by ‘[removing] Plaintiffs from operating the Cangrejeros Franchise.’” *Id.* at 11 (citing Compl. ¶ 50).

The Defendants argue in turn that the alleged conspiracy falls within the “business of baseball” and sets forth several cases to support their argument. They start by laying out that “the Supreme Court intended to exempt the business of baseball, not any particular facet of that business, from the federal antitrust laws.” Charles O. Finley & Co., Inc. v. Kuhn, 569 F.2d 527, 541 (7th Cir. 1978). They then turn to two cases alleging collusion, where the Supreme Court declined to hear challenges to the antitrust exemption.

In the first case, owners of buildings with rooftop views of a professional baseball team’s field brought

action against the team, alleging the team was engaging in anti-competitive behavior and had breached a contract with the building owners when they began construction that would block views of the baseball field from the buildings' rooftops. Right Field Rooftops, LLC v. Chicago Baseball Holdings, LLC, 87 F. Supp. 3d 874 (N.D. Ill. 2015). The Rooftops argued that the baseball exemption did not apply to individual team franchises, and that if it did, the exemption did not apply here because the Rooftops' business was "not necessary to produce the game on the field." *Id.* at 884. The Court laid out that "[t]he Rooftops' first contention that the baseball exemption is inapplicable to individual team franchises is unsupported by the relevant case law. The Toolson defendants themselves included the New York Yankees, the Cincinnati Baseball Club, and both the owner and general manager of the Cincinnati club." *Id.* Further, the Court laid out that "[m]ore fundamentally, . . . the Rooftops' reading of the baseball exemption is overly narrow. The exemption applies to the 'business of baseball' in general, not solely those aspects related to baseball's unique characteristics and needs." *Id.*

The second case was brought by scouts that argued that MLB was colluding to keep the scouts' salaries low because teams were agreeing to not hire scouts already employed by other teams. Wyckoff v. Office of the Comm'r of Baseball, 211 F. Supp. 3d 615 (S.D.N.Y. 2016). Citing a previous case involving the Chicago Cubs the Wyckoff Court observed:

In that case, the court denied plaintiffs' application for a preliminary injunction on the grounds that the baseball exemption barred a challenge to the Chicago Cubs' alleged agreement with others to sell tickets to watch Cubs games from rooftops overlooking Wrigley Field. *Id.* at 884-85. In denying plaintiff's application, the court con-

cluded that the leading Supreme Court cases broadly exempt the “business of baseball”—not discrete aspects of that business—from antitrust regulation. Id.

Id. at 625 (citing Right Field Rooftops, 87 F. Supp. 3d at 884–85). Here, the Plaintiffs claims involve an alleged conspiracy involving an owner of a professional franchise that was dismissed under the League’s regulations. This involves the business of baseball.

The Plaintiffs argument that “[t]he alleged conspiracy has nothing to do with player rules, rules of the game, or any other League rule or bylaw that could even arguably fall within the ‘business of baseball’ as that term has been narrowly defined by the court to limit the scope of the MLB exemption,” Pls.’ Opp’n SMJ 12, is overly narrow, as was the Rooftop’s reading of the exemption in the Right Field Rooftops case.

The Sherman Act baseball exemption applies to the LBPPR and the Cangrejeros team since they are a professional baseball team, and the antitrust claims arise in the context of the business of baseball.

The baseball exemption bars any federal antitrust claims issued from the complaint, leading to dismissal of count one and count two. Count three, count four and count five, alleging state antitrust claims, are consequently dismissed based on the Supremacy Clause as the Supreme Court held in Flood “state antitrust regulation would conflict with federal policy and . . . national ‘uniformity (is required) in any regulation of baseball.’” 407 U.S. at 284 (quoting Flood v. Kuhn, 316 F. Supp. 217, 280 (S.D.N.Y. 1970)).

This Court’s subject matter jurisdiction over this case could thus only be exercised through count seven, which claims Violations of Civil Rights Act of 1871, 42 U.S.C. § 1983, and could confer supplemental jurisdiction

on count six, claiming Contracts in Prejudice of a Third Person.

**C. “Judge shopping ain’t a thing here or anywhere else.”<sup>4</sup> The Plaintiffs’ Claim of Violations of Civil Rights Act of 1871, 42 U.S.C. § 1983 Must be Dismissed Under the Doctrine of Res Judicata.**

While the central element of this Complaint revolves around the antitrust injuries that the Plaintiffs allegedly suffered, this Court may also exercise its subject matter jurisdiction through count seven alleging violations of Civil Rights Act of 1871, 42 U.S.C. § 1983. The Plaintiffs’ claim that the Defendants “conspired with one another and co-conspirator Romero Lugo, [the Mayor of San Juan] acting on behalf of the municipality of San Juan, to deprive Plaintiffs, without due process of law, of their property interests and rights, privileges, and immunities secured by the United States Constitution and laws of the United States under the color of government action by a municipality of Puerto Rico,” Compl. ¶ 159, and “deprived Axon and Cangrejeros LLC, without any due process or compensation, of their established property interest in being the investor-operator of the Cangrejeros Franchise and having control over the commercial exploitation of the team’s various rights without affording them compensation or due process of law.” *Id.* They did so to “accomplish the objective of San Juan to suppress requests by the Franchise for various improvements in its stadium, to suppress the proposal for a private investment in the stadium, and to eliminate the possibility that the team would move to another municipality in Puerto Rico.” *Id.* ¶ 160.

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<sup>4</sup> *Blue Sphere, Inc. v. Individuals, Corporations, etc.* Civil Action No. 22-cv-5599, Jan. 18, 2023, trans. at 7 (N.D.Ill. 2023) (Seager, J.).

In their motion to dismiss for failure to state a claim, the Defendants argued that “Plaintiffs’ action is barred by Res Judicata after [P]laintiffs lost their prior case filed in the local court of Puerto Rico.” Def’s. Mot. FSC 10. This Court is therefore “called upon to determine the preclusive effect of a judgment entered by the Puerto Rico Court of First Instance[, and] Puerto Rico law supplies the rule of decision.” R.G. Fin. Corp. v. Vergara-Núñez, 446 F.3d 178, 182–83 (1st Cir. 2006) (citing Pérez-Guzmán v. Gracia, 346 F.3d 229, 233–234 (1st Cir. 2003)).

The doctrine of res judicata in Puerto Rico is inscribed in the Civil Code:

In order that the presumption of res adjudicata may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants, and their capacity as such.

P.R. Laws Ann. tit. 31, § 3343. Thus, “a party asserting a res judicata defense under Puerto Rico law must establish three elements: (i) the existence of a prior judgment on the merits that is ‘final and unappealable’; (ii) a perfect identity of thing or cause between both actions; and (iii) a perfect identity of the parties and the capacities in which they acted.” R.G. Fin. Corp., 446 F.3d at 183 (citing Boateng v. InterAm. Univ., Inc., 210 F.3d 56, 61–62 (1st Cir. 2000)).

### **1. The Prior Judgment**

The Defendants point out that “[o]n May 5, 2022, the San Juan Superior Court issued its Final Judgment,” Def’s. Mot. FSC 4, and that this is a final judgement because “[s]ince May 23, 2022, to today, [P]laintiffs never sought review or other relief from the San Juan Superior Court’s judgment, which is now firm and final.” Id. at 5.

The Supreme Court has held that “issues actually litigated in a state-court proceeding are entitled to the same preclusive effect in a subsequent federal § 1983 suit as they enjoy in the courts of the State where the judgment was rendered.” Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 83 (1984) (citing Allen v. McCurry, 449 U.S. 90, 96 (1980)). Consequently, if perfect identity of the thing or cause between both actions is established, the State Court Judgement will preclude this claim.

## **2. The Perfect Identity of Thing or Cause Between Both Actions**

“A prior and current action will share a perfect identity of thing if they involve the same object or matter and will share a perfect identity of cause if they flow from the same principal ground or origin or, put another way, if they derive from a common nucleus of operative facts.” Universal Ins. Co. v. Office of the Ins. Comm’r, 755 F.3d 34, 38 (1st Cir. 2014) (citing García-Monagas v. De Arelano, 674 F.3d 45, 51 (1st Cir. 2012)). The Defendants argue that “[b]oth the prior local court case as well as this case arise because of Axon’s suspension from the LBPPR”. Def.’s Mot. FSC 11. They conclude their argument by stating that “[w]hile it could be argued that both cases are based on the same set of facts, at the very least both cases derive from a common nucleus of operative facts.” Id.

The Plaintiffs argue that “[e]ven a cursory comparison of the claims in the narrow Superior Court Action to the very different claims in the instant action makes it evident that ‘broader and more far-reaching’ conduct has been alleged here.” Pls.’ Opp’n FSC 13 (citing Walsh v. Int’l Longshoremen’s Ass’n., 630 F.2d 864, 873 (1st Cir. 1980)). They consider the Superior Court Action to be “a simple breach of contract action challenging, as a



violation of the League's Constitution, the League's imposition of a two-year suspension and a \$5,000 fine on Axon," id., while describing the current action as "a wide-ranging case bringing federal antitrust and civil rights conspiracy claims, as well as Puerto Rico unfair competition and antitrust claims, that were not in any way presented in the Superior Court Action." Id. at 13-14.

The Plaintiffs conflate similarity of cases and similarity of claims. This Court does not have to consider the preclusive effect of the Superior Court Judgement on the entire case brought before it, but the preclusive effect on the cause of action that bears "perfect identity" of thing or cause between actions. See P.R. Laws Ann. tit. 31, § 3343.

Turning to the complaint, and focusing solely on the claim of Violations of Civil Rights Act of 1871, 42 U.S.C. § 1983, the Plaintiffs allege that the "Defendants' conspiracy, with the participation of the mayor of San Juan acting on behalf of the municipality, deprived Axon and Cangrejeros LLC, without any due process or compensation, of their established property interest in being the investor-operator of the Cangrejeros Franchise and having control over the commercial exploitation of the team's various rights without affording them compensation or due process of law." Compl. ¶ 159. Essentially, this deprivation of the "property interest in being the investor-operator of the Cangrejeros Franchise" takes the form of Axon's suspension from his role, the same grievance at the center of the action brought to the Superior Court, and for which the court concluded that such suspension was in compliance with "the contractual due process of the law established by the parties in the Constitution of the Professional Baseball League." Axon v. Liga De Beisbol Profesional de Puerto Rico, Inc., NO. SJ-2022-CV-02802 at 12.

In the Superior Court Judgment, the Court itself compared, in Nostradamus fashion, the contractual due process case brought before it with a potential constitutional due process claim had there been a state actor involved:

The Court must express, first, that the Professional Baseball League is a private entity. As it is well known, unless a private entity is an actor of the state, rights such as the constitutional due process of the law cannot be claimed against it. In such cases, the Supreme Court has reiterated that contractual due process of the law is what applies. This essentially means that if the parties established by contract a specific procedure to sanction one of the parties, the procedure established by contract must be followed. This makes sense because the doctrine of pacta sunt servanda applies. However, in this case, the Court must analyze whether the procedure to impose sanctions that the President of the Professional Baseball League carried out against Mr. Axon is the correct one, pursuant to the contract between the parties.

Id. at 10.

At the heart of both claims lies Axon's suspension and then termination by the Professional Baseball League. After failing in State Court, under the theory of contractual due process, the Plaintiffs attempt to bring the same claim again under a different theory by adding the Mayor, a state actor, to their complaint.

This Court agrees that at the very least, both claims derive from a common nucleus of operative facts. It is satisfied that the perfect identity of thing or cause between both actions is present here.

### 3. Identity of the Parties

The Plaintiffs argue first “it cannot be disputed that the parties involved in this action are not identical to the parties in the Superior Court Action. In total, there are six new Defendants in this action (Criollos Management, Inc., RA12, Inc., Indios de Mayaguez Baseball Club Inc., Gigantes de Carolina Baseball Club Inc., Leones De Ponce CF Inc. and Impulse Sports) as well as a new Plaintiff (Santurce Merchandising LLC) who were not parties to the Superior Court Action.” Pls.’ Opp’n FSC 15. Second, they argue that “Defendants have made no attempt to show that any of the new Defendants in this action were in privity with any of the parties in the prior action.” *Id.*

The Plaintiffs, however, fail to recognize that “under Puerto Rico law, the addition of new defendants to the federal claim does not destroy the defendants’ ability to raise the *res judicata* defense.” Rivera-Feliciano v. State Ins. Fund Corp., 652 F. Supp. 2d 170, 181 (D.P.R. 2009) (Pérez-Giménez, J.) (citing Baez-Cruz v. Municipality of Comerio, 140 F.3d 24, 29 (1st Cir. 1998)). In another case, the same argument made by plaintiffs was met with the same response: “Plaintiffs point out that the present action contains new parties that were not parties in the Commonwealth Court action. Nevertheless, the defense of *res judicata* is applied even when the named parties are different, as long as the real parties in interest are identical.” Lugo Rodriguez v. Puerto Rico Inst. of Culture, 221 F. Supp. 2d 229, 238 (D.P.R. 2002) (Garcia-Gregory, J.), *aff’d*, 98 F. App’x 15 (1st Cir. 2004) (citing Arecibo Radio Corp. v. Commonwealth, 825 F.2d 589, 591 (1st Cir. 1987)).

Here, the real parties of interest in the Civil Rights Act Claim, triggered by Axon’s suspension, are Axon and CSBC, who filed the action in the Commonwealth Court and in this Court against the unlawful conduct of LBPPR

and Flores in his official capacity as President of the League and his personal capacity.

Plaintiffs fail to demonstrate that *res judicata* cannot apply. The Civil Rights Act claim stands alone and is not intertwined with the antitrust claims. This Court is satisfied that the Commonwealth Judgment precludes the federal claim through the doctrine of *res judicata*.

### III. CONCLUSION

Over 100 years ago, and again 50 years ago, the Supreme Court declined to intervene in what it considered to be a congressional responsibility. “[T]he Court said in Federal Baseball in 1922 and what it said in Toolson in 1953, we say again here in 1972: the remedy, if any is indicated, is for congressional, and not judicial, action.” Flood, 407 U.S. at 285. The Supreme Court also said that “[Congress] by its positive inaction, has allowed those decisions to stand for so long and, far beyond mere inference and implication, has clearly evinced a desire not to disprove them legislatively.” Id.

Decades after acknowledging that these decisions have stood for “so long,” it is now apparent that a congressional intervention is unlikely. The Supreme Court may well need to take responsibility itself, or risk issuing the same decision in a century. Until then, district courts have no other choice but to apply the antitrust exemption to Professional Baseball.

This Court does not have jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337 because the claims are exempt from Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 & 26), Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 & 2), and 42 U.S.C. §§ 1983 & 1988 because of the professional baseball antitrust exemption.

Therefore, this Court does not have supplemental jurisdiction over the claims arising under the Puerto Rico

antitrust law, P.R. Laws Ann. tit. 10, § 257, et seq., for violations of the Puerto Rico Fair Competition Law, P.R. Laws Ann. tit. 10, § 259, based on the Supremacy Clause.

The Civil Rights Act Claim is precluded by a prior judgement through the doctrine of res judicata and the Court declines to exercise supplemental authority on the state claim of Contracts in Prejudice of a Third Party under the Puerto Rico General Tort Statute, P.R. Laws Ann. tit. 31, § 10801.

This Court **GRANTS** the Defendants' motion to dismiss for lack of subject matter jurisdiction, ECF No. 43, with regard to the federal antitrust claims. This Court **GRANTS** the Defendants' motion to dismiss for failure to state a claim, ECF No. 28, regarding the Civil Rights Act Claim through the doctrine of res judicata.

/s/ William G. Young  
WILLIAM G. YOUNG  
JUDGE of the UNITED STATES<sup>5</sup>

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<sup>5</sup> This is how my predecessor, Peleg Sprague (D. Mass. 1841-1865), would sign official documents. Now that I'm a Senior District Judge I adopt this format in honor of all the judicial colleagues, state and federal, with whom I have had the privilege to serve over the past 45 years.