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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

14 RICHARD ALAN MORAN, ERNEST
15 FAZIO, AND MIKE COLBERN,
16 individually, and on behalf of all similarly
17 situated retired Major League Baseball
18 players,

Plaintiffs,

v.

19 ALLAN H. "BUD" SELIG, as
20 Commissioner of Major League Baseball,
21 *et al.*,

Defendants

Case No. LACV03-7424 R (CTx)

**DEFENDANTS' STATEMENT OF
UNCONTROVERTED FACTS
AND CONCLUSIONS OF LAW
IN SUPPORT OF MOTION TO
DISMISS THE COMPLAINT
AND/OR SUMMARY
JUDGMENT PURSUANT TO
LOCAL RULE 56-1**

Date: March 15, 2004
Time: 10:00 A.M.
Place: Courtroom 8

Hon. Manuel L. Real

23 In support of their motion to dismiss the complaint and/or for summary
24 judgment, defendants, by their attorneys, Proskauer Rose LLP, assert that the
25 following material facts are uncontroverted and respectfully request that the Court
26 adopt the following conclusions of law:

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SCANNED

1 **Uncontroverted Facts**

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1. In or about May 1993, Major League Baseball (“MLB”) adopted a plan that provided certain medical coverage to individuals who had played professional baseball in the Negro Leagues (the “Negro League Medical Plan”).

[Declaration of Robert D. Manfred, Jr., In Support Of Defendants’ Motion To Dismiss The Complaint And/Or For Summary Judgment (“Manfred Decl.”), at ¶¶ 5, 16, Ex. 2 at 24; Complaint, at ¶ 118.]

2. In or about January 1997, MLB adopted a plan that provided for annual payments (in the amount of \$10,000) to individuals who had played professional baseball in the Negro Leagues prior to 1948 (the “Supplemental Income Plan for Negro League Players” or the “Supplemental Income Plan”), which plan became effective in or about September 1997.

[Manfred Decl., at ¶¶ 5, 16, Ex. 3 at Preamble; Complaint, at ¶ 118.]

3. The Supplemental Income Plan was not adopted until after the fact that former Negro League players did not receive annual payments from MLB was “brought to the public’s attention through litigation in 1996.”

[Complaint, at ¶ 121.]

4. Plaintiffs have made attempts for many years to enlist the support of others in addressing what they characterize as the “inequitable pension situation” by, among other things, seeking the assistance of United States Senator Jim Bunning, a former Major League player.

[Complaint, at ¶¶ 179-183, 191-193, Ex. 2.]

5. MLB took no action to conceal the adoption of the Medical Plan or Supplemental Income Plan.

[Manfred Decl., at ¶ 19, Ex. 4.]

6. Public reports concerning MLB’s adoption of the Medical Plan and/or Supplemental Income Plan were published in, *inter alia*, an Associated Press

1 dispatch, a Knight Rider/Tribune New Service dispatch, the *Los Angeles Times*, *The*
2 *New York Times*, *USA Today*, *The Philadelphia Tribune*, *The Washington Post*, *The*
3 *Post-Standard* (Syracuse, NY) *Newsday* (New York), *Newsweek Magazine*, *The San*
4 *Francisco Examiner*, *Daily News* (New York), *St. Louis Post-Dispatch*, *Chicago*
5 *Tribune*, *San Antonio Express-News*, *New Pittsburgh Courier*, *The Tampa Tribune*,
6 *The Philadelphia Inquirer*, *Sun Sentinel* (Fort Lauderdale), *Times-Picayune* (New
7 Orleans), *Rocky Mountain News*, *Pittsburgh Post-Gazette*, *San Jose Mercury News*,
8 *The Record* (Bergen County, NJ), *Orlando Sentinel*, *The Miami Herald*, *The*
9 *Houston Chronicle*, *Forth Worth Star-Telegram*, *Seattle Post-Intelligencer*, *The*
10 *Chattanooga Times*, *Charlotte Observer*, *The Buffalo News*, *The Boston Globe*, *The*
11 *Baltimore Sun*, and *The Austin American Statesman*.

12 [Manfred Decl., at ¶ 19, Ex. 4.]

13 7. The conditions pursuant to which individuals receive medical coverage
14 under the Medical Plan and annual payments pursuant to the Supplemental Income
15 Plan have remained the same since the adoption of those plans in 1993 and 1997,
16 respectively.

17 [Manfred Decl., at ¶¶ 22-24, Exs. 2 and 3.]

18 8. Simultaneously with its adoption of the Supplemental Income Plan for
19 Negro League Players, MLB adopted a Supplemental Income Plan for Pre-1947
20 Players, that provided for annual payments (in the amount of \$10,000) to individuals
21 who had played in the Major Leagues prior to the time there was any pension plan
22 covering Major League players, all of whom were Caucasian.

23 [Manfred Decl., at ¶¶ 30-32, Ex. 7.]

24 9. Plaintiffs filed a charge of discrimination with the Equal Employment
25 Opportunity Commission ("EEOC") on August 4, 2003.

26 [Complaint, at ¶ 221.]

27 10. Plaintiffs filed their complaint in this action in October 2003.

28 [Complaint.]

SCANNED

1 Conclusions of Law

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1. Plaintiffs knew or should have known of the adoption of the Medical Plan for Negro League players before October 2001.

2. Plaintiffs knew or should have known of the adoption of the Supplemental Income Plan for Negro League players before October 2001.

3. Plaintiffs knew or should have known of the adoption of the Medical Plan for Negro League players more than 300 days prior to the filing of the EEOC charge.

4. Plaintiffs knew or should have known of the adoption of the Supplemental Income Plan for Negro League players more than 300 days prior to the filing of the EEOC charge.

5. Plaintiffs' Title VII claim is time-barred by the applicable statute of limitations.

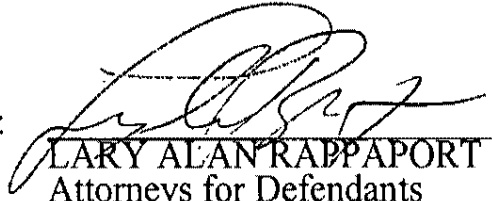
6. Plaintiffs' 42 U.S.C. § 1981 claim is time-barred by the applicable statute of limitations.


7. Plaintiffs' 42 U.S.C. § 1985 claim is time-barred by the applicable statute of limitations.

8. Defendants are entitled to summary judgment on plaintiffs' Title VII, 42 U.S.C. § 1981, and 42 U.S.C. § 1985 claims.

DATED: February 2, 2004

LARY ALAN RAPPAPORT
PROSKAUER ROSE LLP

By: 
LARY ALAN RAPPAPORT
Attorneys for Defendants


March 15, 2004
U.S.D.J.

PROOF OF SERVICE

I declare that: I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is 2049 Century Park East, Suite 3200, Los Angeles, California 90067-3206.

On February 2, 2004, I served the foregoing document described as:

DEFENDANTS' STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW IN SUPPORT OF MOTION TO DISMISS THE COMPLAINT AND/OR SUMMARY JUDGMENT

by placing the original true copies thereof enclosed in a sealed envelope addressed as follows:

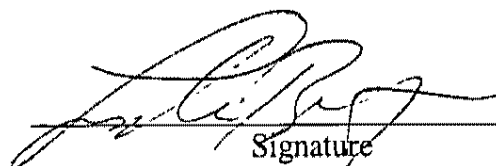
John R. DaCorsi, Esq.
Jason L. Rumsey, Esq.
DaCorsi & Placencio, P.C.
21031 Ventura Boulevard
Suite 1200
Woodland Hills, California 91364-2203

- (By Fax) By transmitting a true and correct copy thereof via facsimile transmission.
- (By U.S. Mail) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
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- (By Next-Day Delivery Service) By causing such envelope to be delivered to the office of the addressee by overnight delivery via FedEx or by other similar overnight delivery service.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 2, 2004, at Los Angeles, California.

LARY ALAN RAPPAPORT

Type or Print Name


Signature