

Exhibit 1
Declaration of Ryan S. Hilbert in Support of
Plaintiffs' Consolidated Opposition to Defendants'
Motions to Dismiss

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Incorporated d/b/a Players Inc
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20 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
21 **SAN FRANCISCO DIVISION**

22 BERNARD PAUL PARRISH, HERBERT
ANTHONY ADDERLEY, WALTER
23 ROBERTS III,

24 Plaintiffs,

25 v.

26 NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION and NATIONAL
27 FOOTBALL LEAGUE PLAYERS
INCORPORATED d/b/a/ PLAYERS INC,

28 Defendants.

Case No. C 07 0943 WHA

**PLAYERS INC'S RESPONSES
AND OBJECTIONS TO
PLAINTIFFS' FIRST SET OF
REQUESTS FOR ADMISSIONS**

1 Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Defendant
2 National Football League Players Inc d/b/a Players Inc ("Players Inc") hereby responds and
3 objects to Plaintiffs' First Set of Requests for Admission (collectively, the "Requests," and
4 individually, a "Request"), dated June 11, 2007.

5 **PRELIMINARY STATEMENT**

6 The following responses and objections are based upon the information currently
7 known and available to Players Inc, including information ascertained pursuant to Players Inc's
8 reasonable inquiry in response to each Request. Discovery and investigation are in the
9 preliminary stages and are ongoing, and may disclose the existence of additional responsive
10 information. Players Inc reserves the right to amend or supplement the responses and objections
11 as additional information is discovered, revealed, recalled or otherwise ascertained. Players Inc
12 specifically reserves the right to utilize subsequently discovered evidence at trial.

13 Players Inc's responses to the Requests do not constitute an admission that
14 Players Inc has in its possession, custody or control information responsive to each and every
15 individual request herein. Furthermore, Players Inc's responses and objections to any Request
16 shall not waive any objections by Players Inc, in this or in any subsequent proceeding, on any
17 grounds, including objections as to the competency, relevancy, materiality, privilege or
18 admissibility of the responses, or the subject matter thereof. Moreover, the fact that Players Inc
19 has answered part or all of any Request is not intended and shall not be construed to be a waiver
20 by Players Inc of all or any part of any objection to any Request.

21 **GENERAL OBJECTIONS**

22 Players Inc asserts the following general objections with respect to each of the
23 Requests:

- 24 1. Players Inc objects to the Requests, including the General Instructions, to
25 the extent that they purport to impose obligations beyond those imposed by the Federal Rules of
26 Civil Procedure, the Local Rules of the Northern District of California, an applicable Order of
27 this Court, or any other applicable rules or statutes.

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1 2. Players Inc objects to the Requests to the extent that they seek information
2 subject to the attorney-client privilege, the work-product doctrine, or any other applicable
3 evidentiary or other privilege, immunity or restriction. The disclosure of any information is
4 without waiver of any privilege, claim of confidentiality, or other objection. In the event that
5 Players Inc discloses any information that is the subject of any privilege, claim of confidentiality,
6 or other objection, such production is inadvertent and shall not constitute a waiver of any
7 privilege, claim of confidentiality or other objection. Insofar as the disclosure of information by
8 Players Inc in response to the Requests may be deemed to be a waiver of any privilege or right,
9 such waiver shall be deemed to be a limited waiver with respect to that particular information
10 only.

11 3. Players Inc objects to the Requests to the extent that they seek information
12 constituting or containing trade secrets, competitively sensitive information or other non-public
13 confidential or proprietary information. Players Inc will, however, disclose such information
14 because a protective order is in place.

15 4. Players Inc objects to the Requests to the extent that they seek information
16 that is not relevant to this subject matter of this action and not reasonably calculated to lead to
17 the discovery of admissible evidence. As set forth in the next paragraph, this objection includes,
18 but is not limited to, Requests calling for information about events that occurred outside the
19 applicable statutes of limitations.

20 5. Players Inc objects to the Requests to the extent that they call for
21 information relating to any asserted conduct by Players Inc prior to February 14, 2003, the
22 commencement of the earliest applicable statutes of limitations for any claim asserted in the
23 Second Amended Complaint ("SAC"). Players Inc will treat each Request as though it calls for
24 information relating to any asserted conduct by Players Inc from February 14, 2003 until the date
25 of these responses.

26 6. Players Inc objects to the Requests to the extent that they are vague,
27 ambiguous, overly broad in scope or unduly burdensome.

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1 7. Players Inc further objects to the Requests to the extent that they seek
2 information that is not within Players Inc’s possession, custody or control. Players Inc construes
3 each Request as requiring it to engage in a reasonable inquiry and bases its responses on
4 information that is known or ascertainable through a reasonable inquiry.

5 8. Players Inc objects to the Requests to the extent that they are drafted in
6 terms of legal conclusions.

7 9. Players Inc reserves all objections or other positions it may have as to the
8 competency, relevance, materiality, privilege, or admissibility of any information disclosed in
9 response to the Requests for any purpose whatsoever.

10 **OBJECTIONS TO PLAINTIFFS’ DEFINITIONS**

11 10. Players Inc’s responses to the Requests do not in any way constitute an
12 adoption of Plaintiffs’ purported Definitions of words or phrases in the Requests. Players Inc
13 objects to the Definitions contained in the Requests on the grounds and to the extent that they: (i)
14 incorporate, reference, or rely upon factual assumptions or characterizations which are incorrect,
15 speculative, or unsubstantiated; (ii) exceed the scope of permissible discovery under the Federal
16 Rules of Civil Procedure, the Local Rules of the Northern District of California, any applicable
17 Order of this Court or any other applicable rules or statutes; (iii) are inconsistent with the
18 ordinary and customary meaning of the words or phrases they purport to define; (iv) include
19 assertions of purported fact that are inaccurate or at the very least are disputed by the parties to
20 this action; or (v) incorporate other purported Definitions that suffer from such defects. Without
21 limiting the breadth and general application of these objections, Players Inc further objects to the
22 Definitions as follows:

23 11. Players Inc objects to the definition of the terms “You,” “Your,”
24 “PLAYERS INC,” or “Defendant” to the extent that they purport to require the disclosure of
25 information in the possession, custody or control of “attorneys” on the ground and to the extent
26 that such information is protected by the attorney-client privilege, work-product doctrine or any
27 other applicable privileges or protections from discovery. Players Inc further objects to the
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1 definition of the terms "You," "Your," "PLAYERS INC," or "Defendant" to the extent they
2 purport to include any of Players Inc's "former employees," "predecessors in interest" or any
3 other entity (including the NFLPA) which may possess information outside of Players Inc's
4 custody or control.

5 12. Players Inc objects to the definition of the terms "NFL Players
6 Association" or "NFLPA" to the extent that they purport to require the disclosure of information
7 in the possession, custody or control of "attorneys" on the ground and to the extent that such
8 information is protected by the attorney-client privilege, work-product doctrine or any other
9 applicable privileges or protections from discovery. Players Inc further objects to the definition
10 of the terms "NFL Players Association" or "NFLPA" to the extent they purport to include any of
11 the NFLPA's "former employees," "predecessors in interest" or any other person or entity which
12 may possess information outside of Players Inc's custody or control.

13 13. Players Inc objects to the definition of the term "Licensee" to the extent
14 that it is overly broad and not reasonably calculated to lead to the discovery or admissible
15 evidence because, among other things, it includes third parties with whom Players Inc has
16 contracted but which do not use the likenesses of retired players.

17 14. Players Inc objects to the definition of the term "GLA" to the extent that it
18 is overly broad, vague and ambiguous because it includes "solicitations or offers" for contracts.
19 For example, Plaintiffs' definition of the term GLA renders certain Requests meaningless (e.g.,
20 Request No. 6: "Admit that you have solicited every Retired Player to enter into a [solicitation
21 for a contract]"). Players Inc will interpret the term GLA to refer to any agreement or other
22 instrument or document whereby an active or retired NFL player assigns to the NFLPA and/or
23 PLAYERS INC the right to use and to grant to persons, firms, or corporations the right to use his
24 name, signature facsimile, voice, picture, photograph, likeness, and/or biographical information
25 in group licensing programs.

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RESPONSES AND SPECIFIC OBJECTIONS

Players Inc expressly incorporates each of the above general objections and objections to definitions (collectively, "General Objections") in its response to each specific Request set forth below, as if fully set forth therein.

REQUEST FOR ADMISSION NO. 1:

Admit that you have purported to represent all Retired Players.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Players Inc objects to Request No. 1 on the ground that the term "represent" is overly broad and ambiguous in this context. Subject to and without waiver of the foregoing objections, Request No. 1 is denied. Players Inc admits that it has previously made statements regarding "representing" specific numbers of retired players, but a reasonable inquiry has not disclosed any statements in which Players Inc purported to represent "all" retired players. With respect to its previous statements regarding "representing" specific numbers of retired players, Players Inc was indicating that it had access to certain numbers of retired players via the NFLPA Retired Players Association, and that Players Inc had the ability to solicit the participation of such players in licensing activities to the extent that potential third-party licensees indicated an interest in pursuing licensing opportunities with such players.

REQUEST FOR ADMISSION NO. 2:

Admit that you have claimed that licensees could secure Retired Player rights only from PLAYERS INC.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Subject to and without waiver of the foregoing objections, Request No. 2 is denied during the limitations period. Players Inc admits that during the limitations period it has claimed that third-party licensees of Players Inc could secure retired NFL player group licensing rights only through Players Inc if such rights were going to be used in conjunction with Players Inc licensed products. To the extent that Request No. 2 is referring to language in Exhibit B to the SAC, that letter was sent prior to the commencement of any applicable statute of limitations

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1 period and information relating to that letter is outside the scope of permissible discovery.
2 Players Inc will not respond to this request for information from prior to the commencement of
3 the statute of limitations except that Players Inc admits that the letter attached to the SAC as
4 Exhibit B was sent prior to the commencement of any applicable statute of limitations and states
5 that "Players Inc's licensees such as EA Sports are permitted to secure retired NFL player rights
6 only from Players Inc."

7 **REQUEST FOR ADMISSION NO. 3:**

8 Admit that you have claimed that PLAYERS INC provides the Retired Players'
9 only opportunity to participate in NFL player video games and get paid.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

11 Subject to and without waiver of the foregoing objections, Request No. 3 is
12 denied during the limitations period. Players Inc admits that during the limitations period it has
13 claimed that third-party licensees of Players Inc could secure retired NFL player group licensing
14 rights only through Players Inc if such rights were going to be used in conjunction with Players
15 Inc licensed NFL player video games. To the extent that Request No. 3 is referring to language
16 in Exhibit B to the SAC, that letter was sent prior to the commencement of any applicable statute
17 of limitations period and information relating to that letter is outside the scope of permissible
18 discovery. Players Inc will not respond to this request for information from prior to the
19 commencement of the statute of limitations except that Players Inc admits that the letter attached
20 to the SAC as Exhibit B was sent prior to the commencement of any applicable statute of
21 limitations and states that "[t]his offer will be your only opportunity to participate in NFL player
22 video games and paid."

23 **REQUEST FOR ADMISSION NO. 4:**

24 Admit that you have solicited every Retired Player to participate in NFL player
25 video games and get paid.

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1 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

2 Subject to and without waiver of the foregoing objections, Request No. 4 is
3 denied.

4 **REQUEST FOR ADMISSION NO. 5:**

5 Admit that the NFLPA has solicited every Retired Player to participate in NFL
6 player video games and get paid.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

8 Players Inc objects to Request No. 5 on the ground that it is directed to the
9 NFLPA. Subject to and without waiver of the foregoing objections, Request No. 5 is denied.

10 **REQUEST FOR ADMISSION NO. 6:**

11 Admit that you have solicited every Retired Player to enter into a GLA.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

13 Subject to and without waiver of the foregoing objections, Request No. 6 is
14 denied.

15 **REQUEST FOR ADMISSION NO. 7:**

16 Admit that the NFLPA has solicited every Retired Player to enter into a GLA.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

18 Players Inc objects to Request No. 7 on the ground that it is directed to the
19 NFLPA. Subject to and without waiver of the foregoing objections, Request No. 7 is denied.

20 **REQUEST FOR ADMISSION NO. 8:**

21 Admit that the NFLPA has assigned to PLAYERS INC all of the GLAs that it has
22 obtained relating to Retired Players.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

24 Players Inc objects to Request No. 8 on the ground that the word "obtained" is
25 vague and ambiguous in this context. Subject to and without waiver of the foregoing objections,
26 Players Inc admits that to the extent retired NFL players enter into GLAs with the NFLPA, the
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1 NFLPA assigns Players Inc the right to utilize the group licensing rights of such retired NFL
2 players, except with respect to trading card agreements.

3 **REQUEST FOR ADMISSION NO. 9:**

4 Admit that the NFLPA has assigned to PLAYERS INC the right to use or license
5 NFL logos and markings.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

7 Subject to and without waiver of the foregoing objections, Request No. 9 is
8 denied.

9 **REQUEST FOR ADMISSION NO. 10:**

10 Admit that you claim to represent over 3,000 Retired Players.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

12 Players Inc objects to Request No. 10 on the ground that the term "represent" is
13 overly broad and ambiguous in this context. Subject to and without waiver of the foregoing
14 objections, Request No. 10 is denied as Players Inc does not currently claim to represent any
15 specific number of retired players. Players Inc admits that it has previously made statements
16 regarding "representing" specific numbers of retired players. In making such statements, Players
17 Inc was indicating that it had access to certain numbers of retired players via the NFLPA Retired
18 Players Association, and that Players Inc had the ability to solicit the participation of such
19 players in licensing activities to the extent that potential third-party licensees indicated an
20 interest in pursuing licensing opportunities with such players.

21 **REQUEST FOR ADMISSION NO. 11:**

22 Admit that you claim to represent more than 2,900 Retired Players.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

24 Players Inc objects to Request No. 11 on the ground that the term "represent" is
25 overly broad and ambiguous in this context. Subject to and without waiver of the foregoing
26 objections, Request No. 11 is denied as Players Inc does not currently claim to represent any
27 specific number of retired players. Players Inc admits that it has previously made statements
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1 regarding “representing” specific numbers of retired players. In making such statements, Players
2 Inc was indicating that it had access to certain numbers of retired players via the NFLPA Retired
3 Players Association, and that Players Inc had the ability to solicit the participation of such
4 players in licensing activities to the extent that potential third-party licensees indicated an
5 interest in pursuing licensing opportunities with such players.

6 **REQUEST FOR ADMISSION NO. 12:**

7 Admit that you claim to represent 3,500 Retired Players.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

9 Players Inc objects to Request No. 12 on the ground that the term “represent” is
10 overly broad and ambiguous in this context. Subject to and without waiver of the foregoing
11 objections, Request No. 12 is denied as Players Inc does not currently claim to represent any
12 specific number of players. Players Inc admits that it has previously made statements regarding
13 “representing” specific numbers of retired players. In making such statements, Players Inc was
14 indicating that it had access to certain numbers of retired players via the NFLPA Retired Players
15 Association, and that Players Inc had the ability to solicit the participation of such players in
16 licensing activities to the extent that potential third-party licensees indicated an interest in
17 pursuing licensing opportunities with such players.

18 **REQUEST FOR ADMISSION NO. 13:**

19 Admit that you have claimed to represent 3,700 Retired Players.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

21 Players Inc objects to Request No. 13 on the ground that the term “represent” is
22 overly broad and ambiguous in this context. Subject to and without waiver of the foregoing
23 objections, Request No. 13 is denied.

24 **REQUEST FOR ADMISSION NO. 14:**

25 Admit that after this lawsuit was filed, you changed the language on your website
26 to say that PLAYERS INC represents “many memorable” retired players instead of claiming to
27 represent more than a specific number of Retired Players.

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1 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

2 Players Inc objects to Request No. 14 on the grounds that the Request is
3 compound, and the term "represent" is vague and ambiguous in this context. Subject to and
4 without waiver of the foregoing objections, Players Inc admits that some time after February 14,
5 2007, Players Inc changed the language on its website so that it currently states: "Formed in
6 1994, PLAYERS INC represents more than 1,800 active and many memorable retired NFL
7 players."

8 **REQUEST FOR ADMISSION NO. 15:**

9 Admit that you have made no accounting to Retired Players of licensing and/or
10 marketing distributions.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

12 Players Inc objects to Request No. 15 on the ground that the term "accounting" is
13 vague and ambiguous in this context. Subject to and without waiver of the foregoing objections,
14 Request No. 15 is denied in that Players Inc accounted to retired players by providing them with
15 appropriate distributions of licensing monies.

16 **REQUEST FOR ADMISSION NO. 16:**

17 Admit that less than 400 Retired Players received any revenue from your
18 licensing activities in 2005.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

20 Subject to and without waiver of the foregoing objections, Request No. 16 is
21 denied. During 2005, more than 400 retired players received revenues from Players Inc with
22 respect to licensing activities, including personal appearances.

23 **REQUEST FOR ADMISSION NO. 17:**

24 Admit that one or more of your agreements with Licensees prevents them from
25 using Retired Players likenesses if the Retired Player is not under contract with PLAYERS INC.
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1 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

2 Players Inc objects to Request No. 17 on the grounds that it is vague and
3 ambiguous. Subject to and without waiver of the foregoing objections, Request No. 17 is denied.
4 Players Inc admits that one or more of its agreements with third-party licensees include “non-
5 interference” provisions similar to the provision set forth in Paragraph 11 of Exhibit C to the
6 SAC: “Licensee agrees and acknowledges that it shall not secure or seek to secure, directly from
7 any player who is under contract to an NFL club, is seeking to become under contract to an NFL
8 club, or at any time was under contract to an NFL club, or from such player’s agent, permission
9 or authorization for the use of such player’s name, facsimile signature, image, likeness,
10 photograph, or biography in conjunction with the licensed product(s) herein.” SAC, Ex. C, ¶ 12.
11 Contrary to the assertion in Request No. 17, such “non-interference” provisions do not purport to
12 impose a general restriction upon third-party licensees. For example, on their face, the non-
13 interference provisions are limited to specified licensed products.

14 **REQUEST FOR ADMISSION NO. 18:**

15 Admit that one or more of your agreements with Licensees requires that the
16 Licensee obtain rights to Retired Players likenesses only through PLAYERS INC.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

18 Subject to and without waiver of the foregoing objections, Request No. 18 is
19 denied. Players Inc admits that one or more of its agreements with third-party licensees include
20 “non-interference” provisions similar to the provision set forth in Paragraph 11 of Exhibit C to
21 the SAC: “Licensee agrees and acknowledges that it shall not secure or seek to secure, directly
22 from any player who is under contract to an NFL club, is seeking to become under contract to an
23 NFL club, or at any time was under contract to an NFL club, or from such player’s agent,
24 permission or authorization for the use of such player’s name, facsimile signature, image,
25 likeness, photograph, or biography in conjunction with the licensed product(s) herein.” SAC,
26 Ex. C, ¶ 12. Contrary to the assertion in Request No. 18, such “non-interference” provisions do
27 not purport to require third-party licensees to obtain retired players’ likenesses only through
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1 Players Inc. For example, on their face, the non-interference provisions are limited to specified
2 licensed products.

3 **REQUEST FOR ADMISSION NO. 19:**

4 Admit that Gene Upshaw has said in reference to licensing of images of the
5 Retired Players: "We could have the greatest dog food in the world, but if the dogs don't like it,
6 we can't sell it."

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

8 Subject to and without waiver of the foregoing objections, Request No. 19 is
9 admitted.

10 Date: August 1, 2007

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11 BY: Eamon O'Kelly
12 Eamon O'Kelly
13 Attorneys for Defendant Players Inc

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