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 and National Football League Players Incorporated d/b/a Players Inc  
 19

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

**DEFENDANTS' MISCELLANEOUS  
 ADMINISTRATIVE MOTION TO  
 FILE UNDER SEAL CERTAIN  
 CONFIDENTIAL MATERIALS  
 FILED BY PLAINTIFFS**

1 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and Civil Local  
2 Rules 79-5(d) and 7-11, Defendants National Football League Players Association (“NFLPA”)  
3 and National Football League Players Incorporated (“Players Inc”) hereby move the Court to  
4 permit certain documents filed by Plaintiffs (the Third Amended Complaint (“TAC”), and  
5 Exhibits D, F, G, I, and O thereto) to be filed under seal.

6 On November 15, 2007, Plaintiffs made a Miscellaneous Administrative Request  
7 To File Certain Confidential Documents Under Seal. In particular, Plaintiffs sought to file under  
8 seal unredacted versions of the TAC, and Exhibits D, F, G, I, J, and O, thereto, on the ground  
9 that those documents contained material that Defendants had designated “Highly Confidential --  
10 Attorneys Eyes Only” or “Confidential” pursuant to the Protective Order entered by the Court in  
11 this action. Plaintiffs publicly filed versions of those documents that redacted the confidential  
12 information at issue.

13 On November 19, 2007, the Court issued an Order Denying Plaintiffs’ Motion To  
14 Seal Documents (“Order”). In its Order, the Court held that “Plaintiffs have failed to meet their  
15 burden as required by Rule 26(c)” because “[n]o substantive basis has been given by Plaintiffs to  
16 show good cause for sealing the documents.” Order at 1. In a November 20, 2007 Order  
17 Clarifying Motion To Seal Documents (“Clarifying Order”), the Court held that if Defendants  
18 were seeking to have the documents at issue filed under seal, “they must formally file a motion  
19 with a sworn record showing specifically why good cause has been met.” Clarifying Order at 1.

20 Defendants now bring that motion, seeking to have Plaintiffs’ TAC, Exhibits D,  
21 F, G, I, and O thereto, filed under seal.<sup>1</sup> Defendants further request that the redacted versions of  
22 those documents (the versions previously filed by Plaintiffs) serve as the publicly available  
23 versions of those documents. The “good cause” for this request is described below, and set forth  
24 in the sworn declarations of Gene Upshaw and Joel Linzner (filed concurrently herewith).

25  
26  
27 <sup>1</sup> Although Plaintiffs sought to have Exhibit J to the TAC filed under seal, Defendants believe  
28 that Exhibit J does not raise the same concerns as the other documents discussed herein, and may  
be publicly filed.

**MEMORANDUM**

1  
2 A court is clearly authorized under Federal Rule of Civil Procedure 26(c) to  
3 prevent the disclosure of information, including trade secrets or commercial information, upon a  
4 showing of good cause. “Good cause” exists for filing protectable information under seal  
5 whenever disclosure would result in specific harm or prejudice to the party to whom the  
6 information belongs. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172,1179-80  
7 (9th Cir. 2006); *Reilly v. Medianews Group Inc.*, No. C 06-04332 SI, 2007 U.S. Dist. LEXIS  
8 8139, at \*11-13 (N.D. Cal. Jan. 24, 2007). Here, such good cause exists for filing under seal the  
9 documents at issue – which are confidential business documents filled with trade secrets – the  
10 public disclosure of which would cause substantial harm to both Defendants and to Electronic  
11 Arts, Inc. (“EA”), a third party computer gaming company based in Redwood City, California.<sup>2</sup>

12 **A. 2004 and 2005 EA Agreements – Exhibits F and G**

13 The documents attached to the TAC as Exhibits F and G are confidential licensing  
14 agreements between Players Inc and EA (the “EA Agreements”). These agreements are non-  
15 public, commercial documents, the terms of which are trade secrets. Specifically, the  
16 confidential terms of these agreements include the specific price terms of the contracts  
17 negotiated between EA and Players Inc (including the precise amounts and timing of the  
18 guaranteed payments and royalties), the specific scope of the rights granted and the services to be  
19 rendered under the agreements, the terms and conditions of payment, and the various  
20 contingencies and other contractual terms between the parties that EA and Players Inc  
21 negotiated. *See* TAC, Exs. F, G.

22 Defendants would be seriously harmed if the EA Agreements were publicly filed,  
23 because the terms of those confidential agreements would become publicly available to other  
24 licensees and licensors that compete in the marketplace. These third parties are sure to alter their  
25

26 <sup>2</sup> Defendants note that the Court has previously found that there is “good cause” for filing under  
27 seal the documents that are the subject of this motion. *See* Order Sealing Confidential  
28 Documents (Rec. Doc. 144), October 3, 2007, at 2 (“Good cause appearing, it is hereby ordered  
that ... the following documents are to be sealed: ...An unredacted version of the Third Amended  
Complaint...; Exhibits D, F, G, I, J, and O to the Third Amended Complaint...”).

1 business behavior in negotiations with Defendants if they became aware of the specific pricing  
2 and other terms of the EA Agreements. This would severely harm the bargaining position of  
3 Players Inc and the NFLPA, and cause substantial competitive and commercial injury to Players  
4 Inc and the NFLPA. *See* Declaration of Gene Upshaw ¶¶ 4-5 (Nov. 21, 2007).

5 Public disclosure of the precise terms of the EA Agreements would similarly  
6 harm EA. As stated in the Declaration of Joel Linzner, the senior executive at EA primarily  
7 responsible for negotiations with Players Inc and the NFLPA, the “extremely sensitive  
8 confidential business information” contained in the EA Agreements “is not a matter of public  
9 record, and would cause substantial competitive injury to EA if it were publicly disclosed.”  
10 Declaration of Joel Linzner ¶ 3 (Nov. 21, 2007). Mr. Linzner further attests that “public  
11 disclosure of this information would harm competition by divulging to EA’s and Players Inc’s  
12 competitors the confidential price and other terms that EA and Players Inc negotiated in these  
13 contracts. The harm to EA and others from public disclosure of these documents would be  
14 severe and immediate.” *Id.*

15 For all of these reasons, there is more than sufficient good cause for filing the EA  
16 Agreements under seal.<sup>3</sup>

17 **B. Players Inc/NFLPA Agreement and Amendment – Exhibits D and I**

18 The document attached to the TAC as Exhibit D is an agreement between Players  
19 Inc and the NFLPA (“Players Inc/NFLPA Agreement”) concerning various business matters  
20 including an NFLPA grant of rights to Players Inc in connection with Players Inc’s licensing  
21 activities. The document attached to the TAC as Exhibit I is an amendment to the Players  
22 Inc/NFLPA Agreement (“Amendment”) regarding a redistribution of certain funds under the  
23 Players Inc/NFLPA Agreement.

24  
25 <sup>3</sup> *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1131 n.4 (documents containing  
26 “trade secrets, financial information, and confidential information about third parties” satisfy the  
27 “good cause” standard) (9th Cir. 2003); *Johnson Controls, Inc. v. Phoenix Control Sys., Inc.*, 886  
28 F.2d 1173, 1176 (9th Cir. 1989) (protecting by seal information containing a party’s trade  
secrets); *Reilly*, 2007 U.S. Dist. LEXIS 8139 at \*14 (filing under seal information that might  
allow competitors to anticipate future actions taken by defendants or that might help the  
bargaining position of companies that negotiate with defendants).

1           These documents are confidential commercial agreements between Players Inc  
2 and the NFLPA regarding the business arrangements of these companies. The terms of these  
3 agreements include descriptions of revenue amounts received by Defendants pursuant to their  
4 licensing agreements with certain licensees, as well as the method by which such revenue is  
5 distributed. The Players Inc/NFLPA Agreement also describes the distribution of revenue  
6 received from third parties, such as NFL Properties, Inc., and certain trading card companies.

7           The specific terms of these commercial agreements have not been made public  
8 and constitute trade secrets regarding the operation of Defendants' licensing businesses. Public  
9 disclosure of these agreements would reveal to Defendants' competitors, counter-contracting  
10 parties, and potential counter-contracting parties detailed financial information relating to the  
11 operations of Defendants' licensing businesses and contractual arrangements with third parties.  
12 Such information could cause these entities to change their business behavior to Defendants'  
13 commercial disadvantage. Accordingly, there is good cause to file the Players Inc/NFLPA  
14 Agreement, and Amendment thereto, under seal.<sup>4</sup>

15           **C. Allen Deposition Testimony – Exhibit O**

16           The document attached to the TAC as Exhibit O contains excerpts of the  
17 deposition testimony given in this action on September 7, 2007, by Douglas Allen, former  
18 President of Players Inc. These excerpts include testimony describing the confidential,  
19 commercial information described above. For example:

- 20           • Verbatim recitations of terms of the EA Agreements, including financial terms, and  
21 descriptions and explanations of both the financial and non-financial terms of the EA  
22 Agreements;

23  
24 <sup>4</sup> See *Cal. Serv. Employees Health & Welfare Trust Fund v. Advance Bldg. Maint.*, No. C06-  
25 3078 CW (BZ), 2007 WL 2669823, at \*1-2 (N.D. Cal. Sept. 7, 2007) (protecting information  
26 relating to defendant's accounts receivables and outgoing payments as trade secrets that could  
27 provide its competitors advantages in the marketplace); *Navarro v. Eskanos & Adler, et al.*, No.  
28 C-06-02231 WHA (EDL), 2007 U.S. Dist. LEXIS 24864, at \*16-17 (N.D. Cal. March 22, 2007)  
(protecting information that reveals the ways in which a party runs its business and thereby  
maintains its competitive advantage); *Reilly*, 2007 U.S. Dist. LEXIS 8139 at \*14 (filing under  
seal information regarding financial information, including past and present revenues because it  
might affect future business dealings).

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- Verbatim recitations of terms of the Players Inc/NFLPA Agreement, and descriptions and explanations of such terms; and
- Verbatim recitations of terms of a licensing agreement between the NFLPA and another third party licensee, and descriptions and explanations of those confidential terms.

Thus, for the same reasons stated above, public disclosure of Mr. Allen’s deposition testimony would cause competitive and commercial harm to Defendants and to EA, and there is good cause for filing Exhibit O under seal.

**D. Third Amended Complaint**

Plaintiffs’ TAC contains much of the very same confidential information described above, including extensive quotations and descriptions of the EA Agreements, the Players Inc/NFLPA Agreement and Amendment thereto, and the deposition testimony of Doug Allen. *See, e.g.*, TAC ¶¶ 21, 23, 25-28, 31, 34, 38, 42, 45, 48, 54, 89. Public disclosure of an unredacted version of the TAC would therefore cause competitive and commercial harm to both Defendants and EA. Accordingly, there is good cause to file the TAC under seal, and for only Plaintiffs’ redacted version made publicly available.

**CONCLUSION**

For the reasons stated above, Defendants respectfully request that this Court grant this Motion To File Under Seal Certain Confidential Materials Filed By Plaintiffs.

Date: November 21, 2007 Dewey & LeBoeuf LLP

BY:           /s/Jeffrey L. Kessler            
Jeffrey L. Kessler  
*Attorneys for Defendants*

I hereby attest that I have on file all holographic signatures for any signatures indicated by a “conformed” signature (/S/) within this e-filed document

Date: BY:           /s/Joseph R. Wetzel            
Joseph R. Wetzel  
*Attorneys for Defendants*