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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' OPPOSITION TO
PLAINTIFFS' MISCELLANEOUS
ADMINISTRATIVE REQUEST TO
SET A FEBRUARY 7, 2008 CLASS
CERTIFICATION MOTION
DEADLINE

1 Defendants NFLPA and Players Inc respectfully request that the Court deny
2 plaintiffs' administrative request. The proposed pre-trial schedule is the result of negotiations
3 between plaintiffs and defendants that led to agreement on almost every single date. The parties
4 were unable to agree only upon the date by which plaintiffs must file their motion for class
5 certification. The date proposed by plaintiffs – February 7, 2008 – is unreasonable, inconsistent
6 with the schedule the Court previously set for this motion deadline and, for the reasons stated
7 below, should not be adopted.
8

9 On June 14, 2007, this Court issued a Case Management Order that set a period of
10 more than four months – i.e., until October 18, 2007 – before the class certification motion
11 deadline. At that time, there was no reason for either the Court or the defendants to expect that
12 plaintiffs would conduct their document production in anything other than the usual manner –
13 i.e., issue an initial comprehensive set of document requests, and then have subsequent
14 productions focus on discrete categories that arise after the initial production. Plaintiffs are now
15 proposing a class certification motion deadline that is a radical departure from the schedule
16 previously set by the Court – after refusing to negotiate over their proposal or to move their
17 proposed deadline even one day – in an obvious attempt to unnecessarily disrupt defendants'
18 business, and sow disorder and impose gratuitous burdens on defendants' discovery responses.
19 Defendants respectfully submit that plaintiffs' unreasonable tactics and proposal should be
20 rejected out of hand, so that plaintiffs are sent a message that the parties should exhaust efforts to
21 reach agreed-upon dates in the schedule before running to the Court, and that efforts such as this
22 to abuse the discovery process and impose unnecessary burdens on opposing parties in discovery
23 will not be tolerated.¹
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27 ¹ Defendants' repeated offers at compromise, and plaintiffs' refusal to make any
28 counterproposal, is evident from the e-mails attached as Exhibit B to the Declaration of Ryan
Hilbert, submitted by plaintiffs with their motion. The email correspondence evidencing
plaintiffs' unilateral cancellation of yesterday's meet and confer, even though defendants

1 As this Court knows, discovery in this case was stayed for months while the Court
2 dealt with – and dismissed – a series of defective complaints filed by plaintiffs. Plaintiffs finally
3 filed a complaint as to which the Court determined some of the claims should not be dismissed at
4 the outset. In doing so, the Court lifted the stay but kept the September 22, 2008 trial date, and
5 moved the non-expert discovery cut-off date from May 9 to May 23, 2008. The parties then met
6 and conferred as to the various deadlines to be reset consistent with this schedule, and reached
7 agreement on all of these dates except one – the deadline for plaintiffs to file a class certification
8 motion. Plaintiffs’ proposal for this date is February 7, 2008, barely two months from now.
9

10 In response, defendants have made every effort to reach a reasonable agreed-upon
11 date for the class certification motion deadline. We explained to defendants’ counsel that, given
12 the broad scope of the discovery requests the defendants have served and have indicated they
13 plan to serve, a two month period before the class certification deadline would create chaos in
14 this very compressed discovery schedule. This is so because plaintiffs have already issued an
15 extensive document request (which was stayed while the court was in the process of reviewing
16 and dismissing plaintiffs’ first three complaints), but plaintiffs have also indicated that they
17 intend to issue additional comprehensive document requests such that the initial document
18 request would comprise only about 60% of the documents plaintiffs seek in this action (including
19 the renewal of several requests seeking broad discovery of defendants’ expenditures that this
20 Court has already ruled are wholly irrelevant to plaintiffs’ claims). Plaintiffs also indicated that
21 they would not agree to issue their second comprehensive set of document demands in a way that
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27 indicated the door was open to discussing further possible ways to resolve this matter on an
28 agreed-upon basis, is submitted herewith as Exhibit A to the Declaration of David Greenspan,
dated December 4, 2007.

1 would enable them to be combined with plaintiffs’ first set of document demands, the most
2 reasonable way to proceed.²

3 In response to this demand, defendants explained that expecting defendants to
4 make two separate comprehensive document productions on this schedule is unreasonable
5 because defendants’ efforts to collect and produce documents in response to the first set of
6 extensive document demands already served were barely underway when the Court dismissed
7 plaintiffs’ initial complaints and stayed discovery (defendants understandably focused on
8 producing the discrete categories of documents that the court ordered to be produced during
9 those motions, in addition to the “courtesy” production requested by the plaintiffs at the outset of
10 this action even though defendants were under no obligation to make that production).³
11 Moreover, defendants reviewed with plaintiffs that a February 7 class certification deadline date
12 would require defendants to artificially compress the productions into a very short number of
13 weeks during a period when the offices of the NFLPA and Players Inc would ordinarily be
14 closed for the holidays (from December 22 through January 1), and during the period
15 immediately prior to the Super Bowl which is not just a game, but a series of business meetings
16 and activities – with all of defendants’ scores of licensees and sponsors – that is the most
17 important time of the year for the licensing business of the NFLPA and Players Inc (including
18 managing over 450 player appearances during these events). Further, defendants noted that both
19 Mr. Kessler and Mr. O’Kelly would be on trial in another case through January, which would
20 further complicate the scheduling difficulties.
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24 ² Defendants would be willing to serve any objections to such combined requests on an
25 expedited basis – e.g., two weeks – so that any disputes regarding the proper scope of the
26 document production can be heard and resolved at the earliest possible time. This is also
27 important because plaintiffs’ initial comprehensive document requests were issued on the basis
28 of a complaint that has since been dismissed, and certain of the documents plaintiffs requested
that the Court did not dismiss at the outset.

³ Plaintiffs’ assertion that defendants’ document production is “long overdue” (Pl. br. at 4) is not
an accurate statement.

1 In the discussions that followed, defendants initially proposed that the class
2 certification deadline be held until the end of fact discovery, then proposed that the deadline be
3 March 14 with a 49 day track (less than the four month period originally contemplated by the
4 Court), and then proposed that the deadline be March 14 with a 35-day track (to address
5 plaintiffs' expressed concern that the hearing on the motion be as soon as possible in the overall
6 schedule). Defendants' most recent proposal would yield a hearing date of April 18, just three
7 weeks after the hearing date proposed by plaintiffs. Defendants refused to move even one day
8 and, despite defendants repeated statements that we were willing to further discuss the issue and
9 reach an agreed-upon date, defendants made no counterproposal, unilaterally cancelled a meet
10 and confer conference previously scheduled for yesterday, and filed the instant motion last night
11 insisting upon their February 7 date.

12
13 Defendants' proposed February 7 date is manifestly unreasonable and wholly
14 inconsistent with this Court's initial scheduling order in this case. There is no dispute that
15 plaintiffs wish to have an early class certification motion deadline date – presumably because
16 they wish to know as soon as possible whether their clients will have class claims, and thus
17 whether this case, as a business proposition, is or is not appealing to plaintiffs' counsel (an
18 interest that is not consistent with conducting this case in a manner in the best interests of any
19 putative class). However, this Court initially set that date to be four months after the
20 commencement of discovery, on the basis that discovery would be conducted in a reasonable
21 manner. Plaintiffs now are seeking a period of half that, barely two months, and have in effect
22 torpedoed the practicability of the schedule by insisting that defendants be forced to compress
23 into the two month period multiple comprehensive document productions, not to mention
24 depositions of defendants and third parties after the documents are produced, with the two
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1 months slotted with maximum disruption to defendants' business. This is manifestly
2 unreasonable, and obviously designed to harass defendants.

3 Indeed, defendants know that their date of February 7 follows immediately on the
4 heels of the February 3 Super Bowl (which is not just a football game, but a series of critical
5 business meetings and events) and the January trial that will make Mr. Kessler and Mr. O'Kelly
6 largely unavailable during that period. Thus, now that plaintiffs finally have a complaint that has
7 not been wholly dismissed, and the discovery stay has just been lifted, requiring defendants to
8 undertake two separate comprehensive productions, purely to accommodate plaintiffs' class
9 certification motion deadline, in this two month period – half the time originally ordered by the
10 Court – is inherently unreasonable and would likely create chaos. The fact that plaintiffs have
11 refused to consider moving this date at all – even though defendants repeatedly stated the door is
12 open to reaching a reasonable agreed upon date, and that defendants are willing to consider other
13 proposals from plaintiffs – is especially telling.

14 Plaintiffs are attempting to abuse the discovery process for no good purpose.
15 Defendants respectfully request that the Court deny plaintiffs' motion, and set a class
16 certification motion deadline date of March 14 with a 35 day track as the deadline for the class
17 certification motion (the schedule offered by defendants to plaintiffs immediately before the
18 motion was filed). This date would result in a three-and-a-half month period before the class
19 certification motion deadline, which is less than the period originally ordered by the Court, and,
20 while tight, is at least marginally practicable. Plaintiffs' proposal is wholly inconsistent with the
21 schedule originally ordered by the Court, and would serve no purpose other than to impose
22 gratuitous burdens on defendants, after plaintiffs have refused to engage in any good faith
23 negotiations over this deadline.
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CONCLUSION

For the reasons stated above, Defendants respectfully request that this Court deny Plaintiffs' motion to set a class certification motion deadline of February 7, 2008 with a 49-day track, and instead set a more reasonable deadline for the motion of March 14, 2008 with a 35-day track.

Date: December 4, 2007 Dewey & LeBoeuf LLP

BY: /S/David G. Feher
David G. Feher
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/Todd L. Padnos
Todd L. Padnos
Attorneys for Defendants