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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
SAN FRANCISCO DIVISION**

21 BERNARD PAUL PARRISH, HERBERT
22 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

**DECLARATION OF GENE UPSHAW
IN SUPPORT OF DEFENDANTS'
ADMINISTRATIVE MOTION TO
FILE UNDER SEAL CERTAIN
CONFIDENTIAL MATERIALS
FILED BY PLAINTIFFS**

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DECLARATION OF GENE UPSHAW

I, Gene Upshaw, hereby declare, as follows:

1. I am Executive Director of the National Football League Players Association ("NFLPA") and Chairman of National Football League Players Incorporated ("Players Inc.") (collectively, "Defendants"). I am over twenty-one years of age, and I have personal knowledge of each of the facts stated herein. If called upon to testify, I could and would testify completely thereto.

2. This declaration is submitted to show good cause why Plaintiffs' Third Amended Complaint ("TAC") and Exhibits F, G, D, I, and O thereto should be filed under seal. As described below, these documents contain trade secrets regarding the licensing businesses of the NFLPA and Players Inc, as well as the licensing business of a major company with which we do business, Electronic Arts, Inc. ("EA"). Public disclosure of these documents would result in serious commercial harm to the NFLPA, Players Inc, and EA, and also harm competition in the licensing marketplace.

3. The documents attached to the TAC as Exhibits F and G are non-public commercial licensing agreements between Players Inc and Electronic Arts Inc. ("EA" and "EA Agreements," respectively). These agreements are non-public, commercial documents, the terms of which are trade secrets. Specifically, the confidential terms of these agreements include, among other things, the specific price terms of the contracts negotiated between EA and Players Inc (including the precise amounts and timing of the guaranteed payments and royalties), the specific scope of the rights granted and services to be rendered under the agreements, the terms and conditions of payment, and the various contingencies and other terms that EA and Players Inc negotiated to govern their contractual relationship.

4. Players Inc and the NFLPA would be seriously harmed commercially if the EA Agreements were publicly filed. Such public disclosure would make the precise terms of those confidential contracts available to other licensees and potential licensees in the licensing marketplace with which we deal or may deal (such as other gaming companies that would

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1 competitively benefit if they had access to the terms we negotiated with EA), and other licensors
2 and potential licensors with which we compete (such as licensors in other sports that similarly
3 license rights to companies such as EA).

4 5. Those companies would see the specific confidential business terms that
5 Players Inc and EA negotiated, which would clearly have a major impact on their business
6 behavior and any future negotiations they may have with Players Inc, the NFLPA or EA, or other
7 companies in the licensing marketplace. Players Inc, the NFLPA and EA are not the only
8 companies competing in the licensing marketplace. Disclosure of these confidential business
9 terms to these companies would seriously distort the marketplace by having all of the
10 confidential business terms of Players Inc and EA in these substantial contracts publicly
11 available, while the terms that these other companies negotiate are not publicly disclosed in the
12 same way. Other licensees and licensors would have a commercial advantage over Players Inc
13 and the NFLPA, and these other companies would clearly modify their behavior to exploit that
14 advantage to the fullest. In short, one of our most important business trade secrets in the
15 marketplace -- the precise contract terms we negotiated with EA in these major contracts --
16 would be lost. This would result in substantial and immediate commercial harm to Players Inc
17 and the NFLPA.

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

24 7. These documents are confidential, commercial agreements between
25 Players Inc and the NFLPA regarding the business arrangements of their licensing businesses.
26 Specifically, the terms of these agreements include descriptions of revenue amounts received by
27 Players Inc and the NFLPA pursuant to their licensing agreements with certain licensees, as well
28 as the methods by which such revenue is distributed. The Players Inc/NFLPA Agreement also

1 describes the distribution of revenue received from third parties, such as NFL Properties, Inc.,
2 and certain trading card companies.

3 8. The specific terms of these commercial agreements have not been made
4 public and they constitute confidential business information regarding the operation of
5 Defendants' licensing businesses. Public disclosure of these agreements would reveal to Players
6 Inc's and the NFLPA's competitors, counter-contracting parties, and potential counter-
7 contracting parties detailed financial information relating to the operations of Players Inc's and
8 the NFLPA's licensing businesses, as well as third party contract information. Such information
9 could cause these entities to change their business behavior to Players Inc's and the NFLPA's
10 commercial disadvantage.

11 9. The document attached to the TAC as Exhibit O contains excerpts of the
12 deposition testimony of Douglas Allen, the former President of Players Inc. In his testimony,
13 Mr. Allen discusses at length much of the same confidential and commercial information
14 described above. For example, Mr. Allen recited verbatim certain terms of the EA Agreements
15 (including financial terms of those agreements), and explained and described the terms of those
16 agreements. Mr. Allen also testified about the Players Inc/NFLPA Agreement and Amendment
17 (including verbatim recitations of some of the terms of those agreements). In addition, Mr. Allen
18 testified about the specific terms of a licensing agreement between the NFLPA and another third
19 party licensee (i.e., other than EA). If this information were to be publicly disclosed, it would
20 cause competitive and commercial harm to Players Inc, the NFLPA, EA, and the other third
21 party licensee, for the same reasons I discuss above.

22 10. Public disclosure of an unredacted version of the Plaintiffs' TAC would
23 cause competitive and commercial harm to Players Inc, the NFLPA, and EA since the TAC
24 contains much of the very same confidential information described above, including extensive
25 quotations of, and descriptions of, the EA Agreements, the Players Inc/NFLPA Agreement and
26 Amendment thereto, and the deposition testimony of Doug Allen.

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I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was in executed in Washington, DC on November 21, 2007.

Dated: November 21, 2007



Gene Upshaw

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