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NATIONAL FOOTBALL LEAGUE PLAYERS INCORPORATED
d/b/a PLAYERS INC, a Virginia corporation.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

22 BERNARD PAUL PARRISH, HERBERT) Civil Action No. C07 0943 WHA
23 ANTHONY ADDERLEY, and WALTER)
24 ROBERTS III on behalf of themselves and all) Honorable William H. Alsup
25 others similarly situated,)

26 Plaintiffs,)

27 v.)

28 NATIONAL FOOTBALL LEAGUE)
PLAYERS INCORPORATED d/b/a PLAYERS)
INC, a Virginia corporation,)

Defendant.)

**PLAYERS INC'S NOTICE OF
MOTION AND MOTION FOR
SANCTIONS PURSUANT TO RULE 11,
28 U.S.C. § 1927, AND THE COURT'S
INHERENT POWERS**

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1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on May 17, 2007 at 8 a.m., or as soon thereafter as
3 this matter may be heard, in Courtroom 9 of the above-entitled Court, located at 450 Golden
4 Gate Avenue, San Francisco, California, Defendant National Football League Players
5 Incorporated d/b/a Players Inc (“Players Inc”) will and hereby does move for sanctions against
6 Plaintiffs Bernard Paul Parrish (“Parrish”), Herbert Anthony Adderley (“Adderley”), and Walter
7 Roberts III (“Roberts”) (collectively “Plaintiffs”) and their counsel, pursuant to Fed. R. Civ. P.
8 11, 28 U.S.C. § 1927, and the Court’s inherent powers.

9 As set forth in the accompanying Memorandum of Points and Authorities, there
10 can be no question that Plaintiffs and their counsel did not have sufficient factual or legal bases
11 for the claims by Parrish and Roberts against Players Inc. Despite the allegations in the
12 Complaint and Amended Complaint concerning such things as pension and disability benefits, it
13 is undisputed that Players Inc is not a union and does not represent retired players (or any other
14 players) in collective bargaining. Players Inc is a for-profit licensing, sponsorship, marketing,
15 and content development company that licenses names and images of current and certain retired
16 National Football League (“NFL”) players who sign group licensing authorizations. The only
17 duty that Players Inc could have to any individual player (or class of players) would be as the
18 result of an individually bargained contract with that player. As Plaintiffs know, Parrish and
19 Roberts have never signed any group licensing authorizations and have no licensing relationship
20 with Players Inc, so these persons cannot have any claims against Players Inc as to its licensing
21 activities. Moreover, Plaintiffs’ counsel failed to conduct the reasonable investigation as to the
22 facts and the law required by Rule 11.

23 Upon information and belief, Plaintiffs and their counsel filed the Complaint and,
24 thereafter, the Amended Complaint, with the improper purpose of harassing an entity affiliated
25 with Players Inc, the National Football League Players Association (“NFLPA”), about the level
26 of pensions and other benefits provided to former NFL players in collective bargaining
27 agreements entered into by the NFLPA – matters wholly unrelated to the allegations in this
28 lawsuit. Pursuant to the Labor Management Relations Act, 29 U.S.C. § 185, Plaintiffs can file

1 no lawsuit regarding such matters against the NFLPA (and any such lawsuit would long since be
2 time barred in any event). Having no valid claim against the NFLPA, Plaintiffs have filed a
3 baseless suit against Players Inc, naming as putative class representatives two individuals –
4 Parrish and Roberts – who are not even members of the class they purport to represent, to garner
5 publicity in their campaign against the NFLPA. In addition, it appears that Plaintiffs and their
6 counsel filed this lawsuit with the improper purpose of generating publicity and benefiting a new
7 enterprise that will compete directly with the licensing activities of Players Inc in relation to
8 retired NFL players. This Court should not countenance such abuses of the judicial process.

9 As a result of the conduct of Plaintiffs and their counsel, Players Inc has incurred
10 significant legal fees and costs for preparing this motion and preparing a response to Plaintiffs’
11 baseless Complaint and Amended Complaint. Accordingly, Players Inc moves, pursuant to Rule
12 11, 28 U.S.C. § 1927, and the Court’s inherent powers, for an Order dismissing the Amended
13 Complaint (or, at a minimum, dismissing Parrish and Roberts as Plaintiffs) and awarding Players
14 Inc monetary sanctions for its reasonable attorneys’ fees and costs.

15 In accordance with Fed. R. Civ. P. 11(c)(1)(A), Players Inc served Plaintiffs with
16 this Motion more than 21 days prior to filing it with the Court. Plaintiffs did not withdraw or
17 correct the allegations at issue during the 21 day period and thus Players Inc hereby files this
18 Motion.

19 Players Inc’s Motion for Sanctions is based upon this Notice of Motion, the
20 accompanying Memorandum of Points and Authorities, and the Declarations of Gene Upshaw
21 and Eamon O’Kelly submitted herewith.

22 Date: April 4, 2007

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23
24
25 BY: s/Jeffrey L. Kessler

26 Jeffrey L. Kessler
27 Attorneys for Defendant Players Inc
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 This case presents a clear abuse of the judicial process, a violation of Rule 11 that
 3 calls for stringent sanctions. On February 14, 2007, Plaintiffs Parrish and Adderley filed this
 4 lawsuit against Players Inc, alleging breach of fiduciary duty and unjust enrichment arising out
 5 of the group licensing activities of Players Inc in relation to former NFL players, and demanding
 6 certification of a class, an accounting, and compensatory and punitive damages. As discussed
 7 herein, had Plaintiffs' counsel conducted a reasonable investigation of the facts and controlling
 8 law, or adhered to their Rule 11 obligations if such an investigation was in fact made, they would
 9 have concluded that at least as to Parrish, the claims asserted in the initial Complaint were
 10 without any possible foundation because Parrish never participated in any Players Inc group
 11 licensing programs and had no relationship – at all – with Players Inc. On February 23, 2007,
 12 Plaintiffs filed the Amended Complaint, adding Roberts as an additional plaintiff – and
 13 compounding their Rule 11 violations, because Roberts also never participated in any Players Inc
 14 group licensing programs and thus had no relationship with Players Inc. Moreover, public
 15 statements by Plaintiffs and their counsel demonstrate their improper purposes in filing these
 16 claims, i.e., to engage in a fishing expedition for public relations purposes, to attack unrelated
 17 collective bargaining activities of the NFLPA (an entity affiliated with Players Inc), and to
 18 promote a new entity “Retired Professional Football Players for Justice,” whose stated purposes
 19 include engaging in licensing activities with respect to former NFL players (and, thus, competing
 20 directly with Players Inc).

21 Plaintiffs' claims are baseless, and sanctions are warranted, for several
 22 independent reasons. First, because Players Inc has never had any relationship with Parrish and
 23 Roberts relating to group licensing or any other activities, Players Inc simply does not owe and
 24 could not owe any duties to Parrish or Roberts, fiduciary or otherwise.¹ Thus, Plaintiffs'
 25 contention that Players Inc has breached such duties is frivolous. Neither Parrish nor Roberts

26 _____
 27 ¹ For the reasons set forth in Players Inc's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6),
 28 which is being filed concurrently with the instant motion, Players Inc does not owe any fiduciary
 duties to Adderley either. Players Inc is not seeking sanctions at this time with respect to the
 claims asserted on behalf of Adderley but reserves its right to do so.

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1 ever signed a GLA that would have authorized Players Inc to license their names or images to
2 licensees such as video game or sports merchandise companies, and they never participated in
3 any Players Inc group licensing programs. In short, Parrish and Roberts are not members of the
4 class they would purportedly represent. Plaintiffs knew these facts when they filed the
5 Complaint and Amended Complaint. Likewise, Plaintiffs’ counsel either knew these facts or
6 ignored their Rule 11 obligation to conduct a reasonable inquiry into the facts and law when
7 signing the Complaint and Amended Complaint.

8 Second, upon information and belief, Plaintiffs brought this lawsuit for improper
9 purposes. For several years, Parrish has pursued a highly visible public campaign against the
10 entity that primarily owns Players Inc, the NFLPA, concerning the pension and other benefits of
11 retired NFL players. It appears that Plaintiffs filed this lawsuit (and sought the attendant
12 publicity) simply as a stunt to gain further attention in Parrish’s campaign in the media for
13 increased pension and other collective bargaining benefits, a matter that is not within the
14 jurisdiction of this or any other court. Moreover, Plaintiffs apparently also filed the lawsuit to
15 promote a new entity that names Plaintiffs Parrish and Adderley as its “Co-Presidents” and that
16 will compete directly with Players Inc in retired player licensing activities.

17 Finally, Plaintiffs’ counsel apparently also had an improper purpose in filing this
18 action. As part of the publicity campaign that Plaintiffs and their counsel launched when this
19 case was filed, counsel of record, Ronald S. Katz, was reported in the press to have bragged that,
20 by filing suit, “We’re picking up a rock and seeing what’s crawling underneath.” In the words of
21 plaintiffs’ own counsel, this suit is thus a fishing expedition, which is an abuse of the judicial
22 process.

23 For all of the above reasons, this case presents a clear violation of Rule 11.
24 Dismissal alone is an insufficient remedy if Plaintiffs and their counsel are not to be rewarded for
25 their conduct. The only appropriate response to such conduct is to sanction Plaintiffs; their
26 counsel of record Ronald S. Katz, and his law firm Manatt, Phelps & Phillips LLP (“Manatt”);
27 co-counsel Lewis T. LeClair and his law firm, McKool Smith P.C. (“McKool Smith”); and co-
28 counsel Samuel A. Mutch and his law firm, Samuel A. Mutch, P.A. (“Mutch”), by striking

1 Parrish and Roberts as plaintiffs, dismissing the Amended Complaint, and ordering payment of
2 Players Inc’s attorney fees and costs for filing this motion, for responding to the Amended
3 Complaint, and any other fees and costs incurred in connection with this lawsuit.

4 **STATEMENT OF FACTS**

5 **I. THE PARTIES**

6 Defendant Players Inc, a Virginia corporation, is a for-profit licensing,
7 sponsorship, marketing, and content development company affiliated with and primarily owned
8 by the NFLPA, the union representing athletes who play in the NFL. Declaration of Gene
9 Upshaw dated April 3, 2007 (“Upshaw Decl.”) ¶ 3. Despite the allegations in the Complaint and
10 Amended Complaint concerning such things as pension and disability benefits, it is undisputed
11 that Players Inc is not a union and does not represent retired players (or any other players) in
12 collective bargaining. Players Inc is a for-profit company that competes with a multitude of
13 other entities in the commercial market place. Id. ¶ 4. The only duty that Players Inc could have
14 to any individual player (or class of players) would be as the result of an individually bargained
15 contract with that player.

16 The NFLPA signs current and former NFL players to GLAs, whereby a player
17 agrees to assign rights to his name, image and other attributes to the NFLPA for licensing in
18 groups of six or more players to entities such as video game companies, trading card companies,
19 and sports merchandise companies. Upshaw Decl. ¶ 5. The NFLPA, in turn, assigns the GLAs
20 to Players Inc for group licensing activities. Id. Individual retired players may also enter into ad
21 hoc licensing agreements with Players Inc from time to time, whereby a player licenses rights to
22 his name or image to Players Inc for use in a specific group licensing program. Id. ¶ 6. If a
23 retired player does not sign a GLA or ad hoc licensing agreement, Players Inc has no relationship
24 with him, does not license the retired player’s name or image, and does not include the retired
25 player in its group licensing programs. Id. ¶ 7.

26 Plaintiff Parrish is a retired NFL player. He played in the NFL from 1959 to
27 1966. Amended Complaint ¶ 8. Although Parrish, like all former NFL players, was eligible to
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1 sign a GLA and participate in Players Inc licensing programs, he never did so. Upshaw Decl. ¶
2 8.

3 Plaintiff Roberts played in the NFL from 1964 to 1970 and was a teammate of
4 Parrish. Amended Complaint ¶ 10. Like Parrish, although eligible to do so, Roberts never
5 signed a GLA and never participated in any Players Inc's licensing programs. Upshaw Decl. ¶ 9.

6 Plaintiff Adderley played in the NFL from 1961 through 1972. Amended
7 Complaint ¶ 9. In contrast to Parrish and Roberts, Adderley signed GLAs and participated in
8 certain Players Inc licensing programs for which he received more than \$13,000 in payments.
9 Upshaw Decl. ¶ 10. Adderley's last GLA expired at the end of 2005. Id.

10 **II. PLAINTIFFS' IMPROPER PURPOSE IN FILING THE LAWSUIT**

11 Parrish is an outspoken and persistent critic of the NFLPA, and in particular its
12 relations with retired players. Parrish is the author of a book entitled They Call It A Game, in
13 which he publicly criticizes the NFLPA. Amended Complaint ¶ 8. Parrish recently testified
14 against the NFLPA in Congressional hearings, and separately called on Congress to conduct an
15 "investigation of the NFLPA and how it's operated." D. Orlando Ledbetter, Inside the NFL:
16 House tackles NFLPA, The Atlanta Journal-Constitution, Dec. 10, 2006, at 6F; see also Bob
17 Glauber, Upshaw finally starts barking, but not at Bryant Gumbel, Newsday, Aug. 27, 2006, at
18 B13 (discussing Parrish's demands for a Congressional investigation regarding the NFLPA's
19 player agent regulations).

20 Parrish has been vehement in criticizing the NFLPA's Executive Director, Gene
21 Upshaw, stating, for example, that "Upshaw's 25 percent increase announcement [i.e.,
22 announcing an increase of 25 percent in pension benefits for retired players] is an insult. He
23 means for it to be." Charles Chandler, NFL Improves Player Benefits; Announcement Draws
24 Mixed Reaction From Retired Players, Charlotte Observer, July 28, 2006, at 6C; see also Bob
25 Glauber, Upshaw finally starts barking, but not at Bryant Gumbel, Newsday, Aug. 27, 2006, at
26 B13 ("Parrish also criticizes the union's failure to sufficiently improve benefits for retired
27 players, even though Upshaw and his group recently won large increases.").

28

1 On February 14, 2007, Manatt filed a Complaint, signed by Ronald S. Katz, and
2 with McKool Smith and Mutch listed as co-counsel, on behalf of a purported class of retired
3 players to whom Players Inc had allegedly breached some unspecified fiduciary duty, and
4 naming Parrish and Adderley as representatives of the purported class. A little over a week later,
5 on February 23, 2007, Manatt filed the Amended Complaint (also signed by Katz), with McKool
6 Smith and Mutch as co-counsel, which added Parrish's former teammate Roberts as a plaintiff
7 and as a representative of the purported class.

8 Although Plaintiffs' counsel knew (or should have known through "an inquiry
9 reasonable under the circumstances") that Parrish and Roberts had never signed GLAs and never
10 participated in Players Inc licensing activities (and thus could assert no claims against Players
11 Inc), Plaintiffs' counsel stated in the Complaint and Amended Complaint signed by Katz that
12 "Plaintiffs' claims are typical of the claims of the entire Class as required by Rule 23(a)(3). The
13 claims of Plaintiffs and members of the Class are based on the same legal theories and arise from
14 the same unlawful conduct." Complaint ¶ 25; Amended Complaint ¶ 26.

15 The Complaint and Amended Complaint contain numerous allegations
16 complaining about the pension, disability and other benefits retired players receive through the
17 NFLPA's collective bargaining efforts, even though these allegations have nothing to do with
18 group licensing. See, e.g., Amended Complaint ¶ 9 (Adderley's "pension payment from the
19 NFLPA is \$176.85 per month"); id. ¶ 14 (complaining about "poverty-level NFLPA pension
20 payments"); id. ("the situation regarding disability payments is a rapidly growing tragedy"); id.
21 ("an extremely low percentage of retired players receive disability payments"); id. ¶ 15
22 (complaining about disability status of former player Mike Webster).

23 In an interview with the New York Times on the day that the Complaint was filed,
24 Plaintiffs' attorney Katz stated that "We're picking up a rock and seeing what's crawling
25 underneath." Alan Schwarz, 2 Former N.F.L. Players Sue Over Sharing Of Fees, N.Y. Times,
26 Feb. 15, 2007, at D2 (attached hereto as Declaration of Eamon O'Kelly dated April 4, 2007
27 ("O'Kelly Decl.") Ex. A). Mr. Katz and his firm, Manatt, subsequently announced that they had
28 formed an entity named "Retired Professional Football Players for Justice," which purportedly

1 will enter into group licensing contracts with retired players, competing directly with Players Inc
 2 “in deals with commercial interests, such as video game and apparel companies.” Daniel
 3 Kaplan, New Group May Seek Retired NFLers’ Rights, Sports Bus. J., Feb. 26-Mar. 4, 2007, at
 4 5 (attached hereto as O’Kelly Decl. Ex. B). A later article directly linked the filing of this class
 5 action lawsuit to the formation of Retired Professional Football Players for Justice, and reported
 6 that the “formal announcement of the creation of [the] organization” had been delayed “in hopes
 7 of capturing media attention during [NFL] draft week in New York.” Daniel Kaplan, Retired
 8 NFLers Delay Announcement of Group, Sports Bus. J., Mar. 5-11, 2007, at 8 (attached hereto as
 9 O’Kelly Decl. Ex. C).

10 A website established in the name “Retired Professional Football Players For
 11 Justice” (www.playersforjustice.org), identifies Parrish and Adderley as “Co-Presidents.” It also
 12 lists Ronald S. Katz of Manatt and Lewis LeClair of McKool Smith on the “Officers &
 13 Directors” webpage as “Outside Litigation Counsel.” The stated purposes of the organization
 14 include “bringing class action lawsuits,” “establish[ing] an alternative to the current marketing
 15 and licensing system which will empower players,” and providing “an organized voice to all
 16 retired NFL players on issues such as royalties, pensions and disability payments.” A statement
 17 in the names of Parrish and Adderley declares that “our first step in righting these wrongs has
 18 been to file a class action lawsuit,” and a further step “is for the players to take control of their
 19 publicity rights, which will be marketed through a retired players licensing and retailing
 20 organization.” As to control of the monies generated by this commercial licensing business,
 21 Samuel A. Mutch, counsel in this action, is listed as “Secretary and Treasurer” of the
 22 organization. See “Retired Professional Football Players for Justice,”
 23 <http://www.playersforjustice.org> (last visited Mar. 9, 2007) (attached hereto as O’Kelly Decl. Ex.
 24 D).

25 ARGUMENT

26 Fed. R. Civ. P. 11(a) provides in relevant part that “[e]very pleading, written
 27 motion, and other paper shall be signed by at least one attorney of record in the attorney’s
 28 individual name....” By signing a pleading, an attorney certifies that:

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[T]o the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, —

(1) it is not being presented for any improper purpose, such as to harass ...;

(2) the claims ... and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; [and]

(3) the allegations and other factual contentions have evidentiary support....

Fed. R. Civ. P. 11(b). Thus, sanctions under Rule 11 are appropriate if a complaint is not grounded in fact or if it sets forth frivolous legal contentions. See Truesdell v. S. Cal. Permanente Med. Group, 209 F.R.D. 169, 174-75 (C.D. Cal. 2002). Moreover, sanctions are appropriate where a complaint is filed for a purpose other than to vindicate rights in court, such as to harass or obtain discovery to support another matter. See In re Kunstler, 914 F.2d 505, 518-20 (4th Cir. 1990).

A violation of Rule 11 occurs where “a reasonable attorney, having conducted an objectively reasonable inquiry into the facts and law” would determine that the complaint was not well founded. Truesdale, 209 F.R.D. at 174 (citation omitted). Complaints that are based on frivolous legal contentions or unsupported factual allegations may also violate Rule 11’s “improper purpose” standard, regardless of plaintiffs’ subjective intent. See Hudson v. Moore Bus. Forms Inc., 836 F.2d 1156, 1163 (9th Cir. 1987); Paciulan v. George, 38 F. Supp. 2d 1128, 1144 (N.D. Cal. 1999); see also In re Kunstler, 914 F.2d at 519.

Where any such violation is found, Rule 11 authorizes Courts to impose sanctions upon plaintiffs, their attorneys of record, and their attorneys’ law firms. Fed. R. Civ. P. 11(c); see Truesdale, 209 F.R.D. at 175. Players Inc respectfully submits that this Court should impose such sanctions against Plaintiffs, their attorney of record, Ronald S. Katz (who signed the complaint), Mr. Katz’s law firm, Manatt, and co-counsel McKool Smith and Mutch. The claims on behalf of Parrish and Roberts set forth in the Complaint and repeated in the Amended Complaint are neither “warranted by existing law [n]or by a nonfrivolous argument for the

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1 extension, modification, or reversal of existing law or the establishment of new law.” Fed. R.
2 Civ. P. 11(b). Not only is there no evidentiary support for those claims, the claims are
3 contradicted by indisputable facts that were known to these Plaintiffs when they commenced the
4 lawsuit.

5 Moreover, upon information and belief, Plaintiffs brought the claims for improper
6 purposes – to harass Players Inc and the NFLPA about collective bargaining benefits provided to
7 retired NFL players, to engage in a fishing expedition for publicity purposes, and to advance the
8 commercial interests of the new entity formed by Plaintiffs and their counsel that will compete
9 directly with Players Inc for the licensing of retired players’ images. Plaintiffs’ counsel could
10 have readily ascertained through “an inquiry reasonable under the circumstances” that any claims
11 on behalf of Parrish or Roberts were baseless and lacked evidentiary support. Thus, counsel
12 either failed to conduct the inquiry required by Rule 11 or, worse, knew that these claims were
13 baseless and were brought for an improper purpose when they filed the Complaint and Amended
14 Complaint.

15 **I. RULE 11 SANCTIONS ARE WARRANTED BECAUSE PLAINTIFFS’ CLAIMS**
16 **LACK ANY EVIDENTIARY SUPPORT AND ARE BASELESS AS A MATTER**
17 **OF LAW**

18 Plaintiffs’ claims are grounded in a single legal theory: that Players Inc owed
19 them some unspecified fiduciary duty and breached that duty. Not only is there no evidentiary
20 support for such a claim as required by Rule 11, this claim is directly contradicted by
21 indisputable facts with regard to Parrish and Roberts, since neither of them has ever had any
22 licensing relationship with Players Inc. Moreover, there is no support for such claims in the law
23 or any reasonable extension of existing law. Players Inc is a for-profit company that competes in
24 the commercial market place for the licensing of players’ images (Upshaw Decl. ¶ 3); therefore,
25 the only duty that Players Inc could have to any individual player (or class of players) would be
26 as the result of an individually bargained contract with that player. For these reasons alone,
27 Plaintiffs and their counsel should be sanctioned under Rule 11.

28 Certain types of relationship (such as attorney-client, trustee-beneficiary, and
corporate officer-shareholder) give rise to a fiduciary duty. See McMahon v. Randolph-Macon

1 Academy, 42 Va. Cir. 417, 419 (1997) (listing relationships where a fiduciary duty exists);
 2 Cohen v. Mastie, 31 Va. Cir. 96 (1993) (same); see also Adelman v. Conotti Corp., 213 S.E.2d
 3 774, 779 (Va. 1975).² As Plaintiffs know, there never was a relationship of any kind between
 4 Players Inc and either Parrish or Roberts, much less a relationship that could give rise to a
 5 fiduciary duty. Neither Parrish nor Roberts ever executed a GLA or participated in any Players
 6 Inc licensing programs. Upshaw Decl. ¶¶ 8-9. Thus, on its face, the allegation that Players Inc
 7 owed – and breached – a fiduciary duty to Parrish or Roberts is frivolous.

8 Not only is there no evidentiary support for the claims brought by Parrish and
 9 Roberts, such claims have no support in the law. For example, Plaintiffs contend in wholly
 10 conclusory fashion that Players Inc “owed and owe each represented player a fiduciary duty to
 11 seek to obtain for that player licensing and marketing opportunities in a fair and equitable
 12 manner consistent with the best interests of that player.” Amended Complaint ¶ 3 (emphasis
 13 added); see also id. ¶ 17 (contending, without explanation, that Players Inc owes a fiduciary duty
 14 to retired players with respect to revenues paid by licensees). Plaintiffs cannot not allege any
 15 facts, however, that Players Inc ever “represented” Parrish or Roberts in any licensing effort or
 16 that they were entitled to share in any revenues paid by licensees, because neither Parrish nor
 17 Roberts ever signed GLAs or participated in any Players Inc licensing programs. Upshaw Decl.
 18 ¶¶ 8-9.

19 Being unable to pretend that there is a legally cognizable fiduciary relationship
 20 between Players Inc and Parrish or Roberts, see McMahon, 42 Va. Cir. at 419; Oakland Raiders,
 21 131 Cal. App. 4th at 632-33, Plaintiffs contend that “Defendant’s position of control and
 22 Plaintiffs’ lack of information” somehow gives rise to a fiduciary duty. Amended Complaint ¶
 23 17. This contention is clearly frivolous as a matter of law. In certain rare instances, where there
 24 are marked inequalities of power or education between the two parties in a close relationship,

25 _____
 26 ² Because Players Inc is a Virginia corporation, the substantive law of Virginia regarding
 27 fiduciary duties applies here. The law in California with respect to fiduciary duty, however, is
 28 substantially the same for purposes of the instant motion. See Oakland Raiders v. Nat’l Football
League, 131 Cal. App. 4th 621, 632-33 (2005) (listing relationships where there are fiduciary
 duties).

1 courts have found such relationships to be “special” or “confidential” and imposed fiduciary
 2 duties. See, e.g., McClung v. Smith, 870 F. Supp. 1384, 1400, 1400 n.6 (E.D. Va. 1994) (finding
 3 a “special” relationship under Virginia law where a woman, unsophisticated in financial matters
 4 and weakened by alcohol dependence, entrusted her finances to a family friend, a lawyer who
 5 was especially knowledgeable about land investing); Richelle L. v. Roman Catholic Archbishop
 6 of San Francisco, 106 Cal. App. 4th 257, 270-74 (2003) (addressing whether there was a
 7 “confidential” relationship under California law where a devout, sexually inexperienced
 8 parishioner had been seduced by her pastor). But there can be no “special” or “confidential”
 9 relationship unless there is a relationship in the first place, and there is not, and never was, any
 10 relationship between Players Inc and Parrish or Roberts – much less a “special” or “confidential”
 11 relationship. See Amended Complaint ¶ 8 (noting that Parrish was CEO of a commercial
 12 construction company for over 20 years that employed more than 3,000 employees).

13 Finally, the contention that Plaintiffs are adequate representatives of a plaintiff
 14 class (Amended Complaint ¶ 27) is frivolous and lacks any support in the law. Parrish and
 15 Roberts, having never executed GLAs or participated in Players Inc licensing programs (Upshaw
 16 Decl. ¶¶ 8-9), are not members of the class they purport to represent. See Lierboe v. State Farm
 17 Mut. Auto. Ins. Co., 350 F.3d 1018, 1022 (9th Cir. 2003) (holding that a plaintiff who does not
 18 have the alleged claim “cannot represent others who may have such a claim, and [plaintiff’s] bid
 19 to serve as a class representative must fail”). Thus, Plaintiffs and their counsel knew from the
 20 outset that the contention that Parrish and Roberts are adequate representatives of the class
 21 alleged in the Complaint and the Amended Complaint is unsupportable. This also violates Rule
 22 11.

23 In sum, not only do “the allegations and other factual contentions” in the
 24 Amended Complaint lack “evidentiary support,” see Fed. R. Civ. P. 11(b)(3), they are
 25 demonstrably untrue and Plaintiffs knew them to be untrue, thereby violating Rule 11. By
 26 signing the Complaint and the subsequent Amended Complaint that contain such blatantly false
 27 allegations, Plaintiffs’ counsel, at a minimum, failed to conduct the inquiry mandated by Rule
 28 11. In addition, Plaintiffs’ claims are not warranted by existing law or by the extension,

1 modification, or reversal of existing law or the establishment of new law. See Fed. R. Civ. P.
 2 11(b)(2).

3 **II. RULE 11 SANCTIONS ARE APPROPRIATE BECAUSE PLAINTIFFS HAD THE**
 4 **IMPROPER PURPOSE TO HARASS THE NFLPA**

5 Parrish has long been critical of the NFLPA and its treatment of retired players.
 6 He has criticized the players' union in his book on the NFL, lobbied Congress concerning retired
 7 players' pension and disability rights, and for several years conducted a media campaign against
 8 the NFLPA. Adderley has also been vocal in his expressing his "disgust[] with the way [retired
 9 NFL players] have been treated." Neil Hays and Roman Modrowski, Ditka: Owners Should be
 10 Ashamed: Former NFL Greats Speak Out Against League's Pension Plan, Chicago Sun-Times,
 11 Feb. 2, 2007, at 100. As noted (supra p.5), these public criticisms are reiterated in the Amended
 12 Complaint, in which Plaintiffs allege that retired players receive "poverty-level pension
 13 payments" and that an "extremely low percentage of retired players receive disability payments."
 14 Amended Complaint ¶ 14; see also id. ¶¶ 15-16 (relating the unfortunate story of retired player
 15 Mike Webster).

16 Plaintiffs are well aware that the pension and disability benefits of which they
 17 complain are negotiated by the NFLPA (the players union), not Players Inc (a for-profit
 18 corporation), and are controlled by the collective bargaining agreements between the NFLPA
 19 and the NFL. Upshaw Decl. ¶ 4. Plaintiffs, however, have no cause of action that would permit
 20 them to challenge the NFLPA's collective bargaining activities in any court, being limited under
 21 the Labor Management Relations Act, 29 U.S.C. § 185(a), to claims for breach of duty of fair
 22 representation that are long since time-barred. See, e.g., Henderson v. Office & Prof'l
 23 Employees Int'l Union, 143 Fed. Appx. 741, 743 (9th Cir. 2005); see also Allis-Chalmers Corp.
 24 v. Lueck, 471 U.S. 202, 210-11 (1985). Thus, any issues that Plaintiffs may have with the
 25 NFLPA concerning these retired player benefits are wholly irrelevant to any purported breach of
 26 fiduciary duty allegations against Players Inc.

27 The prominent place given to these legally irrelevant criticisms in the Amended
 28 Complaint (see ¶¶ 14, 15, 16, 18), combined with the complete lack of factual and legal support

1 for Plaintiffs' breach of fiduciary claims regarding Parrish and Roberts, demonstrates the
2 improper purpose for which the Complaint and the Amended Complaint were filed. This is
3 reinforced by statements on the website of Retired Professional Football Players for Justice, the
4 new group of which Parrish and Adderley are Co-Presidents, that the group "will engage in
5 activities like bringing class action lawsuits, testifying before Congress, and providing
6 information to the media highlighting the situation of those whose former physically demanding
7 careers have resulted in long-term damage to their health." O'Kelly Decl. Ex. D. Thus, it
8 appears that this lawsuit represents nothing more than the latest round in Parrish's media
9 campaign and lobbying of Congress. This is a clear violation of Rule 11. See Hudson, 836 F.2d
10 at 1162 (holding that "the absence of any reasonable support for the damage claim and the nature
11 of the justification offered warrant a conclusion that Littler filed the counterclaim to harass
12 Hudson"); see also Townsend v. Holman Consulting Corp., 929 F.2d 1358, 1366-67 (9th Cir.
13 1990) (affirming district court's determination that an improper purpose can be inferred from the
14 fact that the allegations were frivolous and that plaintiffs claim was "essentially vindictive").

15 That Plaintiffs hope to use this baseless lawsuit against Players Inc as another
16 weapon to publicly harass the NFLPA is further reinforced by the aggressive publicity campaign
17 undertaken by Plaintiffs and their lawyers. See, e.g., Alan Schwarz, 2 Former N.F.L. Players
18 Sue Over Sharing of Fees, N.Y. Times, Feb. 15, 2007, at D2 (reporting on public statements by
19 Plaintiffs and their counsel, Ronald S. Katz, on day that lawsuit was filed); Daniel Kaplan, New
20 Group May Seek Retired NFLers' Rights, Sports Bus. J., Feb. 26-Mar. 4, 2007, at 5 (linking the
21 formation of Retired Professional Footballers for Justice directly to the lawsuit to and reporting
22 that the "group is expected to formally announce its creation as early as this week at a news
23 conference at Manatt's New York office....") (attached hereto as O'Kelly Decl. Ex. B); Daniel
24 Kaplan, Retired NFLers Delay Announcement of Group, Sports Bus. J., Mar. 5-11, 2007, at 8
25 (reporting that the "formal announcement of the creation of [the] organization" had been delayed
26 "in hopes of capturing media attention during [NFL] draft week in New York") (attached hereto
27 as O'Kelly Decl. Ex. C). This aggressive pursuit of publicity exacerbates Plaintiffs' Rule 11
28 violation. See Whitehead v. Food Max of Miss., Inc., 332 F.3d 796, 807 (5th Cir. 2003) (holding

1 that the intent to embarrass a person and attract media attention through service of a signed filing
 2 is an improper purpose under Rule 11); Bryant v. Brooklyn Barbecue Corp., 932 F.2d 697, 698
 3 (8th Cir. 1991) (affirming Rule 11 sanctions where the trial court “concluded the original
 4 complaint was filed solely for an improper purpose, namely to attract publicity and to harass the
 5 defendants”).

6 **III. RULE 11 SANCTIONS ARE APPROPRIATE BECAUSE PLAINTIFFS’**
 7 **COUNSEL FILED THE COMPLAINT FOR AN IMPROPER PURPOSE**

8 Plaintiffs’ attorney, Ronald S. Katz, told the New York Times with regard to this
 9 lawsuit that “[w]e’re picking up a rock and seeing what’s crawling underneath.” Alan Schwarz,
 10 2 Former N.F.L. Players Sue Over Sharing Of Fees, N.Y. Times, Feb. 15, 2007, at D2 (attached
 11 hereto as O’Kelly Decl. Ex. A). Such a fishing expedition is a clear abuse of the judicial process
 12 and sanctionable under Rule 11. See In re. Kunstler, 914 F.2d at 520 (affirming finding of
 13 improper purpose where plaintiffs filed a baseless civil suit in part to obtain discovery for use in
 14 criminal proceedings).

15 Mr. Katz’s law firm also openly supports the improper purposes for which this
 16 lawsuit was filed. As stated by Mr. Katz in a press release issued by his firm, Manatt:

17 Because the pensions they receive from the Union are not enough to live on and
 18 because many of these players are disabled, they need these royalty payments just
 19 to make ends meet. Given the Players Inc documents attached to the complaint, I
 20 would not be surprised to see a congressional investigation of the Union.

21 Press Release, Manatt, Phelps & Phillips LLP, Manatt and McKool Smith Help Retired
 22 Professional Football Players Kick Off Class-Action Lawsuit; Only 10 Percent Of Those
 23 Represented By Union’s Commercial Licensing Arm Receive Payments, (Feb. 15, 2007)
 24 (attached hereto as O’Kelly Decl. Ex. E). This, too, is sanctionable under Rule 11. See, e.g., In
re Kunstler, 914 F.2d at 520.

25 In addition, Mr. Katz and Manatt announced shortly after this lawsuit was filed
 26 that “they were taking the lead in starting Retired Professional Football Players for Justice,”
 27 which purportedly will compete directly with Players Inc “in deals with commercial interests,
 28 such as video game and apparel companies.” Daniel Kaplan, New Group May Seek Retired

1 NFLers' Rights, Sports Bus. J., Feb. 26-Mar. 4, 2007, at 5 (attached hereto as O'Kelly Decl. Ex.
 2 B). The group's website identifies Samuel A. Mutch (who represents Plaintiffs in this lawsuit)
 3 as its Treasurer and also names Mr. Katz and Lewis LeClair of McKool Smith on its "Officers &
 4 Directors" webpage. O'Kelly Decl. Ex. D. The group's goals include "bringing class action
 5 lawsuits" and "establish[ing] an alternative to the current marketing and licensing system which
 6 will empower players." Id. Using a class action lawsuit to seek discovery of Players Inc for
 7 competitive purposes is another Rule 11 violation.

8 **IV. RULE 11 SANCTIONS ARE WARRANTED.**

9 Courts impose sanctions under Rule 11 to the degree necessary "to deter
 10 repetition of such conduct" and may take the form of monetary and/or nonmonetary sanctions.
 11 Fed. R. Civ. P. 11(c)(2). Monetary sanctions are often the reasonable attorney's fees and costs
 12 incurred as a result of the violation. See, e.g., Truesdell, 209 F.R.D. at 178. Nonmonetary
 13 sanctions may include striking the offending paper. See, e.g., Jimenez v. Madison Area Tech.
 14 Coll., 321 F.3d 652, 656-57 (7th Cir. 2003) (affirming dismissal of the complaint where it was
 15 founded on the very allegations that violated Rule 11). Courts should consider the degree of the
 16 Rule 11 violations when determining sanctions. See, e.g., Kendrick v. Zanides, 609 F. Supp.
 17 1162, 1173 (N.D. Cal. 1985) ("Because of the egregiousness of the conduct involved, the
 18 sanctions imposed will not be limited to expenses and attorneys' fees").

19 Here, Players Inc requests that Plaintiffs' baseless allegations concerning a breach
 20 of a nonexistent fiduciary duty allegedly owed to Parrish and Roberts be stricken and that the
 21 Amended Complaint be dismissed with prejudice with respect to these Plaintiffs. As for
 22 monetary sanctions, Players Inc requests an award in the full amount of the reasonable attorney's
 23 fees and costs incurred in filing this motion, in responding to the Amended Complaint, and any
 24 other fees and costs incurred in connection with this lawsuit. These expenses are a direct result
 25 of the violations of Rule 11 by Plaintiffs, their counsel of record, and their law firms as set forth
 26 above. As is appropriate under Rule 11, Players Inc requests that these sanctions be levied jointly
 27 against Plaintiffs; their counsel, Ronald S. Katz and his law firm, Manatt, Phelps & Phillips LLP;
 28 co-counsel Lewis T. LeClair and his law firm McKool Smith P.C.; and co-counsel Samuel A.

1 Mutch and his law firm Samuel A. Mutch P.A. See Fed. R. Civ. P. 11(c); see also Fed. R. Civ.
 2 P. 11 advisory committee notes to 1993 Amendments (“Absent exceptional circumstances, a law
 3 firm is to be held also responsible when ... one of its partners, associates, or employees is
 4 determined to have violated the rule. ... The revision permits the court to consider whether other
 5 attorneys in the firm, co-counsel, other law firms, or the party itself should be held accountable
 6 for their part in causing a violation.”); Davis v. PRC, Inc., 161 F.R.D. 326, 327 (E.D. Va. 1995)
 7 (imposing sanctions on litigant’s personal attorney as well as co-counsel hired to advise on
 8 employment discrimination claim); Val-Land Farms, Inc. v. Third Nat’l Bank, 937 F.2d 1110,
 9 1117-18 (6th Cir. 1991) (upholding sanctions under Rule 11 against primary Illinois firm and
 10 local Tennessee counsel).

11 **V. SANCTIONS ARE ALSO WARRANTED UNDER 28 U.S.C. § 1927 AND THE**
 12 **COURT’S INHERENT POWERS.**

13 Under 28 U.S.C. § 1927, “[a]ny attorney ... who so multiplies the proceedings in
 14 any case unreasonably and vexatiously may be required by the court to satisfy personally the
 15 excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.”
 16 “Unreasonable” and “vexatious” conduct is demonstrated by a showing of “bad faith, improper
 17 motive, or reckless disregard of the duty owed to the court.” Edwards v. Gen. Motors Corp., 153
 18 F.3d 242, 246 (5th Cir. 1998). Bad faith exists “when an attorney knowingly or recklessly raises
 19 a frivolous argument, or argues a meritorious claim for the purpose of harassing an opponent.”
 20 Trulis v. Barton, 107 F.3d 685, 694 (9th Cir. 1995). Section 1927 authorizes the Court to award
 21 costs reasonably incurred because of an attorney’s unreasonable and vexatious conduct. United
 22 States v. Blodgett, 709 F.2d 608, 610-611 (9th Cir. 1983).

23 As described above, Mr. Katz and his co-counsel have filed the Complaint and
 24 the Amended Complaint, which are replete with frivolous contentions. Mr. Katz’s desire to
 25 “see[] what’s crawling underneath” a rock is not an appropriate use of the litigation process and
 26 demonstrates bad faith. Accordingly, Players Inc requests an award of reasonable attorney’s fees
 27 and costs pursuant to Section 1927 against Mr. Katz, his law firm Manatt, and co-counsel
 28 McKool Smith and Mutch, who joined in the Complaint and Amended Complaint.

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In addition to Rule 11 and Section 1927, federal courts have inherent power to impose sanctions against both attorneys and parties for bad faith conduct in litigation. Chambers v. NASCO, Inc., 501 U.S. 32, 35 (1991); see also Fink v. Gomez, 239 F.3d 989 (9th Cir. 2001). Recklessness coupled with an additional factor, such as frivolousness, harassment, or an improper purpose, may be deemed to constitute bad faith. See Fink, 239 F.3d at 994. The Court has broad discretion in its choice of sanctions, including awards of attorneys' fees and dismissal, and awards to compensate parties for reputational injuries. Chambers, 501 U.S. at 44-45; B.K.B. v. Maui Police Dep't, 276 F.3d 1091, 1108-1109 (9th Cir. 2002) (affirming sanctions for reputational damage). Players Inc requests such sanctions that the Court deems appropriate pursuant to its inherent powers.

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CONCLUSION

For all of the foregoing reasons, Players Inc respectfully requests that the Court enter a judgment: (1) declaring Plaintiffs, their counsel of record Ronald S. Katz, and his law firm Manatt, Phelps & Phillips LLP, co-counsel Lewis T. LeClair and his law firm McKool Smith P.C., and co-counsel Samuel A. Mutch and his law firm Samuel A. Mutch P.A., to be in violation of Rule 11; (2) declaring Plaintiffs' counsel to be in violation of 28 U.S.C. § 1927; and (3) pursuant to Rule 11, 28 U.S.C. § 1927, and/or the Court's inherent powers, striking the offending allegations and the Amended Complaint, awarding Players Inc monetary sanctions in the amount of its reasonable attorney's fees and costs, and any other relief that the Court may deem appropriate.

Date: April 4, 2007

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