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and National Football League Players Incorporated d/b/a Players Inc  
18

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

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

23 Plaintiffs,

24 v.

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

27 Defendants.  
28

Case No. C 07 0943 WHA

**DEFENDANTS' MISCELLANEOUS  
ADMINISTRATIVE MOTION TO  
FILE UNDER SEAL**

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 request to file under  
4 seal an unredacted version of Defendants’ Motion for Summary Judgment and Exhibits 1-3, 6-  
5 12, 15-24, and 26-47 to the Declaration of David Greenspan in Support of Defendants’ Motion  
6 for Summary Judgment (“Greenspan Declaration”). These Exhibits include documents  
7 designated by Defendants as “Confidential” or “Highly Confidential -- Attorneys’ Eyes Only.”  
8 Defendants further request that the redacted version of Defendants’ Motion for Summary  
9 Judgment serve as the publicly available version of that document. The “good cause” for this  
10 Motion is set forth below.

11 Defendants submit that this Motion is narrowly tailored to respect the parties’  
12 confidentiality designations under the Protective Order in this action.

13 Pursuant to Civil L.R. 7-12, counsel for Defendants attempted to meet and confer  
14 with counsel for Plaintiffs regarding Defendants’ Miscellaneous Administrative Motion to File  
15 Under Seal. Counsel for Plaintiffs would not stipulate to the filing of documents under seal  
16 solely on the basis that they had not yet reviewed the documents to be so filed (which is not  
17 possible until Defendants’ submission is completed and the filing is made). See Declaration of  
18 Roy Taub ¶¶ 2-4 & Ex. 1. Finally, given the number and significance of the documents at issue,  
19 Defendants submit that good cause exists for permitting Defendants to file a motion in excess of  
20 five pages.

### 21 MEMORANDUM

22 Pursuant to Civil L.R. 79-5, Defendants proffer the following showing of good  
23 cause in support of their request to file under seal.

#### 24 **1. Documents Regarding Defendants’ Licensing Practices with Third** 25 **Party Licensees – Exhibits 11, 21, 22, 26, 28-31, 40, 41, 43, and 44**

26 The documents attached to the Greenspan Declaration as Exhibits 11, 21, 26, 28,  
27 29, 30, and 31 are declarations submitted by Linda Castillon, Vice President of Licensing of  
28 Fathead LLC, Joel Linzner, the Executive Vice President of Business and Legal Affairs of

1 Electronic Arts Inc. (“EA”), Warren Friss, Vice President and Entertainment General Manager of  
2 Topps Company, Inc. (“Topps”), Adam Sullins, Vice President and General Counsel of the  
3 Upper Deck Company, LLC (“Upper Deck”), Jason Brenner, Program Director of MBI,  
4 Incorporated (“MBI”), Christine Finch, President of the Entertainment and Licensing Division of  
5 TMP International, Inc. (“Todd McFarlane), and Steve Byrd, Executive Vice President of Sales  
6 & Marketing of STATS LLC, and respectively.

7           The documents attached to the Greenspan Declaration as Exhibits 22, 40, 41, 43,  
8 and 44 are license agreements (or excerpts of license agreements) between Defendants and  
9 various third-party licensees. These documents are confidential for the same reasons that the  
10 Court previously found good cause to file these documents and similar documents relating to  
11 Defendants’ licensing business under seal. See Order Sealing Confidential Documents (Rec.  
12 Doc. 144) (Oct. 3, 2007); Order Granting Mot. to File Docs. Under Seal (Rec. Doc. 159) (Oct.  
13 15, 2007); Order Granting Defs.’ Misc. Admin. Mot. to File Under Seal Certain Confidential  
14 Information Filed by Pls. (Rec. Doc. 188) (Nov. 26, 2007); Order Granting in Part and Denying  
15 in Part Mots. to Seal (Rec. Doc. 255) (April 7, 2008); Declaration of Gene Upshaw ¶¶ 7-8 (Rec.  
16 Doc. 187) (Nov. 21, 2007) (“Upshaw Decl.”).

17           Specifically, Exhibits 22, 40, 41, 43, and 44 are non-public, commercial  
18 documents (or excerpts thereof), the terms of which are trade secrets. The confidential terms  
19 contained in these documents include the specific price terms of the agreements (including the  
20 precise amounts and timing of the guaranteed payments and royalties), the specific scope of the  
21 rights granted and the services to be rendered under the agreements, the terms and conditions of  
22 payment, and the various contingencies and other contractual terms between the parties that  
23 Players Inc and the respective licensee negotiated. Exhibits 11, 21, 26, and 28-31 should be filed  
24 under seal because they contain such commercially and competitively sensitive business  
25 information related to Defendants’ and third-party licensees’ licensing business.

26           Defendants would be seriously harmed if these documents were publicly filed  
27 because the terms of those confidential agreements would become publicly available to other  
28 licensees and licensors that compete in the marketplace. These third parties are sure to alter their

1 business behavior in negotiations with Defendants if they became aware of the terms of  
2 Defendants' license agreements with its third-party licensees. This would severely harm  
3 Defendants' bargaining positions, and cause substantial competitive and commercial injury to  
4 Defendants. See Upshaw Decl. ¶ 4.<sup>1</sup>

5 For all of these reasons, there is more than sufficient good cause for filing  
6 Exhibits 11, 21, 22, 26, 28-31, 40, 41, 43, and 44 under seal.<sup>2</sup>

7 **2. Information Regarding the Terms of Licensing of Retired Players –**  
8 **Exhibits 17, 19, 23, and 24**

9 The documents attached to the Greenspan Declaration as Exhibits 17, 19, 23, and  
10 24 contain information regarding the terms of licensing of specific retired players, almost all of  
11 whom (with the sole exception of Herbert Adderley) are not named parties to this action. These  
12 documents specify or summarize the terms of licensing or marketing agreements, such as the  
13 amounts paid to the players, the amounts (if any) paid to Players Inc, and details of the licensing  
14 activity.

15 As with the documents regarding Defendants' licensing practices with third-party  
16 licensees, see discussion of Exhibits 11, 21, 22, 26, 28-31, 40, 41, 43, and 44, supra, these  
17 documents are non-public, commercial documents and contain confidential information and  
18 trade secrets, public disclosure of which would seriously harm Defendants and their non-party  
19  
20

21 <sup>1</sup> Public disclosure of the terms of Defendants' license agreements would similarly harm third-  
22 party licensees. See Declaration of Joel Linzner ¶ 3 (Rec. Doc. 186) (Nov. 21, 2007) (“[P]ublic  
23 disclosure of this information would harm competition by divulging to EA’s and Players Inc’s  
24 competitors the confidential price and other terms that EA and Players Inc negotiated in these  
contracts. The harm to EA and others from public disclosure of these documents would be  
severe and immediate.”).

25 <sup>2</sup> See Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1131 n.4 (9th Cir. 2003)  
(documents containing “trade secrets, financial information, and confidential information about  
26 third parties” satisfy the “good cause” standard); Johnson Controls, Inc. v. Phoenix Control Sys.,  
Inc., 886 F.2d 1173, 1176 (9th Cir. 1989) (protecting by seal information containing a party’s  
27 trade secrets); Reilly v. MediaNews Group Inc., No. C 06-04332 SI, 2007 WL 196682, at \*4  
(N.D. Cal. Jan. 24, 2007) (filing under seal information that might allow competitors to  
28 anticipate future actions taken by defendants or that might help the bargaining position of  
companies that negotiate with defendants).

1 licensees. See Upshaw Decl. ¶ 4. For all of these reasons, there is more than sufficient good  
2 cause for filing these documents under seal.<sup>3</sup>

3 **3. Commercial Agreements Between the NFLPA and Players Inc –**  
4 **Exhibits 32, 33, 35, 36, and 38**

5 The document attached to the Greenspan Declaration as Exhibit 32 is an  
6 agreement between Players Inc and the NFLPA (“Players Inc/NFLPA Agreement”) concerning  
7 various business matters including an NFLPA grant of rights to Players Inc in connection with  
8 Players Inc’s licensing activities. The document attached to the Greenspan Declaration as  
9 Exhibit 35 is the predecessor agreement to the Players Inc/NFLPA Agreement and also concerns  
10 various business matters relating to Players Inc’s licensing activities. The document attached to  
11 the Greenspan Declaration as Exhibit 38 is an independent evaluation of various business matters  
12 set forth in the Players Inc/NFLPA Agreement. The document attached to the Greenspan  
13 Declaration as Exhibit 36 is an amendment to the Players Inc/NFLPA Agreement  
14 (“Amendment”) regarding a redistribution of certain funds under the Players Inc/NFLPA  
15 Agreement.<sup>4</sup> And finally, the document attached as Exhibit 33 is a series of internal memoranda  
16 also regarding the distribution of certain funds under the Players Inc/NFLPA Agreement.

17 These documents are confidential commercial agreements between Players Inc  
18 and the NFLPA regarding the business arrangements of these companies, or are documents  
19 explaining or describing those business arrangements. The terms of these agreements include  
20 descriptions of revenue amounts received by Defendants pursuant to their licensing agreements  
21 with certain licensees, as well as the method by which such revenue is distributed. These  
22

23 \_\_\_\_\_  
24 <sup>3</sup> The Court has previously found that there is “good cause” for filing under seal similar  
25 documents related to retired player licensing. See e.g., Order Granting Defs.’ Misc. Admin. Mot.  
26 to File Under Seal, (Rec. Doc. 226) (Mar. 24, 2008).

27 <sup>4</sup> This Court has previously found that there is “good cause” for filing under seal the  
28 NFLPA/Players Inc Agreement and Amendment. See Order Sealing Confidential Docs. at 2  
(Rec. Doc. 144) (Oct. 3, 2007); Order Granting Defs.’ Misc. Admin. Mot. to File Under Seal  
Certain Confidential Information Filed by Pls. (Rec. Doc. 188) (Nov. 26, 2007).

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

3 The specific terms of these commercial agreements have not been made public  
4 and constitute trade secrets regarding the operation of Defendants' licensing businesses. Public  
5 disclosure of these agreements would reveal to Defendants' competitors, counter-contracting  
6 parties, and potential counter-contracting parties detailed financial information relating to the  
7 operations of Defendants' licensing businesses and contractual arrangements with third parties.  
8 Such information could cause these entities to change their business behavior to Defendants'  
9 commercial disadvantage. Upshaw Decl., at ¶¶ 7-8. Accordingly, there is good cause to file  
10 these documents under seal.<sup>5</sup>

11 **4. NFLPA's FY 2007 Annual Financial Report – Exhibit 39**

12 The document attached to the Greenspan Declaration as Exhibits 39 is an excerpt  
13 of the NFLPA's Fiscal Year 2007 Annual Financial Report. This financial report, which has not  
14 been disseminated to the public, contains sensitive and confidential information regarding  
15 Defendants' consolidated finances and business practices, including matters not involving player  
16 licensing. For the same reasons as discussed above, Defendants would be seriously harmed by  
17 the public disclosure of such sensitive internal information. Accordingly, there is good cause to  
18 file Exhibit 39 under seal.

19 **5. Plaintiffs' Expert Reports Referencing Defendants' Confidential**  
20 **Information – Exhibits 16 and 20**

21 The documents attached to the Greenspan Declaration as Exhibits 16 and 20 are  
22 excerpts of reports by Philip Y. Rowley and Daniel A. Rascher, respectively. Messrs. Rowley  
23

24 <sup>5</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).

1 and Rascher are experts Plaintiffs have retained in this matter. These reports contains the very  
2 same confidential information described above, including explanations of Players Inc's internal  
3 business practices with respect to retired player licensing. Public disclosure of these reports  
4 would therefore cause competitive and commercial harm to both Defendants and to its non-party  
5 licensees. Accordingly, there is good cause to file Exhibits 16 and 20 under seal.

6 **6. Expert Report of Roger Noll – Exhibit 18**

7 Attached to the Greenspan Declaration as Exhibit 18 is an excerpt of the Report of  
8 Professor Roger Noll, an expert Defendants have retained in this matter. Professor Noll's report  
9 contains the same type of confidential information described above, including discussion of  
10 Players Inc's internal business practices and transactions with individual licensees. Public  
11 disclosure of this declaration would cause competitive and commercial harm to both Defendants  
12 and to its non-party licensees. Accordingly, there is good cause to file Professor Noll's report  
13 under seal.

14 **7. Declaration of Roger Noll – Exhibit 12**

15 The document attached to the Greenspan Declaration as Exhibit 12 is the  
16 declaration of Professor Roger Noll, an expert Defendants have retained in this matter. Professor  
17 Noll's declaration contains the same type of confidential information described above, including  
18 discussion of Players Inc's internal business practices and transactions with individual licensees.  
19 Public disclosure of this declaration would cause competitive and commercial harm to  
20 Defendants. Accordingly, there is good cause to file Professor Noll's declaration under seal.

21 **8. Declaration of Andrew Feffer – Exhibit 15**

22 The document attached to the Greenspan Declaration as Exhibit 15 is the  
23 Declaration of Andrew Feffer, Executive Vice President and Chief Operating Officer of Players  
24 Inc. Mr. Feffer's declaration contains the same type of confidential, commercial information  
25 described above including descriptions and explanations of both the financial and non-financial  
26 terms of ad hoc agreements between Players Inc's third-party licensees and retired players who  
27 are not parties to this action. Thus, for the same reasons stated above, public disclosure of Mr.  
28

1 Feffer’s affidavit would cause competitive and commercial harm to Defendants and non-party  
2 licensees, and there is good cause for filing Exhibit 15 under seal.<sup>6</sup>

3 **9. Plaintiffs’ Interrogatory Responses Referencing Defendants’**  
4 **Confidential Information – Exhibits 42 and 45**

5 The documents attached to the Greenspan Declaration as Exhibits 42 and 45 are  
6 Plaintiffs’ Responses and Objections to Defendants’ Third Set of Interrogatories and Plaintiffs’  
7 Responses and Objections to Defendants’ First Set of Interrogatories, respectively. These  
8 Responses contain the confidential, commercial information of Defendants including  
9 descriptions and explanations of Players Inc’s internal business practices with respect to retired  
10 player licensing, including the distribution of certain funds under the Players Inc/NFLPA  
11 Agreement. Thus, for the reasons stated above there is good cause for filing these documents  
12 under seal.

13 **10. Defendants’ Interrogatory Responses Referencing Defendants’**  
14 **Confidential Information – Exhibit 46**

15 The document attached to the Greenspan Declaration as Exhibit 46 is Defendants’  
16 Responses and Objections to Plaintiffs’ Third Set of Interrogatories. These Responses contain  
17 the confidential, commercial information described above, including descriptions and  
18 explanations of Players Inc’s internal business practices with respect to retired player licensing,  
19 including the distribution of certain funds under the Players Inc/NFLPA Agreement. Thus, for  
20 the reasons stated above there is good reason to file Exhibit 46 under seal.

21 **11. Plaintiffs’ Opposition to Defendants’ Petition for Permission to**  
22 **Appeal Class Certification Order– Exhibit 47**

23 Plaintiffs’ Opposition to Defendants’ Petition for Permission to Appeal Class  
24 Certification Order, which is attached to the Declaration of David Greenspan as Exhibit 47,  
25 contains the very same confidential information described above, including explanations of  
26 Players Inc’s internal business practices with respect to retired player licensing. Public

27 <sup>6</sup> The Court previously found that there is good cause for filing under seal Mr. Feffer’s  
28 Declaration. See e.g., Order Granting Mot. to File Docs. Under Seal (Rec. Doc. 159) (Oct. 15,  
2007).



1 disclosure of Exhibit 47 would therefore cause competitive and commercial harm to both  
2 Defendants and to its non-party licensees. Accordingly, there is good cause to file Exhibit 47  
3 under seal.

4 **12. Excerpts of Deposition Transcripts – Exhibits 2, 3, 6-10, 27, 34, and 37**

5 The documents attached to the Declaration of David Greenspan as Exhibits 2, 3,  
6 6-10, 27, 34, and 37 are excerpts of deposition testimony given in this action that have been  
7 designated “Confidential” or “Highly Confidential - Attorneys’ Eyes Only” by Defendants.

8 Defendants request to file these deposition transcript excerpts under seal because  
9 they contain testimony describing the confidential, commercial information described above,  
10 including, for example:

- 11 • Descriptions and explanations of the terms of Players Inc’s license
- 12 agreements with non-party licensees;
- 13 • Verbatim recitations of terms of the Players Inc/NFLPA Agreement, and
- 14 descriptions and explanations of such terms; and
- 15 • Descriptions and explanations of Players Inc’s internal business practices
- 16 with respect to retired player licensing.

17 Thus, for the same reasons stated above, public disclosure of this deposition  
18 testimony would cause competitive and commercial harm to Defendants and to non-party  
19 licensees and there is good cause for filing Exhibits 2, 3, 6-10, 27, 34, and 37 under seal. See  
20 Upshaw Decl. ¶ 9.

21 **13. An Unredacted Version of the Third Amended Complaint (“TAC”) –**  
22 **Exhibit 1**

23 The unredacted version of the TAC contains the very same confidential  
24 information described above, including explanations of Players Inc’s internal business practices  
25 with respect to retired player licensing. Public disclosure of an unredacted version of the TAC  
26 would therefore cause competitive and commercial harm to both Defendants and to its non-party  
27 licensees. Accordingly, there is good cause to file under seal the TAC, and for only Plaintiffs’  
28 redacted version made publicly available.<sup>7</sup>

<sup>7</sup> This Court has previously found that there is “good cause” for filing under seal the TAC and  
for making publicly available only Plaintiffs’ redacted version. See Order Granting Defs.’ Misc.

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**14. An Unredacted Version of Defendants' Motion**

Defendants' Motion contains much of the very same confidential information described above, including extensive quotations and descriptions of the License Agreements, the Players Inc/NFLPA Agreement and Amendment thereto, and the deposition testimony of Defendants' current and former employees and agents. Public disclosure of an unredacted version of the Motion would therefore cause competitive and commercial harm to both Defendants and to its non-party licensees. Accordingly, there is good cause to file the Motion under seal, and for only Defendants' redacted version made publicly available.

**CONCLUSION**

For the reasons stated above, Defendants respectfully request that this Court grant this Miscellaneous Administrative Motion to File under Seal.

Date: June 13, 2008

DEWEY & LEBŒUF LLP

BY:           /s/ David G. Feher          

David G. Feher  
*Attorneys for Defendants*

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Admin. Mot. to File Under Seal Certain Confidential Information Filed by Pls. (Rec. Doc. 188) (Nov. 26, 2007).