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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’ Opposition to Plaintiffs’ Motion to Strike the
5 Declarations of Linda Castillon, Adam Sullins, Jason Brenner, Christine Finch and Steve Byrd
6 (“Motion to Strike”) and Exhibits Q, R and S to the Declaration of David Greenspan in Support
7 of Defendants’ Opposition to Plaintiffs’ Motion to Strike (“Greenspan Declaration”). These
8 Exhibits include deposition testimony designated by Defendants as “Confidential” or “Highly
9 Confidential – Attorneys’ Eyes Only.” Defendants further request that the redacted version of
10 Defendants’ Opposition serve as the publicly available version of that document. The “good
11 cause” for this Motion is set forth below.

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

14 Pursuant to Civil L.R. 7-12, counsel for Defendants attempted to meet and confer
15 with counsel for Plaintiffs regarding Defendants’ Miscellaneous Administrative Motion to File
16 Under Seal. Counsel for Plaintiffs would not stipulate to the filing of documents under seal
17 solely on the basis that they had not yet reviewed the documents to be so filed (which is not
18 possible until Defendants’ submission is completed and the filing is made). See Declaration of
19 Roy Taub ¶¶ 2-4 & Ex. 1.

20 MEMORANDUM

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

23 **1. Deposition Testimony Regarding Defendants’ Licensing Practices 24 with Third Party Licensees – Exhibits Q, R and S**

25 The documents attached to the Declaration of David Greenspan as Exhibits Q, R
26 and S are excerpts of deposition testimony given in this action that have been designated
27 “Confidential” or “Highly Confidential - Attorneys’ Eyes Only” by Defendants.
28

1 This testimony is confidential for the same reasons that the Court previously
2 found good cause to file this and similar testimony relating to Defendants' licensing business
3 under seal. See Order Sealing Confidential Documents (Rec. Doc. 144) (Oct. 3, 2007); Order
4 Granting Mot. to File Docs. Under Seal (Rec. Doc. 159) (Oct. 15, 2007); Order Granting Defs.'
5 Misc. Admin. Mot. to File Under Seal Certain Confidential Information Filed by Pls. (Rec. Doc.
6 188) (Nov. 26, 2007); Order Granting in Part and Denying in Part Mots. to Seal (Rec. Doc. 255)
7 (April 7, 2008); Declaration of Gene Upshaw ¶¶ 7-8 (Rec. Doc. 187) (Nov. 21, 2007) ("Upshaw
8 Decl.").

9 Specifically, Defendants request to file these deposition transcript excerpts under
10 seal because they contain testimony describing certain confidential, commercial information
11 including descriptions and explanations of the terms of Players Inc's license agreements with
12 non-party licensees.

13 Defendants would be seriously harmed if these excerpts were publicly filed
14 because the terms of Players Inc's confidential agreements would become publicly available to
15 other licensees and licensors that compete in the marketplace. These third parties are sure to
16 alter their business behavior in negotiations with Defendants if they became aware of the terms
17 of Defendants' license agreements with its third-party licensees. This would severely harm
18 Defendants' bargaining positions, and cause substantial competitive and commercial injury to
19 Defendants. See Upshaw Decl. ¶ 4.¹

20 For all of these reasons, there is more than sufficient good cause for filing
21 Exhibits Q, R and S under seal.²

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

² 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
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
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

1 **2. An Unredacted Version of Defendants' Opposition**

2 Defendants' Opposition contains the exact same confidential information
3 described above, including quotations of the deposition testimony of Defendants' licensees.
4 Public disclosure of an unredacted version of Defendants' Opposition would therefore cause
5 competitive and commercial harm to both Defendants and to its non-party licensees.
6 Accordingly, there is good cause to file Defendants' Opposition under seal, and for only
7 Defendants' redacted version made publicly available.

8 **CONCLUSION**

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

11 Date: July 10, 2008

DEWEY & LEBOEUF LLP

12 BY: /s/ Jeffrey L. Kessler

13 Jeffrey L. Kessler
14 *Attorneys for Defendants*

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28 anticipate future actions taken by defendants or that might help the bargaining position of
companies that negotiate with defendants).