

Dewey & LeBoeuf LLP
One Embarcadero Center, Suite 400
San Francisco, CA 94111

1 Todd Padnos (Bar No. 208202)
tpadnos@dl.com
2 DEWEY & LEBOEUF LLP
One Embarcadero Center, Suite 400
3 San Francisco, CA 94111
Tel: (415) 951-1100; Fax: (415) 951-1180
4

5 Jeffrey L. Kessler (*pro hac vice*)
jkessler@dl.com
6 David G. Feher (*pro hac vice*)
dfeher@dl.com
7 David Greenspan (*pro hac vice*)
dgreenspan@dl.com
8 DEWEY & LEBOEUF LLP
1301 Avenue of the Americas
New York, NY 10019
9 Tel: (212) 259-8000; Fax: (212) 259-6333

10 Kenneth L. Steinthal (*pro hac vice*)
kenneth.steinthal@weil.com
11 WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
12 Redwood Shores, CA 94065
Tel: (650) 802-3000; Fax: (650) 802-3100
13

14 Bruce S. Meyer (*pro hac vice*)
bruce.meyer@weil.com
15 WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
16 Tel: (212) 310-8000; Fax: (212) 310-8007

17 Attorneys for Defendants National Football League Players Association
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

**DECLARATION OF JEFFREY
KESSLER IN SUPPORT OF
DEFENDANTS' LETTER BRIEF TO
THE COURT DATED AUGUST 1,
2008**

DECLARATION OF JEFFREY KESSLER

I, Jeffrey Kessler, hereby declare as follows:

1. I am an attorney with Dewey & LeBoeuf LLP, attorneys for Defendants National Football League Players Association (“NFLPA”) and National Football League Players Incorporated d/b/a Players Inc (“Players Inc”) in this action. I am a member of the bar of the State of New York and my *pro hac vice* application in this matter was granted by the Court on February 28, 2007. I make this Declaration in support of Defendants’ Letter Brief to the Court, dated August 1, 2008. I have personal knowledge of each of the facts stated herein, and if called to testify, could and would testify completely hereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of a license agreement between Electronic Arts Inc. and Players Inc, dated January 20, 2000, bearing bates numbers PI132982-PI132992 (“2000 EA Agreement”).

3. Attached hereto as Exhibit 2 is a true and correct copy of an addendum, dated July 5, 2000, to the 2000 EA Agreement bearing bates numbers PI000128-000132.

4. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from the transcript of the deposition of Joel Linzner, taken on February 8, 2008.

5. Attached hereto as Exhibit 4 is a true and correct copy of a license agreement between Electronic Arts Inc., Electronics Arts C.V., the National Football Museum Inc. (d/b/a the Pro Football Hall of Fame) and Players Inc, dated April 25, 2006, bearing bates numbers PI000100-PI000110.

6. Attached hereto as Exhibit 5 is a true and correct copy of a letter, dated October 27, 2005, from John Bankert, President, Pro Football Hall of Fame, bearing bates number PI126889.

7. Attached hereto as Exhibit 6 is a true and correct copy of excerpts from the transcript of the deposition of Adam Zucker, taken on April 4, 2008.

8. Attached hereto as Exhibit 7 is a true and correct copy of excerpts from the transcript of the deposition of Warren Friss, taken on April 4, 2008.

1 9. Attached hereto as Exhibit 8 are true and correct copies of screenshots from
2 the Madden NFL 2007 video game of the 1984 49ers team.

3 10. Attached hereto as Exhibit 9 is a true and correct copy of Exhibit 3 to the
4 reply report of Plaintiffs' expert Philip Y. Rowley, dated June 27, 2008.

5 11. Attached hereto as Exhibit 10 is a true and correct copy of an e-mail chain
6 between Ryan Hilbert, Esq. of Manatt, Phelps & Phillips, LLP and Jeffrey Kessler and David
7 Greenspan of Dewey & LeBoeuf LLP, copying others, dated May 20, 2008.

8 12. Attached hereto as Exhibit 11 is a true and correct copy of a letter, dated
9 March 28, 2008, from Roy Taub of Dewey & LeBoeuf LLP.

10 13. Attached hereto as Exhibit 12 is a true and correct copy of the proposed Order
11 Regarding Plaintiffs' Discovery Motion, dated August 29, 2007.

12 14. Attached hereto as Exhibit 13 is a true and correct copy of the Order Adopting
13 In Part Proposed Order Regarding Plaintiffs' Discovery Motion, dated August 29, 2007.

14 15. Attached hereto as Exhibit 14 is a true and correct copy of excerpts from the
15 transcript of a hearing that took place before this Court on August 17, 2007.

16 16. Attached hereto as Exhibit 15 is a true and correct copy of excerpts from the
17 transcript of a hearing that took place before this Court on June 11, 2008.

18 17. Attached hereto as Exhibit 16 is a true and correct copy of excerpts from the
19 transcript of the deposition of Bernard Paul Parrish, taken on March 13, 2008.

20 18. Attached hereto as Exhibit 17 is a true and correct copy of an e-mail from
21 Bernard Parrish, dated November 7, 2006, bearing bates number CLASS003725.

22 19. Attached hereto as Exhibit 18 is a true and correct copy of an article by Alan
23 Schwarz titled "Upshaw Maintains Royalties Were Distributed Properly" from the New York
24 Times, dated February 16, 2007, bearing bates numbers CLASS003005-CLASS003006.

25 20. Attached hereto as Exhibit 19 is a true and correct copy of excerpts from the
26 transcript of the deposition of Glenn Eyrich, taken on February 12, 2008.

27
28

Dewey & LeBoeuf LLP
One Embarcadero Center, Suite 400
San Francisco, CA 94111

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Dated: August 1, 2008

/s/ Jeffrey Kessler
Jeffrey L. Kessler