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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’ Letter Brief dated August 1, 2008 (“Reply Letter  
5 Brief”) and Exhibits 1-4, 6, 7, 9, 17, and 19 to the Declaration of Jeffrey Kessler in Support of  
6 Defendants’ Reply Letter Brief (“Kessler Declaration”). These Exhibits include documents  
7 designated by both parties as “Confidential” or “Highly Confidential -- Attorneys’ Eyes Only.”  
8 Defendants further request that the redacted version of Defendants’ Reply Letter Brief serve as  
9 the publicly available version of that document. The “good cause” for this Motion is set forth  
10 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 MEMORANDUM

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

#### 16 **A. Document Produced or Designated by Plaintiffs– Exhibit 17**

17 The document attached to the Kessler Declaration as Exhibit 17 is a document produced  
18 and designated as confidential by Plaintiffs in this action. Pursuant to their obligations under the  
19 Protective Order issued by the Court, Defendants request the Court to file this document under  
20 seal because it has been designated by Plaintiffs as “Confidential.” See Stipulated Protective  
21 Order at § 10 (July 26, 2007) (approved by the Court subject to stated conditions on July 30,  
22 2007).

#### 23 **B. Documents Produced or Designated by Defendants**

##### 24 **1. Players Inc’s License Agreements with EA – Exhibits 1-2 and 4**

25 The documents attached to the Kessler Declaration as Exhibits 1, 2 and 4 are a  
26 license agreement between Players Inc and Electronic Arts (“EA”), an addendum thereto, and a  
27 license agreement among EA, the Pro Football Hall of Fame, and Players Inc, respectively.  
28 These documents are confidential for the same reasons that the Court previously found good

1 cause to file similar documents relating to Defendants’ licensing business under seal. See Order  
2 Sealing Confidential Documents (Rec. Doc. 144) (Oct. 3, 2007); Order Granting Mot. to File  
3 Docs. Under Seal (Rec. Doc. 159) (Oct. 15, 2007); Order Granting Defs.’ Misc. Admin. Mot. to  
4 File Under Seal Certain Confidential Information Filed by Pls. (Rec. Doc. 188) (Nov. 26, 2007);  
5 Order Granting in Part and Denying in Part Mots. to Seal (Rec. Doc. 255) (April 7, 2008);  
6 Declaration of Gene Upshaw ¶¶ 7-8 (Rec. Doc. 187) (Nov. 21, 2007) (“Upshaw Decl.”).

7           Specifically, Exhibits 1, 2 and 4 are non-public, commercial documents, the terms  
8 of which are trade secrets. The confidential terms contained in these documents include the  
9 specific price terms of the agreements (including the precise amounts and timing of the  
10 guaranteed payments and royalties), the specific scope of the rights granted and the services to be  
11 rendered under the agreements, the terms and conditions of payment, and the various  
12 contingencies and other contractual terms between the parties that Players Inc and the respective  
13 licensees negotiated. Exhibits 1, 2, and 4 should be filed under seal because they contain  
14 commercially and competitively sensitive business information related to Defendants’ and EA’s  
15 licensing business.

16           Defendants would be seriously harmed if these documents were publicly filed  
17 because the terms of these confidential agreement would become publicly available to other  
18 licensees and licensors that compete in the marketplace. These third parties are sure to alter their  
19 business behavior in negotiations with Defendants if they became aware of the terms of  
20 Defendants’ license agreements with its third-party licensees. This would severely harm  
21 Defendants’ bargaining positions, and cause substantial competitive and commercial injury to  
22 Defendants. See Upshaw Decl. ¶ 4.<sup>1</sup>

23           For all of these reasons, there is more than sufficient good cause for filing  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Public disclosure of the terms of Defendants’ license agreements would similarly harm third-  
27 party licensees. See Declaration of Joel Linzner ¶ 3 (Rec. Doc. 186) (Nov. 21, 2007) (“[P]ublic  
28 disclosure of this information would harm competition by divulging to EA’s and Players Inc’s  
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.”).

1 Exhibits 1, 2 and 4 under seal.<sup>2</sup>

2 **2. Excerpts of Deposition Transcripts – Exhibits 3, 6, 7 and 19**

3 The documents attached to the Kessler Declaration as Exhibits 3, 6, 7 and 19 are  
4 excerpts of deposition testimony given in this action that have been designated “Confidential” or  
5 “Highly Confidential - Attorneys’ Eyes Only” by Defendants.

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

- 9
- 10 • Descriptions and explanations of the terms of Players Inc’s license agreements with non-party licensees; and
  - 11 • Descriptions and explanations of Players Inc’s internal business practices with respect to active and retired player licensing.
- 12

13 Thus, for the same reasons stated above, public disclosure of this deposition  
14 testimony would cause competitive and commercial harm to Defendants and to non-party  
15 licensees and there is good cause for filing Exhibits 3, 6, 7 and 19 under seal. See Upshaw Decl.  
16 ¶ 9.

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18 **3. An Exhibit to Plaintiffs’ Expert Report Referring to Defendants’ Confidential Information**

19 The document attached as Exhibit 9 to the Kessler Declaration is an index, which  
20 was submitted by an expert retained by Plaintiffs, listing the names of retired players with whom  
21 Defendants have entered into GLAs, as well as the dates for which those GLAs are effective.  
22 Information with respect to whether and with whom Defendants have entered into GLAs is  
23 confidential commercial information that Defendants have not made public. Thus, for the same

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25 <sup>2</sup> See Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1131 n.4 (9th Cir. 2003)  
26 (documents containing “trade secrets, financial information, and confidential information about  
27 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);  
28 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 anticipate future actions taken by defendants or that might help the bargaining position of companies that negotiate with defendants).

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reasons stated above, public disclosure of this information would cause commercial harm to Defendants and there is good cause for filing these documents under seal.

**4. An Unredacted Version of Defendants' Reply Letter Brief**

Defendants' Reply Letter Brief contains much of the very same confidential information described above, including extensive quotations and descriptions of the license agreements and the deposition testimony of Defendants' non-party licensees. For the same reasons as discussed above, public disclosure of an unredacted version of the Reply Letter Brief would therefore cause competitive and commercial harm to both Defendants and to its non-party licensees. Accordingly, there is good cause to file the Reply Letter Brief under seal, and for only Defendants' redacted version to be 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: August 1, 2008

DEWEY & LEBOEUF LLP

BY:           /s/ Jeffrey Kessler          

Jeffery L. Kessler  
*Attorneys for Defendants*