

Exhibit A

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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

**SUPPLEMENTAL DECLARATION
OF DAVID GREENSPAN IN
SUPPORT OF DEFENDANTS'
AUGUST 1, 2008 REPLY LETTER
BRIEF**

DECLARATION OF DAVID GREENSPAN

I, David Greenspan, 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 August 3, 2007.

2. I make this Declaration in response to the Supplemental Declaration of Ryan S. Hilbert filed on August 1, 2008 (“Hilbert Declaration”) regarding the use of pre-statute of limitations documents in this action. I have personal knowledge of each of the facts stated herein, and if called to testify, could and would testify completely hereto.

3. Plaintiffs contend that Defendants had no basis to assert that the parties reached an agreement limiting the production and use of pre-statute of limitations documents, including a May 2001 letter regarding the removal of retired player images not licensed by Defendants. That is not correct.

4. Plaintiffs assert that the May 20, 2008 e-mail attached as Exhibit 10 to the Declaration of Jeffrey Kessler in Support of Defendants’ Letter Brief to the Court Dated August 1, 2008 (“Kessler Declaration”) does not evidence an agreement between the parties on pre-statute of limitations documents, in part because of a later e-mail dated May 23, 2008 from Mr. Hilbert to me. Mr. Hilbert asserts that, “[b]ecause Defendants never responded to my May 23, 2008 e-mail, and because Defendants never produced the list of pre-statute of limitations documents as required therein, there is absolutely no agreement between the parties that precludes the use of the May 2001 letter from LaShun Lawson in this case.” Hilbert Declaration ¶ 6. That too is not correct.

5. On August 29, 2007, the Court issued an Order that, among other things, Defendants were not required to produce documents prior to the statute of limitations period (i.e., February 14, 2003). Defendants subsequently advised Plaintiffs that they would not produce any

1 documents dated before February 14, 2003 except for any agreements in effect during the
2 limitations period and documents relevant to those agreements.

3 6. On April 17, 2008, I received an e-mail from Ron Katz, counsel for Plaintiffs,
4 concerning Defendants' production of certain documents created before February 14, 2003 that
5 he asserted was inconsistent with Defendants' position. I explained to Mr. Katz that any
6 production of such pre-statute of limitations documents was inadvertent. Attached hereto as
7 Exhibit 1 is a true and correct copy of an e-mail from me to Ron Katz, dated April 28, 2008,
8 including the chain of prior correspondence. As reflected in Exhibit 1 to this Declaration and
9 Exhibit A to the Hilbert Declaration, the parties met and conferred on this issue. During the
10 course of the meet and confers, Plaintiffs indicated that they would move to compel Defendants'
11 production of all pre-statute of limitations documents if a compromise could not be reached.

12 7. After numerous communications during the meet and confer process, on
13 May 20, 2008, Mr. Hilbert sent me an email stating "I believe the parties have an agreement" on
14 these issues, and describing the terms of the agreement. On May 22, 2008, I sent an email to Mr.
15 Hilbert noting that his email included a few small matters that neither party intended and that
16 should be corrected. Mr. Hilbert and I then discussed these inadvertent items. Specifically, I
17 pointed out that neither side should be precluded from using pre-statute of limitations documents
18 responsive to Request Nos. 23 and 32 addressed to the NFLPA, since those requests covered
19 Defendants' bylaws and all NFLPA Constitutions that were in effect from the start of the
20 limitations period (as well as any amendments thereto). I told Mr. Hilbert these requests should
21 be included in his first paragraph describing the requests exempted from the agreement to
22 otherwise preclude the use of pre-statute of limitations documents. I indicated that, if this issue
23 were resolved, we would be done.

24 8. Mr. Hilbert then sent me an email on May 23, 2008 that said he had discussed
25 with his colleagues the issues I had raised, and then re-recited the same terms as to the
26 production and use of pre-statute of limitations documents, except that the references to pre-
27 statute of limitations documents responsive to Request Nos. 23 and 32 were moved as he and I
28

1 had discussed. In that email, Mr. Hilbert set forth “what I now believe is the parties’ agreement
2 on this issue.”

3 9. I note that this final point was raised by Defendants, not Plaintiffs, that
4 Plaintiffs did not have any open issues, and that we resolved this point to Defendants’
5 satisfaction.

6 10. The parties then proceeded on the basis that an agreement had been reached.
7 Mr. Hilbert never contacted me asking about the production of any further pre-statute of
8 limitations documents, no motion to compel was filed, and Defendants continued to compile the
9 list of pre-statute of limitations documents that would be precluded (and as to which there was no
10 deadline for the production of the list). Defendants also completed their rolling production of
11 documents on the basis that no other pre-statute of limitations of documents would be produced,
12 and no request for such documents was ever made. The parties also filed their summary
13 judgment briefs without reference to other pre-statute of limitations documents. In other words,
14 Defendants believed the issue of pre-statute of limitations documents was resolved as Mr. Hilbert
15 and I discussed, and as Mr. Hilbert summarized in his May 23 email, and, until the summary
16 judgment hearing, when Mr. Katz referred to the May 2001 letter, both parties acted in
17 accordance with that agreement. Plaintiffs’ belated assertion now that no agreement was
18 reached, to try to use the May 2001 document, is a complete change of course that Plaintiffs had
19 never suggested before.

20 11. In preparing Defendants’ response to Plaintiffs’ submission regarding the May
21 2001 letter that Plaintiffs submitted at the summary judgment hearing (which Defendants had
22 two days to prepare), counsel inadvertently submitted to the Court Mr. Hilbert’s May 20 email
23 instead of the May 23 email. Defendants regret this error, but it does not change the fact that the
24 parties reached an agreement precluding the use of pre-statute of limitations documents other
25 than those expressly exempted by the parties’ agreement, and that the May 2001 letter Plaintiffs
26 submitted at the summary judgment hearing was not so exempted under the terms of that
27 agreement.
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I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Dated: August 4, 2008

/s/
David Greenspan

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

EXHIBIT 1

Clark, Jason

From: Greenspan, David
Sent: Monday, April 28, 2008 11:16 PM
To: 'RKatz@manatt.com'; 'RHilbert@manatt.com'
Cc: Kessler, Jeffrey; 'lleclair@mckoolsmith.com'; 'NCohen@manatt.com'; Feher, David
Subject: Re: Parrish

Our revised proposal was intended to address your concerns and I do not know what remaining concerns you could have if you do not articulate them. In any event, I agree that a phone call would be more productive at this point and 2pm EST on Thursday is fine with me.

----- Original Message -----

From: Katz, Ron <RKatz@manatt.com>
To: Greenspan, David; Hilbert, Ryan <RHilbert@manatt.com>
Cc: Kessler, Jeffrey; lleclair@mckoolsmith.com <lleclair@mckoolsmith.com>; Cohen, Noel <NCohen@manatt.com>; Feher, David
Sent: Mon Apr 28 23:07:36 2008
Subject: RE: Parrish

Please see my previous emails on the subject, the objections in which are not met by your proposal. How about Thursday at 2 your time for a meet/confer?

From: Greenspan, David [mailto:dgreenspan@DeweyLeBoeuf.com]
Sent: Monday, April 28, 2008 8:03 PM
To: Katz, Ron; Hilbert, Ryan
Cc: Kessler, Jeffrey; lleclair@mckoolsmith.com; Cohen, Noel; Feher, David
Subject: RE: Parrish

Tomorrow is not good, but I am generally available the rest of the week. It would be helpful to know your objection to our proposal prior to the call so that I am in a better position to respond.

From: Katz, Ron [mailto:RKatz@manatt.com]
Sent: Mon 4/28/2008 10:56 PM
To: Greenspan, David; Hilbert, Ryan
Cc: Kessler, Jeffrey; lleclair@mckoolsmith.com; Cohen, Noel; Feher, David
Subject: RE: Parrish

Dave--

I don't believe you've responded to the email below. Please do so.

Thanks,

Ron

-----Original Message-----

From: Katz, Ron
Sent: Tuesday, April 22, 2008 8:31 AM
To: 'dgreenspan@DeweyLeBoeuf.com'; Hilbert, Ryan
Cc: 'jkessler@DeweyLeBoeuf.com'; 'lleclair@mckoolsmith.com'; Cohen, Noel; 'dfeher@DeweyLeBoeuf.com'
Subject: Re: Parrish

Dave--

We respectfully disagree with your proposal re this situation created solely by defendants. Our proposal to resolve it:

--Defendants identify all incorrectly produced pre-statute-of-limitations documents and agree not to use them in the litigation.

--Re the remaining pre-statute of limitations documents, Defendants comply with Judge Alsup's Rule 13 so that we know that all other relevant documents in these categories have been produced.

Please advise whether you agree with the above or please let me know when you are available to meet and confer on this subject.

Thanks,

Ron

----- Original Message -----

From: Greenspan, David <dgreenspan@DeweyLeBoeuf.com>
To: Katz, Ron; Hilbert, Ryan
Cc: Kessler, Jeffrey <jkessler@DeweyLeBoeuf.com>; lleclair <lleclair@mckoolsmith.com>; Cohen, Noel; Feher, David <dfeher@DeweyLeBoeuf.com>
Sent: Tue Apr 22 07:29:55 2008
Subject: RE: Parrish

Ron -- I suggest that each side provide a list of any pre-statute of limitations documents that they are seeking to preclude on the basis that such documents are not relevant to any post-statute of limitations agreements, and that we then discuss those documents, with both sides reserving their rights to seek to preclude any later identified documents. Regards, Dave

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-----Original Message-----

From: Katz, Ron [mailto:RKatz@manatt.com]
Sent: Monday, April 21, 2008 8:35 PM
To: Greenspan, David; Hilbert, Ryan
Cc: Kessler, Jeffrey; lleclair; Cohen, Noel; Feher, David
Subject: RE: Parrish

What I mean is that we need to know what documents we're talking about here so that a problem doesn't arise later in enforcing our agreement. I.e., in order for this agreement to work, we need your list of the precluded documents. Then we will either agree with it, add to it or subtract from it in an attempt to come to an agreement with you on it. Once we do that, we can put this issue behind us.

-----Original Message-----

From: Greenspan, David [mailto:dgreenspan@DeweyLeBoeuf.com]

Sent: Monday, April 21, 2008 3:47 PM
To: Katz, Ron; Hilbert, Ryan
Cc: Kessler, Jeffrey; Ileclair, Cohen, Noel; Feher, David
Subject: RE: Parrish

Ron,

We would agree that Defendants are precluded from using those pre-statute-of-limitation documents that are not relevant to post-statute-of-limitation agreements. In other words, while I am not sure what you mean by "those specifically identified pre-statute of limitation documents," we agree with the rest of your proposal.

Regards,
Dave

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-----Original Message-----

From: Katz, Ron [mailto:RKatz@manatt.com]
Sent: Monday, April 21, 2008 12:36 PM
To: Greenspan, David; Hilbert, Ryan
Cc: Kessler, Jeffrey; Ileclair, Cohen, Noel
Subject: RE: Parrish

David--

We respectfully disagree with your approach to the problem below. We think that a more appropriate approach is that Defendants either produce all pre-statute-of-limitations documents or agree that they are precluded from using those specifically identified pre-statute-of-limitation documents that are not relevant to post-statute-of-limitation agreements.

Please let me know if you are amenable to such an agreement. If not please let me know when you are available to meet and confer on this subject.

Thanks,

Ron

From: Greenspan, David [mailto:dgreenspan@DeweyLeBoeuf.com]
Sent: Fri 4/18/2008 10:04 AM
To: Katz, Ron; Hilbert, Ryan
Cc: Kessler, Jeffrey; Ileclair
Subject: RE: Parrish

Ron,

You have correctly stated our position on pre-statute of limitations documents, i.e., that we will produce such documents only to the extent they are relevant to post-statute of limitations agreements. To the

extent we have produced documents that do not fit within these parameters, I assure you that it is the product of inadvertence -- not selective production. Given the breadth of plaintiffs' document requests, we are using a very large team of attorneys (including outside "contract attorneys") to review documents, and it appears that they designated for production at least some pre-2003 documents that should not have been produced. I will revisit this pre-statute of limitations issue with the document review team and try to limit any inadvertent production of documents going forward.

Regards,
Dave

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From: Katz, Ron [mailto:RKatz@manatt.com]
Sent: Thursday, April 17, 2008 6:41 PM
To: Greenspan, David; Hilbert, Ryan
Cc: Kessler, Jeffrey; lleclair
Subject: RE: Parrish

David--

Thank you for the letter attached to the email below. There is another subject from the meet-and-confer that you, Jeffrey Kessler, Ryan Hilbert and I had at the courthouse last week that I wanted to follow up on. I mentioned a concern to Jeffrey that it seemed to me that Defendants were selectively producing pre-statute-of-limitations documents. Jeffrey's response was that Defendants were doing that only with respect to documents that bore on agreements that were in effect after February 15, 2003.

However, Jeffrey's response does not seem to apply to numerous documents that we have now doublechecked. Attached are some exemplars of those. Please let us know your position on this by next Tuesday.

Thanks,

Ron

From: Greenspan, David [mailto:dgreenspan@DeweyLeBoeuf.com]
Sent: Monday, April 14, 2008 12:52 PM
To: Katz, Ron; Hilbert, Ryan
Cc: Kessler, Jeffrey
Subject: Parrish

Please find correspondence attached.

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