

## EXHIBIT LLL

to the Declaration of Ryan Hilbert  
in Support of Plaintiffs' Opposition to  
Defendants' Motion for Summary Judgment

DEWEY BALLANTINE LLP  
1950 University Avenue, Suite 500  
East Palo Alto, California 94303-2225

1 Mark Malin (Bar No. 199757)  
*mmalin@deweyballantine.com*  
2 DEWEY BALLANTINE LLP  
1950 University Avenue, Suite 500  
3 East Palo Alto, CA 94303  
Tel: (650) 845-7000; Fax: (650) 845-7333

4 Jeffrey L. Kessler (*pro hac vice*)  
*jkessler@deweyballantine.com*  
5 David G. Feher (*pro hac vice*)  
*dfeher@deweyballantine.com*  
6 Eamon O'Kelly (*pro hac vice*)  
*eokelly@deweyballantine.com*  
7 DEWEY BALLANTINE LLP  
1301 Avenue of the Americas  
8 New York, NY 10019  
Tel: (212) 259-8000; Fax: (212) 259-6333

10 Kenneth L. Steinthal (*pro hac vice*)  
*kenneth.steinthal@weil.com*  
11 Claire E. Goldstein (Bar No. 237979)  
*claire.goldstein@weil.com*  
12 WEIL, GOTSHAL & MANGES LLP  
201 Redwood Shores Parkway  
13 Redwood Shores, CA 94065  
Tel: (650) 802-3000; Fax: (650) 802-3100

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

18 Attorneys for Defendant National Football League Players  
Association

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

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

24 Plaintiffs,

25 v.

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

28 Defendants.

Case No. C 07 0943 WHA

**NATIONAL FOOTBALL LEAGUE  
PLAYERS ASSOCIATION'S  
RESPONSES AND OBJECTIONS  
TO PLAINTIFFS' FIRST SET OF  
REQUESTS FOR ADMISSIONS**

1 Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Defendant  
2 National Football League Players Association (“NFLPA”) hereby responds and objects to  
3 Plaintiffs’ First Set of Requests for Admission to Defendant National Football League Players  
4 Association (collectively, the “Requests,” and individually, a “Request”), dated July 17, 2007.

5 **PRELIMINARY STATEMENT**

6 The following responses and objections are based upon the information currently  
7 known and available to the NFLPA, including information ascertained pursuant to the NFLPA’s  
8 reasonable inquiry in response to each Request. Discovery and investigation are in the  
9 preliminary stages and are ongoing, and may disclose the existence of additional responsive  
10 information. The NFLPA reserves the right to amend or supplement the responses and  
11 objections as additional information is discovered, revealed, recalled or otherwise ascertained.  
12 The NFLPA specifically reserves the right to utilize subsequently discovered evidence at trial.

13 The NFLPA’s responses to the Requests do not constitute an admission that the  
14 NFLPA has in its possession, custody or control information responsive to each and every  
15 individual request herein. Furthermore, the NFLPA’s responses and objections to any Request  
16 shall not waive any objections by the NFLPA, in this or in any subsequent proceeding, on any  
17 grounds, including objections as to the competency, relevancy, materiality, privilege or  
18 admissibility of the responses, or the subject matter thereof. Moreover, the fact that the NFLPA  
19 has answered part or all of any Request is not intended and shall not be construed to be a waiver  
20 by the NFLPA of all or any part of any objection to any Request.

21 **GENERAL OBJECTIONS**

22 The NFLPA asserts the following general objections with respect to each of the  
23 Requests:

24 1. The NFLPA objects to the Requests to the extent that they purport to  
25 impose obligations beyond those imposed by the Federal Rules of Civil Procedure, the Local  
26 Rules of the Northern District of California, an applicable Order of this Court, or any other  
27 applicable rules or statutes. The NFLPA notes that the Requests do not contain any definitions  
28 or instructions. The NFLPA will interpret each Request in a reasonable manner.

1           2.       The NFLPA objects to the Requests to the extent that they seek  
2 information subject to the attorney-client privilege, the work-product doctrine, or any other  
3 applicable evidentiary or other privilege, immunity or restriction. The disclosure of any  
4 information is without waiver of any privilege, claim of confidentiality, or other objection. In  
5 the event that the NFLPA discloses any information that is the subject of any privilege, claim of  
6 confidentiality, or other objection, such production is inadvertent and shall not constitute a  
7 waiver of any privilege, claim of confidentiality or other objection. Insofar as the disclosure of  
8 information by the NFLPA in response to the Requests may be deemed to be a waiver of any  
9 privilege or right, such waiver shall be deemed to be a limited waiver with respect to that  
10 particular information only.

11           3.       The NFLPA objects to the Requests to the extent that they seek  
12 information constituting or containing trade secrets, competitively sensitive information or other  
13 non-public confidential or proprietary information. The NFLPA agrees to disclose such  
14 information only pursuant to the terms of the protective order that has been so-ordered by the  
15 Court in this action.

16           4.       The NFLPA objects to the Requests to the extent that they seek  
17 information that is not relevant to the subject matter of this action and not reasonably calculated  
18 to lead to the discovery of admissible evidence. As set forth in the next paragraph, this objection  
19 includes, but is not limited to, Requests calling for information about events that occurred  
20 outside the applicable statutes of limitations.

21           5.       The NFLPA objects to the Requests to the extent that they call for  
22 information relating to any asserted conduct by the NFLPA prior to February 14, 2003, the  
23 commencement of the earliest applicable statutes of limitations for any claim asserted in the  
24 Second Amended Complaint ("SAC"). Players Inc will treat each Request as though it calls for  
25 information relating to any asserted conduct by the NFLPA from February 14, 2003 until the  
26 date of these responses.

27           6.       The NFLPA objects to the Requests to the extent that they are vague,  
28 ambiguous, overly broad in scope or unduly burdensome.



1 **REQUEST FOR ADMISSION NO. 3:**

2 Admit that PLAYERS INC has claimed that PLAYERS INC provides the Retired  
3 Players' only opportunity to participate in NFL player video games and get paid.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

5 The NFLPA objects to Request No. 3 on the ground that it is directed to Players  
6 Inc. Subject to and without waiver of the foregoing objections, Request No. 3 is denied for the  
7 reasons stated in Response to Request No. 3 in Players Inc's Responses and Objections to  
8 Plaintiffs' First Set of Requests for Admissions, dated August 1, 2007.

9 **REQUEST FOR ADMISSION NO. 4:**

10 Admit that you have solicited every Retired Player to participate in NFL player  
11 video games and get paid.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

13 Subject to and without waiver of the foregoing objections, Request No. 4 is  
14 denied.

15 **REQUEST FOR ADMISSION NO. 5:**

16 Admit that PLAYERS INC has solicited every Retired Player to participate in  
17 NFL player video games and get paid.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

19 The NFLPA objects to Request No. 5 on the ground that it is directed to Players  
20 Inc. Subject to and without waiver of the foregoing objections, Request No. 5 is denied.

21 **REQUEST FOR ADMISSION NO. 6:**

22 Admit that PLAYERS INC has solicited every Retired Player to enter into a GLA.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

24 The NFLPA objects to Request No. 6 on the ground that it is directed to Players  
25 Inc. Subject to and without waiver of the foregoing objections, Request No. 6 is denied.

26 **REQUEST FOR ADMISSION NO. 7:**

27 Admit that the NFLPA has solicited every Retired Player to enter into a GLA.

28

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

2 Subject to and without waiver of the foregoing objections, Request No. 7 is  
3 denied.

4 **REQUEST FOR ADMISSION NO. 8:**

5 Admit that the NFLPA has assigned to PLAYERS INC all of the GLAs that it has  
6 obtained relating to Retired Players.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

8 The NFLPA objects to Request No. 8 on the ground that the word “obtained” is  
9 vague and ambiguous in this context. Subject to and without waiver of the foregoing objections,  
10 the NFLPA admits that to the extent retired NFL players enter into GLAs with the NFLPA, the  
11 NFLPA assigns Players Inc the right to utilize the group licensing rights of such retired NFL  
12 players, except with respect to trading card agreements.

13 **REQUEST FOR ADMISSION NO. 9:**

14 Admit that the NFLPA has assigned to PLAYERS INC the right to use or license  
15 NFL logos and markings.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

17 Subject to and without waiver of the foregoing objections, Request No. 9 is  
18 denied.

19 **REQUEST FOR ADMISSION NO. 10:**

20 Admit that PLAYERS INC has claimed to represent over 3,000 Retired Players.

21 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

22 The NFLPA objects to Request No. 10 on the grounds that the term “represent” is  
23 overly broad and ambiguous in this context. The NFLPA further objects to Request No. 10 on  
24 the ground that it is directed to Players Inc. Subject to and without waiver of the foregoing  
25 objections, the NFLPA admits that Players Inc has previously made statements regarding  
26 “representing” over 3,000 retired players. For example, Players Inc has made statements  
27 regarding representing 3,500 retired players. In making such statements, Players Inc was  
28 indicating that it had access to certain numbers of players via the NFLPA Retired Players

1 Association, and that Players Inc had the ability to solicit the participation of such players in  
2 licensing activities to the extent that potential third-party licensees indicated an interest in  
3 pursuing licensing opportunities with such players.

4 **REQUEST FOR ADMISSION NO. 11:**

5 Admit that PLAYERS INC has claimed to represent more than 2,900 Retired  
6 Players.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

8 The NFLPA objects to Request No. 11 on the grounds that the term “represent” is  
9 overly broad and ambiguous in this context. The NFLPA further objects to Request No. 11 on  
10 the ground that it is directed to Players Inc. Subject to and without waiver of the foregoing  
11 objections, the NFLPA admits that Players Inc has previously made statements regarding  
12 “representing” more than 2,900 retired players. For example, Players Inc has made statements  
13 regarding representing 3,500 retired players. In making such statements, Players Inc was  
14 indicating that it had access to certain numbers of players via the NFLPA Retired Players  
15 Association, and that Players Inc had the ability to solicit the participation of such players in  
16 licensing activities to the extent that potential third-party licensees indicated an interest in  
17 pursuing licensing opportunities with such players.

18 **REQUEST FOR ADMISSION NO. 12:**

19 Admit that PLAYERS INC has claimed to represent 3,500 Retired Players.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

21 The NFLPA objects to Request No. 12 on the grounds that the term “represent” is  
22 overly broad and ambiguous in this context. The NFLPA further objects to Request No. 12 on  
23 the ground that it is directed to Players Inc. Subject to and without waiver of the foregoing  
24 objections, the NFLPA admits that Players Inc has previously made statements regarding  
25 “representing” 3,500 retired players. In making such statements, Players Inc was indicating that  
26 it had access to approximately 3,500 retired players via the NFLPA Retired Players Association,  
27 and that Players Inc had the ability to solicit the participation of such players in licensing  
28



1 activities to the extent that potential third-party licensees indicated an interest in pursuing  
2 licensing opportunities with such players.

3 **REQUEST FOR ADMISSION NO. 13:**

4 Admit that PLAYERS INC has claimed to represent 3,700 Retired Players.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

6 The NFLPA objects to Request No. 13 on the grounds that the term “represent” is  
7 overly broad and ambiguous in this context. The NFLPA further objects to Request No. 13 on  
8 the ground that it is directed to Players Inc. Subject to and without waiver of the foregoing  
9 objections, Request No. 13 is denied.

10 **REQUEST FOR ADMISSION NO. 14:**

11 Admit that after this lawsuit was filed, PLAYERS INC changed the language on  
12 its website to say that PLAYERS INC represents “many memorable” retired players instead of  
13 claiming to represent more than a specific number of Retired Players.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

15 The NFLPA objects to Request No. 14 on the grounds that is compound, and the  
16 term “represent” is vague and ambiguous in this context. The NFLPA further objects to Request  
17 No. 14 on the ground that it is directed to Players Inc. Subject to and without waiver of the  
18 foregoing objections, the NFLPA admits that Players Inc, some time after February 14, 2007,  
19 changed the language on its website so that Players Inc’s website currently states: “Formed in  
20 1994, Players Inc represents more than 1,800 active and many memorable retired NFL players.”

21 **REQUEST FOR ADMISSION NO. 15:**

22 Admit that you have made no accounting to Retired Players of licensing and/or  
23 marketing distributions.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

25 The NFLPA objects to Request No. 15 on the ground that the term “accounting”  
26 is vague and ambiguous in this context. Subject to and without waiver of the foregoing  
27 objections, Request No. 15 is denied in that the NFLPA, in conjunction with Players Inc,  
28

1 accounted to retired players by providing them with appropriate distributions of licensing  
2 monies.

3 **REQUEST FOR ADMISSION NO. 16:**

4 Admit that less than 400 Retired Players received any revenue from your  
5 licensing activities in 2005.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

7 Subject to and without waiver of the foregoing objections, Request No. 16 is  
8 denied. Players Inc engages in licensing activities on behalf of the NFLPA, and, during 2005,  
9 more than 400 retired players received revenues from Players Inc with respect to licensing  
10 activities, including personal appearances.

11 **REQUEST FOR ADMISSION NO. 17:**

12 Admit that one or more of your agreements with Licensees prevents them from  
13 using Retired Players likenesses if the Retired Player is not under contract with PLAYERS INC.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

15 The NFLPA objects to Request No. 17 on the grounds that it is vague and  
16 ambiguous. Subject to and without waiver of the foregoing objections, Request No. 17 is denied.  
17 The NFLPA admits that one or more of its agreements with third-party licensees include “non-  
18 interference” provisions similar to the provision set forth in Paragraph 11 of Exhibit C to the  
19 SAC: “Licensee agrees and acknowledges that it shall not secure or seek to secure, directly from  
20 any player who is under contract to an NFL club, is seeking to become under contract to an NFL  
21 club, or at any time was under contract to an NFL club, or from such player’s agent, permission  
22 or authorization for the use of such player’s name, facsimile signature, image, likeness,  
23 photograph, or biography in conjunction with the licensed product(s) herein.” SAC, Ex. C, ¶ 12.  
24 Contrary to the assertion in Request No. 17, such “non-interference” provisions do not purport to  
25 impose a general restriction upon third-party licensees. For example, on their face, the non-  
26 interference provisions are limited to specified licensed products.

1 **REQUEST FOR ADMISSION NO. 18:**

2 Admit that one or more of your agreements with Licensees requires that the  
3 Licensee obtain rights to Retired Players likenesses only through PLAYERS INC.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

5 Subject to and without waiver of the foregoing objections, Request No. 18 is  
6 denied. The NFLPA admits that one or more of its agreements with third-party licensees include  
7 “non-interference” provisions similar to the provision set forth in Paragraph 11 of Exhibit C to  
8 the SAC: “Licensee agrees and acknowledges that it shall not secure or seek to secure, directly  
9 from any player who is under contract to an NFL club, is seeking to become under contract to an  
10 NFL club, or at any time was under contract to an NFL club, or from such player’s agent,  
11 permission or authorization for the use of such player’s name, facsimile signature, image,  
12 likeness, photograph, or biography in conjunction with the licensed product(s) herein.” SAC,  
13 Ex. C, ¶ 12. Contrary to the assertion in Request No. 18, such “non-interference” provisions do  
14 not purport to require third-party licensees to obtain retired players’ likenesses only through  
15 Players Inc. For example, on their face, the non-interference provisions are limited to specified  
16 licensed products.

17 **REQUEST FOR ADMISSION NO. 19:**

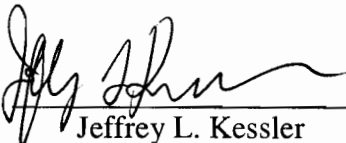
18 Admit that Gene Upshaw has said in reference to licensing of images of the  
19 Retired Players: “We could have the greatest dog food in the world, but if the dogs don’t like it,  
20 we can’t sell it.”

21 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

22 Subject to and without waiver of the foregoing objections, Request No. 19 is  
23 admitted.

24 Date: August 16, 2007

DEWEY BALLANTINE LLP

25  
26 BY:   
27 Jeffrey L. Kessler  
28 *Attorneys for Defendant NFLPA*