

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

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

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 & LEOEUF LLP
1301 Avenue of the Americas
9 New York, NY 10019
Tel: (212) 259-8000; Fax: (212) 259-6333

10 Attorneys for Defendants.

11 Ronald S. Katz (Bar No. CA 085713)
rkatz@manatt.com
12 Ryan S. Hilbert (Bar No. CA 210549)
rhilbert@manatt.com
13 Noel S. Cohen (Bar No. CA 219645)
ncohen@manatt.com
14 MANATT, PHELPS & PHILLIPS, LLP
15 1001 Page Mill Road, Building 2
East Palo Alto, CA 94303-1006
16 Tel: (650) 812-1300; Fax: (650) 213-0260

17 Attorneys for Plaintiffs.

18 **UNITED STATES DISTRICT COURT**
19 **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

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

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

Lewis T. LeClair (Bar No. CA 077136)
lleclair@mckoolsmith.com
Jill Adler (Bar No. CA 150783)
jadler@mckoolsmith.com
MCKOOL SMITH, P.C.
300 Crescent Court, Suite 1500
Dallas, TX 75201
Tel: (214) 978-4984; Fax: (214) 978-4044

Case No. C 07 0943 WHA

**STIPULATION REGARDING
TESTIMONY OF JOEL LINZNER**

1 Defendants National Football League Players Association and National Football
2 League Players Incorporated d/b/a/ Players Inc (collectively, “Defendants”), and Plaintiffs
3 Bernard Paul Parrish, Herbert Anthony Adderley, and Walter Roberts III (collectively,
4 “Plaintiffs”), hereby respectfully submit this Stipulation regarding the timing of testimony of
5 third-party witness Joel Linzner of Electronic Arts, Inc., (“EA”) and the authenticity and/or
6 admissibility of specific evidence relating to EA:

7 **STIPULATION**

8 WHEREAS, Joel Linzner, an employee of Electronic Arts, Inc. (“EA”), has been
9 deposed in this matter;

10 WHEREAS, Mr. Linzner is within the subpoena power of this Court and has been
11 subpoenaed by Plaintiffs to appear at the trial beginning October 20 and to testify during
12 Plaintiffs’ case in chief;

13 WHEREAS, counsel for EA has advised counsel for the parties that Mr. Linzner
14 has a long scheduled trip to Europe planned for the week of October 20, but will return on
15 October 27; and

16 WHEREAS, Mr. Linzner is identified on Defendants’ Pretrial Disclosures as a
17 witness Defendants expect to call.

18 NOW THEREFORE the parties, through their respective counsel, hereby stipulate
19 that:

- 20 (1) Plaintiffs shall withdraw their subpoena on Mr. Linzner requiring his
21 appearance on October 20;
- 22 (2) Plaintiffs shall withdraw any and all other subpoenas previously served
23 upon EA (including the subpoena requiring EA to produce certain
24 documents and things on October 20), and Plaintiffs agree that they will
25 not seek to issue any other subpoena directed at EA or any EA witness in
26 connection with their case in chief in this matter, with the parties reserving
27 their respective rights in connection with Plaintiffs’ ability to call an EA
28 witness in a rebuttal case, if any;
- (3) Notwithstanding the above, Plaintiffs shall serve Mr. Linzner with a new
subpoena requiring his appearance at 8:00 a.m. on October 29, 2008;

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

- (4) The parties agree that Mr. Linzner’s testimony may be taken out of order, and Plaintiffs may call him as a witness on October 29, and the parties shall work with the Court to schedule his testimony efficiently on that day. Mr. Linzner shall be called as a witness only once during the trial, and Plaintiffs may examine him first, but Defendants' examination of Mr. Linzner shall not be limited by the scope of Plaintiffs' examination and may cover any subject that is otherwise permissible;
- (5) Defendants agree that Plaintiffs may read or play video excerpts from the deposition of Mr. Linzner during their case in chief as though he were “unavailable” under Rule 804(b)(1) of the Federal Rules of Evidence, and Defendants shall be allowed to counter-designate excerpts;
- (6) EA has agreed to provide to Plaintiffs, two days after the complete execution of this stipulation, a copy of the original May 31, 2001, letter received by EA from LaShun Lawson attached as Exhibit “A” hereto (PI 131529-30), and Defendants agree to the authenticity of such original letter, and, without waiving any other objection Defendants may have as to the admissibility of such original letter, and without waiving Plaintiffs’ right to seek to offer such letter into evidence in their case in chief, that such original letter constitutes statements by an employee of a party within the scope of her employment within the meaning of FRE 801(d)(2)(D);
- (7) Defendants agree to the authenticity of a document attached as Exhibit “B” hereto (EA000153-56) evidencing an email chain between and among EA personnel and employees of the Defendants spanning from June 2005 to August 2005, and, without waiving any other objection Defendants may have as to the admissibility of all or any portion of such document, and without waiving Plaintiffs’ right to seek to offer such email chain into evidence in their case in chief, that the portions of the email chain in the document that constitute emails from LaShun Lawson constitute statements by an employee of a party within the scope of her employment within the meaning of FRE 801(d)(2)(D), and that the portions of the email chain in the document that constitute emails from EA personnel were communications made within the scope of such person’s duties for EA;
- (8) Defendants agree that the list of Madden NFL games attached as Exhibit “C” are authentic and admissible in evidence and that such games may be used by Plaintiffs at any time during their case in chief.

IT IS SO STIPULATED.

///
///
///

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

Date: September 19, 2008

Respectfully Submitted,

Dewey & LeBoeuf LLP

BY: /s/ Jeffrey L. Kessler

Jeffrey L. Kessler
Attorneys for Defendants

Date: September 19, 2008

Manatt, Phelps & Phillips, LLP

BY: /s/ Ryan Hilbert

Ryan S. Hilbert
Attorneys for Plaintiffs

Date: September 19, 2008

Electronic Arts, Inc.

BY: /s/ Jake Schatz

Jake Schatz, Vice President Legal

Filer's Attestation: Pursuant to General Order No. 45, Section X(B) regarding signatures, Ryan Hilbert hereby attests that concurrence in the filing of this document has been obtained.