

Exhibit 2  
to the  
Clark Declaration

Dewey & LeBoeuf LLP  
1950 University Avenue  
East Palo Alto, California 94303-2225

1 Mark Malin (Bar No. 199757)  
*mmalin@dl.com*  
2 DEWEY & LEBOEUF 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*)  
5 *jkessler@dl.com*  
David G. Feher (*pro hac vice*)  
6 *dfeher@dl.com*  
Eamon O'Kelly (*pro hac vice*)  
7 *eokelly@dl.com*  
DEWEY & LEBOEUF LLP  
8 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 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*)  
15 *bruce.meyer@weil.com*  
WEIL, GOTSHAL & MANGES LLP  
16 767 Fifth Avenue  
New York, NY 10153  
17 Tel: (212) 310-8000; Fax: (212) 310-8007

18 Attorneys for Defendants National Football League Players Association  
and National Football League Players Incorporated d/b/a Players Inc

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  
FOOTBALL LEAGUE PLAYERS  
27 INCORPORATED d/b/a/ PLAYERS INC,

28 Defendants.

Case No. C 07 0943 WHA

**DECLARATION OF RICHARD  
BERTHELSEN IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR LEAVE  
TO FILE A THIRD AMENDED  
COMPLAINT**

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**DECLARATION OF RICHARD BERTHELSEN**

I, Richard Berthelsen, hereby declare, as follows:

1. I am General Counsel of the National Football League Players Association (“NFLPA”). I am over twenty-one years of age, and I have personal knowledge of each of the facts stated herein. If called upon to testify, I could and would testify completely thereto.

**NFLPA Constitution**

2. I understand that the plaintiffs in this action have asserted in their proposed Third Amended Complaint (“TAC”) that the NFLPA Constitution dated March 1994, attached to the TAC as Exhibit K, somehow gives rise to fiduciary obligations on the part of the defendants to provide certain retired players, including Bernard Parrish, with “information affecting other benefits to which they may be entitled, including but not limited to the fact that Players Inc was licensing retired player rights to licensees like EA, regardless of whether those players’ images were ever used.” TAC, ¶ 72, 79. This distorts the meaning of the NFLPA Constitution, which as set forth below, promises nothing to retired players with respect to licensing information.

3. The NFLPA Constitution provides that only persons currently employed as professional football players by a member club of the NFL shall be eligible to be active members of the NFLPA. Only active members are eligible to vote in elections of Player Representatives, collective bargaining ratification or any other matter affecting active players. See NFLPA Constitution, Art. II.

4. Thus, pursuant to the NFLPA Constitution, no retired player is eligible for active NFLPA membership.

5. With respect to retired players, the NFLPA Constitution authorizes a retired player organization and provides that “[a]ny person who has been an active player in the NFL...may join the NFLPA as a retired player member after retiring from football.” Id.

1                   6.       A retired player becomes a member of this retired player organization,  
2 called the NFLPA Retired Players Association, only upon his payment of annual membership  
3 dues to the NFLPA (except that, upon official retirement and/or collection of severance pay, each  
4 retiring player receives membership in the NFLPA Retired Players Association for two years  
5 without having to pay annual dues). A retired player does not become a member of the Retired  
6 Players Association, or of the NFLPA for that matter, by virtue of signing any Group Licensing  
7 Authorization (“GLA”).  
8

9                   7.       The total amount received from retired players by the NFLPA in annual  
10 dues does not offset the cost to the NFLPA of providing various services to retired players. In a  
11 letter sent by Doug Allen to certain retired players, attached to the TAC as Exhibit L, Mr. Allen  
12 writes that dues payments allow the “NFLPA to provide extensive services and benefits to retired  
13 players...For example, the NFLPA Retired Players Department and Benefits Department serves  
14 almost 4000 NFLPA retired player members at an annual cost to the NFLPA of \$1.5 million.  
15 Retired player dues offset less than \$200,000 of that amount.”

16                   8.       The NFLPA Constitution sets forth the rights of Retired Players  
17 Association members: a retired player member has the right to (i) attend an annual NFLPA  
18 convention and participate in certain convention activities, with the exception of meetings  
19 designated for active NFLPA members only; (ii) receive NFLPA publications, retired players  
20 publications, and other information affecting retirement benefits or other benefits he may be  
21 entitled to; (iii) participate in NFLPA special events; (iv) participate in any group insurance plan  
22 offered through the NFLPA on the retired player’s behalf; (v) be represented on the NFLPA  
23 Retirement Board; and (vi) affiliate with a local chapter of the NFLPA retired players  
24 organization. Id.

25                   9.       The right conferred on Retired Player Association members in the NFLPA  
26 Constitution to receive information affecting “retirement benefits or other benefits” refers to  
27 information regarding certain benefits that may be available to retired players by virtue of the  
28 Collective Bargaining Agreement between the NFL Management Council and the NFLPA

1 (“CBA”). Attached hereto as Exhibit A is a true and accurate copy of excerpts of the CBA dated  
2 March 8, 2006. (The CBA is also publicly available on the NFLPA’s website at www.nflpa.org.)  
3 These CBA benefits include pension funding, Exh. A., Art. XLVII, disability benefits, id. at Art.  
4 LI, and the “88 benefit” for players suffering from dementia, id. at Art. XLVIII-D, among others,  
5 but not any purported benefits with respect to licensing or marketing activities.  
6

7 **Gene Upshaw’s Statements**

8 10. In an article that appeared in the Charlotte Observer on January 15, 2006,  
9 attached to the TAC as Exhibit P, Gene Upshaw, Executive Director of the NFLPA and  
10 Chairman of Players Inc, is quoted as saying with respect to retired players “I don’t work for  
11 them.”

12 11. I understand that the plaintiffs point to Mr. Upshaw’s statement as a basis  
13 for their allegation that the NFLPA and Players Inc have “breached their fiduciary obligations to  
14 Mr. Parrish and other members of the Retired NFLPA Member Class by admitting that they do  
15 not work for retirees at all.” TAC, ¶ 78.

16 12. Nowhere in the Charlotte Observer article is Mr. Upshaw quoted as saying  
17 the NFLPA does not work for retired players “at all.” Rather, Mr. Upshaw’s statement refers to  
18 the fact that for collective bargaining purposes, retired players are not members of the NFLPA’s  
19 bargaining unit. The full text of Mr. Upshaw’s quote is as follows:

20 ‘The bottom line is I don’t work for them,’ he said. ‘They don’t hire me and they  
21 can’t fire me. They can complain about me all day long. They can have their  
22 opinion. But, the active players have the vote. That’s who pays my salary. They  
23 (retirees) say they don’t have anybody in the (bargaining room). Well, they don’t  
24 and they never will. I’m the only one in that room. They’re not in the bargaining  
25 unit. They don’t even have a vote.’

26 13. This is confirmed in the Preamble of the CBA, which provides that the  
27 NFLPA is the “sole and exclusive bargaining representative of present and future employee  
28 players in the NFL in a bargaining unit,” which includes (i) all professional football players  
employed by a member club of the NFL; (ii) all professional football players who have been  
previously employed by a member club of the NFL who are seeking employment with an NFL

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Club; and (iii) certain rookie players. See Exhibit A. Retired players are, therefore, not members of the NFLPA's bargaining unit.

14. Further, in the article relied upon by plaintiffs, Mr. Upshaw is not quoted as saying anything with respect to whether the NFLPA represents, or works on behalf of, retired players in connection with marketing and licensing activities, which are not collective bargaining activities.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was in executed in D.C. on October 10, 2007.

Dated: October 10, 2007

  
Richard Berthelsen