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 ELECTRONIC ARTS, INC.
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 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION
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12 BERNARD PAUL PARRISH, HERBERT
 ANTHONY ADDERLEY, and WALTER
 13 ROBERTS III, on behalf of themselves and all
 others similarly situated,

14 Plaintiffs,

15 v.

16 NATIONAL FOOTBALL LEAGUE
 PLAYERS ASSOCIATION, a Virginia
 17 corporation, and NATIONAL FOOTBALL
 LEAGUE PLAYERS INCORPORATED
 18 d/b/a/ PLAYERS INC., a Virginia corporation,

19 Defendants.
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Case No. C07 0943 WHA

**THIRD PARTY ELECTRONIC ARTS,
 INC.'S NOTICE OF MOTION AND
 MOTION FOR ADMINISTRATIVE
 RELIEF TO FILE DOCUMENT UNDER
 SEAL**

Date: October 22, 2008
 Time: 7:30 a.m.
 Dept: Courtroom 9, 19th Floor
 Judge: Honorable William H. Alsup

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on October 22, 2008, at 7:30 a.m., or as soon thereafter as may be heard, in the Courtroom of the Honorable William H. Alsup located at 450 Golden Gate Avenue, 19th Floor, San Francisco, California, third party Electronic Arts Inc. will and hereby does move pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and Civil Local Rules 79-5(c) and (d) and 7-11 for an order permitting Trial Exhibit 80 to be filed under seal and that a redacted version of the document (that redacts only the competitively sensitive price information in Paragraph 6 of the Trial Exhibit) be used at trial. Electronic Arts Inc. makes this motion on the ground that Trial Exhibit 80 has not been publicly disclosed and contains extremely sensitive and confidential business information.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities in Support Thereof, the Declaration Jacob J. Schatz in Support Thereof, the files and pleadings in place in this action, and any argument of counsel.

Dated: October 21, 2008

KEKER & VAN NEST, LLP

By: /s/ R. James Slaughter
R. JAMES SLAUGHTER
Attorneys for Third Party
Electronic Arts Inc.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Third Party Electronic Arts Inc. (“EA”) requests that the Court order that Trial Exhibit
4 80—EA’s current license agreement with the National Football League Players Association
5 (“NFLPA”)—be filed under seal and that a redacted version of the exhibit (that only redacts
6 competitively sensitive price information in Paragraph 6 of that exhibit) be used during trial. EA
7 makes this motion on the ground that its current license agreement with NFLPA has not been
8 publicly disclosed and contains extremely sensitive and confidential business information, the
9 disclosure of which would severely harm EA in negotiations with other licensors. EA also
10 requests that any evidence that makes use of the EA’s confidential pricing information from its
11 current license agreement with NFLPA, be similarly redacted.

12 **II. BACKGROUND**

13 In response to a subpoena, EA produced numerous documents in this matter, among them
14 EA’s current license agreement with NFLPA, dated effective March 1, 2006, (Bates No.
15 EA000057-EA000076) (“2006 License Agreement”). Declaration of Jacob J. Schatz (“Schatz
16 Decl.”) ¶ 2. The 2006 License Agreement is EA’s current license agreement with the NFLPA.
17 *Id.* The license agreement includes EA’s royalty rates and guaranteed minimum payments to
18 NFLPA, which are extremely sensitive and confidential business information. *Id.* EA never
19 shares publicly, including with other licensors the royalty rates and guaranteed minimum
20 payments contained in a license agreement with another licensor. *Id.* The public disclosure of
21 such information would severely harm EA in its negotiations with other parties. *Id.* Because of
22 the sensitivity of the agreement, EA designated the document highly confidential pursuant to the
23 terms of the protective order in place in this litigation and expected that it would be kept and
24 used on an attorneys eyes only basis. *Id.*

25 On October 21, 2008, EA learned for the first time that the Court intended to permit all
26 documents and information produced during this litigation to be publicly disclosed during trial.
27 Schatz Decl. ¶ 3. Upon learning this information, EA contacted counsel for Plaintiffs and
28 Defendants to alert them to EA’s concern about the potential public disclosure of this

1 information and to request that they stipulate to the use of a redacted version of the 2006 License
2 Agreement that redacts only EA's competitively sensitive financial information contained in
3 Paragraph 6 of the 2006 License Agreement. *Id.* At the time of the filing of this request, neither
4 plaintiffs nor defendants had responded to EA's request.. *Id.*

5 **III. ARGUMENT**

6 Pursuant to Federal Rule of Civil Procedure 26(c), this Court is authorized to prevent the
7 disclosure of information, including trade secrets or competitively sensitive commercial
8 information, upon a showing of "good cause." "Good cause" exists for filing protectable
9 information under seal whenever disclosure would result in specific harm or prejudice to the
10 party to whom the information belongs. *Kamakana v. City and County of Honolulu*, 447 F.3d
11 1172, 1179-80 (9th Cir. 2006); *Reilly v. Medianews Group Inc.*, No. C 06-04332 SI, U.S. Dist
12 LEXIS 8139, at *11-13 (N.D. Cal. Jan. 24, 2007).

13 Good cause exists here for the use of a redacted version of Exhibit 80 (the 2006 License
14 Agreement) during trial. As described above, the 2006 License Agreement contains extremely
15 sensitive, competitive pricing information. The disclosure of such information would severely
16 harm EA. *See Reilly*, 2007 U.S. Dist. LEXIS 8139 at * 14 (filing under seal information that
17 might allow competitors to anticipate future actions or that might help bargaining position of
18 companies that negotiate with party producing the information).

19 Moreover, EA's request is narrowly tailored to achieve the goal of preserving its
20 confidential, trade secret information while permitting disclosure of non-protected material. EA
21 requests only that pricing information be redacted from the document, not that it be filed under
22 seal in its entirety.

23 **IV. CONCLUSION**

24 For the foregoing reasons, Third Party Electronic Arts Inc. respectfully requests that the
25 Court permit the parties to use at trial a redacted version of the 2006 License Agreement, which
26 is attached as Exhibit B to the Schatz Declaration and that an unredacted version of the document
27 be maintained confidential and filed under seal. EA further requests that any evidence that
28 makes use of the EA's confidential pricing information from the 2006 License Agreement be

1 similarly redacted or kept confidential and maintained under seal.

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3 Dated: October 21, 2008

KEKER & VAN NEST, LLP

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By: /s/ R. James Slaughter

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R. JAMES SLAUGHTER

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Attorneys for Third Party

Electronic Arts Inc.

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