

Exhibit 1
To Defendants' Letter Brief Dated November 5, 2008

1 **A.** WELL, THAT'S THE WAY -- THAT'S THE WAY THAT IT'S -- THAT'S
2 THE WAY THE LAW HAS DEFINED THE TASK OF THE ECONOMIST.
3 CONCEPTUALLY, THAT'S NOT WHAT ECONOMISTS DO. BUT LEGALLY,
4 THAT'S WHAT YOU DO IN A CASE, YES.

5 **Q.** OKAY. AND HERE YOU WOULD CONCEDE THAT IF -- IF ACTIVE NFL
6 PLAYERS FOR LICENSING PURPOSES TO THIRD PARTIES IS A RELEVANT
7 MARKET, CLEARLY THE NFLPA AND PI WOULD HAVE MARKET POWER,
8 CORRECT?

9 **A.** IF THE MARKET FOR ACTIVE PLAYERS --

10 **Q.** RIGHT.

11 **A.** -- IS A RELEVANT MARKET, THEN THEY ARE THE ONLY
12 PARTICIPANTS IN THAT MARKET FOR GROUP LICENSING. BUT THERE'S
13 STILL THE DEGREE OF SUBSTITUTION BETWEEN INDIVIDUAL LICENSING
14 AND GROUP LICENSES.

15 **Q.** FAIR ENOUGH. BUT AS FOR GROUP LICENSING, THEY HAVE
16 EFFECTIVELY A MONOPOLY CONFERRED BY THE LICENSE AGREEMENT,
17 CORRECT?

18 **MR. KESSLER:** OBJECTION, YOUR HONOR. HE MOVED FROM A
19 HYPOTHETICAL TO NOW NONHYPOTHETICAL. HE'S CONFUSING THE TWO
20 QUESTIONS.

21 **THE COURT:** TRUE. YOU DID DO THAT. PLEASE REPHRASE
22 IT.

23 **MR. HUMMEL:** SURE.

24 **BY MR. HUMMEL:**

25 **Q.** ASSUMING THAT IF WE'VE ESTABLISHED THE RELEVANT A

1 MARKET --

2 **MR. HUMMEL:** AND, YOUR HONOR, I'D ASK THAT THAT
3 ASSUMPTION CARRY THROUGH THESE QUESTIONS.

4 **BY MR. HUMMEL:**

5 **Q.** THAT THERE IS A RELEVANT MARKET FOR ACTIVE PLAYER
6 LICENSING RIGHTS, OKAY?

7 **A.** YOU NEED MORE THAN THAT. YOU NEED GROUP LICENSING RIGHTS.

8 **Q.** ALL RIGHT. FOR GROUP LICENSING RIGHTS.

9 AND LET'S TALK ABOUT THAT FOR A MINUTE, ACTUALLY,
10 BECAUSE YOU TESTIFIED AT GREAT LENGTH ABOUT THE COMBINED MONIES
11 THAT WERE PAID TO PLAYERS OUT OF LICENSING REVENUES, CORRECT?

12 **A.** CORRECT.

13 **Q.** AND IN THAT YOU LUMP TOGETHER GROUP OR SHARED REVENUES
14 WITH AD HOC LICENSING REVENUES, CORRECT?

15 **A.** WELL, THEY ARE ALL GROUP LICENSES. SOME ARE AD HOC AND
16 SOME ARE SHARED.

17 **Q.** NO. JUST TALK ABOUT THE LICENSE FOR JOE MONTANA. THAT
18 WOULD HAVE BEEN INCLUDED IN YOUR -- IN YOUR HYPOTHETICAL,
19 RIGHT, OR IN YOUR DATA, RIGHT?

20 **A.** THAT IS PART OF A GROUP LICENSE.

21 **Q.** HOW IS IT PART OF THE GROUP LICENSE?

22 **A.** ANY LICENSE FOR THE SAME PRODUCT THAT INVOLVES SIX OR MORE
23 PLAYERS IS A GROUP LICENSE, REGARDLESS OF WHETHER THE PLAYERS
24 ARE PAID THE SAME OR THE PLAYERS ARE PAID DIFFERENTLY.

25 SO IN THE CASE OF THE HALL OF FAME GAME, JOE MONTANA

1 LICENSES THAT WERE SIGNED BY PLAYERS INC.

2 AND THAT'S TO BE DISTINGUISHED FROM LICENSING THE
3 TEAM LOGO AND THE TEAM IDENTIFICATION FROM THE NFL.

4 Q. LET ME JUST MAKE SURE, BECAUSE I AGREE WITH YOU IT WAS
5 CONFUSING.

6 WHEN YOU HAVE A HISTORIC TEAM WITH NO PLAYER NAMES
7 AND NO PLAYER PICTURES, OKAY? WHO DID EA PAY LICENSING MONEY
8 TO FOR THAT TYPE OF A GAME: NO PLAYER NAMES, NO IMAGES? WHO
9 GOT THAT MONEY?

10 A. JUST THE NFL.

11 Q. THE NFL ARE THE OWNERS?

12 A. THE OWNERS. THE OWNERS OF THE TEAMS. THE LEAGUE IS THE
13 ONE WHO ACTUALLY DOES THE LICENSING THROUGH NFL PROPERTIES.
14 AND THEN, TO THE EXTENT THEY MAKE MONEY OFF OF THAT THAT
15 EXCEEDS THE COST OF DOING THE LICENSING, IT'S DISTRIBUTED AMONG
16 THE TEAMS.

17 Q. AND WHO DOES EA PAY MONEY TO WHEN IT'S LICENSING THE NAMES
18 OF PLAYERS?

19 A. PLAYERS INC, FOR THE IMAGES AND IDENTITIES OF THE PLAYERS.

20 Q. OKAY. THERE'S BEEN SOME DISCUSSION IN YOUR EXAMINATION
21 ABOUT EA POSSIBLY TAKING RETIRED PLAYERS FOR FREE. DO YOU
22 REMEMBER THAT?

23 A. YES.

24 Q. OKAY. AS AN ECONOMIST, OKAY, WOULD IT MAKE ANY SENSE FOR
25 PLAYERS INC TO THROW IN RETIRED PLAYERS FOR FREE?

1 A. NO. IT WOULD MAKE NO SENSE AT ALL TO GIVE AWAY SOMETHING
2 FOR FREE.

3 Q. WHY NOT?

4 A. MOREOVER --

5 Q. WHY NOT?

6 A. FIRST OF ALL, YOU ONLY LET PEOPLE TO HAVE ACCESS TO THINGS
7 WHEN YOU'RE GETTING COMPENSATED FOR IT, OBVIOUSLY. THE RETIRED
8 PLAYERS, AGAIN, REMEMBERING THAT MOST OF THEIR INCOME IS BEING
9 DERIVED FROM LICENSES THAT DO NOT COVER ALL -- ANY MORE THAN A
10 HANDFUL OF PLAYERS, YOU KNOW, GIVING IT ALL AWAY, SO TO SPEAK,
11 THOSE RETIRED PLAYERS WHO ARE GETTING PAID NOW SUBSTANTIAL
12 AMOUNTS OF MONEY WOULD JUST BOLT. AND THEY WOULDN'T LET
13 PLAYERS INC HANDLE THEIR -- THEIR LICENSING IF THEY HAD TO
14 SHARE THE REVENUES THAT WERE CREATED BY SIX OR SEVEN PLAYERS
15 WITH 2,000.

16 BY THE SAME TOKEN, THE NFL PLAYERS' UNION, THE ACTIVE
17 PLAYERS' UNION WOULD NEVER AGREE TO SHARE ITS REVENUES WITH
18 13,000 RETIRED PLAYERS. YOU KNOW, THAT IS TO SAY THERE'S LESS
19 THAN 2,000 ACTIVE PLAYERS.

20 THEY HAVE CREATED A UNION WITH EXCLUSIVE RIGHTS TO
21 LICENSE THEIR STUFF. IF 2,000 PLAYERS THAT ARE ACTIVE VERSUS
22 13,000 THAT AREN'T, IF YOU BUNDLED IT ALL TOGETHER AND SAID YOU
23 HAD TO TAKE IT ALL OR NOTHING, ALMOST ALL THE MONEY WOULD GO TO
24 RETIRED PLAYERS, AND THE UNION WOULD JUST FOLD. IT WOULD JUST
25 NO LONGER BE IN THE LICENSING BUSINESS BECAUSE THE PLAYERS

1 WOULDND'T STAND FOR IT.

2 Q. PROFESSOR NOLL, YOU GOT ASKED SOME QUESTIONS ABOUT AD HOC
3 LICENSING AND THE -- VERSUS -- I THINK THEY CALLED IT "SHARED
4 VERSUS UNSHARED LICENSING."

5 DO YOU REMEMBER THOSE QUESTIONS?

6 A. I DO.

7 Q. OKAY. NOW, FOR THE ACTIVE PLAYERS, ARE YOU FAMILIAR WITH
8 THE 35-AND-UNDER RULE?

9 A. YES.

10 Q. OKAY. AND WHEN YOU EXPLAIN -- WHEN PLAYERS INC LICENSES
11 35 OR FEWER ACTIVE PLAYERS, IS THAT MONEY SHARED WITH ALL THE
12 ACTIVE PLAYERS OR SOME PARTICULAR GROUP; DO YOU KNOW?

13 A. IT'S JUST -- NO, IT'S NOT SHARED WITH EVERYONE.

14 Q. WHO IS IT SHARED WITH?

15 A. JUST THE GUYS WHO GET LICENSED. YOU CAN GET GROUP
16 LICENSES FROM PLAYERS INC FOR ANY NUMBER OF ACTIVE PLAYERS YOU
17 WANT. AND THERE'S TWO PARTS TO THE STORY.

18 THE FIRST PART IS TYPICALLY THESE LICENSES THAT ARE
19 FOR A SUBSET ARE A FAIRLY SMALL SUBSET, AND THEY ARE LIMITED TO
20 THE PEOPLE IN THAT GROUP.

21 SECONDLY, THE PAYOUTS, EVEN WITHIN THAT SUBSET, DON'T
22 HAVE TO BE EQUAL. IN FACT, MOST OF THEM AREN'T. THEY PAY
23 DIFFERENT AMOUNTS TO DIFFERENT PLAYERS.

24 Q. AND TALKING ABOUT THE GROSS LICENSING REVENUE POOL YOU
25 WERE ASKED ABOUT, THAT IS SHARED TO ELIGIBLE ACTIVE PLAYERS?