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 19 Incorporated d/b/a Players Inc, a Virginia Corporation

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

21 BERNARD PAUL PARRISH, HERBERT  
 22 ANTHONY ADDERLEY, and WALTER  
 ROBERTS III, on behalf of themselves and all  
 23 others similarly situated,

24 Plaintiffs,

25 v.

26 NATIONAL FOOTBALL LEAGUE PLAYERS  
 INCORPORATED d/b/a PLAYERS INC., a  
 27 Virginia Corporation,

28 Defendant.

Case No. CV 07 00943 WHA

**PLAYERS INC'S REPLY TO  
 PLAINTIFFS' OPPOSITION TO  
 MOTION TO TRANSFER VENUE**

Date: May 31, 2007

Time: 8:00 a.m.

Ctrm: 9

Judge: Honorable William H. Alsup

**INTRODUCTION**

1  
2 In its opening brief, Defendant National Football League Players Incorporated  
3 d/b/a Players Inc (“Players Inc”) demonstrated that for the convenience of the parties and  
4 witnesses, and in the interest of justice, this Court should grant its Motion to Transfer Venue to  
5 the Eastern District of Virginia or, alternatively, to the District of Columbia pursuant to 28 U.S.C.  
6 § 1404(a). Players Inc itself and the bulk of its testimonial and documentary evidence are located  
7 in the Washington D.C. area and the operative facts underlying this dispute mainly took place in  
8 the Washington, D.C. area. In addition, the Eastern District of Virginia and Washington D.C.  
9 have interests in this action because Players Inc is incorporated in Virginia and its licensing and  
10 marketing activities largely take in the Washington, D.C. area. Also, this case would likely go to  
11 trial much more quickly if it were transferred to the Eastern District of Virginia.

12 In their opposition, Plaintiffs Bernard Paul Parrish, Herbert Anthony Adderley,  
13 and Walter Roberts III (“Plaintiffs”) have failed to demonstrate that the convenience of the parties  
14 and interests of justice do not support a transfer. Plaintiffs overstate the importance this Court  
15 should give to Plaintiffs’ chosen forum, because the case is a purported class action and only one  
16 of the named plaintiffs lives in the district. Additionally, this Court should give no weight to the  
17 location of plaintiffs’ counsel. Plaintiffs point to three purportedly relevant third-party witnesses;  
18 none of the three reside in this district and Plaintiffs have misrepresented the location of one of  
19 the witnesses, who resides in the Washington, D.C. area. Finally, while the locus of the alleged  
20 tort for one named plaintiff may be in the district, the operative facts as to all named plaintiffs and  
21 their purported class members took place primarily in the Washington, D.C. area. Therefore, this  
22 district has little interest in the dispute and a change of venue is appropriate.

23 There can be no question that the Eastern District of Virginia or, alternatively,  
24 Washington, D.C., is a more convenient forum for this dispute and this action should be  
25 transferred from the Northern District of California.

**ARGUMENT**

26  
27 The parties agree that, pursuant to 28 U.S.C. § 1404(a), this Court may grant a  
28 motion to transfer venue if (1) the action could have been brought in the transferee district and (2)

1 a “transfer will service the convenience of the parties and witnesses, and will promote the  
2 interests of justice.” Alexander v. Franklin Res., Inc., No. C 06-7121 SI, 2007 WL 518859, at \*2  
3 (N.D. Cal. Feb. 14, 2007) (in the interest of judicial economy, court granted motion to transfer  
4 case to venue where substantially similar actions were pending); see also Defendant’s Motion to  
5 Transfer Venue (“Transfer Motion”) at 3; Plaintiffs’ Opposition to Defendant’s Motion to  
6 Transfer Venue (“Opposition Brief”) at 2. The Plaintiffs concede that this action could have been  
7 brought in the Eastern District of Virginia or Washington, D.C. See Opposition Brief at 2.

8 The only dispute, therefore, is whether the interests of justice and convenience of  
9 the parties and witnesses favor a transfer. To determine such issues, this Court “must consider  
10 both public factors which go to the interests of justice and private factors, which go to the  
11 convenience of the parties and witnesses.” David v. Alphin, No. C 06-04763 WHA, 2007 WL  
12 39400, at \*2 (N.D. Cal. Jan. 4, 2007) (granting motion to transfer venue in alleged class action  
13 case involving breach of fiduciary duty of defendant bank to its retirees to district where  
14 defendants were located). The factors include (1) plaintiffs’ choice of forum; (2) the convenience  
15 of the parties; (3) the convenience of the witnesses; (4) ease of access to evidence; (5) the  
16 familiarity of the forums with the applicable law; (6) local interest in the dispute; and (7) the  
17 relative east of court congestion and time of trial in each forum. See Alexander, 2007 WL  
18 518859 at \*2. Because Plaintiffs have failed to refute that these factors weigh in favor of a  
19 transfer to the Eastern District of Virginia, this Court should grant Players Inc’s motion.

20 **I. PLAINTIFFS’ CHOICE OF FORUM SHOULD BE GIVEN LIMITED**  
21 **DEFERENCE**

22 Plaintiffs argue that this Court should not disturb Plaintiffs’ choice of forum. See  
23 Opposition Brief at p. 3. However, they do not dispute that where a plaintiff “purports to  
24 represent a nationwide class,” a plaintiff’s choice of forum is “less significant.” Alexander, 2007  
25 WL 518859 at \* 3 (in granting motion to transfer venue, court accorded less weight to plaintiff’s  
26 choice of forum where plaintiff purported to represent uncertified nationwide class); see also  
27 Berenson v. Nat’l Fin. Servs., LLC, 319 F. Supp. 2d 1, 3-4 (D. D.C. 2004) (court gave “little  
28 deference” to plaintiffs’ choice of forum and granted motion to transfer venue in uncertified class

1 action lawsuit by consumers against electronic bill payment service); Genden v. Merrill, Lynch,  
2 Pierce, Fenner & Smith, Inc., 621 F. Supp. 780, 781 (N.D. Ill. 1985) (plaintiff's choice of venue  
3 was accorded less deference in nationwide class action lawsuit that had "no unique local interest  
4 or contact" with the chosen district); Transfer Motion at 5.

5 Plaintiffs' attempts to distinguish David, 2007 WL 39400 at \*3, are insufficient.  
6 See Opposition Brief at 3. While it is true that the Court gave some deference to the plaintiff's  
7 choice of forum, the Court also acknowledged that in a class action lawsuit, the named plaintiffs'  
8 choice of forum is given less deference.

9 Similarly, plaintiffs have not disputed that less deference is given to a plaintiff's  
10 chosen forum when the operative facts giving rise to the dispute occurred outside the forum and  
11 where the forum has little interest in the parties or subject matter. See Jaco Envtl. Inc v.  
12 Appliance Recycling Ctrs. of America, Inc., No C 06-06601 JSW, 2007 WL 951274 at \*2 (N.D.  
13 Cal. March 27, 2007) (in granting motion to transfer venue, court gave less deference to  
14 plaintiff's chosen forum where facts giving rise to the case had "little connection" to district).  
15 Lou v. Belzberg further supports this argument, despite plaintiffs' attempts to distinguish it. 834  
16 F.2d 730, 739 (9th Cir. 1987) (named plaintiff's choice of forum in shareholders' derivative suit  
17 given less weight because it was class action lawsuit and operative facts did not occur within  
18 forum); see also Opposition Brief at 3-4. In that shareholders' derivative case, the court  
19 examined the plaintiff's contacts with the forum and found that the fact that their stock purchase  
20 agreement was negotiated and executed in the transferee district weighed in favor of the court  
21 granting a motion to transfer venue.

22 Plaintiffs' choice to bring this case in this district should be accorded limited  
23 deference because they purport to represent a nationwide class and because Players Inc's  
24 licensing and marketing activities, including the execution and negotiation of agreements, were  
25 largely conducted in the Washington, D.C. area, not in the Northern District of California. The  
26 burden on Players Inc to prove that the remaining factors favor transfer to the Eastern District of  
27 Virginia should also be reduced. See Jaco, 2007 WL 951274 at \*3 ("[a]s deference to plaintiff's  
28 choice of forum decreases, a defendant's burden to upset the plaintiff's choice of forum also

1 decreases). The residence of one named plaintiff and one licensee in the forum does not provide  
2 a significant connection to this venue.

3 **II. THE CONVENIENCE OF THE PARTIES FAVORS TRANSFERRING**  
4 **THIS CASE TO THE EASTERN DISTRICT OF VIRGINIA OR**  
5 **WASHINGTON, D.C.**

6 Plaintiffs argue that the convenience of the parties weighs against this motion to  
7 transfer venue. See Opposition Brief at 4-5. However, Plaintiffs have cited no relevant evidence  
8 to contradict Players Inc’s argument that the Eastern District of Virginia and Washington, D.C.  
9 are more convenient forums for the parties. See Transfer Motion at 6.

10 The location within this district of one of the named plaintiffs – who was added in  
11 the Amended Complaint, presumably in anticipation of this motion – is not dispositive. See  
12 Genden, 621 F. Supp. at 782 (location of main class representative was not relevant to court’s  
13 determination of whether to transfer venue). The location of counsel is afforded even less weight  
14 – it is not considered in the court’s determination. See id. (“the convenience of counsel is not one  
15 of the factors to be considered” in deciding a motion to transfer venue). Also, the fact that the  
16 plaintiffs located in Florida and New Jersey chose to bring this action in this district does not  
17 prove that this forum is convenient to those parties.

18 Most importantly, while Plaintiffs are correct that the National Football League  
19 Players Association (“NFLPA”) has an office in San Francisco, that fact is irrelevant to the  
20 convenience of the parties because the NFLPA is not a party to this litigation. Additionally, no  
21 employee of Players Inc has worked out of the NFLPA’s San Francisco office and no Players Inc  
22 licensing or marketing activities have taken place there. See Declaration of Mary Moran in  
23 Support of Players Inc’s Reply to Plaintiffs’ Opposition to Motion to Transfer Venue at 2. In  
24 fact, the NFLPA’s San Francisco office was used by its regional director, who was engaged in  
25 labor issues, but it currently has no staff. See id.

26 The present forum is inconvenient to Players Inc, which is incorporated in Virginia  
27 and headquartered in nearby Washington, D.C. Therefore, this factor weighs in favor of the  
28 Court granting the motion to transfer venue.

1           **III.           THE WITNESSES' CONVENIENCE WEIGHS IN FAVOR OF A**  
2           **TRANSFER**

3           Plaintiffs also argue that the Northern District of California is a more convenient  
4 forum for third party witnesses. See Opposition Brief at 5-7. However, Plaintiffs have only  
5 identified one potential witness in the district, a licensee of Players Inc, while at the same time  
6 conceding that "it is likely that non-party witnesses and documentary evidence will be sought  
7 from numerous districts." Id., at 6, n.3. If the licensee is relevant to the dispute, Plaintiffs have  
8 brought forth no evidence that it would be unavailable in the transferee district. See Berenson,  
9 319 F. Supp. 2d at 4 (in granting motion to transfer venue, court considered that there was no  
evidence that witnesses would be unavailable in either forum).

10           Plaintiffs also identify Doug Allen, Pat Allen, and Howard Skall as "key non-party  
11 witnesses." Opposition Brief at 5-6. However, none of these witnesses reside in this district or  
12 within the subpoena power of this court. See Fed R. Civ. P. 45. Plaintiffs state that Doug Allen  
13 and Pat Allen live in Los Angeles. See Declaration of Ryan S. Hilbert in Support of Plaintiffs'  
14 Opposition to Defendant's Motion to Transfer Venue ("Hilbert Declaration") at 2. However,  
15 although Howard Skall is employed by Creative Artists Agency Sports, he lives and works in  
16 Olney, Maryland, a suburb of Washington, D.C. See Declaration of Howard Skall in Support of  
17 Players Inc's Reply to Plaintiffs' Opposition to Motion to Transfer Venue at 2.

18           Plaintiffs also suggest that because the NFLPA is closely related to Players Inc, the  
19 convenience of the witnesses weighs against a transfer. See Opposition Brief at 6-7 (citing Apex  
20 Sales Agency v. Phoenix Sintered Metals, Inc., No. 1:06 CV 01203, 2006 WL 3022987 \*2 (N.D.  
21 Ohio Oct. 23, 2006)). However, Apex is distinguishable because it involved the convenience of  
22 parties, not witnesses, and a claim by multiple defendants that they were more inconvenienced by  
23 the forum than the single plaintiff. The Apex court stated that the defendants were related entities  
24 and the inconvenience of the chosen forum was not greater than the inconvenience that the  
25 plaintiff would face if the case were transferred. Here, the NFLPA is not a party to this lawsuit  
26 and, therefore its inconvenience is not subsumed by any inconvenience to Players Inc. Instead, it  
27  
28

1 should be separately considered as a third party that is located outside this district, and near the  
2 transferee district.

3 Because Plaintiffs have identified only one potential non-party witness located in  
4 this forum, and numerous other third party witnesses are located around the country, including  
5 within the subpoena power of the transferee venue, the convenience of the witnesses favors a  
6 transfer to the Eastern District of Virginia. See Jaco, 2007 WL 951274 at \* 3-4 (court granted  
7 motion to transfer venue where witnesses relevant to the case were located outside the Northern  
8 District of California and outside the state); David, 2007 WL 39400 at \* 4 (where third-party  
9 witnesses are outside the court's subpoena power and, therefore, may not be available to testify at  
10 trial, the court said that the convenience of the witnesses favored transfer of the case).

11 **IV. EVIDENCE IS LARGELY LOCATED IN THE WASHINGTON, D.C.**  
12 **AREA**

13 Plaintiffs argue that because no single location would provide the easiest access to  
14 the sources of proof and because one licensee (and possibly other unidentified witnesses), is  
15 located in the district, this factor weighs against a transfer of venue. See Opposition Brief at 7-8.  
16 Even if one named plaintiff may have evidence in the district (though none is cited by Plaintiffs),  
17 this does not outweigh the fact that evidence from the two other named plaintiffs and remainder  
18 of the purported class, if any, will likely be located outside the district. See Transfer Motion at 4-  
19 5.

20 In addition, the fact that Players Inc is headquartered in Washington, D.C. and,  
21 therefore, its corporate books and witnesses are located in or near the transferee venue weighs in  
22 favor of this motion. See Greenwell v. Belkin Corp., No. C 06-02760, 2006 WL 2884393 at \*2  
23 (N.D. Cal. Oct. 10, 2006) (court granted motion to transfer where it would facilitate access to  
24 discovery materials and witnesses where evidence largely came from defendant's records and  
25 corporate representatives, which were located in transferee district); Berenson, 319 F. Supp. 2d at  
26 4 (in granting motion to transfer venue, court considered that the bulk of the documentary  
27 evidence was located in the transferee forum). Notwithstanding Plaintiffs' conclusory assertion  
28 that technological advances may lesson the discovery burden on Players Inc, the fact that the bulk

1 of the evidence in this matter is outside this venue and near the transferee district is highly  
2 relevant to the Court's analysis and weighs in favor of the Court granting this motion. See Jaco,  
3 2007 WL 951274 at \* 4 (in granting motion to transfer venue, court said fact that relevant  
4 evidence was outside the district weighed in favor of the transfer); Genden, 621 F. Supp. at 783  
5 (court granted motion to transfer venue where overwhelming number of witnesses and documents  
6 were located in transferee district and plaintiffs provided "no reason why defendants should bear  
7 the greater legal cost of transporting documents, counsel and witnesses ... to defend against  
8 Plaintiffs' as yet unproven allegations").

9 **V. PUBLIC FACTORS ALSO WEIGH IN FAVOR OF TRANSFER TO THE**  
10 **EASTERN DISTRICT OF VIRGINIA OR WASHINGTON, D.C.**

11 Plaintiffs argue that public factors, including local interest, court congestion,  
12 choice of law, and unfairness in burdening the citizens of a district, "favor California as well."  
13 Opposition Brief at 8. However, Plaintiffs have failed to sufficiently demonstrate that these  
14 factors do not weigh in favor of this Court granting the motion to transfer venue. See Transfer  
15 Motion at 7-8.

16 In support of its opposition, Plaintiffs argue that the "locus" of this dispute is in  
17 California, New Jersey and Florida – and that if a class is certified, it will be likely be "spread  
18 amongst the 50 states," – and not in the Washington, D.C. area. See Opposition Brief at 8.  
19 However, the majority of the operative facts in this dispute center around the licensing and  
20 marketing activities of Players Inc, in the Washington, D.C. area. In addition, Virginia has a local  
21 interest in this dispute because the defendant is a Virginia Corporation. In an unpublished  
22 decision, cited by the Plaintiffs, the court held that districts have an interest in the companies  
23 incorporated in their states and in the activities those corporations undertake. See Tropos  
24 Networks Inc. v. IPCO LLC, No C 05-04281 JSW, 2006 WL 1883316 at \* 4 (N.D. Cal. July 7,  
25 2006) (court granted motion to transfer patent infringement case to Georgia where defendant was  
26 Georgia corporation and its allegedly infringing activity took place there).

27 Also, as explained above, the citizens of northern California have little connection  
28 to this purported class action lawsuit and a jury trial in this venue would be a burden to them. In



1 contrast, the licensing and marketing activities of Players Inc are centered in the Washington,  
2 D.C. area and the citizens of that district and the Eastern District of Virginia have more  
3 connection to this dispute.

4 Moreover, Plaintiffs are mistaken in their assertion that there are no differences  
5 between the laws of Virginia and California applicable to the issues raised by this lawsuit. As  
6 Players Inc points out in its Reply in Support of Its Motion for Judgment on the Pleadings  
7 Pursuant to Rule 12(c) (“Rule 12(c) Reply”) at 3-4, there are important differences between the  
8 fiduciary duty laws of California and Virginia. For example, under Virginia law, “estoppel must  
9 be shown by clear and convincing evidence.” See Highridge Place Condominium Unit Owner’s  
10 Ass’n v. Langley, 66 Va. Cir. 185, 187 (2004). This heightened evidentiary standard protects  
11 Virginia defendants, such as Players Inc, from the imposition of principal-agent liability without  
12 “clear, precise and unequivocal evidence.” See Penn. Casualty Co. v. Chris Simopoulos, M.D.,  
13 Ltd., 235 Va. 460, 465 (1988). Under California law, on the other hand, agency by estoppel can  
14 be proven by a preponderance of the evidence. See, e.g., Golden Day Schools, Inc. v. Dept. of  
15 Ed., 69 Cal. App. 4th 681, 692-93 (1999). By way of further example, Virginia law limits the  
16 amount of punitive damages awards. See Va. Code Ann. § 8.01-38.1 (“total amount of [punitive  
17 damages] awarded may not exceed \$350,000”). California, by contrast, imposes no such limits  
18 on punitive damages. Here, where Plaintiffs seek punitive damages in an unspecified amount  
19 (see Am. Compl., “Prayer for Relief” at ¶ b), this difference between the laws is significant.

20 California courts apply a “governmental interest” test to choice of law questions.  
21 See Hurtado v. Superior Court, 11 Cal. 3d 574, 579 (1974); Arno v. Club Med, Inc., 22 F.3d  
22 1464, 1468 (9th Cir. 1994). As Players Inc discusses in its Rule 12(c) Reply, under a  
23 governmental interest analysis, this Court should apply Virginia law. See Rule 12(c) Reply at 4.  
24 If the Court agrees that Virginia law applies, then this factor weighs in favor of transferring  
25 venue, because the Eastern District of Virginia will be in a much better position to apply Virginia  
26 law. See Ferens v. John Deere Co., 494 U.S. 516, 529-30 (1990) (public transfer of venue factors  
27 included “appropriateness” of having trial in forum whose laws apply to the dispute); Sweet-  
28 Reddy v. Vons Cos. Inc., No. C06-06667 MJJ, 2007 WL 841792 at \* 3 (N.D. Cal. March 20,

