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 13 **UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**  
 15 **WESTERN DIVISION**

16 JAKE RASHAAN REED,  
 17  
 Plaintiff,  
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 vs.  
 19 RONALD BENSON SLAVIN II and  
 20 SPORTSTARS, INC.,  
 21  
 Defendants.

Case No. 2:20-cv-09384-MWF-PD

**DEFENDANTS' NOTICE OF  
 MOTION AND MOTION TO  
 DISQUALIFY PLAINTIFF'S  
 COUNSEL; MEMORANDUM OF  
 POINTS AND AUTHORITIES IN  
 SUPPORT THEREOF**

REDACTED PUBLIC VERSION

[FILED CONCURRENTLY WITH DECLARATION OF  
 KRISTINA M. FERNANDEZ MABRIE, DECLARATION  
 OF ANDREW L. LEE, DECLARATION OF ALAN  
 HERMAN, AND [PROPOSED] ORDER]

COMPLAINT FILED: OCTOBER 13, 2020  
 HON. MICHAEL W. FITZGERALD  
 DATE: DECEMBER 14, 2020  
 TIME: 10:00 A.M.  
 PLACE: COURTROOM 5A

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**TABLE OF CONTENTS**

- I. INTRODUCTION .....2
- II. FACTUAL BACKGROUND.....5
  - A. SPORTSTARS’ ATTORNEY-CLIENT RELATIONSHIP WITH ATTORNEY GINSBERG .....5
  - B. ATTORNEY GINSBERG INITIATES THE INSTANT LITIGATION AGAINST SPORTSTARS ..... 13
- III. ARGUMENT..... 15
  - A. LEGAL STANDARD FOR DISQUALIFICATION ..... 15
  - B. GINSBERG OWES A DUTY OF LOYALTY AND CONFIDENTIALITY TO SPORTSTARS..... 16
    - 1. Attorney Ginsberg Is Violating His Duty of Loyalty to Former Client Sportstars. .... 17
    - 2. Attorney Ginsberg Is Breaching His Duty of Confidentiality to Sportstars.....22
  - C. SPORTSTARS DID NOT PROVIDE, AND WILL NOT PROVIDE, ITS INFORMED WRITTEN CONSENT TO WAIVE THE CURRENT CONFLICT.....25
  - D. THE BALANCING OF INTERESTS CONFIRMS THAT DISQUALIFICATION IS APPROPRIATE IN THIS CASE .....25
- IV. CONCLUSION.....27

**TABLE OF AUTHORITIES**

**Page(s)**

**Federal Cases**

*Advanced Messaging Techs., Inc. v. EasyLink Servs. Int’l Corp.*,  
913 F. Supp. 2d 900 (C.D. Cal. 2012) ..... 15

*Baytree Capital Assocs., LLC v. Quan*,  
No. CV 08-2822 CAS, 2008 WL 3891226 (C.D. Cal. Aug. 18, 2008)..... 26

*Beltran v. Avon Prods., Inc.*,  
867 F. Supp. 2d 1068 (C.D. Cal. 2012) ..... 25

*Burnett v. Rowzee*,  
No. SACV07-641DOC (ANX), 2007 WL 2767936 (C.D. Cal. Aug. 13,  
2007) ..... 25

*In re Cty. of Los Angeles*,  
223 F.3d 990 (9th Cir. 2000) ..... 15

*Elan Transdermal Ltd. v. Cygnus Therapeutic Sys.*,  
809 F. Supp. 1383 (N.D. Cal. 1992)..... 19

*Parrino v. FHP, Inc.*,  
146 F.3d 699 (9th Cir. 1998) ..... 13

*State Compensation Insurance Fund v. Drobot*,  
192 F.Supp.3d 1080 (C.D. Cal. 2016) ..... 19, 27

*White v. Experian Info. Solutions*,  
993 F. Supp. 2d 1154 (C.D. Cal 2014) ..... 26

**California Cases**

*Blue Water Sunset, LLC v. Markowitz*,  
192 Cal. App. 4th 477 (2011) ..... 18

*City Nat’l Bank v. Adams*,  
96 Cal. App. 4th 315 (2002) ..... 18

*People ex rel. Dep’t of Corps. v. Speedee Oil Change Sys., Inc.*,  
20 Cal. 4th 1135 (1999) ..... 16

1 *Gong v. RFG Oil, Inc.*,  
 2 166 Cal. App. 4th 209 (2008) ..... 19

3 *Jessen v. Hartford Cas. Ins. Co.*,  
 4 111 Cal. App. 4th 698 (2003) ..... 19

5 *Kim v. The True Church Members of Holy Hill Cmty. Church*,  
 6 236 Cal. App. 4th 1435 (2015) ..... 26

7 *Oasis W. Realty, LLC v. Goldman*,  
 8 51 Cal. 4th 811 (2011) ..... 23

9 *Ontiveros v. Constable*,  
 10 245 Cal. App. 4th 686 (2016) ..... 16

11 *Shen v. Miller*,  
 12 212 Cal. App. 4th 48 (2012) ..... 16

13 *Truck Ins. Exch. v. Fireman’s Fund Ins. Co.*,  
 14 6 Cal. App. 4th 1050 (1992) ..... 18, 23, 26

15 *Wutchumna Water Co. v. Bailey*,  
 16 216 Cal. 564 (1932) ..... 17

**Other State Cases**

17 *Brothers v. New York State Elec. and Gas Corp.*,  
 18 11 N.Y.3d 251 (2008) ..... 19

19 *Fifth Club, Inc. v Ramirez*,  
 20 196 S.W.3d 788 (Tex. 2006) ..... 19

21 *Painter v Amerimex Drilling I, Ltd.*,  
 22 561 S.W.3d 125 (Tex 2018)..... 19

**California Statutes**

23 Cal. Bus. & Prof. Code § 6068(e)(1) ..... 22

24 Cal. Bus. & Prof. Code § 6068, subd. (e)(1)..... 22

25 Cal. Civ. Proc. Code § 128(a)(5) ..... 16

26 **Other Authorities**

27 Local Rule 7-3..... 1

28

1 Local Rule 83-3.1.2..... 16

2 Local Rule 7 ..... 1

3 Local Rule 7.3 ..... 3, 8

4 Rules of Professional Conduct, Rule 1.6 ..... 5, 16, 22, 24

5 Rules of Professional Conduct, Rule 1.9 ..... 5, 16, 17

6 Rules of Professional Conduct, Rule 1.9(a)..... 25

7 Rules of Professional Conduct, Rule 1.9(c)..... 17

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 14, 2020 at 10:00 a.m., or as soon  
3 thereafter as counsel may be heard in Courtroom 5A of the above-entitled Court, located  
4 at 350 West First Street, Courtroom 5A, Los Angeles, California 90012, Defendants  
5 SPORTSTARS, INC. and RONALD BENSON SLAVIN II (“Defendants”) will move  
6 this Court pursuant to Local Rule 7 for an order that Disqualifies Peter R. Ginsberg and  
7 his firm, Michelman & Robinson, LLP, from serving as counsel for Plaintiff JAKE  
8 RASHAAN REED (“Plaintiff”).

9 This Motion is based on this Notice of Motion, the accompanying Memorandum of  
10 Points and Authorities, the Declaration of Kristina M. Fernandez Mabrie, the Declaration  
11 of Andrew L. Lee, the Declaration of Alan Herman, the Proposed Order, all papers and  
12 pleadings on file in this action, and any other evidence and argument as may be presented  
13 at or before any hearing on this Motion.

14 This motion is made following the conference of counsel pursuant to L.R. 7-3  
15 which took place on October 30, 2020 and continued on November 2, 2020.

16 DATED: November 9, 2020

17 **FOLEY & LARDNER LLP**  
18 Andrew L. Lee  
19 Gregory A. Marino  
20 Kristina M. Fernandez Mabrie

21 /s/ Kristina M. Fernandez Mabrie  
22 Kristina M. Fernandez Mabrie  
23 Attorneys for Defendants SPORTSTARS,  
24 INC. and RONALD BENSON SLAVIN II

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendants SPORTSTARS, INC. (“Sportstars”) and RONALD BENSON SLAVIN II (“Slavin”) bring this motion seeking an order disqualifying Sportstars’ previous counsel Peter R. Ginsberg (“Attorney Ginsberg”) and his law firm, Michelman & Robinson, LLP, from representing Plaintiff JAKE RASHAAN REED (“Plaintiff” or “Reed”) in this action and any related action because Attorney Ginsberg’s prior representation of Sportstars was substantially related to several issues in this action. Cognizant of the importance of a plaintiff’s access to counsel of his choosing, Sportstars does not lightly move for this relief, but the Rules of Professional Conduct governing Confidentiality of Information and Duties to Former Clients make this motion necessary.

Plaintiff Reed’s claims in this action assert that Sportstars, an athlete management firm, and its agent, Defendant RONALD BENSON SLAVIN II (“Slavin”), should pay him “at least one million dollars, and perhaps significantly more,” because other athletes were drafted in the National Football League (“NFL”) Draft, while he had to wait to be signed as a free agent by the Jacksonville Jaguars after the Draft. Ignoring all established norms and reasonable expectations, and the nature of the NFL Draft as the world’s most-competitive job interview (NFL teams “draft” candidates from thousands of college football players for only 224 job openings), Reed’s complaint asserts that Mr. Slavin essentially guaranteed he would be selected in the early rounds of the NFL Draft and paid millions of dollars. According to the complaint, Mr. Slavin should have overruled the opinions of the medical staffs of thirty-two NFL teams that a knee injury in Reed’s past was a risk making him less qualified as a draft pick than other available athletes. The complaint includes Sportstars as a Defendant solely on the theory that it is “vicariously liable” for Mr. Slavin’s alleged misconduct.<sup>1</sup>

Attorney Ginsberg represented Sportstars for more than twenty-five years on a

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<sup>1</sup> For the record, Defendants deny and will respond in due course to Plaintiff’s allegations of misconduct.

1 variety of matters until recently, when he surprisingly appeared on behalf of Plaintiff in  
2 an arbitration commenced by Mr. Slavin, seeking to recover expenses owed by Reed.  
3 Attorney Ginsberg then filed this lawsuit against Sportstars and Mr. Slavin, despite  
4 having acquired deep knowledge of Sportstars’ inner workings over those years. A  
5 substantial relationship exists between several issues in these proceedings and matters  
6 that Attorney Ginsberg worked on, and obtained confidential information about, during  
7 his previous representation of Sportstars, requiring disqualification of Attorney Ginsberg  
8 and his firm under the Rules of Professional Conduct.

9 This memorandum discusses those matters in some detail below; however, the  
10 merit of this motion is most apparent by reference to a specific legal question and answer,  
11 between Sportstars and Attorney Ginsberg, during the negotiation of the agreement that  
12 started Mr. Slavin’s tenure as a sports agent with Sportstars:

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 Attorney Ginsberg’s legal advice in response was, “[REDACTED]  
18 (Declaration of Brian Mackler (“Mackler Decl.”) ¶ 21, Ex. O.) Now, the [REDACTED]  
19 [REDACTED] has arisen precisely because of Attorney  
20 Ginsberg’s claims on behalf of his new client. The Complaint specifically cites, refers to,  
21 and relies on that same agreement, and the relationship it established between Sportstars  
22 and Mr. Slavin, in an effort to hold Sportstars “vicariously liable” for Slavin’s alleged  
23 conduct. (Compl., at ¶¶ 25, 63-65, 78-80, 87-89, and 97-98.)

24 The substantial relationship between Attorney Ginsberg’s representation of his  
25 current client and his prior representation of Sportstars<sup>2</sup> requires his disqualification and,  
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27 <sup>2</sup> In ‘meet and confer’ discussions pursuant to Local Rule 7.3, Attorney Ginsberg denied  
28 that he had previously represented Sportstars. (Declaration of Andrew L. Lee ¶ \_\_.)  
Accordingly, this memorandum discusses the existence of that attorney-client  
relationship generally, in addition to discussion of the particular areas of representation  
that are substantially related to Attorney Ginsberg’s current representation of Plaintiff



1 by imputation, his firm’s disqualification. The evidence of this substantial relationship  
2 consists of (a) Attorney Ginsberg’s work on Mr. Slavin’s agreement with Sportstars, (b)  
3 his representation of Sportstars in connection with several prior arbitrations in a manner  
4 directly contrary to the position he now advances in this action and in the arbitration  
5 underlying this action, *to wit*, that matters relating to Sportstars cannot be brought before  
6 the arbitrator under applicable rules,<sup>3</sup> and (c) his work for Sportstars on the early form of  
7 the agreement between Plaintiff and the Defendants at the heart of this action and the  
8 underlying arbitration.

9 Attorney Ginsberg has breached, and continues to breach, his ethical obligations of  
10 loyalty and confidentiality to his former client, Sportstars. In keeping with the applicable  
11 authorities discussed below, the necessity of disqualification is borne out merely by the  
12 possibility, or even the appearance of the possibility, that Attorney Ginsberg may have  
13 received confidential information in his prior representation of Sportstars that would be  
14 relevant to this matter. Here, however, that possibility is a certainty, established by the  
15 declarations and exhibits accompanying this motion, and by Attorney Ginsberg’s own  
16 pleadings. Accordingly, Defendants respectfully request that the Court immediately  
17 disqualify Attorney Ginsberg and, by imputation, Michelman & Robinson, LLP, from  
18 representing, assisting, or providing information or advice to Plaintiff, or Plaintiff’s  
19 attorneys, in connection with this action or any other action related to Plaintiff’s  
20 allegations in the Complaint.

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27 Reed.

28 <sup>3</sup> Defendants reserve the right to move this Court to compel arbitration of the claims in  
this action and to otherwise seek dismissal of the complaint on a number of grounds;  
however, Defendants deemed it appropriate to raise the threshold issue of disqualification  
prior to engaging with Attorney Ginsberg or his firm in substantive motion practice.

DEFENDANT’S MOTION TO DISQUALIFY PLAINTIFF’S COUNSEL

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**II. FACTUAL BACKGROUND**

Sportstars is a full-service athlete management firm, which has been representing National Football League players for more than thirty-five years. (Declaration of Alan Herman (“Herman Decl.”), ¶ 2.) Headquartered in New York City, Sportstars is organized as a joint venture of separate agents who function cooperatively under their own agreements with Sportstars<sup>4</sup> (the “Agency Agreements”). (*Id.*, ¶ 3.) The Agent Agreements are [REDACTED] under the Sportstars brand to represent professional football players. (*Id.*) The agents serve as official “Certified Contract Advisors” pursuant to the rules and regulations of the players union, known as the National Football League Players Association (“NFLPA”). (*Id.*, ¶ 4.) Sportstars assists the agents by [REDACTED] (*Id.*)

Attorney Ginsberg represented Sportstars and its athlete-clients since 1993, until suddenly ‘changing sides’ by appearing against Sportstars in a recent arbitration and then filing this lawsuit against Sportstars. (*Id.*, ¶ 5.) In doing so, Attorney Ginsberg violated the Rules of Professional Conduct, including Rule 1.6 (Confidential Information) and Rule 1.9 (Duties to Former Clients), as explained in more detail below.

**A. SPORTSTARS’ ATTORNEY-CLIENT RELATIONSHIP WITH ATTORNEY GINSBERG**

More than twenty-five years ago, Sportstars hired Peter R. Ginsberg as its attorney. (Herman Decl., ¶ 6.) Since then, Attorney Ginsberg’s representation of Sportstars has

<sup>4</sup> The National Football League Players Association certifies individuals, not business entities, to represent players in negotiations with NFL teams. (Herman Decl. ¶ 4.)

1 been extensive and continuous. (*Id.*, *passim* Declaration of Brian Mackler (“Mackler  
2 Decl.”), *passim*.) Throughout the course of this attorney-client relationship, Attorney  
3 Ginsberg became deeply ingrained in the Sportstars business, to the point where he  
4 consistently was the first call for issues or matters involving, or potentially involving, any  
5 legal issues. (*Id.*, ¶ 8.)

6 1. ***Attorney Ginsberg’s Regular Representation of Sportstars on a Variety of***  
7 ***Matters***

8 Over the last 25-plus years, Attorney Ginsberg has represented Sportstars on a  
9 variety of matters relating to many, if not most, aspects of Sportstars’ business. In  
10 addition to the matters discussed further below, which directly relate to his current  
11 representation of Plaintiff, Alan Herman’s Declaration details a variety of other instances  
12 of Attorney Ginsberg’s representation of Sportstars, including:

- 13 • In 2009, a “family advisor” of a Sportstars athlete/client attempted to extort  
14 a fee from Sportstars, several Sportstars agents, and the athlete himself.  
15 Attorney Ginsberg advised Sportstars and the agents in that matter,  
16 including in communications with the attorney for the “family advisor.”  
17 (Herman Decl. ¶ 8.a.)
- 18 • In August 2010, Attorney Ginsberg hired, as an associate and on Sportstars’  
19 recommendation, a young lawyer named Christopher Deubert who had  
20 worked for Sportstars as an intern while in law school, and who continued  
21 to provide legal services to Sportstars during his nearly four years as an  
22 associate at Attorney Ginsberg’s then-current firm. (*Id.* ¶ 8.b; *see also*  
23 Herman Decl. ¶ 12, Ex. K, p. 68 (identifying Christopher Deubert as an  
24 attorney appearing on behalf of Sportstars for the Peter R. Ginsberg Law  
25 Firm, LLC).)<sup>5</sup>

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27 <sup>5</sup> *See also* Chris Deubert, Economic Realities & Issues Amateur Athletes Encounter  
28 (2012) 8 DePaul J. Sports L. & Contemp. Probs. 155, 159 n.1 (stating “Chris Deubert is  
an associate attorney at Peter R. Ginsberg Law, LLC. Mr. Deubert practices in the areas  
of sports law and commercial litigation. Mr. Deubert has worked for and is affiliated with  
various sports-affiliated entities including: the Sports Lawyers Association, the UMass

- 1 • In September 2012, Attorney Ginsberg represented Sportstars and an athlete  
2 client in connection with a financial dispute with a jeweler. Among other  
3 work on the matter, Ginsberg wrote to counsel for the jeweler, stating, “I  
4 have been asked by [REDACTED] and Sportstars, Inc. to respond to your  
5 August 17, 2012 correspondence.” The letter goes on to dispute the alleged  
6 facts and request documents in support of the jeweler’s position, before  
7 concluding, as Sportstars’ attorney, “Please direct all communications  
8 regarding this matter to me.” (*Id.* ¶ 8.c., Ex. B.)
- 9 • In May 2017, Attorney Ginsberg represented Sportstars in connection with  
10 negotiations with an outside marketing agency about a potential transaction,  
11 including emails and documents written and revised by Attorney Ginsberg,  
12 which make it clear that Sportstars was the party he was representing in that  
13 transaction. (*Id.* ¶ 8.d., Ex C.)
- 14 • Attorney Ginsberg invoiced Sportstars for various legal work performed for  
15 the firm. (*Id.* ¶¶ 8.e, 8.f, and 8.g., Exs. D, E, F.)
- 16 • In July 2017, Attorney Ginsberg worked on an arrangement for Sportstars to  
17 engage a marketing company. (*Id.* ¶ 8.f., Ex. E.)
- 18 • Also in July 2017, Attorney Ginsberg represented Sportstars in connection  
19 with a dispute with a charter boat company in Florida including, among  
20 other things, drafting a settlement letter stating “I am counsel to Sportstars,  
21 Inc. (“Sportstars’”)” and describing the dispute and Sportstars’ damages. (*Id.*  
22 ¶ 8.g., Ex. F.)
- 23 • In May 2020, only a few months ago, Attorney Ginsberg provided legal  
24 services to Sportstars in connection with a personnel matter involving  
25 misconduct by a Sportstars intern, advising Sportstars to communicate that  
26 the intern was “hereby terminated as a Sportstars marketing intern  
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28 Sport Management Department, and Sportstars Inc.”).

1 effectively [sic] immediately,” to respond to the party who advised  
2 Sportstars about the inappropriate behavior leading to the termination, and  
3 to advise the intern’s university that “Sportstars has terminated” the intern.  
4 (*Id.* ¶ 8.h., Ex. G.)

- 5 • Sportstars’ principal, Mr. Herman, used Attorney Ginsberg as counsel in a  
6 recent personal litigation. Sportstars also [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED] (*Id.* ¶ 9 and Ex. H.)

- 10 • Sportstars referred its athlete-clients to Attorney Ginsberg for assistance  
11 with a variety of legal matters, [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED] (*Id.* ¶ 9.)

15 In the meet and confer discussions required by Local Rule 7.3, Attorney Ginsberg  
16 asserted to Sportstars’ counsel that he did not have a prior attorney-client relationship  
17 with Sportstars, but that simply is not true. Contrary to that assertion, however, the  
18 exhibits attached to the Herman Declaration include Attorney Ginsberg’s privileged  
19 communications and advice to Sportstars in connection with each of the foregoing  
20 matters. (*Id.* Exs. B through H.) Even without addressing the issues described below that  
21 are directly related to Attorney Ginsberg’s representation of Plaintiff Reed, the foregoing  
22 examples illustrate an extensive attorney-client relationship with Sportstars.

23 2. **The Slavin Agreement**

24 Attorney Ginsberg also handled other types of matters for Sportstars over the  
25 years, including many if not most of the Agent Agreements between Sportstars and its  
26 agents. (Herman Decl. ¶¶ 14-17; Mackler Decl., *passim*.) Relevant specifically to this  
27 action, Attorney Ginsberg represented Sportstars in connection with Mr. Slavin’s Agent  
28 Agreement (the “Slavin Agreement”), which the Complaint refers to as “Slavin’s

1 employment contract.” (*Id.*; Comp., ¶ 25.)

2 The Mackler Declaration details weeks of privileged communications and legal  
3 advice between Sportstars and Attorney Ginsberg about the Slavin Agreement. (Mackler  
4 Decl. ¶¶ 7-24.) Attorney Ginsberg drafted, reviewed and revised multiple versions of the  
5 Slavin Agreement, which include his “tracked changes,” and his comments in the  
6 margins of the documents. (*Id.* Exhibits C, D, F, G, J, K, & N.) The email  
7 communications consist of questions and answers to and from Attorney Ginsberg about  
8 how to handle the Slavin Agreement. (*See id.* ¶ 7, Ex. A (“

9 [REDACTED]

10 [REDACTED]); ¶ 14, Ex. H ([REDACTED]);

11 ¶ 15, Ex. I ([REDACTED]

12 [REDACTED]

13 [REDACTED]); ¶ 16, Ex. J ([REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]); ¶ 21, Ex O ([REDACTED]

17 [REDACTED]

18 [REDACTED]) Attorney Ginsberg advised Sportstars about how to draft provisions of  
19 the agreement and how to respond to and deal with revisions proposed by Mr. Slavin and  
20 his attorney. (Herman Decl., ¶ 13, Exs. L, M; Mackler Decl., *passim.*)

21 By its terms, the Slavin Agreement is a private and confidential document not  
22 generally accessible to the public or anyone other than Sportstars and Slavin, and was  
23 clearly within the scope of attorney-client privileged and confidential information.  
24 Indeed, below is a screen shot from a draft of the Slavin Agreement, in a provision edited  
25 by Attorney Ginsberg, unequivocally stating that the agreement and its terms are  
26 confidential:

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[REDACTED]

(Mackler Decl., Exhibit N, p. 91 (*highlighting added*.) Given Attorney Ginsberg’s work on this Agency Agreement, which expressly states that [REDACTED]

[REDACTED]

[REDACTED] Attorney Ginsberg was aware that the agreement itself was confidential.

Attorney Ginsberg also recently worked on the Agent Agreement for Sportstars agent Jared Fox. (Herman Decl. ¶ 16.) Attorney Ginsberg personally handled the negotiation of this Agent Agreement for Sportstars. (*Id.*) Fox’s Agent Agreement further illustrates the confidential nature, and Attorney Ginsberg’s awareness of that confidential nature, of Sportstars’ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] among other things. (Herman Decl. ¶ 16, Ex. N.)

3. **Attorney Ginsberg’s Handling of Sportstars’ Section 5 Grievances**

In addition to providing general legal advice as needed, Attorney Ginsberg regularly handled “Section 5 Grievances” for Sportstars and several of its agents. (*Id.* ¶ 10.) Section 5 of the NFLPA Regulations Governing Certified Contract Advisors (the “NFLPA Regulations”) sets forth the exclusive procedures for resolution of disputes between certified player agents and players, as well as for disputes between two different agents.<sup>6</sup> It includes a mandatory and binding arbitration provision, which applies to a

<sup>6</sup> A true and correct copy of the NFLPA Regulations may be found here: <https://nflpaweb.blob.core.windows.net/media/Default/PDFs/Agents/RegulationsAmendedAugust2016.pdf>

1 broad range of claims and issues, including claims by agents seeking to recover  
2 compensation or expenses from players and claims broadly relating to “[a]ny other  
3 activities of a Contract Advisor within the scope of these Regulations.” NFLPA  
4 Regulations, pg. 13-15 (Ex. A). The Section 5 Grievances that Attorney Ginsberg  
5 handled for Sportstars over the years included several where he represented Sportstars  
6 and individual Sportstars agents in seeking to collect funds owed from the players  
7 pursuant to the “SRA Addendum” (which, as discussed below, Attorney Ginsberg had  
8 originally drafted for Sportstars). (Herman Decl., ¶ 9.)

9 As long ago as 2002, Attorney Ginsberg represented Sportstars in connection with  
10 a Section 5 Grievance against another agent, [REDACTED] (*Id.* ¶ 11.) More recently,  
11 in September 2014, Attorney Ginsberg represented Sportstars and Sportstars agent David  
12 Butz in another Section 5 Grievance, this time against a former athlete-client. (*Id.* ¶ 12.)  
13 The Grievance, submitted on “Peter J. Ginsberg Law LLC” letterhead states, “[w]e  
14 represent David Butz II and Sportstars, Inc., in the above-referenced Grievance[,]” and  
15 identifies the Grievants as “David Butz II and Sportstars, Inc.” (*Id.* Ex. K p. 62) The  
16 pleading attached to Attorney Ginsberg’s cover letter includes a caption identifying  
17 “SPORTSTARS, INC.” as a “Grievant” and text stating that “Grievants David Butz II  
18 and Sportstars, Inc. (‘Sportstars’), by their attorneys, Peter R. Ginsberg Law, LLC, for  
19 their Grievance against [Respondent] state as follows[.]” (*Id.* at p. 64.) The signature  
20 block on the last page of the Grievance similarly identifies Attorney Ginsberg, his  
21 associate Christopher R. Deubert, and his law firm as “*Attorneys for Grievants David*  
22 *Butz II and Sportstars, Inc.*” (*Id.* p. 68.)

23 Attorney Ginsberg represented Sportstars in connection with another Section 5  
24 Grievance more recently, this one against a former athlete-client and seeking to recover  
25 moneys owed for expenses under the SRA Addendum (Herman Decl. ¶ 13), just like the  
26 claim against Plaintiff Reed in the arbitration underlying this action (*Id.* ¶ 21, Ex. P).  
27 Butz’s initial email sent Attorney Ginsberg a draft grievance he intended to file against a  
28 former client, describing in detail the basis and theory of the claims, asking questions of



1 Attorney Ginsberg, and specifically requesting his advice. (*Id.* ¶ 13, Ex. L.)

2 Attorney Ginsberg responded with a redlined version of the grievance that included  
3 his comments and revisions. (*Id.*) The attached filename including the phrase  
4 “.prgredlined” to indicate that it was the version with Attorney Ginsberg’s revisions  
5 shown. (*Id.*) The draft grievance itself, including in Attorney Ginsberg’s own revisions,  
6 makes clear that it is a grievance prepared on behalf of Sportstars: the caption includes  
7 “Sportstars, Inc.” as a Grievant, the introductory paragraphs identify Sportstars, Inc. as a  
8 Grievant and a party, and state that the grievance is submitted “by their attorneys, Peter  
9 R. Ginsberg Law, LLC.” (*Id.* Ex. L pp. 70-72.) Throughout the grievance, allegations  
10 are asserted by “Sportstars,” and there are revisions, comments and questions from  
11 Attorney Ginsberg. (*Id.* Ex. L, *passim.*) The signature line says that the grievance is  
12 submitted by Peter R. Ginsberg, as “Attorney for Grievants David Butz II and  
13 Sportstars.” Emails between Attorney Ginsberg and Butz about scheduling the  
14 arbitration hearing and potential settlement further confirm his representation of  
15 Sportstars in connection with the matter. (*Id.* ¶ 13 Ex. M.)

16 **4. The SRA Addendum**

17 Another matter Attorney Ginsberg handled for Sportstars was the drafting of an  
18 early version of the “Addendum to Standard Representation Agreement” (the “SRA  
19 Addendum”), which is attached and incorporated into every agent representation  
20 agreement that Sportstars agents execute with new clients as a “Standard Representation  
21 Agreement,” or “SRA”). (Herman Decl., ¶ 7, Ex. A.)<sup>7</sup> The SRA Addendum includes

22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]

27 \_\_\_\_\_  
28 <sup>7</sup> Early versions of the SRA Addendum, including the Attorney Ginsberg’s early version (Herman Decl. Ex. A) were entitled “Health Warranty and Waiver of Liability.” (Herman Decl. ¶ 7.)

1 (*Id.*) Plaintiff’s Complaint expressly refers to and relies upon the SRA between Reed and  
 2 Mr. Slavin (which includes a version of the SRA Addendum applicable to Reed), as well  
 3 as Defendants’ demand for Reed to repay \$26,426.51 pursuant to the Addendum.<sup>8</sup>  
 4 (Compl., ¶¶ 24, 26.) That demand for repayment is the same claim at issue in the NFLPA  
 5 arbitration that gave rise to this dispute. (*See* Herman Decl. ¶ 21, Ex. P.)

6  
 7 **B. ATTORNEY GINSBERG INITIATES THE INSTANT LITIGATION**  
 8 **AGAINST SPORTSTARS**

9 On January 1, 2020, Sportstars and its agent Mr. Slavin agreed to represent  
 10 Plaintiff, a college football player who was graduating from the University of Georgia  
 11 and seeking to enter the NFL Draft for the 2020 NFL Season. (Comp., ¶ 26; Herman  
 12 Decl., ¶ 18.) The Agreement consisted of an SRA, which attached and incorporated by  
 13 reference a form of the Addendum that Attorney Ginsberg had originally drafted for  
 14 Sportstars. (Comp., ¶ 26; Herman Decl., ¶ 18, Ex. O.) On May 27, 2020, Reed  
 15 terminated the SRA and, pursuant to the terms of the SRA Addendum, Sportstars and  
 16 Slavin sought to recover from Reed the expenses that Sportstars had paid on his behalf  
 17 for training and other pre-Draft matters. (Comp., ¶ 24; Herman Decl., ¶ 19.)

18 In or around late June 2020, Attorney Ginsberg suddenly decided, without  
 19 explanation, to change sides and become adverse to Sportstars. (Herman Decl. ¶ 20, 22.)  
 20 Attorney Ginsberg called Mr. Herman, advising that he was considering representing  
 21 Plaintiff to assert claims for malpractice against Mr. Slavin and Sportstars. (Herman  
 22 Decl., ¶ 20.) Mr. Herman expressed shock and surprise, and informed Attorney Ginsberg  
 23 that his plan, which was without any merit, involved him in a serious legal conflict of  
 24 interest, due to his prior and extensive representation of Sportstars. (*Id.*) Attorney  
 25 Ginsberg insisted, without explanation, that there was no conflict. (*Id.*)

26 On September 9, 2020, Mr. Slavin commenced a Section 5 Grievance against  
 27

28 <sup>8</sup> Documents referenced in a complaint may be considered by the court if the documents’  
 “authenticity ... is not contested” and “the plaintiff’s complaint necessarily relies” on  
 them. *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998).

1 Plaintiff, to [REDACTED]

2 [REDACTED] (*Id.* ¶ 21, Ex. P.) On October 7, 2020, Attorney Ginsberg  
3 appeared in the Section 5 Grievance proceeding on behalf of Plaintiff (and, therefore,  
4 against his former client, Sportstars), by submitting “Respondent’s Motion to Dismiss  
5 and Answer.” (Herman Decl. ¶ 22, Ex. Q.) The “Motion to Dismiss” expressly relies on  
6 Attorney Ginsberg’s knowledge of Sportstars’ confidential information the Slavin  
7 Agreement for the benefit of his new client (Plaintiff) and in order to disadvantage his  
8 former client (Sportstars), whose attorney-client privilege protected that very same  
9 information from such use or disclosure:

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 (Herman Decl. Ex. Q, p.116.) Attorney Ginsberg had this confidential information only  
16 because of, and pursuant to, his attorney-client relationship with Sportstars. The theory  
17 of Attorney Ginsberg’s “Motion to Dismiss” is that [REDACTED]

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]. (*Id.*, pp. 118-120.)

21 On Monday, October 12, 2020, Attorney Ginsberg contacted Sportstars’ principal,  
22 Alan Herman, by text message, inquiring “[h]ave Slavin and Sportstars notified the  
23 insurance carrier about JR Reed’s claims?” (Herman Decl., ¶ 23, Ex. R.) During an  
24 ensuing telephone discussion, Mr. Herman once again advised Attorney Ginsberg that a  
25 conflict of interest precluded Attorney Ginsberg from representing Plaintiff against  
26 Sportstars. (*Id.* ¶ 23.) Attorney Ginsberg said that there was no conflict, that he intended  
27 to file a lawsuit the next day against Sportstars and Slavin, and that Herman should have  
28 their attorney call Attorney Ginsberg to discuss paying a settlement to resolve this lawsuit

1 and avoid it becoming public. (*Id.*) After reiterating his belief that Attorney Ginsberg  
2 was violating his ethical obligations, Mr. Herman asked why Attorney Ginsberg was  
3 planning to sue Sportstars and not just Mr. Slavin. (*Id.* ¶ 24.) Attorney Ginsberg advised  
4 that his intent was to file these claims in court rather than arbitration and that he would  
5 agree to sue Slavin without including Sportstars only if Slavin, in return, would agree to  
6 keep the case in court rather than try to move it to arbitration. (*Id.*)

7 That evening, counsel for Sportstars and Mr. Slavin telephoned Attorney Ginsberg.  
8 (Lee Decl., at ¶ 3.) Counsel began by advising Attorney Ginsberg that Sportstars and Mr.  
9 Slavin strongly believed he was operating under a conflict of interest and violating his  
10 ethical responsibilities. (*Id.*) Counsel explained that Attorney Ginsberg’s deep  
11 involvement with Sportstars over a period of many years, including in matters related and  
12 similar to the instant matter, made it apparent that he could not represent Plaintiff Reed in  
13 his dispute with Sportstars without using relevant confidential and privileged information  
14 obtained through his prior representation of Sportstars. (*Id.*) Attorney Ginsberg denied  
15 this logic and instead reiterated his proposal that he would refrain from suing Sportstars if  
16 Mr. Slavin would agree keep the case in court and not seek to move it to arbitration,  
17 which Mr. Lee declined. (*Id.* ¶ 5.) The next day, Attorney Ginsberg and Michelman &  
18 Robinson, LLP filed the instant lawsuit against Mr. Slavin and Sportstars, seeking more  
19 than \$1 million in damages. (*Id.*) (See Compl., generally.)

### 21 **III. ARGUMENT**

#### 22 **A. LEGAL STANDARD FOR DISQUALIFICATION**

23 Federal courts in California apply California state law in determining matters of  
24 disqualification. *In re Cty. of Los Angeles*, 223 F.3d 990, 995 (9th Cir. 2000) (“[W]e  
25 apply state law in determining matters of disqualification.”); *Advanced Messaging*  
26 *Techs., Inc. v. EasyLink Servs. Int’l Corp.*, 913 F. Supp. 2d 900, 906 (C.D. Cal. 2012)  
27 (“The Ninth Circuit . . . has made clear that a federal court in California must apply  
28 California law in a disqualification motion.”). The Central District explicitly applies the

1 State Bar Act, the Rules of Professional Conduct of the State Bar, and applicable judicial  
2 decisions on the standards of professional conduct in the Central District. C.D. Cal. L.R.  
3 83-3.1.2.

4 A trial court’s authority to disqualify an attorney derives from the power inherent  
5 in every court, “[t]o control in furtherance of justice, the conduct of its ministerial  
6 officers, and of all other persons in any manner connected with a judicial proceeding  
7 before it, in every matter pertaining thereto.” Cal. Civ. Proc. Code § 128(a)(5); *see*  
8 *Ontiveros v. Constable*, 245 Cal. App. 4th 686, 694 (2016) (quoting *People ex rel. Dep’t*  
9 *of Corps. v. Speedee Oil Change Sys., Inc.*, 20 Cal. 4th 1135, 1145 (1999)). “Ultimately,  
10 disqualification motions involve a conflict between the clients’ right to counsel of their  
11 choice and the need to maintain ethical standards of professional responsibility.” *People*  
12 *ex rel. Dept. of Corporations*, 20 Cal. 4th at 1145. “The paramount concern must be to  
13 preserve public trust in the scrupulous administration of justice and the integrity of the  
14 bar.” *Id.*

15 **B. GINSBERG OWES A DUTY OF LOYALTY AND**  
16 **CONFIDENTIALITY TO SPORTSTARS**

17 Attorneys owe duties of loyalty and confidentiality to former clients. “When a  
18 party seeking legal advice consults an attorney at law and secures that advice, the relation  
19 of attorney and client is established *prima facie*.” *Shen v. Miller*, 212 Cal. App. 4th 48,  
20 57 (2012) (citation omitted). As discussed above, the Herman Declaration, the Mackler  
21 Declaration, and their various exhibits, establish that there was a prior attorney-client  
22 relationship between Attorney Ginsberg and Sportstars. Attorney Ginsberg’s own words  
23 establish that relationship without question, in his letters, his emails, his invoices, and his  
24 drafting, revision and negotiation of various agreements for Sportstars.

25 Attorney Ginsberg’s conduct in representing Plaintiff against Sportstars violates  
26 several Rules of Professional Conduct applicable to him as a both a member of the bar of  
27 the State of New York and as an attorney admitted *pro hac vice* before the Central  
28 District of California, including Rule 1.6 (Confidentiality of Information) and Rule 1.9

1 (Duties to Former Clients). Given Attorney Ginsberg’s *pro hac vice* admission before  
2 this Court, he is bound by the California Rules of Professional Conduct. For purposes of  
3 this motion, therefore, the California Rules of Professional Conduct apply.

4 **1. Attorney Ginsberg Is Violating His Duty of Loyalty to Former**  
5 **Client Sportstars.**

6 As the former attorney for Sportstars, Attorney Ginsberg and his law firm  
7 Michelman & Robinson, LLP, are subject to mandatory disqualification. California law  
8 forbids attorneys and law firms from representing a client adverse to a former client  
9 without a waiver. Cal. R. Prof. Conduct 1.9. Specifically, Rule 1.9(c) addresses what  
10 duties an attorney has regarding former clients. Rule 1.9 of the Rules of Professional  
11 Conduct provides:

12 (a) A lawyer who has formerly represented a client in a matter  
13 shall not thereafter represent another person\* in the same or a  
14 substantially related matter in which that person’s\* interests are  
15 materially adverse to the interests of the former client unless the  
16 former client gives informed written consent.\*

17 \*\*\*\*\*

18 Rules of Professional Conduct, Rule 1.9, Duties to Former Clients (effective on  
19 November 1, 2018).

20 Comment 1 to Rule 1.9 further provides:

21 [a]fter termination of a lawyer-client relationship, the lawyer  
22 [still] owes two duties to a former client. The lawyer may not (i)  
23 do anything that will injuriously affect the former client in any  
24 matter in which the lawyer represented the client, or (ii) at any  
25 time use against the former client knowledge or information  
26 acquired by virtue of the previous relationship.

27 Rules of Professional Conduct, Rule 1.9, Comment 1 (citing *Oasis W. Realty, LLC v.*  
28 *Goldman*, 51 Cal. 4th 811 (2011)); *see also Wutchumna Water Co. v. Bailey*, 216 Cal.  
564 (1932).

Two matters are the same or substantially related if they involve a “substantial risk  
of a violation of one of the two duties to a former client described above in Comment  
[1].” Rules of Professional Conduct, Rule 1.9, Comment 3. In such a situation, “[t]he

1 court will assume that during the course of the former representation confidences were  
2 disclosed to the attorney bearing on the subject matter of the representation. It will not  
3 inquire into their nature and extent.” *City Nat’l Bank v. Adams*, 96 Cal. App. 4th 315,  
4 324-25 (2002). To identify a substantial relationship, the Court only needs to find that  
5 the factual contexts of the representations are similar or related.<sup>9</sup> *See Trone*, 621 F.2d at  
6 998 (finding “[s]ubstantiality is present if the factual contexts of the two representations  
7 are similar or related.”); *see also Truck Ins. Exch. v. Fireman’s Fund Ins. Co.*, 6 Cal.  
8 App. 4th 1050, 1056 (1992).

9 Courts employ a presumption of a substantial relationship “if there is a reasonable  
10 probability that confidences were disclosed which could be used against the client in  
11 later, adverse representation.” *Trone*, 621 F.2d at 998. As set forth in *Trone*:

[T]he underlying concern is the possibility, or appearance of the  
possibility, that the attorney may have received confidential  
information during the prior representation that would be  
relevant to the subsequent matter in which disqualification is  
sought. The test does not require the former client to show that  
actual confidences were disclosed. That inquiry would be  
improper as requiring the very disclosure the rule is intended to  
protect. The inquiry is for this reason restricted to the scope of  
the representation engaged in by the attorney. It is the possibility  
of the breach of confidence, not the fact of the breach, that  
triggers disqualification.

20 *Id.* at 999. Successive representations are “substantially related” when the evidence  
21 before the trial court supports a rational conclusion that the information material to the  
22 evaluation, prosecution, settlement, or accomplishment of the former representation,  
23 given its factual and legal issues, is also material to the evaluation, prosecution,  
24 settlement, or accomplishment of the current representation, given its factual and legal  
25

26 <sup>9</sup> The substantial relationship test, which is based on fiduciary duties, is even satisfied by  
27 a one-time special appearance on behalf of a company. *See Blue Water Sunset, LLC v.*  
28 *Markowitz*, 192 Cal. App. 4th 477, 488 (2011), *reh’g denied* (Feb. 25, 2011) (stating  
“[w]e would reach the same conclusion even if he only made an appearance” to indicate  
an attorney owed a duty of utmost loyalty even if he had only specially appeared once at  
a demurer hearing).

1 issues. *Jessen v. Hartford Cas. Ins. Co.*, 111 Cal. App. 4th 698, 713 (2003).

2 “When a conflict of interest requires an attorney’s disqualification from a matter,  
3 the disqualification normally extends vicariously to the attorney’s entire law firm.” *State*  
4 *Compensation Insurance Fund v. Drobot*, 192 F.Supp.3d 1080, 1115 (C.D. Cal. 2016)  
5 quoting (*People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.*, 20  
6 Cal.4th 1135, 1139 (1999).) As to law firms, disqualification is required even if the  
7 specific attorneys who provided the substantially related legal advice to the former client  
8 have left the firm. *Elan Transdermal Ltd. v. Cygnus Therapeutic Sys.*, 809 F. Supp.  
9 1383, 1385, 1389–91 (N.D. Cal. 1992). Further, “[w]hen the duty of loyalty applies,  
10 courts have found the conflict to require ‘per se, or automatic disqualification, in all but a  
11 few instances.’” *Gong v. RFG Oil, Inc.*, 166 Cal. App. 4th 209, 214 (2008) (citation  
12 omitted).

13 Here, the substantial relationship test is satisfied several times over.

14 The Slavin Agreement: Attorney Ginsberg cites and relies on the Slavin  
15 Agreement to advance the proposition for his current client that Sportstars is vicariously  
16 liable for Slavin’s alleged misconduct. Under Texas law, which governs Plaintiff’s SRA  
17 (Herman Decl. ¶ 18, Ex. O p. 96), vicarious liability depends upon the relationship  
18 between the bad actor and the party sought to be held liable vicariously. *Painter v*  
19 *Amerimex Drilling I, Ltd.*, 561 S.W.3d 125, 131 (Tex 2018), *reh’g denied* (Dec. 14,  
20 2018) (vicarious liability of employer for acts of employees); *Fifth Club, Inc. v Ramirez*,  
21 196 S.W.3d 788, 792 (Tex. 2006) (vicarious liability of independent contractors requires  
22 that defendant “controls the details or methods of the independent contractor’s work to  
23 such an extent that the contractor cannot perform the work as it chooses.”) (citation  
24 omitted). The same distinction applies under New York law, which governs the Slavin  
25 Agreement (*see, e.g., Mackler Decl. Ex. N. p. 96*). *See Brothers v. New York State Elec.*  
26 *and Gas Corp.*, 11 N.Y.3d 251, 257–258 (2008) (noting that, subject to limited  
27 exceptions, “a party who retains an independent contractor, as distinguished from a mere  
28 employee or servant, is not liable for the independent contractor’s negligent acts” because



1 “one who employs an independent contractor has no right to control the manner in which  
2 the work is to be done and, thus, the risk of loss is more sensibly placed on the  
3 contractor”).)

4 The relationship between Sportstars and Slavin, including the degree of control or  
5 lack thereof and Slavin’s status as a party to the agreement, are issues about which  
6 Sportstars specifically requested and received legal advice from Attorney Ginsberg in the  
7 context of negotiating the Slavin Agreement. Among other things:

- 8 • Attorney Ginsberg told Sportstars that Slavin was “[REDACTED]  
9 [REDACTED]” and suggested how Sportstars should respond, including with  
10 revisions in the Slavin Agreement. (Mackler Decl. ¶ 16, Ex. J.)
- 11 • Brian Mackler told Attorney Ginsberg, in a privileged communication, that  
12 [REDACTED]  
13 [REDACTED] (*Id.* ¶ 19,  
14 Ex. M.)
- 15 • Attorney Ginsberg responded by advising [REDACTED]  
16 [REDACTED]  
17 [REDACTED] (*Id.*)
- 18 • Most significantly, Sportstars specifically requested Attorney Ginsberg to  
19 provide legal advice about [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED] (*Id.* ¶ 21, Ex. O (emphasis added).)
- 25 Attorney Ginsberg responded with the requested legal advice: [REDACTED]  
26 [REDACTED] (*Id.*)

27 The question, at this time, is not whether Sportstars controls or employs Slavin for  
28 purposes of vicarious liability, but whether that question is substantially related to

1 Attorney Ginsberg’s prior representation of Sportstars. As shown above, Attorney  
2 Ginsberg advised Sportstars on precisely that issue. Attorney Ginsberg’s Complaint in  
3 this action necessarily requires this Court to [REDACTED]

4 [REDACTED]  
5 [REDACTED] (*Id.*) Accordingly, the representations are substantially related  
6 and Attorney Ginsberg and his firm must be disqualified.

7 Arbitration of Sportstars’ Interests: The theory of Attorney Ginsberg’s “Motion to  
8 Dismiss” the arbitration underlying this action is that [REDACTED]

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] (Herman Decl., Ex. Q pp. 118-120.) Combined with his vicarious  
13 liability allegations, which are the only basis the Complaint asserts for Sportstars to be a  
14 defendant in this action, this theory provides Plaintiff with a basis to seek to resist the  
15 motion to compel arbitration that Attorney Ginsberg admitted, to Mr. Herman and  
16 Sportstars’ counsel, is likely to arise in this case. (Herman Decl. ¶ 24; Lee Decl. ¶ 5.)  
17 Attorney Ginsberg, however, has specifically represented Sportstars on this very issue in  
18 the past, in connection with [REDACTED]

19 [REDACTED]  
20 [REDACTED] (Herman Decl. ¶ 12, Ex. K; ¶ 13, Exs. L-M.). Once again, the  
21 representations are substantially related, such that Attorney Ginsberg and his firm must  
22 be disqualified.

23 The SRA Addendum: Attorney Ginsberg drafted the form of the SRA Addendum,  
24 which is the agreement directly at issue in the underlying arbitration and is the basis for  
25 the allegation in the Complaint that Sportstars “presented Plaintiff with an invoice  
26 seeking \$26,426.51 for expenses.” (Compl. ¶ 24.) The SRA Addendum is an attachment  
27 to and a part of the SRA itself, which in turn is the basis for the alleged duties underlying  
28 the causes of action in this case. (Compl. ¶ 26 (“In anticipation of satisfying their

1 contractual obligations pursuant to the SRA, the parties by their actions and conduct  
2 created an implied contract pursuant to which Defendants were obligated to prepare  
3 Plaintiff for and otherwise assist Plaintiff in obtaining the opportunity to enter into a NFL  
4 Team once Plaintiff was drafted.”.) Furthermore, Attorney Ginsberg represented  
5 Sportstars in at least one past matter [REDACTED]  
6 [REDACTED] (Herman Decl. ¶ 13), an issue he is now advocating against on behalf of  
7 his current client (Herman Decl. Ex. Q, p. 120 ([REDACTED]  
8 [REDACTED]) The necessary involvement of the  
9 SRA Addendum in this action, based on the allegations of the Complaint, is yet another  
10 example of the substantial relationship between Attorney Ginsberg’s prior representation  
11 of Sportstars and his current representation of Plaintiff Reed, once again requiring  
12 disqualification of him and his firm in this action.

13 On these facts, it is clear that Attorney Ginsberg’s prior work for Sportstars  
14 substantially relates to his and his firm’s representation of Plaintiff in this case. Under  
15 California law, no remedy short of disqualification is sufficient to redress the conflict.  
16 Attorney Ginsberg and Michelman & Robinson, LLP, therefore, are barred from  
17 prosecuting this lawsuit against Sportstars and mandatory disqualification applies.

18 **2. Attorney Ginsberg Is Breaching His Duty of Confidentiality to**  
19 **Sportstars**

20 The other fiduciary duty created from the attorney-client relationship is the duty of  
21 confidentiality. “A lawyer shall not reveal information protected from disclosure by Cal.  
22 Bus. & Prof. Code § 6068, subdivision (e)(1) unless the client gives informed  
23 consent....” Rules of Professional Conduct, Rule 1.6 (new rules effective 11/1/18). The  
24 referenced code provides that it is a duty of a lawyer to “maintain inviolate the  
25 confidence, and at every peril to himself or herself to preserve the secrets, of his or her  
26 client.” Cal. Bus. & Prof. Code § 6068(e)(1). An attorney’s fiduciary duties of loyalty  
27  
28

1 and confidentiality continue in force even after the underlying representation has ended.  
2 *Oasis West Realty, LLC*, 51 Cal. 4th at 821.

3 Again, the Courts look to see if a substantial relationship exists between the prior  
4 representation and the current representation because if “a substantial relationship exists,  
5 courts will presume that confidences were disclosed during the former representation  
6 which may have value in the current relationship. Thus, actual possession of confidential  
7 information need not be proven when seeking an order of disqualification.” *Truck Ins.*  
8 *Exchange*, 6 Cal. App. 4th at 1056 (citing *Civil Serv. Com. v. Superior Court*, 163 Cal.  
9 App. 3d 70, 79–80 (Cal. Ct. App. 1984)). Attorney Ginsberg’s substantial involvement  
10 with all facets of Sportstars’ operations as outside counsel, including the documents he  
11 assisted in negotiating and drafting, itself triggers the presumption that he had access to  
12 confidential information related to this case. The presumption is not even necessary here,  
13 however, because Attorney Ginsberg has expressly used his former client’s confidential  
14 information in this case, thereby confirming his actual access to that information and its  
15 relevance to his representation of his new client, Plaintiff Reed.

16 Attorney Ginsberg disclosed and used to the disadvantage of Sportstars, and the  
17 advantage of Plaintiff, Sportstars’ confidential information consisting of, at a minimum,  
18 the terms of the Slavin Agreement. The Complaint alleges:

19 Upon information and belief, Slavin’s employment contract with  
20 Sportstars states that all clients are *jointly* represented by Slavin and  
21 Sportstars and, as is common among sports agencies representing  
22 NFL players, that, among the agent’s responsibilities, Slavin would  
23 *promote the sports agency’s business*.

24 (Compl. ¶ 25 (emphasis added).) The Slavin Agreement, which Attorney Ginsberg  
25 drafted, uses basically the same language [REDACTED] which was added  
26 by Attorney Ginsberg:  
27  
28

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]

4 (Mackler Decl. Ex. J, p. 61) and

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 (*Id.* (emphasis added).) The language of the Agreement itself, which Mr. Ginsberg  
10 worked on in his capacity as Sportstars’ attorney, explicitly states that the terms of the  
11 Agreement are confidential. (Mackler Decl. Exs. C p. 24, D pp. 35-36, F pp. 47-48, J p.  
12 63, K p. 75, & N p. 91.) The Agent Agreement of Jared Fox, which Attorney Ginsberg  
13 also worked on for Sportstars, similarly confirms Attorney Ginsberg’s knowledge that  
14 Sportstars [REDACTED]

15 [REDACTED]  
16 [REDACTED] (Herman Decl. ¶ 16, Ex. N.) Attorney Ginsberg’s disclosure of the terms  
17 of the Slavin Agreement in his “Motion to Dismiss” in the pending Section 5 Grievance,  
18 and in the Complaint, therefore, is a direct violation of Rule 1.6.

19 Further, the Complaint misrepresents t [REDACTED]

20 [REDACTED] even though Attorney Ginsberg knows [REDACTED]  
21 [REDACTED] (*Id.* Exs. C p. 21 ([REDACTED])

22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]), D p. 33 (same), F p. 45 (same), J p. 61 (same), K p. 72, & N p.

26 88.) Given that applicable law is less stringent for an employment relationship than it is  
27 for an independent contractor relationship, it would be in Plaintiff Reed’s interests for  
28 Attorney Ginsberg to seek to establish that Slavin is an employee, rather than an

1 independent contractor, of Sportstars. Attorney Ginsberg’s confidential knowledge, from  
2 years of representing Sportstars, of [REDACTED]  
3 [REDACTED] would be highly  
4 relevant to this question, making it highly likely that confidential information of  
5 Sportstars, in addition to the literal terms of the Slavin Agreement is also being, or at risk  
6 of being, improperly used by Attorney Ginsberg, which also requires his disqualification.

7 **C. SPORTSTARS DID NOT PROVIDE, AND WILL NOT PROVIDE,**  
8 **ITS INFORMED WRITTEN CONSENT TO WAIVE THE CURRENT**  
9 **CONFLICT**

10 Attorney Ginsberg and Michelman & Robinson, LLP were required to obtain the  
11 informed, written consent of Sportstars in order to prosecute this lawsuit. Rules of  
12 Professional Conduct, Rule 1.9(a). Absent this informed written consent, Attorney  
13 Ginsberg is obligated to withdraw from its representation of Plaintiff in this lawsuit.  
14 Attorney Ginsberg failed to so obtain informed written consent from Sportstars.

15 **D. THE BALANCING OF INTERESTS CONFIRMS THAT**  
16 **DISQUALIFICATION IS APPROPRIATE IN THIS CASE**

17 Where the *per se* disqualification rule applies, as it does here, there can be no  
18 balancing of interests. Even if the competing interests are considered in this case, it is  
19 clear that Attorney Ginsberg and Michelman & Robinson, LLP must be disqualified. The  
20 issue of disqualification implicates a conflict between the client’s right to counsel of its  
21 choice and the need to maintain ethical standards of professional responsibility. *See, e.g.,*  
22 *Beltran v. Avon Prods., Inc.*, 867 F. Supp. 2d 1068, 1076-77 (C.D. Cal. 2012). In  
23 resolving a motion to disqualify counsel, a district court must balance “a client’s right to  
24 chosen counsel, an attorney’s interest in representing a client, the financial burden on the  
25 client to replace disqualified counsel, and the possibility that tactical abuse underlies the  
26 disqualification motion” against “the need to maintain ethical standards of professional  
27 responsibility.” *Burnett v. Rowzee*, No. SACV07-641DOC (ANX), 2007 WL 2767936,  
28 at \*3 (C.D. Cal. Aug. 13, 2007) (citation omitted).

1           These broad disqualification principles, however, “give way to narrower, more  
2 specific rules in the case of attorney-client conflicts.” *White v. Experian Info. Solutions*,  
3 993 F. Supp. 2d 1154, 1162 (C.D. Cal 2014). Ultimately, the court’s “paramount concern  
4 must be to preserve the public trust in the scrupulous administration of justice and the  
5 integrity of the bar.” *Id.* at 1166 (citation omitted). Thus, when balancing these  
6 competing interests, the “right to counsel of one’s choosing must yield to considerations  
7 of ethics that run to the very integrity of our judicial process.” *Baytree Capital Assocs.,*  
8 *LLC v. Quan*, No. CV 08-2822 CAS (AJWX), 2008 WL 3891226, at \*6 (C.D. Cal. Aug.  
9 18, 2008) (quoting *Metro-Goldwyn-Mayer, Inc. v. Tacinda Corp.*, 36 Cal. App. 4th 1832,  
10 1838 (1995).)

11           Here, the ethical considerations outweigh any cost or inconvenience to Plaintiff.  
12 The *per se* disqualification rule applies; it would be profoundly unfair to Sportstars to  
13 allow Attorney Ginsberg to continue to represent Plaintiff in litigation against his former  
14 client, Sportstars. See *Truck Ins. Exchange*, 6 Cal. App. 4th at 1059 (disqualification is  
15 based on the premise that “courts should not allow a law firm to profit from a conflict of  
16 interest which it created”). It also is imperative to prevent tactical abuse of Attorney  
17 Ginsberg’s professional responsibilities in support of efforts to evade the NFLPA  
18 arbitration provisions.

19           In order to prosecute this case for Plaintiff, Attorney Ginsberg necessarily will be  
20 required to depose and cross-examine his former client. In *Kim v. The True Church*  
21 *Members of Holy Hill Cmty. Church*, 236 Cal. App. 4th 1435 (2015), *reh’g denied* (June  
22 12, 2015), the California Court of Appeal held unequivocally that: “cross-examining a  
23 former client results in an ‘actual conflict’ prohibited under rule [1.9].” *Id.* at 1457. The  
24 court observed that it could not allow a firm to represent one client while adversely cross-  
25 examining another: “‘The spectacle of an attorney skewering her own client on the  
26 witness stand in the interest of defending another client demeans the integrity of the legal  
27 profession and undermines confidence in the attorney-client relationship.’” *Id.* at 1456-  
28 57 (quoting *Hernandez v. Paicius*, 109 Cal. App. 4th 452 (2003)). Indeed, this Court has

1 strongly doubted that a client could ever intelligently consent to being deposed or cross-  
2 examined in a way that would adversely affect the client interests. *State Comp. Ins. Fund*  
3 *v. Drobot*, 192 F. Supp. 3d 1080, 1113 (C.D. Cal. 2016). “Case law suggests that a  
4 lawyer cannot literally put a conflict of interest on the stand by cross-examining one  
5 client against her interests to support another client's interests.” *Id.*

6 **IV. CONCLUSION**

7 For the foregoing reasons, Defendants respectfully request that Peter R. Ginsberg  
8 and Michelman & Robinson, LLP be disqualified from representing Plaintiff in this  
9 action and barred from referring the case to new counsel, suggesting replacement counsel  
10 to Plaintiff, or otherwise taking any action related to this matter and Plaintiff’s allegations  
11 against Defendant, in this or any substantially related matter.

12 DATED: November 9, 2020

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20 INC. and RONALD BENSON SLAVIN II