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NATIONAL BASKETBALL ASSOCIATION and ADAM SILVER

13 *Counsel continued on next page*

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION  
16

17 DONALD T. STERLING, an )  
18 individual, and THE STERLING )  
FAMILY TRUST, )  
19 Plaintiffs, )  
20 v. )  
21 NATIONAL BASKETBALL )  
ASSOCIATION, a New York )  
22 professional association; ADAM )  
SILVER, an individual and DOES 1 )  
through 10, )  
23 Defendants. )

24 NATIONAL BASKETBALL )  
ASSOCIATION, a New York )  
25 professional association; and ADAM )  
SILVER, an individual, )  
26 Counterclaimants, )  
27 v. )  
28 DONALD T. STERLING, an )  
individual, and THE STERLING )  
FAMILY TRUST, )  
Counterdefendants. )

CASE NO.: CV14-4192-FMO-(SHx)  
**JOINT REPORT PURSUANT TO  
FEDERAL RULE OF CIVIL  
PROCEDURE 26(F) AND LOCAL  
RULE 26-1**  
Scheduling Conference:  
Date: December 4, 2014  
Time: 10:00 A.M.  
Courtroom: 22

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5 Attorneys for Plaintiff and Counterdefendant  
DONALD T. STERLING  
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1 Pursuant to Federal Rule of Civil Procedure 26(f) (hereinafter “Rule 26(f)”)  
2 Local Rule 26-1 et seq., and this Court’s orders of September 9 and October 23,  
3 2014, Plaintiff Donald T. Sterling (“Plaintiff” or “Mr. Sterling”), and Defendants the  
4 National Basketball Association (the “NBA” or “League”) and Adam Silver  
5 (“Commissioner Silver”) (collectively, “Defendants”), by and through their  
6 undersigned counsel, having met and conferred pursuant to Rule 26(f) and Local  
7 Rule 26-1, hereby submit the following Joint Report.

8

9 **a. Statement of the Case**

10 **Plaintiff:** This case arises out of the egregiously excessive and utterly  
11 draconian set of disciplinary measures taken by Defendants against Plaintiff with  
12 regard to an illegally recorded conversation that took place between Plaintiff and Ms.  
13 V. Stiviano in the privacy of Ms. Stiviano’s home, which was subsequently and  
14 surreptitiously leaked to the media.

15 On or about April 25, 2014, the gossip website, TMZ, posted an audiotape of a  
16 private conversation between Plaintiff and his then girlfriend, Ms. V. Stiviano that  
17 occurred in Ms. Stiviano’s living room sometime in October 2013. Unbeknownst to  
18 Plaintiff at the time, Ms. Stiviano secretly recorded this conversation without  
19 Plaintiff’s consent. The impetus behind Plaintiff’s statements in the illegally  
20 recorded conversation exclusively related to an incident wherein Plaintiff had  
21 become jealous of Ms. Stiviano’s apparent association with “four gorgeous black  
22 guys” whom Plaintiff viewed as threatening to his relationship with Ms. Stiviano. In  
23 the heat of the moment, Plaintiff advised Ms. Stiviano not to bring “black people” to  
24 Clippers games and to refrain from posting pictures of herself with “black people” on  
25 Instagram—a social media site. The release of the illicit audiotape by TMZ  
26 prompted a predictable public backlash and led to an expedited and sham of an  
27 “investigation” by the NBA into the matter.

28

1 On or about April 29, 2014, after less than a three-day “investigation” and in  
2 direct response to the illicit audiotape, newly-appointed NBA Commissioner Adam  
3 Silver issued draconian sanctions against Plaintiff. Commissioner Silver fined  
4 Plaintiff \$2.5 million (an unprecedented amount) and imposed a lifetime ban against  
5 Plaintiff’s involvement with the operation and management of the Los Angeles  
6 Clippers and even barred him from physically attending NBA games. At the same  
7 time, Commissioner Silver announced that a vote would be conducted by the NBA  
8 Board of Governors on June 3, 2014 in an effort to force Plaintiff to sell the Los  
9 Angeles Clippers and stated that he urged the Board of Governors to take such an  
10 action.

11 On May 19, 2014, Commissioner Silver served a formal written charge (the  
12 “Charge”) on Plaintiff. The charge is based entirely or almost entirely on the  
13 illegally recorded conversation between V. Stiviano and Plaintiff. The Charge  
14 contained six counts that allegedly provided a basis for the NBA Board of Governors  
15 to terminate Plaintiffs’ then-existing ownership in the Los Angeles Clippers. On  
16 May 27, 2014, Plaintiff submitted his response to the Charge. Thereafter,  
17 Commissioner Silver publicly confirmed that the Board of Governors would indeed  
18 hold a vote on June 3, 2014 at 1:00 p.m. in New York City to decide whether  
19 Plaintiff’s interests in the Los Angeles Clippers would be terminated and whether a  
20 “forced sale” of the team would commence. In accordance with Commissioner  
21 Silver’s request to terminate Plaintiff’s ownership interest in the Los Angeles  
22 Clippers, Plaintiff began a frantic process of trying to find potential buyers in  
23 anticipation of a seemingly inevitable June 3, 2014 vote to terminate his ownership  
24 interest in the Los Angeles Clippers. However, the vote never occurred because  
25 Plaintiff’s spouse had tentatively agreed on a sale to Mr. Steven Ballmer, yet without  
26 Plaintiff’s consent. Plaintiff subsequently found himself embroiled in litigation over  
27 the summer of 2014 between himself and his wife concerning the propriety of  
28 Plaintiff’s removal from the Sterling Family Trust (which owned LAC Basketball

1 Club, Inc. as the result of a 2005 transfer) and other related issues concerning his  
2 wife's unilateral attempt to sell the Los Angeles Clippers out from under Plaintiff.

3 After the sale of the Los Angeles Clippers by Plaintiff's spouse (Rochelle  
4 Sterling) to Mr. Ballmer was approved by the Superior Court of California, County  
5 of Los Angeles, in an order dated August 12, 2014, Plaintiff not only found himself  
6 without an NBA franchise that he had formerly owned for 33 years and had been  
7 universally-recognized as the longest-tenured owner in the NBA, but under a  
8 supposedly legal indemnification provision that would effectively prevent him from  
9 pursuing his claims against the NBA.

10 **Defendants:** This case arises from Plaintiff's widely publicized, deeply  
11 offensive, demeaning, and discriminatory statements and conduct, that occurred  
12 while he was the controlling owner of the Los Angeles Clippers (the "Team" or the  
13 "Clippers"). On April 29, 2014, after an expeditious but thorough investigation,  
14 Commissioner Silver, pursuant to his authority under the NBA Constitution, fined  
15 Mr. Sterling \$2.5 million and banned Mr. Sterling for life from any association with  
16 the Clippers organization or the NBA. Plaintiff's suit challenges the discipline  
17 imposed on him—notwithstanding that he agreed under Article 24 of the NBA  
18 Constitution that the Commissioner's decisions regarding discipline shall be final  
19 and binding.

20 In addition to imposing discipline on Mr. Sterling, Commissioner Silver also  
21 publicly stated that he would "urge the Board of Governors to exercise its authority  
22 to terminate the current ownership of the Clippers and sell the team to a new owner."

23 On May 19, 2014, Commissioner Silver filed a written charge (the "Charge")  
24 in accordance with the procedures set forth in the NBA Constitution asserting that  
25 the membership in the NBA of LAC Basketball Club, Inc. ("LAC")—the entity that  
26 owned the Clippers basketball team—should be terminated. LAC is a California  
27 corporation whose stock was then 100% owned by the Sterling Family Trust, as  
28 amended on December 18, 2013 (the "Trust"). A meeting of the NBA Board of

1 Governors was scheduled for June 3, 2014 to hear the evidence and vote on the  
2 Charge.

3 Mr. Sterling's lawsuit challenges the June 3<sup>rd</sup> termination vote of the NBA  
4 Board of Governors. However, prior to the filing of the Complaint, the June 3<sup>rd</sup>  
5 meeting was cancelled and the charge was withdrawn after Mr. Sterling's wife,  
6 Rochelle—as the sole trustee of the Trust and with Mr. Sterling's express agreement  
7 to the sale of his interest in the Team—elected to: (i) execute a binding term sheet to  
8 sell LAC for \$2 billion; and (ii) sign an agreement releasing any claims that she,  
9 LAC, or the Trust may have against the NBA and indemnifying the NBA against any  
10 claims asserted by herself, LAC, the Trust, Mr. Sterling, or any third party. Mrs.  
11 Sterling's proposed sale of the team was approved by the Superior Court of  
12 California, County of Los Angeles, in an order dated August 12, 2014. Because Mrs.  
13 Sterling voluntarily sold the team, there ceased to be any need for the NBA Board of  
14 Governors to ever consider and vote on the charge. Thus, the principal conduct  
15 challenged in the complaint—the NBA's purported termination of Mr. Sterling's  
16 ownership of the Clippers—never occurred.

17 In addition to denying the material allegations of Plaintiff's complaint,  
18 Defendants have counterclaimed for indemnity based on, *inter alia*, (1) a 2005  
19 Agreement and Undertaking (the "A&U") with Plaintiff; (2) Plaintiff's  
20 indemnification obligations under the NBA Constitution and By-Laws; and (3) a  
21 1989 Amended and Restated Joint Venture Agreement (the "JVA") with Plaintiff.

22  
23 **b. Subject Matter Jurisdiction**

24 This Court has federal question jurisdiction over Plaintiff's claim for alleged  
25 violations of the Antitrust Laws under the Sherman Act pursuant to 28 U.S.C. § 1331  
26 and 15 U.S.C. § 15. This Court has supplemental jurisdiction, pursuant to 28 U.S.C.  
27 § 1367, over Plaintiff's claims for alleged violations of his California Constitutional  
28 rights, breach of contract, conversion, and breach of fiduciary duties because these

1 claims, like his Antitrust claim, all arise out of the question of ownership of the Los  
2 Angeles Clippers basketball team. Finally, this Court has supplemental jurisdiction  
3 over Defendants' Counterclaim pursuant to 28 U.S.C. § 1367 because Defendants  
4 allege that pursuant to binding agreements, Plaintiff must indemnify the NBA and  
5 Commissioner Silver for losses in connection with Plaintiff's acts, omissions, and  
6 other conduct relating to: (a) Plaintiff's statements and conduct; (b) the NBA's  
7 investigation of the Recording and Plaintiff's statements and conduct; (c) the  
8 imposition of discipline upon Plaintiff; (d) the proceedings to terminate Plaintiff's  
9 ownership of the Clippers; and (e) this lawsuit.

10  
11 **c. Legal Issues**

12 **Plaintiff:** The key legal issues are: (1) whether New York parties can be held  
13 to have violated the California Constitutional right to privacy by relying, in a private  
14 association's disciplinary matter, on a widely publicized recording of statements  
15 made in the presence of a third party; (2) whether Defendants violated section 1 of  
16 the Sherman Act through a termination vote that never occurred or by a vote which  
17 was threatened; (3) whether Defendants breached any of their contracts with Plaintiff  
18 by disciplining him; (4) whether Defendants converted the Team from Plaintiff; (5)  
19 whether Defendants owed or breached any fiduciary duties to Plaintiff; (6) whether  
20 Mrs. Sterling's agreements to indemnify Defendants obligate Plaintiff to indemnify  
21 Defendants for costs and fees in connection with this suit; and (7) whether under the  
22 well-established doctrine of judicial non-interference, this Court should disturb a  
23 private association's lawful application of its rules and procedures.

24 **Defendants:** The key legal issues are (1) whether New York parties can be  
25 held to have violated the California Constitutional right to privacy by relying, in a  
26 private association's disciplinary matter, on a widely publicized recording of  
27 statements made in the presence of a third party, over which the speaker had no  
28 reasonable expectation of privacy; (2) whether Defendants violated section 1 of the

1 Sherman Act through a termination vote that never occurred; (3) whether Defendants  
2 breached any of their contracts with Plaintiff by disciplining him, where Plaintiff  
3 expressly granted Commissioner Silver broad authority to impose fines and  
4 discipline of the type at issue here; (4) whether Defendants converted the Team from  
5 Plaintiff, where the Superior Court of Los Angeles found that Plaintiff's spouse  
6 lawfully exercised her authority as sole Trustee to sell the Team on behalf of the  
7 Trust; (5) whether Defendants owed or breached any fiduciary duties to Plaintiff; (6)  
8 whether Plaintiff's agreements to indemnify Defendants obligate him to indemnify  
9 Defendants for costs and fees in connection with this suit; and (7) whether under the  
10 well-established doctrine of judicial non-interference, this Court should disturb a  
11 private association's lawful application of its rules and procedures, where (a) the  
12 discipline imposed was expressly authorized under the NBA Constitution to which  
13 Plaintiff agreed to be bound, (b) Mr. Sterling was provided an opportunity to submit  
14 evidence and be heard in advance of the imposition of the discipline, and (c) the  
15 Commissioner did not in any way act arbitrarily, capriciously or in bad faith.

16

17 **d. Parties, Evidence, etc.**

18 The parties are unaware at this time of any additional parties that will or  
19 should be added to the case.

20 **Plaintiff:** Plaintiff will present evidence demonstrating: (1) that the discipline  
21 imposed on Plaintiff was based solely on an illegal recording and the events flowing  
22 from the illegal recording's dissemination to the public; (2) the extent of the harm  
23 that Defendant's actions caused Plaintiff, including but not limited to: Defendants'  
24 collusion with Plaintiff's spouse in forcing a sale of the Los Angeles Clippers  
25 without the consent of Plaintiff, violation of Plaintiff's Constitutional Rights, and  
26 breach of fiduciary duties all culminating in the loss of a unique and irreplaceable  
27 NBA franchise commonly known as the Los Angeles Clippers.

28

1 Plaintiff's witnesses may include some or all of the following individuals:  
2 Plaintiff, Rochelle Sterling, Former NBA Commissioner David Stern, Current NBA  
3 Commissioner Adam Silver, NBA Deputy Commissioner Mark Tatum, V. Stiviano,  
4 Lucy Vasquez, Richard Parsons, David Anders, Michael Bass, Kathy Behrens, Amy  
5 Brooks, Emilio Collins, Ron Klempner, Richard Lapchick, Salvatore LaRocca, Sara  
6 Parikh, PhD., and Dan Rossomondo.

7 Plaintiff expects key documents to include the following: Charge and all  
8 exhibits in support thereof; the NBA Constitution and By-Laws; the A&U; the JVA;  
9 communications from sponsors, fans, employees, and players; and documents  
10 sufficient to identify Plaintiff's legal fees and expenses.

11 **Defendants:** As explained in Defendants' Disclosure Statement pursuant to  
12 Fed. R. Civ. Proc. 7.1(a), the NBA has no corporate parent. There is no publicly-  
13 held corporation that owns 10% or more of the NBA. The NBA has no publicly-held  
14 subsidiaries or affiliates.

15 Defendants expect to present evidence demonstrating (1) that the discipline  
16 imposed on Mr. Sterling—following Plaintiff's opportunity to submit evidence and  
17 be heard—was entirely permissible and fully justified under the NBA's relevant  
18 governing documents, and was not imposed arbitrarily, capriciously or in bad  
19 faith; and (2) the extent of the harm Defendants and the Team suffered as a result of  
20 Plaintiff's words and actions. Defendants' witnesses may include some or all of the  
21 following individuals: Commissioner Silver, Donald T. Sterling, NBA Deputy  
22 Commissioner Mark Tatum, V. Stiviano, Lucy Vasquez, Richard Parsons, David  
23 Anders, Michael Bass, Kathy Behrens, Amy Brooks, Emilio Collins, Ron Klempner,  
24 Richard Lapchick, Salvatore LaRocca, Sara Parikh, PhD., and Dan Rossomondo.  
25 Defendants expect key documents to include the Charge and all exhibits in support  
26 thereof; the NBA Constitution and By-Laws; the A&U; the JVA; communications  
27 from sponsors, fans, employees, and players; and documents sufficient to identify  
28 Defendants' legal fees and expenses.

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**e. Insurance**

**Plaintiff:** None.

**Defendants:** Federal Insurance Company and Chubb Insurance Company of New Jersey may be liable in whole or in part (directly or indirectly) for any non-indemnified portions of a judgment against Defendants, up to an aggregate limit of \$11,000,000.

**f. Magistrate Judge**

The parties do not consent to a magistrate judge presiding over this action.

**g. Discovery**

**Plaintiff:** Plaintiff anticipates conducting broad discovery related to the circumstances surrounding the illegal recording by V. Stiviano and the consequences thereof. Plaintiff will depose Defendants, V. Stiviano and Lucy Vasquez.

The parties have not agreed to increase the number of depositions allowed under the Federal Rules of Civil Procedure.

Plaintiff anticipates that written discovery can be completed by December 15, 2015. Plaintiff proposes the following expert discovery schedule: (1) initial expert witness disclosures due December 31, 2015; (2) rebuttal expert witness disclosures due January 29, 2016; and (3) expert depositions completed by February 29, 2016. The matter can be set for trial on December 12, 2016, which would allow sufficient time for all of the following:

- (a) the filing of a motion for summary judgment within 30 days after the close of discovery in accordance with Rule 56(b), which would result in a filing deadline of March 30, 2016;
- (b) a noticed hearing on that motion under Local Rule 6-1 that (without extensions) would occur on May 2, 2016;

1 (c) the Court's ruling on that motion may occur in mid to late July  
2 2016; and

3 (d) both parties sufficient time to prepare for trial, if necessary, after a  
4 ruling on the motion for summary judgment (approximately three months), which  
5 would result in a trial date of December 12, 2016.

6 **Defendants:** In general, and reserving all rights, Defendants anticipate  
7 conducting narrow discovery related to the circumstances surrounding the recorded  
8 statements that Mr. Sterling made, including the fact that they were made in the  
9 presence of a third party, with no reasonable expectation of privacy, and with  
10 Plaintiff's consent. Defendants anticipate deposing Plaintiff, V. Stiviano, and Lucy  
11 Vasquez.

12 The parties have not agreed to increase the number of depositions allowed  
13 under the Federal Rules of Civil Procedure.

14 Defendants anticipate that fact discovery can be completed by May 15, 2015.  
15 Defendants propose the following expert discovery schedule: (1) initial expert  
16 witness disclosures due May 29, 2015; (2) rebuttal expert witness disclosures due  
17 June 29, 2015; and (3) expert depositions completed by July 31, 2015. The matter  
18 can be set for trial on March 21, 2016, which would allow sufficient time for all of  
19 the following:

20 (a) the filing of a motion for summary judgment within 30 days after  
21 the close of discovery in accordance with Rule 56(b), which would  
22 result in a filing deadline of August 28, 2015;

23 (b) a noticed hearing on that motion under Local Rule 6-1 that  
24 (without extensions) would occur on October 1, 2015;

25 (c) the Court sufficient time to rule on that motion (approximately  
26 two months), which might occur in mid to late December 2015; and  
27  
28

1 (d) both parties sufficient time to prepare for trial, if necessary, after  
2 a ruling on the motion for summary judgment (approximately three  
3 months), which would result in a trial date of March 21, 2016.  
4

5 **h. Motions**

6 **Plaintiff:** As noted, Plaintiff anticipates the possibility of moving for  
7 summary judgment. Pursuant to Plaintiff's proposed discovery schedule, Plaintiff  
8 requests that any motion for summary judgment be due March 30, 2016, which is 30  
9 days after the close of discovery and in accordance with Federal Rule of Civil  
10 Procedure 56(b).

11 **Defendants:** As noted, Defendants anticipate the possibility of moving for  
12 summary judgment. Defendants request that any motion for summary judgment be  
13 due August 28, 2015, which is 30 days after the close of discovery in accordance  
14 with Federal Rule of Civil Procedure 56(b).  
15

16 **i. Class Certification**

17 Class certification is not applicable here.  
18

19 **j. Dispositive Motions**

20 Plaintiff proposes the cut-off date for dispositive motions be set for March 30,  
21 2016.

22 Defendants propose the cut-off date for dispositive motions be set for August  
23 28, 2015. Defendants anticipate that all claims may be determined by summary  
24 judgment.

25 **k. Settlement/Alternative Dispute Resolution (ADR)**

26 There have been no meaningful settlement discussions between the parties.  
27 The parties agree to private mediation. The parties agree on ADR Option No. 3,  
28 private mediation, as specified in L.R. 16-15.4. The parties agree that ADR shall be

1 completed no later than forty-five (45) days before the Final Pretrial Conference.  
2 Provided, however, in the event the parties believe there is a reasonable possibility of  
3 settlement at an earlier date, they will meet and confer.  
4

5 **l. Pretrial Conference and Trial**

6 Plaintiff proposes that the Final Pretrial Conference occur on September 22,  
7 2016, and that the trial begin on December 12, 2016.

8 Defendants propose that the Final Pretrial Conference occur on February 22,  
9 2016, and that the trial, if necessary, begin on March 21, 2016.

10  
11 **m. Trial Estimate**

12 **Plaintiff:** Plaintiff estimates that the jury trial will last at least 15 court days.

13 **Defendants:** Defendants estimate that the trial by court will last 5-7 court  
14 days.  
15

16 **n. Trial Counsel**

17 **Plaintiff:** Bobby Samini will be lead trial counsel, with assistance from  
18 Michael D. Michaels, Nicole C. Prado and Matthew M. Hoesly.

19 **Defendants:** Jeffrey Mishkin will be lead trial counsel, with assistance from  
20 Anthony Dreyer, Richard Marmaro and/or Jason Russell.  
21

22 **o. Independent Expert or Master**

23 The parties do not believe this is a case where the court should consider  
24 appointing a master pursuant to Fed. R. Civ. P. 53 or an independent scientific  
25 expert.  
26

27 **p. Other Issues**  
28

1 Pursuant to Local Rule 26-1, counsel for the parties discussed the following  
2 additional matter:

3 (i) **Complex Cases**

4 Notwithstanding the complexity of the case, the parties do not believe at this  
5 time that the Manual for Complex Litigation is necessary.

6 Dated: November 13, SAMINI SCHEINBERG PC  
7 2014

8 By: /s/ Bobby Samini  
9 BOBBY SAMINI  
10 Attorneys for Plaintiff Donald T. Sterling

11 Dated: November 13, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
12 2014

13 By: /s/ Jason D. Russell  
14 JASON D. RUSSELL  
15 Attorneys for Defendants National Basketball  
16 Association and Adam Silver

17 All other signatories listed, and on whose behalf the filing is submitted, concur in the  
18 filing's content and have authorized the filing.  
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