

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

OCT 21 2010

In the United States District Court
For the Eastern District of Texas
Beaumont Division

DAVID J. MALAND, CLERK
BY
DEPUTY OC

10-41119

Dwight Harrison
Plaintiff

Case 1:07-CV00473

Vs

NFL Player Benefits,
Defendant,

Notice of Appeal
Out of Time Appeal

To the Honorable court we would like to serve notice of an appeal showing denial of Evidentiary Hearing because of a summary judgment that the plaintiff was accused of not responding in a timely manner. After reviewing docket numbers and stamped return cards there was an error of which docket number refers to what. This is clear but it appears no one wants to pull docket numbers and match them. The plaintiff was never notified by the magistrate judge or the presiding judge of any final order; this is completely missing from the docket sheet. There is no record of any Certified or regular letter being sent to plaintiff. Item #34 on docket sheet is not for Item # 30 Magistrate judge's report which was to notify plaintiff of time limit to respond to Summary judgment, it is actually for item # 29 Re-setting order. We simply do not understand.

Background:

1. Special circumstances, if I am clear on what that means, surely the plaintiff should be considered. He was a patient of Beaumont State Mental Health and Mental Retardation Center, he suffers from head trauma and early stages of dementia which is certified by Social Security and documented by a host of other doctors and neutral physicians.

2. Do not understand and I am his help, why is the court angry at him for trying to save his disability and retirement the only way that he knows how. We are asking the court for some compassion. Any documents needed for verification can be provided. Imagine being slicked out of your retirement and disability by skilled lawyers and you are sick. These are not the only reasons, we believe and appeal is warranted there are other reasons that we will amend. We are asking for an initial ruling on the clerical errors. We would love to have the opportunity to present the evidence face to face in an evidence hearing, a lot of things would be cleared up, and we believe we have competent help in a Eugene Morris.

Yours truly,



Dwight Harrison
1735 W. Highland Dr.
Beaumont, TX. 77705

04/03/2008	<u>20</u>	ORDER to Conduct Rule 26(f) Conference with a proposed Scheduling Order. Signed by Judge Keith F. Giblin on 4/3/08. (mrp,) (Entered: 04/03/2008)
06/04/2008	<u>21</u>	NOTICE of Attorney Appearance by James C Plummer on behalf of Dwight Harrison (Plummer, James) (Entered: 06/04/2008)
07/03/2008	<u>22</u>	APPLICATION to Appear Pro Hac Vice by Attorney Edward A Scallet for NFL Player Benefits. PHV filing fee paid: \$25, Receipt 1-1-6131. (mrp,) (Entered: 07/07/2008)
07/11/2008	<u>23</u>	First MOTION to Withdraw as Attorney by Dwight Harrison. (Plummer, James) (Additional attachment(s) added on 7/14/2008: # <u>1</u> Text of Proposed Order) (pkb,). (Entered: 07/11/2008)
07/18/2008	<u>24</u>	NOTICE of Hearing on Motion <u>23</u> First MOTION to Withdraw as Attorney & Case Management Conference: Motion Hearing & Case Management Conference set for 8/12/2008 10:00 AM in Ctrm 5 (Beaumont) before Magistrate Judge Keith F. Giblin. (ksd) (Entered: 07/18/2008)
08/12/2008	<u>27</u>	Minute Entry for proceedings held before Magistrate Judge Keith F. Giblin: Motion Hearing held on 8/12/2008 re <u>23</u> First MOTION to Withdraw as Attorney filed by Dwight Harrison. The Court granted the motion to withdraw as counsel. The Court will enter a scheduling order. (Court Reporter K. Dean) (ksd) (Entered: 08/14/2008)
08/13/2008	<u>25</u>	ORDER granting <u>23</u> Motion to Withdraw as Attorney. Attorney James C Plummer terminated as counsel of record for Mr. Harrison. Mr. Harrison is redesignated as a pro se Plaintiff proceeding in forma pauperis. Signed by Magistrate Judge Keith F. Giblin on 8/13/08. (mrp,) (Entered: 08/14/2008)
08/13/2008	<u>26</u>	SCHEDULING ORDER: Docket call is set for 4/3/09 at 10:00 a.m. in Courtroom 3 before Judge Marcia A. Crone. The case will be set for Final Pretrial Conference and Trial at the docket call. Amended Pleadings due by 9/1/2008. Discovery due by 10/7/2008. Motions due by 10/14/2008. Signed by Magistrate Judge Keith F. Giblin on 8/13/08. (mrp,) (Entered: 08/14/2008)
10/14/2008	<u>28</u>	MOTION for Summary Judgment by NFL Player Benefits. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Exhibit Order for Sanctions, # <u>3</u> Exhibit Final Judgment, # <u>4</u> Exhibit Order of Dismissal, # <u>5</u> Exhibit Order Denying Reconsideration, # <u>6</u> Exhibit Magistrate Judge's Report, # <u>7</u> Exhibit Order on Objections to Magistrate Judge's Ruling, # <u>8</u> Exhibit Final Judgment, # <u>9</u> Exhibit Order Denying Reconsideration, # <u>10</u> Exhibit Mr. Harrison's Complaint, # <u>11</u> Text of Proposed Order Proposed Order)(Scallet, Edward) (Entered: 10/14/2008)
03/11/2009	<u>29</u>	ORDER Re-Setting Docket Call and Amended Scheduling Order. After considering the District Court's schedule and the pending matters in this case, it has been determined that trial in this case should be re-set. The Court sua sponte re-sets the docket call and pre-trial to 10:00 a.m. on 7/10/09 in Courtroom 3 before Judge Marcia A. Crone. Signed by Magistrate Judge Keith F. Giblin on 3/11/09. (mrp,) (Entered: 03/11/2009)

*

03/16/2009	<u>30</u>	REPORT AND RECOMMENDATION OF U. S. MAGISTRATE JUDGE ON MOTION FOR SUMMARY JUDGMENT. Based upon the findings and legal reasons stated herein, the undersigned finds the Defendant's motion for summary judgment should be granted based on Plaintiff's lack of response and for want of prosecution under the Local Rules and the Federal Rules of Civil Procedure. Signed by Magistrate Judge Keith F. Giblin on 3/13/09. (mrp,) (Entered: 03/16/2009)
03/16/2009	<u>31</u>	ACKNOWLEDGMENT OF RECEIPT by Dwight Harrison on 3/13/09 of 29 Order resetting deadlines. (mrp,) (Entered: 03/17/2009)
04/14/2009	<u>32</u>	ORDERED that the report and recommendation on the motion for summary judgment (#30) is adopted. Order granting <u>28</u> Motion for Summary Judgment. Signed by Judge Marcia A. Crone on 4/14/09. (bjc,) (Entered: 04/15/2009)
04/14/2009	<u>33</u>	FINAL JUDGMENT. In accordance w/ the court's order adopting the magistrate judge's report and recommendation, the motion for summary judgment is granted in favor of Defendant NFL Player Benefits, properly referred to as NFL Player Retirement Plan, w/ respect to all of Plaintiff Dwight Harrison's claims. Plaintiff shall take nothing by his suit. Signed by Judge Marcia A. Crone on 4/14/09. (bjc,) (Entered: 04/15/2009)
04/15/2009	<u>34</u>	Mail Returned as Undeliverable. Mailed Order # <u>30</u> sent CMRRR to Dwight Harrison returned with envelope marked: Unclaimed. (mrp,) (Entered: 04/17/2009)
11/05/2009	<u>35</u>	Letter from Dwight Harrison. (mrp,) (Entered: 11/06/2009)
05/25/2010	<u>36</u>	Letter from Dwight Harrison requesting an evidentiary hearing. (mrp,) (Entered: 05/26/2010)
05/25/2010	<u>37</u>	MOTION for Evidentiary Hearing by Dwight Harrison. (mrp,) (Entered: 06/14/2010)
09/27/2010	<u>38</u>	ORDER denying <u>37</u> Motion for Hearing. Signed by Magistrate Judge Keith F. Giblin on 9/27/10. (pkb,) (Entered: 09/27/2010)

*

CERTIFICATE OF SERVICE

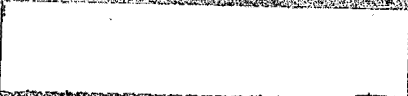
I, Dwight Harrison, hereby certify that on October 19, 2010, I served copies of Notice of Appeal/Out of Time Appeal on the following parties by way of US Mail:

NFL Player Benefits
C/o Groom Law Group
1701 Pennsylvania
Washington, DC. 20006

10/19/10
Date

Dwight Harrison
Signature

HEADMONT, TX 77705



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
300 WILLOW ST. SUITE 100
HEADMONT, TX 77705



CERTIFIED MAIL

CLERK

UNITED STATES DISTRICT COURT

P.O. BOX 9507

BEAUMONT, TEXAS 77704

OFFICIAL BUSINESS



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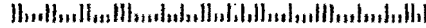
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SC: 77704950707 *1799-05139-14-19

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1:07cv473 #30

Dwight Harrison
1735 West Highland Drive
Beaumont, TX 77705

APPEAL, CASREF, PROSI

U.S. District Court [LIVE] 10-41119
Eastern District of TEXAS (Beaumont)
CIVIL DOCKET FOR CASE #: 1:07-cv-00473-MAC-KFG

Harrison v. NFL Player Benefits
Assigned to: Judge Marcia A. Crone
Referred to: Magistrate Judge Keith F. Giblin
Cause: 28:1332 Diversity-Breach of Contract

Date Filed: 07/05/2007
Date Terminated: 04/14/2009
Jury Demand: None
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

Dwight Harrison *a*

represented by **Dwight Harrison**
1735 West Highland Drive
Beaumont, TX 77705
409/840-6175
PRO SE

James C Plummer
Plummer & Associates
4200 Montrose Boulevard
Suite 410
Houston, TX 77006
713/522-2887
Fax: 713/522-3605
Email: jplummer@plummerlawyers.com
TERMINATED: 08/13/2008

V.

Defendant

NFL Player Benefits *e*

represented by **August A Imholtz, III**
Groom Law Group CHTD
1701 Pennsylvania Ave NW
Ste 1200
Washington, DC 20006
202/861-5404
Fax: 202/659-4503
Email: aai@groom.com
TERMINATED: 07/11/2008
LEAD ATTORNEY

Douglas W Ell
Groom Law Group CHTD
1701 Pennsylvania Ave NW
Ste 1200
Washington, DC 20006

202/861-6634
 Fax: 12026594503
 Email: dwe@groom.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Edward A Scallet
 Groom Law Group CHTD
 1701 Pennsylvania Ave NW
 Ste 1200
 Washington, DC 20006
 202/861-5422
 Fax: 202/659-4503
 Email: eas@groom.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/05/2007	<u>1</u>	COMPLAINT against NFL Player Benefits , filed by Dwight Harrison. (Attachments: # <u>1</u> Civil Cover Sheet & Pro Se Case Opening Form)(aam,) (Entered: 07/09/2007)
07/05/2007	<u>2</u>	MOTION for Leave to Proceed in forma pauperis by Dwight Harrison. (aam,) (Entered: 07/09/2007)
07/05/2007	<u>3</u>	MOTION for Temporary Restraining Order by Dwight Harrison. (aam,) (Entered: 07/09/2007)
07/05/2007	<u>4</u>	MOTION to Appoint Counsel by Dwight Harrison. (aam,) (Entered: 07/09/2007)
07/05/2007		ORDER REFERRING CASE to Magistrate Judge Keith F. Giblin pursuant to General Order 05-07 (aam,) (Entered: 07/09/2007)
07/05/2007		Pro Se Packet handed to Plaintiff 7/5/2007. (aam,) (Entered: 07/09/2007)
08/27/2007	<u>5</u>	FACT STATEMENT in Support of <u>3</u> Motion for Temporary Restraining Order by Dwight Harrison. (tkd,) (Entered: 08/27/2007)
11/14/2007	<u>6</u>	ORDER denying <u>4</u> Motion for Appointment of Counsel. Signed by Judge Keith F. Giblin on 11/14/07. (tkd,) (Entered: 11/15/2007)
11/14/2007	<u>7</u>	ORDER granting <u>2</u> Motion for Leave to Proceed in forma pauperis. The Clerk is ordered to issue process and US Marshal serve process upon deft Natl Football League Player Benefits Plan. Deft shall have 20 days from receipt to answer or otherwise plead. Signed by Judge Keith F. Giblin on 11/14/07. (tkd,) (Entered: 11/15/2007)
11/15/2007	<u>8</u>	E-GOV SEALED SUMMONS issued for NFL Player Benefits Plan and given to USM for service. (tkd,) (Entered: 11/15/2007)
11/19/2007	<u>9</u>	MOTION for Hearing to Clarify Order by Dwight Harrison. (fbc,) (Entered: 11/20/2007)
12/18/2007	<u>10</u>	APPLICATION to Appear Pro Hac Vice by Attorney August A Imholtz, III for NFL

		Player Benefits. (FEE PAID RECEIPT # 1-1-5241) (bjc,) (Entered: 12/19/2007)
12/29/2007	<u>11</u>	<i>Defendant's</i> ANSWER to Complaint by NFL Player Benefits.(Imholtz, August) (Entered: 12/29/2007)
01/10/2008	<u>12</u>	REPORT AND RECOMMENDATION on Motion for Temporary Restraining Order. The undersigned U. S. Magistrate Judge recommends that the District Court deny the Plaintiff's motion for a temporary restraining order # <u>3</u> . Signed by Judge Keith F. Giblin on 1/10/08. (mrp,) (Entered: 01/11/2008)
01/10/2008	<u>13</u>	ORDER ON MOTION FOR HEARING. The Court has since issued its Report and Recommendation on the Plaintiff's motion for TRO. Accordingly, that issue has been analyzed by this Court. A hearing to clarify the Court's previous order is therefore moot at this point because the Court has since addressed the TRO request separately. It is therefore, ordered that the motion for hearing # <u>9</u> is denied as moot. Signed by Judge Keith F. Giblin on 1/10/08. (mrp,) (Entered: 01/11/2008)
01/24/2008	<u>14</u>	APPLICATION to Appear Pro Hac Vice by Attorney Douglas W Ell for NFL Player Benefits. (mrp,) (Entered: 01/25/2008)
01/24/2008		Pro Hac Vice Filing fee paid by Douglas W Ell; Fee: \$25, receipt number: 1-1-5385 (mrp,) (Entered: 01/25/2008)
01/25/2008	<u>15</u>	MOTION for Extension of Time to File Response by Dwight Harrison. (mrp,) (Entered: 01/28/2008)
01/31/2008	<u>16</u>	ORDER granting <u>15</u> Motion for Extension of Time to File Response and the Court will afford Mr. Harrison an additional 10 days to file objections. If he intends to object to the Report and Recommendation on his motion for TRO, the Plaintiff is ordered to file those objections on or before 2/11/08. If he intends for the motion to extend time for filing response to constitute his objections, he is instructed to notify the Court of this in writing also on or before 2/11/08. Signed by Judge Keith F. Giblin on 1/31/08. (mrp,) (Entered: 01/31/2008)
02/11/2008	<u>17</u>	ANSWER to ruling for TRO by Dwight Harrison. (mrp,) (Entered: 02/14/2008)
02/11/2008	<u>18</u>	E-GOV SEALED SUMMONS Returned Executed NFL Player Benefits served on 12/10/2007, answer due 12/30/2007. (pkb,) (Entered: 02/14/2008)
02/14/2008	<u>19</u>	ORDER. The Court orders that the plaintiff's objections to the report are overruled. The magistrate judge's report and recommendation is adopted. The Court orders that the plaintiff's motion for a restraining order <u>3</u> is denied. Signed by Judge Marcia A. Crone on 2/14/08. (mrp,) (Entered: 02/15/2008)
04/03/2008	<u>20</u>	ORDER to Conduct Rule 26(f) Conference with a proposed Scheduling Order. Signed by Judge Keith F. Giblin on 4/3/08. (mrp,) (Entered: 04/03/2008)
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09/27/2010	<u>38</u>	ORDER denying <u>37</u> Motion for Hearing. Signed by Magistrate Judge Keith F. Giblin on 9/27/10. (pkb,) (Entered: 09/27/2010)
10/06/2010	<u>39</u>	MOTION to clear clerical error by Dwight Harrison. (pkb,) (Entered: 10/07/2010)
10/14/2010	<u>40</u>	ORDER denying <u>39</u> Motion to Clear Clerical Error. Over a year has passed after the entry of the final judgment before Mr. Harrison moved for any relief with the Court. This establishes a clear lack of prosecution on his part, coupled with the history of failing to prosecute and dilatory filings as this Court discussed in detail in its order denying the motion for evidentiary hearing. The Court entered final judgment and this case has been closed since April 2009. Further filings may be stricken or met with sanctions for being without merit and untimely. Signed by Magistrate Judge Keith F. Giblin on 10/14/10. (mrp,) (Entered: 10/14/2010)
10/21/2010	<u>41</u>	NOTICE OF APPEAL OUT OF TIME as to <u>40</u> Order denying Motion to Clear Clerical Error, <u>33</u> Final Judgment, <u>32</u> Order Adopting R & R on Motion for Summary Judgment, <u>38</u> Order denying Motion for Hearing by Dwight Harrison. # <u>1</u> Envelope (dlc,). (Entered: 10/21/2010)

PACER Service Center			
Transaction Receipt			
10/21/2010 14:57:15			
PACER Login:	ap0000	Client Code:	05_714+++++
Description:	Docket Report	Search Criteria:	1:07-cv-00473-MAC-KFG
Billable Pages:	4	Cost:	0.32