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21 Attorneys for Plaintiffs

22 UNITED STATES DISTRICT COURT
 23 NORTHERN DISTRICT OF CALIFORNIA
 24 SAN FRANCISCO DIVISION

25 BERNARD PAUL PARRISH, and
 26 HERBERT ANTHONY ADDERLEY, on
 27 behalf of themselves and all others
 28 similarly situated,

Plaintiffs

vs.

29 NATIONAL FOOTBALL LEAGUE
 30 PLAYERS ASSOCIATION, a Virginia
 31 corporation, and NATIONAL FOOTBALL
 32 LEAGUE PLAYERS INCORPORATED
 33 d/b/a PLAYERS INC, a Virginia
 34 corporation,

Defendants.

CIVIL ACTION NO. C07 0943 WHA

**DECLARATION OF RONALD S. KATZ IN
 SUPPORT OF MOTION FOR LEAVE TO
 FILE THIRD AMENDED COMPLAINT**

Date:
 Time:
 Judge: Honorable William H. Alsup

1 I, Ronald S. Katz, do hereby declare and certify as follows:

2 1. I have personal knowledge of the following facts, and if called as a witness,
3 could and would competently testify thereto.

4 2. I am an attorney at law, duly licensed to practice before all the courts of the State
5 of California, and I am a partner with the law offices of Manatt, Phelps & Phillips, LLP,
6 attorneys of record for Plaintiffs in the above-entitled action.

7 3. I hereby submit this Declaration in compliance with this Court’s September 6,
8 2007 Order Granting Defendants’ Motions to Dismiss Plaintiffs’ Second Amended Complaint
9 (“SAC”).

10 4. Attached as Exhibit 1 to Plaintiffs’ Motion for Leave to File a Third Amended
11 Complaint is a true and correct copy of a proposed Third Amended Complaint (“TAC”)
12 prepared by Plaintiffs. Plaintiffs’ TAC is different from prior complaints in several ways.

13 **Statute of Limitations Issues**

14 5. In its September 6, 2007 Order (“Order”), the Court determined that the statute
15 of limitations for Plaintiffs’ claims had not been tolled. Accordingly, the TAC asserts only
16 those claims that fall within the statute of limitations period in accordance with the Court’s
17 Order.

18 **Plaintiffs’ Claim Under California Business & Professions Code § 17200**

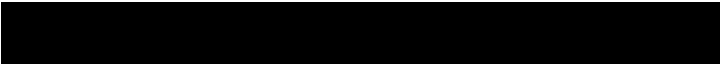
19 6. Plaintiffs have respectfully incorporated by reference into the TAC their 17200
20 claim on behalf of the 17200 California Resident Class (as described in the SAC) in its entirety
21 solely to preserve the Court’s prior ruling on this claim for appeal. *See* TAC, ¶¶ 82, 116. As
22 Plaintiffs understand it, “[i]t is the law of [the Ninth] circuit that a plaintiff waives all claims
23 alleged in a dismissed complaint which are not realleged in an amended complaint.” *See, e.g.,*
24 *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) (citations omitted). Plaintiffs do
25 not intend to pursue this claim at this time and respectfully request that the Court dismiss it with
26 prejudice so that it can preserved for appeal. [REDACTED]

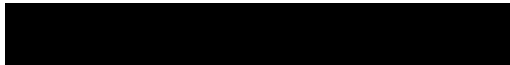
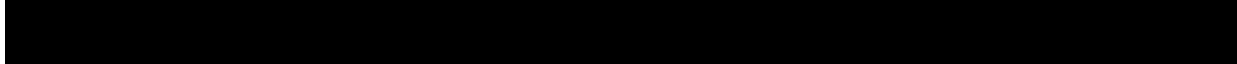
27 [REDACTED]
28 [REDACTED]

1 **Plaintiffs' Claim for Breach of Contract on Behalf of the GLA Class**

2 7. Unlike prior complaints, the TAC includes copies of agreements signed by
3 Plaintiffs that were in effect during the statute of limitations period. Specifically, Plaintiffs
4 attach to the TAC a GLA Mr. Adderley signed on May 1, 2001, and a GLA Mr. Adderley
5 signed on November 22, 2002. TAC, **Exhibits B** and **C**. Each of these agreements was in
6 effect during the relevant statute of limitations period; the May 1, 2001 GLA expired on
7 December 31, 2003 and the November 22, 2002 expired on December 31, 2005. Plaintiffs
8 originally pled the legal effect of these agreements on information and belief. Plaintiffs would
9 have attached the exact agreements themselves, but did not have copies until Defendants
10 produced them on August 1, 2007 (after the Second Amended Complaint had already been
11 filed).

12 8. The TAC also has been amended to identify the specific provision of Mr.
13 Adderley's GLAs that were breached by Defendants. Specifically, Defendants have breached
14 the provision in the GLAs which states: "*it is further understood that the moneys generated by*
15 *such licensing of retired player group rights will be divided between the player and an escrow*
16 *account for all eligible NFLPA members who have signed a group licensing authorization*
17 *form.*" (emphasis added). TAC, ¶¶ 19, 29.

18 9. In addition, the TAC has been amended to better explain Plaintiffs' breach of
19 contract theory on behalf of the GLA class. In its September 6, 2007 Order, the Court found
20 that the SAC failed to specify how Plaintiffs "personally lost funds because a provision of the
21 contract was breached." The TAC explains in great detail the personal nature of the breach of
22 the above provision and the damages such breach caused Mr. Adderley and those members of
23 the GLA Class (as that term is defined in the TAC). TAC, ¶¶ 29-39. Specifically, Plaintiffs
24 have amended the TAC to allege that 

25 
26 

27 ¹ On September 21, 2007, counsel for Defendants sent Plaintiffs' counsel a letter and affidavit purporting to show
28 that Players Inc paid Plaintiff Herb Adderley all monies to which Defendants claim Mr. Adderley was entitled. The
monies identified in Defendants' materials appear to relate to individual "ad hoc" agreements Mr. Adderley signed

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[REDACTED]

TAC, ¶¶ 29-39.

Plaintiffs’ Claim for Breach of Fiduciary Duty on Behalf of the GLA Class

10. Regarding the claim for breach of fiduciary duty based on the existence of a confidential relationship, Plaintiffs have alleged additional details related to Plaintiffs’ vulnerability to Defendants in accordance with the Order. Specifically, Plaintiffs’ TAC alleges that they were vulnerable to the size and economic power of Defendants because, among other reasons, Defendants had a complete monopoly over the relevant financial information and actively hid such information from the retired players. TAC, ¶¶ 48-51. Plaintiffs also allege that Defendants actively solicited the participation of retired players, which empowered Defendants, and that Plaintiffs were unable to effectively protect themselves from Defendants because of the lack of information and conflicts of interest fostered by the actions of Defendants. TAC, ¶ 51. Part of the basis for this claim comes from new information Plaintiffs gleaned from Defendants’ Responses to Plaintiffs’ First Set of Requests for Admissions, [REDACTED] both of which occurred after Plaintiffs filed their Second Amended Complaint.

11. Regarding breach of fiduciary duty based on agency by estoppel, in its September 6, 2007 Order, the Court determined that “[P]laintiffs [had] sufficiently alleged that there was an agency by estoppel relationship between [Mr.] Adderley and [D]efendants.” What the Court found lacking, however, was a claim of detrimental reliance on behalf of Mr. Adderley. In an effort to address the Court’s concerns, Plaintiffs now plead reliance on behalf of Mr. Adderley and others. TAC, ¶¶ 48-49. Specifically, Plaintiffs allege that Mr. Adderley with Players Inc. However, as explained in more detail above, Plaintiffs are not claiming that Defendants failed to pay Mr. Adderley pursuant to any “ad hoc” agreement, but rather that Defendants failed, pursuant to the GLA, to pay Mr. Adderley and other retired players a share of the guaranteed minimum revenue they received from licensing retired player rights to third parties like EA. [REDACTED]

1 and, on information and belief, other members of the GLA Class, relied on the Defendants to
2 act in good faith and to represent their best interests in connection with group licensing
3 opportunities. TAC, ¶ 49. Because of this, Mr. Adderley and others did not pursue licensing
4 opportunities on their own behalf (even though, as explained in the TAC, this would have been
5 futile). *Id.* Plaintiffs also allege that Mr. Adderley and, on information and belief, other
6 members of the GLA Class, relied on language of the GLAs – which provided for distribution
7 of licensing revenue to all eligible NFLPA members who have signed a GLA – [REDACTED]
8 [REDACTED]
9 [REDACTED] TAC, ¶ 50. Further, as
10 explained above, Plaintiffs allege that the rights to Mr. Adderley’s image [REDACTED]
11 [REDACTED]
12 [REDACTED] TAC, ¶¶ 52-53. As above,
13 part of the basis for this claim comes from new information Plaintiffs did not have in their
14 possession at the time they filed the SAC.

15 [REDACTED] In addition to the claims above, Plaintiffs’ TAC now includes a claim for breach
16 of fiduciary duty arising from express agency on behalf of Mr. Adderley and the GLA Class.
17 Specifically, Plaintiffs now allege that Defendants created, and accepted, an express agency
18 relationship between themselves and the retired players based on the GLA and the retired
19 players’ ability to control Defendants’ ability to license their images. [REDACTED]
20 [REDACTED]

21 [REDACTED] Plaintiffs’ TAC also claims that Defendants breached their various fiduciary
22 duties to Mr. Adderley and the GLA class by, among other things, [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 **Plaintiffs' Claim for Breach of Fiduciary Duty on Behalf of the Retired NFLPA Member**

2 **Class**

3 14. Since the filing of the SAC, Plaintiffs received information from Defendants
4 concerning which Plaintiffs paid dues to be retired members of the NFLPA for which years, and
5 which of those retired members of the NFLPA signed a GLA according to Defendants' records.
6 Plaintiffs have also learned through Defendants' Responses to Requests for Admissions that
7 Players Inc claims to represent *all* retired NFLPA members whether or not they ever signed a
8 GLA, [REDACTED] Plaintiffs
9 previously alluded to these allegations based on information and belief, but did not possess the
10 details they now possess. Based on the new information, Plaintiffs' TAC now includes a claim
11 for a breach of fiduciary duty on behalf of Mr. Parrish, and a class of retired NFLPA members
12 who joined the Retired Players Association but who, according to the NFLPA's own records,
13 did not sign a GLA. The elements of Plaintiffs' claim are twofold.

14 15. First, Plaintiffs allege a fiduciary duty on behalf of Mr. Parrish and others based
15 on agency by estoppel. Specifically, Plaintiffs claim that the NFLPA solicited the membership
16 of these retired NFL players and subsequently claimed that it represented these retired members
17 (without their knowledge) for purposes of pursuing commercial and marketing opportunities
18 with existing and potential NFL sponsors. TAC, ¶¶ 66-67. Defendants enjoyed substantial
19 benefits from such membership, including receipt of dues and access to these retired players.
20 *Id.*

21 16. Second, Plaintiffs allege a fiduciary duty on behalf of Mr. Parrish and others
22 based on a confidential relationship. Plaintiffs allege that Defendants actively solicited the
23 membership of vulnerable retirees like Mr. Parrish in exchange for the payment of dues. TAC,
24 ¶¶ 58, 72. Such membership provided Defendants with desired access to these players for
25 purposes of pursuing commercial activities, including, but not limited to, the licensing of retired
26 players' rights. TAC, ¶ 72. The NFLPA also promised retirees like Mr. Parrish a stake in the
27 actions of the NFLPA. TAC, ¶ 73. Mr. Parrish and others were vulnerable because Defendants
28 had a monopoly on information that was not provided to Plaintiffs, who suffer disabilities

1 resulting from their NFL careers. TAC, ¶ 72.

2 17. Plaintiffs claim that Defendants breached their fiduciary duties to Mr. Parrish
3 and the other retired NFLPA members by failing to provide them with information regarding
4 commercial or other opportunities pursued on the retired members' behalf. TAC, ¶¶ 79-80.
5 .Plaintiffs also allege a breach based on Defendants' comments that they in fact do not work for
6 retirees at all. TAC, ¶ 78.

7 **Plaintiffs' Claim for Unjust Enrichment**

8 18. There is no claim for unjust enrichment in the TAC because Defendants have
9 now produced Mr. Adderley's signed GLAs.

10 **Plaintiffs' Good Faith Basis for the Allegations in the Third Amended Complaint**

11 19. The changes discussed above result from attempting to comply with the Court's
12 Order and from the following newly-acquired information not in Plaintiffs' possession at the
13 time of the filing of the SAC:

- 14 • Exact copies of the GLAs Herb Adderley signed on May 1, 2001 and on
15 November 22, 2002, both of which were still in effect during the relevant statute
16 of limitations period;

17 [REDACTED] Players Inc's license agreements [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]

- 25 • Defendants' Responses to Plaintiffs' First Set of Requests for Admissions, in
26 which Defendants admit, among other things, that they represent all retired
27 NFLPA members in licensing and marketing matters regardless of whether that
28 member signed a GLA, and that they account to retirees merely by making

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payments to them;

- A declaration from Defendants' counsel confirming that Mr. Adderley paid membership dues to the NFLPA at least in 2003, 2004, and 2005, that Mr. Parrish paid membership dues to the NFLPA at least in 2005, and that the NFLPA does not have any record of Mr. Parrish signing a GLA during the statute of limitations period.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on September 27, 2007.

/s/Ronald S. Katz
Ronald S. Katz

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