

1 MANATT, PHELPS & PHILLIPS, LLP
 2 RONALD S. KATZ (Bar No. CA 085713)
 3 E-mail: rkatz@manatt.com
 4 RYAN S. HILBERT (Bar No. CA 210549)
 5 E-mail: rhilbert@manatt.com
 6 NOEL S. COHEN (Bar No. CA 219645)
 7 E-mail: ncohen@manatt.com
 8 1001 Page Mill Road, Building 2
 9 Palo Alto, CA 94304-1006
 10 Tel: (650) 812-1300; Fax: (650) 213-0260

11 MCKOOL SMITH,
 12 LEWIS T. LECLAIR (Bar No. CA 077136)
 13 E-mail: lleclair@mckoolsmith.com
 14 JILL ADLER NAYLOR (Bar No. CA 150783)
 15 E-mail: jnaylor@mckoolsmith.com
 16 300 Crescent Court
 17 Dallas, TX 75201
 18 Tel: (214) 978-4984; Fax: (214) 978-4044

19 *Attorneys for Plaintiffs*

20 UNITED STATES DISTRICT COURT
 21 NORTHERN DISTRICT
 22 SAN FRANCISCO DIVISION

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

27 Plaintiffs,

28 v.

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

34 Defendants.

CIVIL ACTION NO. C07 0943 WHA

**MOTION TO DISMISS PLAINTIFF
 PARRISH'S INDIVIDUAL CLAIM
 WITHOUT PREJUDICE FOR LACK OF
 JURISDICTION**

1 Plaintiff Bernard Paul Parrish moves¹ to dismiss without prejudice Parrish's claim for
2 breach of fiduciary duty against Defendants on the ground that the Court lacks jurisdiction, as
3 follows:

4 1. Parrish filed a putative class action on behalf of himself and others similarly
5 situated (the "Retired NFLPA Member Class") on February 14, 2007. In its Order dated
6 November 14, 2007 Granting in Part and Denying in Part Plaintiffs' Motion for Leave to File an
7 Amended Complaint, this Court stated that "Parrish has stated a claim for breach of fiduciary
8 duty." As a result, on March 14, 2008, Plaintiffs filed a Motion to certify as a class action the
9 claim for breach of fiduciary duty asserted by Bernard Parrish against Defendants on behalf of the
10 Retired NFLPA Member Class.

11 3. In its Order dated April 29, 2008 Granting in Part and Denying in Part Plaintiffs'
12 Motion for Class Certification, this Court denied certification of Parrish's breach of fiduciary
13 duty claim on behalf of the Retired NFLPA Member Class on the grounds that Parrish was not an
14 adequate class representative. Thus, by denying certification of Parrish's claim for breach of
15 fiduciary duty on behalf of the Retired NFLPA Member Class (without ruling on the merits),
16 Parrish is left only with an individual claim that does not satisfy the requirements for federal court
17 diversity jurisdiction as his claim, standing alone, does not exceed the jurisdictional amount of
18 \$75,000. *See* 28 U.S.C.A. § 1332(a).

19 4. Based on the foregoing, Plaintiffs request that Parrish's individual claim for breach
20 of fiduciary duty now be dismissed without prejudice, with: (a) the right to appeal this Court's
21 final judgment with respect to the denial of class certification for Parrish's breach of fiduciary
22 duty claim brought on behalf of the Retired NFLPA Member Class be expressly preserved, and
23 (b) in the event of a successful appeal of the Court's final judgment with respect to the denial of
24

25 ¹ Plaintiffs tried working with Defendants on a suitable stipulation dismissing Mr. Parrish's
26 claims, and even provided Defendants with two different versions. Defendants, however, refused
27 to agree to a stipulation of dismissal without prejudice and demanded that Parrish dismiss his
28 claims with prejudice. Plaintiffs believe that dismissal without prejudice is the appropriate
vehicle, and now bring this motion in order to dismiss Mr. Parrish's claim and streamline this case
for trial.

1 class certification for Parrish’s breach of fiduciary duty claim, the right that such class claim be
2 allowed to move forward before this Court.

3 WHEREAS, Plaintiffs request that (1) Parrish’s individual claim for breach of fiduciary
4 duty now be dismissed without prejudice, (2) the right to appeal this Court’s final judgment with
5 respect to the denial of class certification for Parrish’s breach of fiduciary duty claim brought on
6 behalf of the Retired NFLPA Member Class be expressly preserved, and (3) in the event of a
7 successful appeal of the Court’s final judgment with respect to the denial of class certification for
8 Parrish’s breach of fiduciary duty claim, that such claim be allowed to move forward before this
9 Court.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: August 12, 2008

MANATT, PHELPS & PHILLIPS, LLP

By: /s/Ryan S. Hilbert
Ryan S. Hilbert
1001 Page Mill Road, Building 2
Palo Alto, CA 94304-1006
Telephone: (650) 812-1300
Facsimile: (650) 213-0260
Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[PROPOSED] ORDER

The Court having considered the Motion to Dismiss, the pleadings on file and the arguments of counsel, and good cause appearing, hereby GRANTS Parrish’ Motion to Dismiss his individual claim without prejudice.

It is hereby ORDERED that that (1) Parrish’s individual claim for breach of fiduciary duty is now dismissed without prejudice, (2) the right to appeal this Court’s final judgment with respect to the denial of class certification for Parrish’s breach of fiduciary duty claim brought on behalf of the Retired NFLPA Member Class is expressly preserved, and (3) in the event of a successful appeal of the Court’s final judgment with respect to the denial of class certification for Parrish’s breach of fiduciary duty claim, that such claim is allowed to move forward before this Court.

IT IS SO ORDERED.

Dated: _____

HON. WILLIAM H. ALSUP
United States District Court Judge