

EXHIBIT 1

Case No. C 07 0943 WHA

Parrish v. National Football League Players Association, et al.

1 MANATT, PHELPS & PHILLIPS, LLP
RONALD S. KATZ (California Bar No. 085713)
2 E-mail: rkatz@manatt.com
RYAN S. HILBERT (California Bar No. 210549)
3 E-mail: rhilbert@manatt.com
NOEL S. COHEN (California Bar No. 219645)
4 E-mail: ncohen@manatt.com
1001 Page Mill Road, Building 2
5 Palo Alto, CA 94304-1006
Telephone: (650) 812-1300
6 Facsimile: (650) 213-0260
7 McKOOL SMITH, P.C.
LEWIS T. LECLAIR (California Bar No. 077136)
8 E-mail: lleclair@mckoolsmith.com
JILL ADLER (California Bar No. 150783)
9 E-mail: jadler@mckoolsmith.com
300 Crescent Court, Suite 1500
10 Dallas, TX 75201
Telephone: (214) 978-4000
11 Facsimile: (214) 978-4044

12 Attorneys for Plaintiffs

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

17 BERNARD PAUL PARRISH, HERBERT
18 ANTHONY ADDERLEY, and WALTER
ROBERTS, III on behalf of themselves and
19 all others similarly situated,

20 Plaintiffs

21 vs.

22 NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION, a Virginia
23 corporation, and NATIONAL FOOTBALL
LEAGUE PLAYERS INCORPORATED
24 d/b/a PLAYERS INC, a Virginia
corporation,

25 Defendants.

CIVIL ACTION NO. C07 0943 WHA

**THIRD AMENDED COMPLAINT FOR
BREACH OF CONTRACT, BREACH OF
FIDUCIARY DUTY, AN ACCOUNTING
AND VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE § 17200**

CLASS ACTION

JURY TRIAL DEMANDED

1 Plaintiff Bernard Parrish (“Parrish”), Herbert Anthony Adderley (“Adderley”), and Walter
2 Roberts, III (“Roberts”) by and through their undersigned attorneys, bring this complaint on behalf
3 of themselves and other similarly situated retired NFL players against National Football League
4 Players, Inc. (“PLAYERS INC”), and its parent labor union, the National Football League Players
5 Association (the “NFLPA” or the “Players Union”), as follows:

6 **I. INTRODUCTION**

7 This is a class action lawsuit brought by Parrish, Adderley and Roberts on behalf of
8 themselves and three classes of retired NFL football players against the NFLPA and PLAYERS
9 INC. Plaintiffs allege that the Defendants have breached contractual and fiduciary duties to
10 Adderley and to those retired players who have signed what Defendants have referred to both as a
11 Group Licensing Agreement or Group Licensing Authorization (hereafter “GLA”) with the
12 NFLPA during the class period (the “GLA Class”). Plaintiffs also continue to allege that the
13 NFLPA has breached fiduciary duties to Adderley, Parrish and to those retired members of the
14 NFLPA whom Defendants purported to represent during the class period (the “Retired NFLPA
15 Member Class”). Plaintiffs seek relief on behalf of Adderley and the GLA Class for breach of
16 contract, breach of fiduciary duty, and an accounting. Plaintiffs also seek relief on behalf of
17 Parrish and the Retired NFLPA Member Class for breach of fiduciary duty.

18 In addition, solely for purposes of preserving the claims and issues for appeal (*see Forsyth*
19 *v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997)), Plaintiffs respectfully re-allege, and
20 incorporate by reference, the claims under Bus. & Prof. Code § 17200 previously asserted by
21 Roberts, and on behalf of the 17200 California Resident Class.

22 **II. JURISDICTION AND VENUE**

23 1. The Court has subject matter jurisdiction under 28 U.S.C. § 1332 (diversity
24 jurisdiction) because one or more Class members is a citizen of a state different from Defendants,
25 there are more than 100 class members, and, on information and belief, the aggregate amount in
26 controversy exceeds the jurisdictional amount of \$5 million.

27 2. Venue in this Court is proper under 28 U.S.C. § 1391 because a substantial part of
28 the events or omissions giving rise to the claims occurred in this district.

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

III. INTRADISTRICT ASSIGNMENT

3. Pursuant to Local Civil Rule 3-2, assignment of this action to the San Francisco division of this Court is proper because a substantial part of the events or omissions giving rise to the claims herein occurred in San Mateo County.

IV. PARTIES

A. PLAINTIFFS

4. Plaintiff BERNARD PAUL PARRISH, a resident of Florida, is a former defensive back who starred with the Cleveland Browns from 1959 through 1966. Parrish graduated with a degree in Building Construction from the University of Florida, School of Architecture and Fine Arts. He was the CEO and President of a commercial construction company for over 20 years that employed over 3,000 tradesmen, laborers and engineers (both union and non-union), building hotels, medical and office buildings, and housing for officer and enlisted men on AFB's in eight states. Prior to entering the NFL, Parrish was a baseball All-American at the University of Florida (where he is also a member of the school's Hall of Fame) and played one year of professional baseball. As a pro football player, Parrish played in two Pro Bowl games. In 1964, Parrish led the Browns to an NFL World Championship, beating Johnny Unitas and Coach Don Shula's heavily-favored Colts 27-0. Parrish has been an advocate for retired players for many years. He is the author of a best selling book, *They Call It A Game*.

5. Plaintiff HERBERT ANTHONY ADDERLEY, a resident of New Jersey, is a former NFL cornerback who starred for the Green Bay Packers and the Dallas Cowboys from 1961 through 1972. Adderley played in five Pro Bowl games during the 1960's. He also played in seven NFL championship games, including four of the first six Super Bowl games. Adderley is one of only two players in pro football history to play on six World Championship teams. Adderley's 60-yard interception return for a clinching touchdown for the Packers in Super Bowl II was the first touchdown scored by a defensive player in Super Bowl history. He was enshrined in the Pro Football Hall of Fame in 1980. In 1999, Adderley was ranked number 45 on *The Sporting News'* list of the 100 Greatest Football Players. Adderley has signed a number of GLAs with the

1 NFLPA. In addition, Adderley paid membership dues to the NFLPA at least in 2003, 2004, and
2 2005. On information and belief, his membership expired in February 2006.

3 6. Plaintiff WALTER ROBERTS III, a resident of Northern California since 1979, is a
4 former wide receiver and kick returner who starred in the NFL from 1964 to 1970. A former
5 California state and national long-jump champion in 1960, Roberts went on to play with the
6 Cleveland Browns from 1964 to 1966 and was a member of the Cleveland Browns team that
7 defeated Johnny Unitas and Coach Don Shula's heavily-favored Colts 27-0 in the 1964 World
8 Championship. Roberts also led the league in kickoff returns that same year. Following his stint
9 with the Browns, Roberts played with the New Orleans Saints during their inaugural season in
10 1967 and helped the Saints win their first game in franchise history by scoring three touchdowns in
11 a 31-24 victory over the Philadelphia Eagles. Roberts also played for Coach Vince Lombardi and
12 the Washington Redskins in 1969 and 1970. Following his career in professional football, Roberts
13 co-owned a building supplies company called JR Builders Specialties, Inc. He is a competitor
14 and/or potential competitor to Defendants for the marketing of his image, and still receives many
15 requests for autographs for trading cards bearing his image.

16 **B. DEFENDANTS**

17 7. The NFLPA, formed in 1956, is a Virginia corporation that acts as the labor union
18 for professional football players in the National Football League. The NFLPA's principal place of
19 business is 2021 L Street, Washington, D.C.

20 8. Almost all active NFL players grant the right to market their names and images to
21 the NFLPA under the Collective Bargaining Agreement with the NFL (the "CBA"). Even though
22 retired NFL players are not and cannot be a party to the CBA, the NFLPA solicits membership
23 from retired NFL players and charges them annual dues for membership in the association.

24 9. The NFLPA has already been served and has appeared in this lawsuit.

25 10. Formed in 1994, PLAYERS INC is a for profit corporation owned by the NFLPA.
26 According to a Form 990 filed by Defendant NFLPA, PLAYERS INC is 79% owned by the
27 NFLPA (*see Exhibit A*). Douglas Allen ("Allen"), President of PLAYERS INC during the
28 relevant statute of limitations period (and until his departure in January of 2007), confirmed that

1 the remaining share of PLAYERS INC is owned by the Professional Athletes Foundation, a
2 501(c)(3) organization. PLAYERS INC is a Virginia corporation with its principal place of
3 business at 2021 L Street, Washington, D.C.

4 11. PLAYERS INC and the NFLPA have sought to become the exclusive representative
5 for group licensing of active and retired players with respect to licensed products, such as trading
6 cards and video games, television and radio programming, personal appearances, autograph
7 signings, an Internet site, and events such as the Super Bowl. On information and belief,
8 PLAYERS INC receives gross licensing revenues of over \$50 million per year based on the
9 licensing of products of over \$700 million per year.

10 12. PLAYERS INC has already been served and has appeared in this lawsuit.

11 **V. SUBSTANTIVE ALLEGATIONS OF ADDERLEY AND THE GLA CLASS**

12 **A. DEFENDANTS' GROUP LICENSING PROGRAM**

13 13. The NFLPA promotes a "Retired Players Group Licensing Program," through
14 which it solicits retired players to grant to the NFLPA a group license, giving it the ". . . non-
15 exclusive right to market the retired player's name, number, likeness, voice, facsimile signature,
16 photograph, picture, and/or biographical information (collectively "image") in the NFLPA Retired
17 Group Licensing Program." See **Exhibits B** and **C** (GLAs signed by Herb Adderley, attached
18 hereto and incorporated by reference). The NFLPA has solicited Adderley (and other retired NFL
19 members) to provide their name and image rights to the NFLPA pursuant to this form of GLA.

20 14. The NFLPA grants the rights that it obtains pursuant to the group license
21 agreements that it receives from retired players to PLAYERS INC in accordance with an
22 Agreement between the NFLPA and PLAYERS INC dated as of March 1, 2000 (the "NFLPA-
23 PLAYERS Agreement", a copy of which is attached hereto as **Exhibit D** and incorporated herein
24 by reference).

25 15. On its website dated February 6, 2007, PLAYERS INC defines these group
26 licensing rights and programs as follows:

27 Group licensing programs are defined as those programs in which a
28 licensee utilizes a total of six (6) or more NFL players in conjunction with
or on products that are sold at retail or used as promotional or premium

1 items. The players may be depicted *individually* on a product as part of a
2 series or collectively with other players.

3 Some PLAYERS INC group licensing programs utilize as few as 6 players
4 and others as many as 1,800 league-wide. PLAYERS INC works with
5 more than 60 licensees whose products include: Trading cards (500+
6 players), Videogames (1,500+ players), Apparel (1,000+ players) and
7 Collectibles (75+ players) (emphasis added). See **Exhibit E**.

8 PLAYERS INC's group licensing rights and programs are found in numerous license agreements
9 with third parties.

10 16. As detailed below, although the GLAs signed by Adderley and, on information and
11 belief, by other members of the GLA Class during the limitations period, were purportedly non-
12 exclusive, the actual operation of the GLAs, and the interpretation of them by the NFLPA and
13 PLAYERS INC effectively rendered Adderley and the other class members powerless to market
14 themselves in connection with football and/or with the vast majority of potential NFL sponsors.

15 **B. ADDERLEY AND OTHER GLA CLASS MEMBERS ENTERED INTO
16 GLAS WHICH PROVIDED FOR DISTRIBUTION OF LICENSING
17 REVENUES TO ALL PARTICIPANTS IN THE GROUP LICENSING
18 PROGRAM**

19 17. As noted above, Adderley entered into several versions of a GLA with the NFLPA
20 as part of its Retired Group Licensing Program, including two GLAs that were still in effect within
21 the period of the statute of limitations. On information and belief, numerous other retired players
22 signed GLAs containing language substantively identical to the language appearing in the two
23 most recent Adderley GLAs.

24 18. Adderley first signed a GLA with the NFLPA in 1993, prior to the formation of
25 PLAYERS INC, and signed a second GLA in 1996. Adderley then entered into a third GLA on
26 May 1, 2001, which expired on December 31, 2003. A copy of the GLA signed by Plaintiff
27 Adderley in 2001 is attached hereto as **Exhibit B** and incorporated herein by reference. On
28 November 22, 2002, Adderley signed a GLA that remained in effect until December 31, 2005. A
copy of the GLA signed by Plaintiff Adderley in 2002 is attached hereto as **Exhibit C** and
incorporated herein by reference (the "Adderley 2002 GLA"). Both of these GLAs were still in
effect during the relevant statute of limitations period.

1 19. The version(s) of the GLA executed by Adderley and in effect during the limitations
2 period required that revenues be shared between *all* participants of Defendants' group licensing
3 program. The Adderley GLA states, in relevant part, that "*it is further understood that the*
4 *moneys generated by such licensing of retired player group rights will be divided between the*
5 *player and an escrow account for all eligible NFLPA members who have signed a group*
6 *licensing authorization form.*" (emphasis added). See Exhibits B and C.

7 **C. DEFENDANTS LICENSED THE RIGHTS OF ADDERLEY AND OTHER**
8 **RETIRED PLAYERS TO LICENSEES AS PART OF THE GROUP**
9 **LICENSING PROGRAM**

10 20. On various occasions, Defendants have disputed that they have licensed retired
11 players' rights in connection with their group licensing programs. Contrary to Defendants' claims,
12 Defendants have licensed retired player rights to many of its licensees (*and have been paid for*
13 *those rights*), regardless of whether those rights were ever exercised. The best example of this is
14 PLAYERS INC's licensing relationship with Electronic Arts, Inc. ("EA"), a company
15 headquartered in San Mateo County that produces the "Madden NFL" series of football
16 videogames that are the most popular in the world.

17 21. In an agreement between PLAYERS INC and EA effective from March 1, 2004
18 through February 28, 2005, a copy of which is attached hereto as Exhibit F and incorporated
19 herein by reference (the "EA 2004 Agreement"), PLAYERS INC represented in Paragraph 1(A)
20 that it had acquired group licensing rights for certain retired players :

21 (A) PLAYERS INC. represents that it is a licensing
22 affiliate of the National Football League Players Association
23 ("NFLPA"); that the NFLPA has been duly appointed and is acting
24 on behalf of the football players of the National Football League
25 would have entered into a Group Licensing Authorization, either in
26 the form attached hereto as Attachment "A" or through the
27 assignment contained in Paragraph 5(b) of the NFL Player
28 Contract, which have been assigned to PLAYERS INC.; and that in
such capacity PLAYERS INC. has the right to negotiate this
contract and the right to grant rights and licenses described herein.
Licensee acknowledges that PLAYERS INC. also on occasion
secures authorization for inclusion in PLAYERS INC. licensing
programs from players, *including but not limited to retired players*,
who have not entered into such Group Licensing Authorization, but
who, nevertheless, authorize PLAYERS INC. to represent such
players for designated PLAYERS INC. licensed programs.
(emphasis added).

1 22. The former president of PLAYERS INC, Doug Allen, who signed the EA 2004
2 Agreement on behalf of PLAYERS INC, confirmed that the language of Paragraph 1(A) included
3 those retired players who did not sign the specific GLA form attached as Exhibit A to the EA 2004
4 Agreement (designed for active NFL players), but who instead signed another form of GLA, like
5 Adderley, or otherwise granted their rights to the NFLPA.

6 23. In Paragraph 2(A) of the EA 2004 Agreement, PLAYERS INC granted a license to
7 the retired players referenced in Paragraph 1(A):

8 (A) Upon the terms and conditions hereinafter set forth,
9 PLAYERS INC. hereby grants to Licensee and Licensee hereby
10 accepts the non-exclusive right, license and privilege of utilizing
11 ... the names, likenesses (including, without limitation, numbers),
12 pictures, photographs, voices, facsimile signatures and/or
13 biographical information (hereinafter "identity") of the NFL players
14 referenced in Paragraph 1(A) above, for products(s) in the form of
15 video and computer football simulation, arcade-style, and manager
16 games....

17 *See* EA 2004 Agreement, **Exhibit F**, Paragraphs 1(A) and 2(A).

18 24. Allen, who signed the EA 2004 Agreement on behalf of PLAYERS INC,
19 confirmed that the language of Paragraph 2(A) included those retired players who signed GLAs, or
20 otherwise granted their group licensing rights to the NFLPA.

21 25. In December 2004, EA and PLAYERS INC entered into an historic exclusive
22 contract (the "EA 2005 Agreement"), a copy of which is attached hereto as **Exhibit G** and
23 incorporated herein by reference. In the EA 2005 agreement (effective from March 1, 2005
24 through February 28, 2010), PLAYERS INC represented in Paragraph 1(A), just as it had in the
25 EA 2004 Agreement, that it had acquired group licensing rights for certain retired players :

26 (A) PLAYERS INC represents that it is a licensing
27 affiliate of the National Football League Players Association
28 ("NFLPA"); that the NFLPA has been duly appointed and is acting
on behalf of the football players of the National Football League
who have entered into a Group Licensing Authorization, either in
the form attached hereto as Attachment "A" or through the
assignment contained in Paragraph 4(b) of the NFL Player
Contract, which have been assigned to PLAYERS INC.; and that in
such capacity PLAYERS INC. has the right to negotiate this
contract and the right to grant rights and licenses described herein.
Licensee acknowledges that PLAYERS INC. also on occasion
secures authorization for inclusion in PLAYERS INC. licensing

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

programs from players, *including but not limited to retired players*, who have not entered into such Group Licensing Authorization, but who, nevertheless, authorize PLAYERS INC. to represent such players for designated PLAYERS INC. licensed programs. (emphasis added).

26. In Paragraph 2(A) of the EA 2005 Agreement, just as in the EA 2004 Agreement, PLAYERS INC granted EA a license to the retired players referenced in Paragraph 1(A):

(A) Upon the terms and conditions hereinafter set forth, **PLAYERS INC. hereby grants to Licensee and Licensee hereby accepts the exclusive right, license and privilege of utilizing** the trademarks and names of PLAYERS INC. which may be amended from time to time by PLAYERS INC. and the names, likenesses (including, without limitation, numbers), pictures, photographs, voices, facsimile signatures and/or biographical information (hereinafter "identity") **of the NFL players referenced in Paragraph 1(A) above**, for product(s) in the form of video and computer football simulation, arcade-style, and manager games . . . (emphasis added).

See EA 2005 Agreement, **Exhibit G**, Paragraphs 1(A) and 2(A).

27. The revenues generated by the EA 2005 Agreement were significant; EA guaranteed a minimum annual royalty of \$25,000,000 per year. Paragraph 6(C) of the 2005 Agreement makes clear that the guaranteed minimum royalty payments that PLAYERS INC is entitled to receive are due and payable *regardless of whether EA makes any use of any retired player's licensed rights*:

Such advances and guaranteed minimum royalty payments shall be made by Licensee as specified herein *whether or not Licensee uses the rights licensed hereunder*, and no part of such guaranteed minimum royalty payments shall be repayable to Licensees" (emphasis added).

EA 2005 Agreement, **Exhibit G**, Paragraph 6(C).

28. Defendants have licensed retired players' rights and images, as granted pursuant to the Retired Players Group Licensing Program, to other licensees, including, but not limited to, the Upper Deck Company and the Topps Company. These licenses have generated guaranteed minimum payments to PLAYERS INC that should have been shared with retired players who signed GLAs with the NFLPA.

1 **D. DEFENDANTS BREACHED THEIR CONTRACTUAL OBLIGATIONS**
2 **TO ADDERLEY AND THOSE RETIRED PLAYERS WHO HAVE SIGNED**
3 **SIMILAR GLAS BY FAILING TO SHARE LICENSING REVENUE**
4 **WITH THEM**

5 29. PLAYERS INC and the NFLPA breached the terms of the Adderley GLA(s) by
6 failing to share the revenue they received from such licenses – including the guaranteed minimum
7 royalties under the EA Agreements, and other licensing royalties – with retirees. As noted above,
8 the Adderley GLAs provide that moneys generated by licensing of retired player rights “. . . will
9 be divided between the player and an escrow account for all eligible NFLPA members who have
10 signed a group licensing authorization form.” See **Exhibits B** and **C**.

11 30. On information and belief, PLAYERS INC and the NFLPA created a bank account
12 – a “licensing revenue depository account” – from which they transferred money for a variety of
13 purposes. Rather than complying with the express terms of the GLAs signed by Adderley and
14 other retired members of the NFLPA, however, PLAYERS INC and the NFLPA entered into a
15 scheme designed to deprive the retired NFLPA members of their rightful share of the funds
16 deposited in such account, and to appropriate to themselves substantial sums.

17 31. More specifically, the 2000 NFLPA-PLAYERS Agreement (referred to in
18 Paragraph 14 above and, on information and belief, still in effect today), provides for the
19 distribution of royalties to those who have entered into GLAs. Paragraph 4(B) of the NFLPA-
20 PLAYERS Agreement provides for a royalty in the amount of sixty per cent (60%) of gross
21 licensing revenue to be paid “to such players as have currently licensed NFLPA to use their Group
22 Licensing rights and who meet the eligibility requirements of Section 4(D)...” See **Exhibit D**.
23 This Agreement, however, which was made without the knowledge of Adderley or the other retired
24 players, confirms the breach of the GLA by, among other things, not providing for payments to
25 retired players, who, on information and belief, never received any payments pursuant to the GLA
26 (see, e.g., Paragraph 4(A)(v) et. seq. of **Exhibit D**). The sixty percent (60%) of gross licensing
27 revenue should have been paid to an “escrow account for all eligible NFLPA members [including
28 retired NFLPA members] who signed a group licensing authorization form.”

1 32. Each of the active players of the NFLPA who have signed GLAs have, on
2 information and belief, been paid an “equal share” royalty from the sixty percent (60%) royalty
3 specified in the NFLPA-PLAYERS Agreement. However, the retired NFL players and members
4 who signed GLAs have not, on information and belief, been paid any portion of the guaranteed
5 minimum revenues.

6 33. Defendants have arbitrarily, unnecessarily and wrongfully excluded retired NFLPA
7 members who signed a GLA from a share of such revenues. There is no valid reason to exclude
8 those retired players who signed GLAs from an “equal share” royalty. Indeed, Allen recently
9 acknowledged that the NFLPA could include retired NFL players like Adderley and other GLA
10 Class members.

11 34. The guaranteed minimum royalties under the EA 2004 Agreement and EA 2005
12 Agreement, and payable under additional licenses referenced in Paragraph 28 above, are not
13 related to any specific player and make no distinction between amounts paid for active NFL
14 players and retired players. Pursuant to the NFLPA-PLAYERS Agreement, such royalties should
15 have been distributed on an “equal share” basis to all retired players who had executed GLAs.
16 Nevertheless, despite the NFLPA’s promise in Adderley’s GLAs and its obligations to Adderley
17 and other members of the GLA Class, licensing revenues were not divided between the player and
18 all eligible NFLPA members who had signed a GLA. In fact, an email from Doug Allen dated
19 October 27, 2006 (attached as **Exhibit H** and incorporated herein by reference) confirms that only
20 358 of 3,500 retired players received payments in 2005. These payments amounted to a fraction of
21 PLAYERS INC’s NFL player licensing business.

22 35. The GLAs were drafted solely by PLAYERS INC and should be construed strictly
23 against the NFLPA and PLAYERS INC.

24 **E. DEFENDANTS BREACHED THEIR CONTRACTUAL OBLIGATIONS**
25 **TO ADDERLEY AND OTHER RETIRED PLAYERS WHO SIGNED**
26 **SIMILAR GLAS BY RETAINING AMOUNTS OF GROSS LICENSING**
27 **REVENUE AND BY “RE-ALLOCATING” \$8 MILLION IN LICENSING**
28 **REVENUE THAT SHOULD HAVE BEEN PAID TO NFLPA MEMBERS**

29 36. In addition to their failure to distribute “equal share” royalties to those retired
30 players, including Adderley, who signed GLAs from the sixty percent (60%) of gross licensing

1 revenue, Defendants retained additional amounts of such revenue in violation of the GLAs, and
2 improperly re-allocated \$8 million in licensing revenue, keeping such revenue for themselves
3 rather than distributing it, as they were required to do, to NFLPA members who signed a GLA,
4 including retired players.

5 37. The NFLPA-PLAYERS Agreement does not specifically provide for the
6 distribution of the remaining forty percent (40%) of gross licensing revenue. In accordance with
7 the GLAs signed by Adderley and other retired players, this remaining revenue should have been
8 paid directly to players or paid out as additional royalty to NFLPA members. Adderley does not
9 know the disposition of such funds and will need an accounting to determine what has happened to
10 those funds. Adderley's legal remedies are not sufficient to obtain this information.

11 38. However, in an amendment to the NFLPA-PLAYERS Agreement dated February
12 28, 2006, but effective as of March 1, 2005 (the "2005 Amendment"), the NFLPA and PLAYERS
13 INC agreed, unilaterally and without notice to retired players, that eight million dollars
14 (\$8,000,000) of gross licensing revenue should be "reallocated" among the NFLPA and PLAYERS
15 INC. This amendment (attached as **Exhibit I** and incorporated herein by reference) notes that "the
16 NFLPA and Players Inc currently retain 30% and 33% respectively of marginal amounts of gross
17 licensing revenue", and then goes on to provide that:

18 Notwithstanding the other provisions of this Section 4, \$8,000,000
19 of the amount described in Section 4(A) [gross licensing revenue]
20 shall be paid out of the licensing revenue depository account
21 established to disburse amounts payable to the NFLPA and Players
22 Inc. with the depository account paying 60% of such amount to the
23 NFLPA and 40% of such amount to Players Inc. See **Exhibit I**.

24 39. Thus, instead of complying with the express terms of the GLAs signed by Adderley
25 and other retired members of the NFLPA, PLAYERS INC has, on information and belief, with the
26 concurrence of or at the direction of the NFLPA, diverted millions of dollars from the licensing
27 revenue depository account to PLAYERS INC and the NFLPA. On information and belief, this
28 money was used to support the overhead, substantial salaries and perquisites of those entities.

1 **F. THE NFLPA AND PLAYERS INC HAVE BREACHED FIDUCIARY**
2 **OBLIGATIONS TO THOSE RETIRED PLAYERS WHO, LIKE**
3 **ADDERLEY, JOINED THE NFLPA AND ASSIGNED THEIR GROUP**
4 **LICENSING RIGHTS TO THE NFLPA**

4 40. As detailed in Section V(A) above, the NFLPA and PLAYERS INC have solicited
5 retired players, including Adderley and other members of the GLA Class, to participate in the
6 Retired Players Group Licensing Program through execution of GLAs. Although the GLA signed
7 by Adderley and, on information and belief, other GLA Class members, contains language
8 indicating it is a “non-exclusive” license, as stated on PLAYERS INC’s website dated February 6,
9 2007, the group licensing program actually operates in practice like an “exclusive” license:

10 When a player signs an NFLPA Group Licensing Assignment (GLA) or assigns his
11 group licensing rights to the NFLPA, *he gives the NFLPA the exclusive right to*
12 *use his name, number, likeness, voice, facsimile signature, photograph, picture,*
13 *and/or biographical information (collectively “image”) in licensed programs*
14 *involving six or more players.* The NFLPA has assigned, and will continue to
15 assign, those rights to PLAYERS INC. (emphasis added). *See Exhibit E.*

14 41. The language on PLAYERS INC’s website does not distinguish between active and
15 retired players.

16 42. In fact, the most recent agreement between PLAYERS INC and EA, the EA 2005
17 Agreement, contains a provision that the licensee “shall not secure or seek to secure, directly from
18 any player who ... at any time in the past was under contract to an NFL club, or from such player’s
19 agent, permission or authorization for the use of such player’s name, facsimile signature, image,
20 likeness (including without limitation, number) photograph or biography in conjunction with the
21 [licensed products].” *See, e.g., Exhibit G* attached hereto and incorporated herein by reference.
22 On information and belief, most, if not all other agreements between PLAYERS INC and licensees
23 of PLAYERS INC contain this same language.

24 43. In a memorandum to NFLPA Contract Advisors in 2006 (a copy of which is
25 attached hereto as **Exhibit J** and incorporated by reference), Doug Allen also confirmed how
26 broadly the GLAs were interpreted by PLAYERS INC:

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

“Exclusive Sponsorship Agreement between Players Inc and NFL

- Provides exclusive player group licensing rights and exclusive use of Players Inc logo to NFL national sponsors...

* * *

- Provides that all contact with any NFL player regarding player’s participation in NFL sponsorship program (including contact with player’s agent or marketing representative) must be through Players Inc....”

“Effect of Sponsorship Agreement on NFL Club or Local Sponsor Use of Players

* * *

- Player group licensing rights are defined as the use of six or more player names and/or images in commonly branded retail licensed products, promotions, or sponsorship programs, calculated on a national basis during an annual period from March 1-February 28. Player group licensing does not require that six players be utilized on the same product or advertisement at the same time;

- For example, if Coca Cola utilized a different player identity in each of six team cities to activate local sponsorship programs, Players Inc.’s exclusive group licensing rights threshold would be crossed and Coca Cola would require a Players Inc license for such use, even though in any of the six cities only one player from that cities’ team would be used;

* * *

44. Although Allen has claimed that his memorandum dealt specifically with active NFL players and not retired NFL players, his interpretation of key provisions of the GLA form apply equally to retired players. For example, the extremely broad definition of the “six player” threshold for group licensing would be applied in the same way to retired players as it would to active players and would preclude retired players such as Adderley from making *individual* deals with many national or local NFL sponsors. When asked to explain the restrictions of the GLA as interpreted by the NFLPA and PLAYERS INC, Allen could not provide a clear explanation of how the six player restrictions would operate, suggesting instead that each situation would depend on a host of variables that would have to be discussed and negotiated between the retired player and PLAYERS INC. In other words, PLAYERS INC retained the right and power to claim that the retired player’s effort to market would in some way impinge on the authorization granted to the NFLPA or a license restriction between PLAYERS INC and potential sponsors or licensees.

1 Against this backdrop, Adderley alleges the following bases for his breach of fiduciary
2 duty claims against Defendants:

3 **1. The GLAs Create an Express Agency Relationship**

4 45. As the representative of the retired players who have signed a GLA during the class
5 period, Defendants have created, and accepted, an express agency relationship between themselves
6 and the retired players. Defendants had the ability to negotiate and ultimately execute licensing
7 agreements on behalf of Adderley and the GLA Class by virtue of the GLAs. According to Allen's
8 testimony, Adderley and other retired players retained control over PLAYERS INC's conduct by
9 having the ability to approve all personal appearances and additional services that might be
10 requested by a licensee. Adderley and other retired players also retained control over PLAYERS
11 INC's conduct under the GLA by having the ability to withdraw their participation in Defendants'
12 Group Licensing Program, and to terminate the relationship. As the documents and testimony
13 detailed herein confirm, PLAYERS INC requested retired players like Adderley to sign specific
14 contracts for such events as promotional appearances and card signings. Nevertheless, the annual
15 GLAs signed by Adderley and, on information and belief, other GLA Class members, granted
16 Defendants the express right to market the image of Adderley and other GLA Class members.

17 **2. The GLAs and Surrounding Circumstances Create an Agency
18 Relationship by Operation of Law And/Or As Can Be Inferred or
19 Implied by the Conduct of the Parties and Surrounding Circumstances**

20 46. The GLAs also create an agency relationship, either by operation of law and/or as
21 can be inferred or implied based on the conduct of the parties and the circumstances of the case.
22 Upon information and belief, Defendants have enjoyed substantial benefits from these agency
23 relationships, and Defendants should now be estopped from disavowing their resulting obligations.
24 The NFLPA entered into the GLAs with retired players and then assigned the rights to PLAYERS
25 INC who enforced and acted upon them, on information and belief, with the consent and approval
26 of the NFLPA.

27 47. In addition, Defendants have assumed a fiduciary relationship with the retired
28 players who signed GLAs and are obligated to act with the highest duty of loyalty and regard for
the interests of those retired players. These duties include fiduciary obligations that arise, among

1 other ways, from the NFLPA's role as an association in which those retired players who signed
2 GLAs were also members. On information and belief, any retired player who signed a GLA was
3 also a member of the NFLPA.

4 48. Adderley and, on information and belief, other members of the GLA Class, relied
5 on the Defendants to act in good faith and to represent their best interests in connection with group
6 licensing opportunities. Because of this, Adderley and other members of the GLA Class did not
7 pursue licensing opportunities on their own behalf. Even if they had, however, their efforts would
8 have been highly unlikely to succeed. As noted above, although the GLAs signed by Adderley,
9 and by other members of the GLA Class during the limitations period, are purportedly "non-
10 exclusive", the actual operation of the GLAs and other agreements, and the interpretation of them
11 by the NFLPA and PLAYERS INC, effectively rendered Adderley and the other class members
12 powerless to market themselves in connection with football or with many potential sponsors.

13 49. Adderley and other members of the GLA Class also relied on language of the GLAs
14 – which provided for distribution of licensing revenue to all eligible NFLPA members who have
15 signed a GLA – in deciding to participate in the Retired Players Group Licensing Program, and in
16 authorizing Defendants to represent them in connection with group licensing opportunities. In
17 doing so, Adderley and other GLA Class members reasonably expected that the NFLPA and
18 PLAYERS INC would act in good faith towards them, and would distribute to them a portion of
19 group licensing revenue received as promised, *regardless of whether their individual images were*
20 *ever used.*

21 50. Defendants owed Adderley and each represented NFLPA member a fiduciary duty
22 to act in a fair and equitable manner consistent with the best interests of retired players. Instead,
23 Defendants have acted in an arbitrary, capricious and inequitable manner, contrary to their
24 fiduciary obligations. In addition to admitting that they did not provide an accounting to the retired
25 players other than the payments themselves, Defendants actively hid such information from the
26 retired players, such as the NFLPA-PLAYERS Agreement (see paragraphs 14, 29-35 above).

27
28

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

3. Defendants Breached the Fiduciary Duties Owed to Adderley and Other Retired Players Who Signed GLAs

51. Without the knowledge of retired players such as Adderley, PLAYERS INC licensed the rights of retired players to licensees such as EA in exchange for very substantial guaranteed minimum payments totaling millions of dollars per year. These licensee payments were not segregated between active and retired players and were paid to PLAYERS INC and the NFLPA regardless of whether the images of any individual players were used.

52. Without the knowledge of retired players such as Adderley, PLAYERS INC and the NFLPA have arbitrarily, wrongfully and in violation of the rights of retired players, excluded retired players from the "equal share royalty" paid to active players from such funds and have failed to distribute group licensing revenue to retired players that they were obligated, in good faith, to distribute. Defendants unfairly and wrongfully excluded retired players (without their knowledge) from any "equal share royalty" by, among other things, defining "gross licensing revenues" and/or "eligibility" in a way that excludes the retired players, even though there is no valid basis on which to do so and even though such conduct breaches the GLA.

53. The NFLPA has placed itself in a position of conflict of interest in violation of its fiduciary duty by choosing to pay active players (who vote on the management of the NFLPA) and appropriating or "re-allocating" substantial sums of money for itself from such funds, while excluding retired players from a share of the equal share, guaranteed royalties. The actions of PLAYERS INC and the NFLPA are particularly egregious because Defendants kept secret from, and refused to provide to, Adderley and other retired players the pertinent and critical information that would have revealed their actions, leaving such players unable to know what was happening and unable to protect themselves.

54. More specifically, Defendants have violated fiduciary duties to Adderley and the putative class in at least the following ways:

- PLAYERS INC and the NFLPA have violated a continuing duty to GLA Class members to accurately report such revenues to members of the GLA Class, and they

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

have violated a duty to report such revenues to the members of the GLA Class in a timely fashion;

- PLAYERS INC and the NFLPA have not, on information and belief, distributed revenues to the members of the GLA Class that should have been distributed and were owed to them;
- PLAYERS INC and the NFLPA have arbitrarily, capriciously and wrongfully excluded retired players from the “equal share” royalty paid from sixty percent (60%) of gross licensing revenue;
- PLAYERS INC and the NFLPA have misappropriated funds totaling eight million dollars (\$8,000,000) or more that should have been paid, in part, to Adderley and the GLA Class; and
- PLAYERS INC and the NFLPA have placed themselves in a position of conflict of interest and have acted adversely to the interest of retired NFL players who signed a GLA.

55. As a result of the unlawful conduct complained of above, Adderley seeks an accounting of the funds received and distributed by PLAYERS INC in connection with its claimed representation of retired players who signed a GLA. Adderley also seek damages on behalf of the putative class, in an amount to be proven at trial, which, on information and belief, will exceed the jurisdictional amount of \$5 million.

1 **VI. SUBSTANTIVE ALLEGATIONS OF PARRISH AND THE NFLPA MEMBERS**
2 **WHOM THE RECORDS OF THE NFLPA SHOW DID NOT SIGN A GLA**

3 **A. THE NFLPA AND PLAYERS INC HAVE A FIDUCIARY OBLIGATION**
4 **TO PARRISH AND THOSE RETIRED PLAYERS WHO WERE**
5 **MEMBERS OF THE NFLPA, BUT, ACCORDING TO THE NFLPA,**
6 **DID NOT SIGN A GLA**

7 56. The NFLPA provides for membership of retired NFL players, and solicits the
8 membership of such retired NFL players in exchange for dues. In particular, the NFLPA's
9 Constitution, enacted in March 1994 and, on information and belief, in effect during the relevant
10 limitation period until it was amended in March of 2007, recognizes that that because "... retired
11 players still have a stake in the actions of the NFLPA, the Board of Player Representatives has
12 authorized a retired players organization." See **Exhibit K** (NFLPA Constitution dated March
13 1994), Art. II, p. 6, attached hereto and incorporated by reference.

14 57. On information and belief, in the fall of 2003, the NFLPA solicited retired NFL
15 players to join (or renew their membership) in the NFLPA, including Parrish and other members of
16 the Retired NFLPA Member Class. See letter from Douglas F. Allen to "NFLPA Member" in the
17 fall of 2003, (attached hereto as **Exhibit L** and incorporated herein by reference). See also March
18 15, 2006 Letter from NFLPA Retired Players Steering Committee to Bernie Parrish attached hereto
19 as **Exhibit M**. Parrish and Adderley received this Fall 2003 letter.

20 58. Parrish paid membership dues to the NFLPA at least in 2005, and his membership
21 expired in April 2006. The NFLPA does not have any record of Parrish signing a GLA within the
22 statute of limitations period.

23 59. Among other things, the NFLPA Constitution provided that all retired members had
24 a right to . . . :

25 *Receive NFLPA publications, the retired player publications, and other*
26 *information which may affect his retirement benefits or other benefits he may*
27 *be entitled to as an NFL player.*

28 **Exhibit K** (NFLPA Constitution), Art. II, p.7 (emphasis added).

60. On various occasions, PLAYERS INC has made inconsistent, misleading, and
ambiguous representations about the number of retired players that it purports to represent and the
rights it has licensed on behalf of retired players. As of February 6, 2007 (before the original

1 complaint in this matter was filed), PLAYERS INC's website stated that PLAYERS INC
2 represents "over 3000 retired players." See **Exhibit E**. Shortly after this complaint was filed,
3 however, PLAYERS INC changed its website to say that PLAYERS INC represents "many
4 memorable retired NFL players."

5 61. PLAYERS INC has now conceded that it "represents" all retired NFLPA members,
6 *whether or not they ever signed a GLA*, because those players were "available" to PLAYERS INC
7 *by virtue of their membership in the NFLPA*:

8 PLAYERS INC admits that it has previously made statements
9 regarding "representing" specific numbers of retired players but a
10 reasonable inquiry has not disclosed any statements in which
11 Players Inc. purported to represent "all" retired players. With
12 respect to its previous statements regarding "representing" specific
13 numbers of retired layers, Players Inc was indicating that it had
14 access to certain numbers of retired players via the NFLPA Retired
15 Players Association, and that Players Inc had the ability to solicit
16 the participation of such players in licensing activities to the extent
17 that potential third-party licensees indicated an interest in pursuing
18 licensing opportunities with such players.

14 See **Exhibit N** (Responses to Requests for Admission, No. 1), attached hereto and incorporated by
15 reference.

16 62. Indeed, Doug Allen similarly confirmed (as stated on PLAYERS INC's website)
17 that PLAYERS INC represented *all* retired members of the NFLPA:

18 Q. So you, as President of PLAYERS INC believed it was accurate to say that
19 PLAYERS INC represented all retired members of the NFLPA?

20 A. Yes.

21 See **Exhibit O** (Allen Tr., 58:2-5)

22 63. He verified that retired players, like active players, "became available to NFL
23 sponsors exclusively through PLAYERS INC", and explained that PLAYERS INC's
24 representation of retired NFLPA members was "[f]or the purpose of providing access to them for a
25 number of opportunities. Group licensing was part of it, but not all of it." *Id.*, **Exhibit O** (Allen
26 Tr., 34:22-24, 36:19-37:4, 58:13-15).

27 64. By virtue of offering membership in the NFLPA after retirement in exchange for
28 dues and/or in order to gain access to retired players' rights by virtue of their membership in the

1 NFLPA, the NFLPA and PLAYERS INC stand in a fiduciary relationship to Parrish and other
2 members of the Retired NFLPA Member Class.

3 **1. Membership in the NFLPA and Surrounding Circumstances Create**
4 **an Agency Relationship by Operation of Law And/Or As Can Be**
5 **Inferred or Implied by the Conduct of the Parties and Surrounding**
6 **Circumstances**

6 65. The NFLPA and PLAYERS INC have entered into an agency relationship, either by
7 operation of law and/or as can be inferred or implied based on the conduct of the parties and the
8 circumstances of the case, with retired NFLPA members who did not sign a GLA, according to the
9 records of the NFLPA. The NFLPA solicited the membership from these retired NFL players, and
10 by virtue of their membership in the NFLPA, PLAYERS INC has admitted that it represented
11 these retired players.

12 66. Upon information and belief, Defendants have enjoyed substantial benefits from
13 these agency relationships, including receipt of dues and access to these retired players for
14 purposes of pursuing commercial and marketing opportunities with existing and potential NFL
15 sponsors, and Defendants should now be estopped from disavowing their resulting obligations.

16 67. When deciding to join the NFLPA and in paying dues, Parrish, and, on information
17 and belief, other Retired NFLPA Members, relied on the NFLPA's membership solicitation and
18 promises (as set forth in correspondence and in the NFLPA Constitution). They reasonably
19 expected that in exchange for their payment of dues and membership in the NFLPA, Defendants,
20 including their Chairman, would act in good faith on their behalf and/or refrain from disavowing
21 any obligation to work for or on behalf of retired NFLPA members.

22 68. By virtue of its purported representation of Parrish, PLAYERS INC and the NFLPA
23 undertook a duty to inform them of potential benefits owing to them in connection with
24 opportunities that were pursued on behalf of retired members.

25 69. Parrish and, on information and belief, other Retired NFLPA Members would not
26 have paid dues had they known that Defendants would not have undertaken to act on their behalf in
27 good faith or to provide them with accurate and complete information regarding benefits to which
28 they might be entitled.

1 70. The NFLPA and PLAYERS INC have actively solicited retired membership in the
2 NFLPA from retirees, not only in exchange for payment of dues, but to provide Defendants with
3 the desired access to these players for purposes of pursuing commercial activities, including, but not
4 limited to, licensing of retired players' rights. More specifically, Defendants have a complete
5 monopoly over information relevant to retired NFLPA benefits, including “. . . information which
6 may affect [their] retirement benefits or other benefits [they] may be entitled to as [] NFL
7 player[s].” See **Exhibit K** (NFLPA Constitution), Art. II, p. 7. For example, Defendants did not
8 inform retired NFL players of such significant agreements as the NFLPA-PLAYERS Agreement.
9 See **Exhibit D**.

10 71. Under the terms of the NFLPA Constitution, retired players pay membership dues
11 and are acknowledged to “have a stake in the actions of the NFLPA”. Nevertheless, retired players
12 receive no information from PLAYERS INC regarding commercial or other opportunities pursued
13 on their behalf.

14 72. Indeed, Gene Upshaw, Executive Director of the NFLPA and Chairman of
15 PLAYERS INC, has repeatedly stated that “he does not work for retired players.” In an article
16 dated January 15, 2006 in the *Charlotte Observer* (attached hereto as **Exhibit P** and incorporated
17 by reference), Mr. Upshaw was quoted as saying about the retired players:

18 The bottom line is, I don't work for them. They don't hire me, and they
19 can't fire me. They can complain about me all day long. They can have
20 their opinion. But the active players have the vote. That's who pays my
 salary.

21 73. Shortly after making such comments, Mr. Upshaw addressed the issue of retiree
22 benefits in a January 20, 2006 memo to the NFLPA Retired Members. See **Exhibit Q**, attached
23 hereto and incorporated by reference.

24 74. In that memo, Mr. Upshaw noted that “[m]uch has been made of my recent
25 comments to the *Charlotte Observer*.” See **Exhibit Q**. He further confirmed that “I stand by what
26 I said.” *Id.*

27 75. Parrish received a copy of the January 20, 2006 memo from Mr. Upshaw, and
28 believed that his statements were a confirmation that the Defendants had breached their obligations

1 to retired members. These statements were exacerbated by Mr. Upshaw in a quote in a February
2 16, 2007 *New York Times* article that he has admitted making about retired player licensing: “We
3 could have the greatest dog food in the world, but if the dogs don’t like it, we can’t sell it.”

4 **Exhibit R.**

5
6 **B. THE NFLPA AND PLAYERS INC HAVE BREACHED THEIR**
7 **FIDUCIARY OBLIGATIONS TO PARRISH AND THOSE RETIRED**
8 **PLAYERS WHO WERE MEMBERS OF THE NFLPA BUT DID NOT,**
9 **ACCORDING TO THE NFLPA, SIGN GLAS**

10 76. As confirmed by Mr. Upshaw, the NFLPA and PLAYERS INC have breached their
11 fiduciary obligations to Parrish and other members of the Retired NFLPA Member Class by
12 admitting that they do not work for these retirees at all. At a minimum, Mr. Upshaw’s statements
13 reflect a lack of good faith representation on those admittedly represented by Defendants. In
14 addition, Mr. Upshaw’s statements reflect the exploitation of those retired members who joined the
15 NFLPA.

16 77. Defendants have also failed to provide Parrish, and on information and belief, other
17 members of the Retired NFLPA Member Class, with information affecting other benefits to which
18 they may be entitled, including but not limited to the fact that PLAYERS INC was licensing retired
19 player rights to licensees like EA, regardless of whether those players’ images were ever used.
20 Defendants’ failure to provide such information directly and plainly contravenes relevant
21 provisions of the NFLPA Constitution, and further violates Defendants’ obligation to act on behalf
22 of retired NFLPA members in good faith.

23 78. More specifically, Defendants have breached their fiduciary duties to Parrish, and
24 other members of the Retired NFLPA Member Class, in at least the following ways:

- 25 • By failing to provide them with accurate and complete information relevant to benefits to
26 which they might be entitled, including licensing and marketing benefits;
- 27 • By failing to act in good faith towards retired NFLPA members by acknowledging that
28 they do not work for retired members; and

- 1 • By failing to act in good faith on behalf of retired NFLPA members (whom Defendants
2 have now admitted they represent) who did not sign a GLA in pursuing commercial and
3 marketing opportunities on their behalf and/or informing the retired NFLPA members of
4 any benefits that may be owing to them in connection with opportunities that were pursued
5 on behalf of retired NFLPA members.

6 79. Because Defendants have breached their obligations to Retired NFLPA Members,
7 Parrish seeks return of all NFLPA dues paid by him and on behalf of a class of other retired
8 NFLPA members who paid dues during the period of the statute of limitations, but did not sign a
9 GLA according to the records of the NFLPA.

10 **VI. ADDITIONAL SUBSTANTIVE ALLEGATIONS REGARDING PREVIOUSLY**
11 **DISMISSED CLAIMS UNDER CALIFORNIA BUSINESS & PROFESSIONS CODE**
12 **§ 17200**

13 **A. THE NFLPA AND PLAYERS INC HAVE UNFAIRLY COMPETED AND**
14 **WRONGFULLY INTERFERED WITH THE MARKETING OF THE**
15 **IMAGES OF RETIRED NFL PLAYERS**

16 80. Solely for purposes of preserving Plaintiffs' right to appeal the Court's September
17 6, 2007 Dismissal of claims arising under Bus. & Prof. Code § 17200 (*see Forsyth v. Humana,*
18 *Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997)), as asserted by Roberts on behalf of the 17200
19 California Resident Class, Plaintiffs respectfully re-allege, and incorporate by reference,
20 allegations made in Paragraphs 1-52, 71-80 and the Prayer for Relief of the Second Amended
21 Complaint as though set forth fully herein.

22 **VII. CLASS ACTION ALLEGATIONS**

23 81. Plaintiffs bring this class action on behalf of themselves and all others similarly
24 situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action is maintainable
25 as a class action pursuant to Rule 23(a), (b) and (d).

26 **A. THE GLA CLASS**

27 82. Plaintiff Herb Adderley brings claims of breach of contract and breach of fiduciary
28 duty, on behalf of a nationwide class seeking damages and an accounting (the "GLA Class").

83. The GLA Class is defined as all those retired NFL Players who at any time have
sent an executed GLA to the NFLPA containing language similar or identical to the Adderley 2002

1 GLA, that was in effect during the period beginning at the earliest point of the statute of limitations
2 and continuing until the expiration of the last such GLA. Excluded from the GLA Class are the
3 NFLPA, PLAYERS INC, and their directors, officers and employees.

4 **B. THE RETIRED NFLPA MEMBER CLASS**

5 84. Plaintiff Parrish represents a class of retired NFLPA members (the “Retired NFLPA
6 Member Class”).

7 85. The Retired NFLPA Member Class is defined as retired NFL players who joined the
8 NFLPA as retired members and paid dues to the NFLPA within the period of the statute of
9 limitations, but, according to the records of the NFLPA, did not sign a GLA. Excluded from the
10 Class are the NFLPA, PLAYERS INC, and their directors, officers and employees.

11 86. The above Classes meet the numerosity standard in Rule 23(a)(1) because, although
12 the exact numbers are unknown to Plaintiffs, on information and belief each alleged class consists
13 of at least hundreds of retired NFL players, who are geographically dispersed throughout the
14 United States, California and perhaps elsewhere. The joinder of each of these players is
15 impracticable. The disposition of their claims through this class action will provide substantial
16 benefits to both the parties and the Court.

17 87. The size of the Classes and the identities of their individual members are
18 ascertainable through Defendants’ records.

19 88. Members of these Classes may be notified of the pendency of this action by
20 techniques and forms commonly used in class actions, such as by published notice, e-mail notice,
21 website notice, first class mail, or combinations thereof, or by other methods suitable to this class
22 and deemed necessary and/or appropriate by the Court.

23 89. There is a well-defined community of interest and common questions of law and
24 fact affecting the members of the GLA Class as required by 23(a)(2). The questions of law and
25 fact common to the GLA Class predominate over any questions affecting only individual members
26 and include, but are not limited to, the following:
27
28

- 1 a) Whether PLAYERS INC and/or the NFLPA have breached their contractual
- 2 obligations and fiduciary duties to each member of the GLA Class by the acts and
- 3 omissions, among others described above;
- 4 b) Whether PLAYERS INC licensed the rights of retired NFL players who signed
- 5 GLAs to EA and other licensees of PLAYERS INC;
- 6 c) Whether retired NFL players who signed GLAs were and are entitled to a share of
- 7 the gross licensing revenue constituting guaranteed minimum payments paid to
- 8 PLAYERS INC by EA and other licensees of PLAYERS INC;
- 9 d) Whether retired NFL players who signed GLAs were and are entitled to an “equal
- 10 share” royalty from the guaranteed minimum payments paid to PLAYERS INC by EA
- 11 and other licensees of PLAYERS INC;
- 12 e) Whether Adderley and the GLA Class are entitled to an accounting showing all
- 13 revenue received by Defendants from group licensing and whether and how that revenue
- 14 was distributed to PLAYERS INC, the NFLPA and among the members of the GLA
- 15 Class; and
- 16 f) Whether Adderley and the GLA Class are entitled to damages, punitive damages,
- 17 costs and attorneys’ fees as a result of the unlawful conduct of Defendants.

18 90. There is a well-defined community of interest and common questions of law and
19 fact affecting the members of the Retired NFLPA Member Class as required by 23(a)(2). The
20 questions of law and fact common to the Retired NFLPA Member Class predominate over any
21 questions affecting only individual members and include, but are not limited to, the following

- 22 a) Whether the NFLPA and PLAYERS INC owed a fiduciary duty to retired players
- 23 who joined the NFLPA and paid dues, but did not sign a GLA;
- 24 b) Whether the NFLPA and PLAYERS INC are estopped to deny the agency
- 25 relationship to retired NFLPA members who paid dues but did not sign a GLA
- 26 c) Whether the NFLPA and PLAYERS INC breached their fiduciary duties to retired
- 27 players who joined the NFLPA and paid dues, but did not sign a GLA;

28

- 1 d) Whether PLAYERS INC has meddled or interfered with the rights of Parrish and
- 2 other members of the Retired NFLPA Member Class through contracts and agreements
- 3 with licensees; and
- 4 e) Whether Parrish and the Retired NFLPA Member Class are entitled to a refund of
- 5 all dues paid to the NFLPA, and other damages.

6 **VIII. CLAIMS FOR RELIEF**

7 **FIRST CAUSE OF ACTION**

8 **(Breach of Contract – GLA Class)**

9 **(Against Both Defendants)**

10 91. Plaintiffs incorporate by reference paragraphs 1 through 90 above as though set
11 forth fully herein.

12 92. On information and belief, Adderley and other GLA Class members entered into a
13 version of GLA(s) with PLAYERS INC and/or the NFLPA within the period of the statute of
14 limitations. The GLA form signed by Plaintiff Adderley in 2002 is attached as **Exhibit C**. On
15 information and belief, each GLA, including the one signed by Adderley and other members of the
16 GLA Class, is a valid and binding contract between those retired players and the NFLPA.

17 93. According to PLAYERS INC's website, retired players sign a GLA with the
18 NFLPA. In turn, the NFLPA assigns (and will continue to assign) the rights under those
19 Agreement(s), including the Agreements signed by Adderley and other members of the GLA
20 Class, to PLAYERS INC.

21 94. The version of the GLA executed by Adderley and in effect during the limitations
22 period provides, in relevant part, that “ *it is further understood that the moneys generated by such*
23 *licensing of retired player group rights will be divided between the player and an escrow account*
24 *for all eligible NFLPA members who have signed a group licensing authorization form.*”
25 (emphasis added). (**Exhibit C**) (emphasis added).

26 95. On information and belief, Adderley and other GLA Class members performed any
27 and all obligations required of them under the GLA(s).

28

1 **THIRD CAUSE OF ACTION**

2 **(Accounting – GLA Class)**

3 **(Against Both Defendants)**

4 103. Adderley incorporates by reference paragraphs 1 through 102 above as though set
5 forth fully herein.

6 104. By virtue of his status as a signatory of the Adderley 2002 GLA and a retired
7 member of the NFLPA, Adderley is entitled to information concerning monies due to him from the
8 NFLPA and/or PLAYERS INC. As set forth in the NFLPA Constitution, Adderley and other class
9 members have a right to receive from the NFLPA, “. . . information which may affect his
10 retirement benefits *or other benefits he may be entitled to* as an NFL player.” NFLPA
11 Constitution, Art. II, p. 7.

12 105. By virtue of the acts and omissions described above, Adderley does not have
13 adequate information to determine what monies are due to him as a result of Defendants actions
14 pursuant to the Adderley 2002 GLA. Indeed, Defendants have admitted that they have not made
15 an accounting to retired NFL players of licensing and/or marketing distributions except by
16 providing them with distributions of monies Defendants believe are owed them. *See Exhibit N*
17 *(Responses to Requests for Admission, No. 15).*

18 106. The exact amount of money received and distributed by PLAYERS INC in
19 connection with the licensing and marketing of Adderley and the GLA Class, including monies
20 distributed to or misappropriated by PLAYERS INC and the NFLPA, is unknown and cannot be
21 ascertained without an accounting of the funds.

22 107. On information and belief, a balance is due to Plaintiffs and there is no adequate
23 remedy at law to obtain that balance without an accounting.

24 **FOURTH CAUSE OF ACTION**

25 **(Breach of Fiduciary Duty – Retired NFLPA Member Class)**

26 **(Against both Defendants)**

27 108. Plaintiffs incorporate by reference paragraphs 1 through 107 above as though set
28 forth fully herein.

1 allegations made in Paragraphs 1-52, 71-80 and the Prayer for Relief of the Second Amended
2 Complaint as though set forth fully herein.

3 **VIII. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray as
5 follows:

- 6 a. That the Court determines that this action may be maintained as a class action under
7 Rule 23 of the Federal Rules of Civil Procedure, and that Ronald S. Katz of
8 MANATT, PHELPS & PHILLIPS, LLP be appointed as lead class counsel.
- 9 b. That Plaintiffs and each and every member of the three Classes recover (i) damages
10 determined to have been sustained by each of them, including punitive damages,
11 (ii) restitution as provided by law, and (iii) that joint and several judgments in favor
12 of Plaintiffs and each and every member of the three Classes, respectively, be
13 entered against the Defendant.
- 14 c. That an accounting by accountants of Adderley's choice be ordered by the Court at
15 the expense of the Defendants.
- 16 d. That Plaintiffs and other members of the three classes recover their costs of this suit,
17 including reasonable attorneys' fees, as provided by law.
- 18
19
20
21
22
23
24
25
26
27
28

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

e. That Plaintiffs and the other members of the three classes be granted such other, further and different relief as the nature of the case may require or as may seem just and proper to this Court.

Respectfully submitted,
Dated: November 15, 2007

/s/Ronald S. Katz
Ronald S. Katz (SBN 085713)
Ryan S. Hilbert (SBN 210549)
Noel S. Cohen (SBN 219645)
MANATT, PHELPS & PHILLIPS, LLP
1001 Page Mill Road, Building 2
Palo Alto, CA 94304-1006
Telephone: (650) 812-1300
Facsimile: (650) 213-0260
Attorneys for Plaintiffs

Lewis T. LeClair, Esq.
Jill Adler, Esq.
McKOOL SMITH, P.C.
300 Crescent Court
Suite 1500
Dallas, TX 75201
214-978-4984
214-978-4044 (fax)

Exhibit L
to the
Third Amended Complaint for Breach of
Contract, Beach of Fiduciary Duty, an Accounting
and Violation of California Business &
Professions Code § 17200



Dear NFLPA Member:

In 1994 the NFLPA created a separate marketing and licensing subsidiary, Players Inc. Since then, Players Inc has marketed NFL players, active and retired, in a variety of ways; licensed products such as trading cards and videogames, television and radio programming, personal appearances, autograph signings, an all-player internet site (nflplayers.com) and at events such as the NFL Kick-Off and the Super Bowl.

NFL Players Assoc
2021 L Street, NW
Suite 800
Washington, DC 20037
202.463.2000
Fax 202.463.0300

Hundreds of retired NFL players have received payments from Players Inc for these activities but every retired NFL player has benefited from Players Inc's creation. How? Because 40% of Players Inc's operating revenue is paid to the NFLPA as a royalty for the active player name and image rights secured by the NFLPA and licensed to Players Inc. This allows the NFLPA to provide extensive services and benefits to retired players in return for modest retired player dues of \$50 per year. For example, the NFLPA Retired Players Department and Benefits Department serves almost 4000 NFLPA retired player members at an annual cost to the NFLPA of \$1.5 million. Retired player dues offset less than \$200,000 of that amount. The \$1.3 million difference in the cost of retired player representation by the PA is paid for by active player licensing. Retired players deserve this kind of support from active players because you built the game and the union. We live every day by the NFLPA's motto: "Past, Present and Future."

We have the participation of almost every active NFL player in group licensing. And we need your support for the licensing program as well. You have signed the NFLPA Group Licensing Assignment ("GLA") in the past but your GLA is about to expire. Please sign the enclosed GLA and return it today. This agreement is non-exclusive and will not interfere with any other licensing or endorsement opportunities you may have.

Join the thousands of retired NFL players who have provided their name and image rights to the NFLPA and Players Inc. You may get the opportunity to receive royalty payments or appearance fees. And, as explained above, Players Inc funds the NFLPA, giving the NFLPA the financial and staff resources to:

- negotiate better pension and disability benefits
- publicize a network of medical facilities that treat retired players without insurance
- organize 32 NFLPA local chapters
- hold a retired players convention
- endow the Players Assistance Trust for retired players in need

Help us market retired NFL players and show your support for the NFLPA and Players Inc by signing and returning the enclosed GLA today!

If you have any questions about the GLA or retired player licensing, please call Beverly Halton at the NFLPA Retired Players Department (202-463-2213 or 800-372-2000).

Thanks for your prompt attention and for your help. Enjoy the rest of the 2003 NFL season!

Happy Holidays,

Douglas F. Allen
Assistant Executive Director