

# **EXHIBIT 37**

**Case No. C 07 0943 WHA**

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

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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

Plaintiffs

vs.

CASE NO.  
C 07 00943 WHA

NATIONAL FOOTBALL LEAGUE  
PLAYERS ASSOCIATION and  
NATIONAL FOOTBALL LEAGUE  
PLAYERS INCORPORATED d/b/a  
PLAYERS INC.,

Defendants

VIDEOTAPED DEPOSITION OF  
RICHARD A. BERTHELSEN

May 13, 2008  
10:12 a.m.

Manatt, Phelps, Phillips, LLP  
700 12th Street, N.W.  
Washington, D.C.

Linda Ann Crockett, a Notary Public

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9 On behalf of the Plaintiffs

10  
11 DAVID FEHER, ESQUIRE

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15 (212) 259-8000

16 On behalf of the Defendants

17  
18  
19 ALSO PRESENT: Ken Nuzzi, Videographer

20  
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1 that money include money that ultimately goes  
2 to retired players?

3 MR. FEHER: Objection to form.

4 A. What do you mean by "that money"?

5 Q. Does the licensing revenue depository  
6 account, does money that goes to retired  
7 players flow through that account?

8 MR. FEHER: Objection to form.

9 A. I don't know.

10 Q. Based on your testimony that this is  
11 all active player money, are you assuming that  
12 it does not flow through the account?

13 A. Counsel, I don't want to make any  
14 assumptions as to how things have been done  
15 from a bookkeeping standpoint. But the -- what  
16 we've talked about as far as the 8 million and  
17 the allocations that you've asked me about,  
18 there we are talking about active player  
19 licensing or marketing money.

20 MR. LeCLAIR: Let's go off the record  
21 for just a second.

22 THE VIDEOGRAPHER: 10:49 a.m. Off  
23 record.

24 (Off the record.)

25 THE VIDEOGRAPHER: Our time now

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1 think your question was 2000 through 2006?

2 Q. 2003 through 2006.

3 A. Yes. My familiarity occurred because  
4 of that case and I think that case was 2004.

5 Q. Were you aware that the retired player  
6 GLA provided for a sharing of revenue between  
7 the player and an escrow account; were you  
8 aware of that?

9 MR. FEHER: Objection.

10 A. I became aware of it because of the  
11 litigation I referred to.

12 Q. To your knowledge, was such an escrow  
13 account ever created?

14 A. It was not.

15 Q. Do you know why it wasn't created?

16 A. Because the efforts to generate the  
17 money for the retired players were  
18 unsuccessful.

19 Q. Who was responsible for the, quote,  
20 efforts to generate the money for retired  
21 players, closed quote?

22 A. PLAYERS INC.

23 Q. And did anyone ever report to you the  
24 reasons for the failure?

25 MR. FEHER: Objection.

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1 licensing agreement.

2 Q. And when the NFLPA or PLAYERS INC  
3 represented active and retired players in  
4 connection with the negotiation with EA, for  
5 example, they were acting in the interest of  
6 the players, not in the interest of EA,  
7 correct?

8 A. Counsel, you always seem to sneak that  
9 retired player part into your question. The  
10 deal with EA Sports was for active players for  
11 the video game. If there was anything about  
12 retired players, that was a separate matter and  
13 retired players were separately compensated.

14 Q. I'm going to get to that license  
15 agreement shortly. That's a subject we will  
16 take up. But did, in fact, to your knowledge,  
17 did the NFLPA or PLAYERS INC ever negotiate in  
18 any way with respect to a contract relating to  
19 retired players?

20 MR. FEHER: Objection to form.

21 A. I am aware through this litigation  
22 that there was something done vis-a-vis EA  
23 Sports and retired players. I think it was a  
24 Hall of Fame deal.

25 Q. Correct. And with respect to that

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1 would be strictly retired players. There was  
2 never any intent to have active players share  
3 in retired players licensing. They were to be  
4 separate and apart.

5 Q. In other words, it was always  
6 intended, as far as you understood, to always  
7 keep retired player licensing totally separate  
8 from active players licensing?

9 A. Yes, that's the conclusion I drew from  
10 what investigation I did of the issue back when  
11 we had that prior case.

12 Q. Why would that be; why would you want  
13 to keep them separate?

14 A. Again, this is not my area. This is  
15 not my responsibility.

16 Q. Fair enough. Has anyone ever  
17 explained to you why keep them separate?

18 A. I can draw my own conclusions.

19 Q. Tell me what your conclusions are.

20 A. Because you want the people who  
21 generate the money to benefit from it. Active  
22 players would not be generating the money from  
23 retired player group licensing programs. It  
24 would be unfair to the retired players to give  
25 active players a share of that. And that's

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1 true on the flip side. If the money is  
2 generated by active players, it's unfair to the  
3 active players to divide it with retired  
4 players.

5 Q. But why not just license both  
6 together?

7 MR. FEHER: Objection to form.

8 A. Because one is a viable ongoing  
9 program and has been for decades. The other  
10 was a try and see, which did not succeed. It  
11 wouldn't make any sense to combine the two. As  
12 I testified previously, there was an allocation  
13 set up by Duff & Phelps from the beginning and  
14 that was an allocation as between the union,  
15 PLAYERS INC and active players. Why would we  
16 undermine that template, that advice or that  
17 valuation by including another group?

18 Q. Did you see, Mr. Berthelsen, any  
19 conflict of interest in the decision about  
20 whether to license retired players together  
21 with active players or separately from active  
22 players?

23 MR. FEHER: Objection to form.

24 A. I was not in a position where that  
25 would have been a subject at hand for me at any

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1 point. As I want to keep reminding you, my  
2 knowledge of this came as a result of  
3 litigation. And so I had my lawyer/litigator  
4 role on when I was dealing with these issues.

5 Q. There are lots of licenses that  
6 license all of the active players, correct?  
7 Some. Let's don't say a lot. Let's just say  
8 some.

9 A. Well, the licensee, as I understand  
10 it, is given the right to use anyone for whom  
11 we have an active player GLA. Whether they in  
12 fact use them all is another matter. I doubt  
13 that any licensee has ever used every player.

14 Q. Right. Is there anything unfair in  
15 sharing with the people that aren't used?

16 MR. FEHER: Objection to form.

17 A. You'd have to give me more context, I  
18 guess. But active player money is active  
19 player money. Retired player money is retired  
20 player money. And the model for how the active  
21 player licensing is set up, which preceded any  
22 involvement by retired players by a great  
23 number of years, was all based on a model that  
24 included only active players. That model has  
25 worked. It comes from an outside objective

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1 consultant, and there would be no reason to  
2 compromise that model by inclusion of a group  
3 that was not included when it was created. And  
4 for me that's why retired players have to be  
5 completely separate.

6 Q. I'm asking a little different question  
7 now, Mr. Berthelsen. I'm just asking you with  
8 respect to active players, is there any problem  
9 with the fact that some active players are used  
10 and some aren't, and you share the money with  
11 everybody, including those who are used and  
12 those who aren't used?

13 MR. FEHER: Objection to form.

14 A. Is there a problem with that, no.  
15 That's been the policy. There have been  
16 players who shared in it who haven't been used  
17 but they're still active players. They all,  
18 when they sign up, have the potential to be  
19 used. Some guys get hurt; other guys go on to  
20 play better than they're expected to; others  
21 play worse than they're expected to. But  
22 they're all active players. They're all going  
23 to be playing in the upcoming season. And  
24 who's actually used becomes a function of a lot  
25 of variables that nobody can anticipate when

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REPORTER'S CERTIFICATION

STATE OF MARYLAND  
COUNTY OF BALTIMORE

I, Linda A. Crockett, a Notary Public of the State of Maryland, do hereby certify that the within named, RICHARD BERTHELSEN, was deposed at the time and place herein set out, and after having been duly sworn by me, was interrogated by counsel.

I further certify that the examination was recorded stenographically by me, and this transcript is a true record of the proceedings.

I further certify that the stipulations made herein were entered into by counsel in my presence.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this 23rd day of May, 2008.

My commission expires: December 1, 2008

*Linda A. Crockett*

Linda A. Crockett

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