

Exhibit 2

To the Declaration of Jason Clark

Filed Under Seal

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

5 BERNARD PAUL PARRISH, HERBERT)
6 ANTHONY ADDERLEY, and WALTER)
7 ROBERTS, III, on behalf of)
8 themselves and all others)
9 similarly situated,)

10 Plaintiffs,)

11 vs.)

No. C07-0943-WHA

12 NATIONAL FOOTBALL LEAGUE)
13 PLAYERS ASSOCIATION, a)
14 Virginia corporation and)
15 NATIONAL FOOTBALL PLAYERS,)
16 INC., d/b/a PLAYERS, INC.,)
17 a Virginia)

18 Defendants.)

ORIGINAL

19 DEPOSITION OF PHILIP Y. ROWLEY,
20 San Francisco, California
21 Tuesday, July 22, 2008
22

23 Reported by:
24 Rebecca Romano,
25 CSR No. 12546
Job No. 81049/204031

1 use in applying the damages.

2 **Q (By Mr. Kessler) Okay. Would you offer an**
3 **opinion to the trier of fact as to which estimate is a**
4 **better estimate of the damages suffered by the class?**

5 MR. KATZ: Object.

6 THE DEPONENT: As a general proposition?

7 **Q (By Mr. Kessler) Yes.**

8 A No.

9 **Q Okay. So in your expert opinion, are they all**
10 **equally good estimates?**

11 MR. KATZ: Object.

12 THE DEPONENT: Again, it depends upon the
13 specific determination of liability on the relevant
14 issues. If you defined this is the liability, I believe
15 I can apply a specific model.

16 **Q (By Mr. Kessler) Okay. Well, if the jury**
17 **just finds breach of contract -- and that's all we**
18 **know -- the judge gets a verdict that says breach of**
19 **contract, which, in your expert opinion, is the best**
20 **estimate of damages if it's just a finding of breach of**
21 **contract?**

22 MR. KATZ: Object.

23 THE DEPONENT: Not being a lawyer, I would
24 have anticipated that the jury instructions would have
25 looked to one of the key issues being, "Does breach of

1 contract mean only those contracts or agreements that
2 have specific language referencing retired players
3 versus all contracts," because that goes to groups
4 larger than six, which I understand from plaintiffs'
5 counsel is one of -- is one of their arguments.

6 So for me to, first off, give a model, I would
7 need to understand, is that -- is that the breach of
8 contract.

9 **Q (By Mr. Kessler) Do you have any opinion as**
10 **to what the contract means in this case?**

11 MR. KATZ: Object.

12 **Q (By Mr. Kessler) I'm referring to the group**
13 **licensing authorization signed by retired players.**

14 A As it means from a -- from a legal standpoint?

15 **Q Are you offering any expert opinion on that**
16 **issue?**

17 A On that language?

18 **Q Yes.**

19 A Either the Group 6 or the retired in escrow?

20 Not to the meaning. I take into account in my
21 damage constructs what an application might be of an
22 escrow account, as an example. But to the language, I'm
23 not offering an opinion as to what that specifically
24 means.

25 **Q Do your models distinguish between the amount**

1 of damages that would be awarded if only a breach of
2 contract is found as opposed to a breach of fiduciary
3 duty?

4 MR. KATZ: Object.

5 THE DEPONENT: Yes. You could apply the
6 models strictly to breach of contract.

7 Q (By Mr. Kessler) Well, do all models apply --
8 do all the damage measurements apply to a breach of
9 contract claim?

10 MR. KATZ: Object.

11 THE DEPONENT: It depends on the definition of
12 what is the breach. So --

13 Q (By Mr. Kessler) Well, let me ask you this.

14 A Sure.

15 MR. KATZ: Well, are you finished with your
16 answer?

17 THE DEPONENT: Yes.

18 Q (By Mr. Kessler) Okay. You have one damage
19 model. It's the -- that adjusts the player pool by
20 three percentages; 10 percent, 25 percent and 40
21 percent.

22 You're familiar with that model --

23 A Yes.

24 Q -- correct?

25 Okay. How would applying those percentages

1 **have any relationship to a breach of contract, a breach**
2 **of the GLA, okay, without there also being a breach of**
3 **fiduciary duty?**

4 MR. KATZ: Object.

5 THE DEPONENT: My -- my understanding in
6 talking with counsel as to how the plaintiffs may argue
7 that is that inherent in the agreement would be some
8 type of reasonable percentage that might have been taken
9 out by the NFLPA/PI certain for of its costs or
10 expenses.

11 Q (By Mr. Kessler) **Have you read the GLA, the**
12 **retired players --**

13 A Yes.

14 Q **Is there anything in the retired GLA that**
15 **refers to any reasonable percentage that you have**
16 **seen?**

17 MR. KATZ: Object.

18 THE DEPONENT: That specific language, as I
19 recall, does not appear in the GLA.

20 Q (By Mr. Kessler) **Well, in fact, let's take a**
21 **look at the GLA. I will show you Exhibit 168 --**

22 A Sure.

23 Q -- **that's been marked.**

24 **Okay. If you take a look, it says in the last**
25 **paragraph, "It is further understood that the monies**

1 generated by such licensing of retired player group
2 rights will be divided between the player and an escrow
3 account for all eligible NFLPA members who have signed a
4 group licensing authorization form."

5 Do you see that?

6 A Yes.

7 Q Okay. Do you see any language that you can
8 identify that would lead you to conclude, as an expert,
9 that there is something in this contract about how the
10 money will be divided in terms of percentages or
11 reasonable percentages or anything like that?

12 MR. KATZ: Object.

13 THE DEPONENT: Strictly looking at the
14 contract, not attempting the legal obligations that may
15 be implied --

16 Q (By Mr. Kessler) Right.

17 A -- I don't see that language, either that
18 there are percentages or that any monies would be taken
19 out of that fund for any purposes. It's not there.

20 Q Okay. So other than the fact that counsel has
21 told you that plaintiffs may have a theory as to why
22 reasonable percentages are built into this GLA, do you
23 provide any expert analysis to support that theory in
24 any way?

25 MR. KATZ: Object.

1 THE DEPONENT: Well, to the extent that I have
2 built three constructs with percentages, based on
3 percentages that were provided by another expert, I have
4 provided some type of a model that could be used by the
5 trier of fact if it's deemed as a breach.

6 But I have not been asked and nor did I study
7 specifically the reasonableness of the percentages
8 independently from what I gathered from Dr. Rasher.

9 Q (By Mr. Kessler) Dr. Rasher came up with
10 these comparables and percentages, correct?

11 MR. KATZ: Object.

12 THE DEPONENT: The 10 percent, the 25 and the
13 40?

14 Q (By Mr. Kessler) Yes.

15 A Yes.

16 Q You haven't done anything to independently
17 verify the reasonableness of those comparables, have
18 you?

19 MR. KATZ: Object.

20 THE DEPONENT: That's not true.

21 Q (By Mr. Kessler) You have verified them?

22 A I have had at least two discussions with
23 Dr. Rasher as to how he -- how he came up with those and
24 what he's basing it upon.

25 Q Okay. And based on those discussions, you are

1 agreements are appropriate in which years.

2 So quite a bit of work went into constructing
3 the damage models.

4 **Q (By Mr. Kessler) Did you make any judgment as
5 to which contracts and agreements were appropriate?**

6 MR. KATZ: Object.

7 THE DEPONENT: I was directed by counsel that
8 those agreements that had certain language that
9 referenced retired players should be considered a subset
10 of all agreements.

11 **Q (By Mr. Kessler) Okay. Other than counsel
12 directing you on that, did you form any expert judgment
13 as to whether those agreements should be included in
14 your damage analysis?**

15 MR. KATZ: Object.

16 THE DEPONENT: To the extent that they are
17 included or portions of them are included in the equal
18 share pool, yes.

19 **Q (By Mr. Kessler) Okay. On what basis do you
20 believe the language of those contracts support
21 including them?**

22 MR. KATZ: Object.

23 **Q (By Mr. Kessler) If you have an expert
24 opinion about that.**

25 A Yeah -- no. Counsel, are you talking about

1 looking to but-for worlds along with lost profits, what
2 are incremental costs, it combines those types of
3 disciplines. And that's what I have testified on in
4 several occasions.

5 **Q (By Mr. Kessler) Have you constructed a**
6 **but-for world here in your damage analysis?**

7 **A I believe the correct --**

8 MR. KATZ: I'm going to object. Sorry.

9 THE DEPONENT: There's -- under the certain
10 parameters of what I was attempted (sic) to solve for as
11 it relates to the breach of contract and the certain
12 issues and the breach of fiduciary duty, I have built
13 what should be the but-for world, which would reflect
14 what the retired players would have received but for the
15 actions that are alleged.

16 **Q (By Mr. Kessler) How did you eliminate the**
17 **possibility that in your but-for world, that if the**
18 **retired players were going to be participating in the**
19 **GLR pool, that their individual ad hoc monies would not**
20 **also go in that pool?**

21 **How do you know?**

22 MR. KATZ: Object.

23 THE DEPONENT: That isn't what was practiced
24 or performed. I have looked to just specifically the
25 equal share pool as a surrogate for the escrow fund that

1 was supposed to have been established.

2 The appearance monies, premium monies, ad hoc
3 monies, et cetera, are a completely separate -- separate
4 fund.

5 **Q (By Mr. Kessler) Okay. But in the actual**
6 **world, retired players didn't share in the GLR pool at**
7 **all, correct?**

8 MR. KATZ: Object.

9 **Q (By Mr. Kessler) In the real world.**

10 A In -- in each of the years, it was active
11 players who -- who received monies out of that pool,
12 along with a small amount for practice squad players.

13 **Q So in the real world, retired players did not**
14 **share in the GLR pool, correct?**

15 MR. KATZ: Object.

16 THE DEPONENT: Yes.

17 **Q (By Mr. Kessler) Now, in the but-for world,**
18 **you're assuming retired players do share in the GLR**
19 **pool, correct?**

20 MR. KATZ: Object.

21 THE DEPONENT: I'm assuming that they would
22 have shared in some type of an escrow fund. And the
23 best measure or proxy that I have for that is the GLR
24 fund.

25 **Q (By Mr. Kessler) Okay. And if in your**

1 but-for world the retired players who did not share
2 before are now sharing, how do you know, in that but-for
3 world, they would not also be asked to contribute the
4 licensing revenue which some of those same players
5 received individually?

6 Do you know one way or the other?

7 MR. KATZ: Object.

8 THE DEPONENT: My understanding is that
9 NFLPA/PI divided agreements and was able to put monies
10 either into the GLR pool or into the premium amount that
11 was then paid directly to individuals.

12 My assumption is that that would have still
13 been -- still been the case.

14 Q (By Mr. Kessler) What's the basis for that
15 assumption?

16 A The basis for that assumption is that that is
17 how it appears to have been done historically, each
18 year.

19 Q But historically, retired players weren't paid
20 out of the GLR pool at all, correct?

21 MR. KATZ: Object.

22 THE DEPONENT: That is correct.

23 Q (By Mr. Kessler) Okay. Take a look at 168.

24 You see there's a definition of group
25 licensing programs?

1 **Q** **(By Mr. Kessler) Exhibit 630 is a copy of**
2 **your supplemental report; is that correct?**

3 A Yes.

4 **Q** **If you take a look at the bottom paragraph in**
5 **the first page, it said you made certain assumptions,**
6 **correct?**

7 A Yes.

8 **Q** **Okay. Tell me what are the assumptions you**
9 **made.**

10 A Well, primarily, obviously, that liability
11 would be established. If liability isn't established,
12 there's not going to be damages, I would -- I would
13 assume.

14 **Q** **Other than that, what other assumptions have**
15 **you made in your damage study?**

16 A So secondly would be to look, in creating the
17 subset of contracts, that the contracts that would be at
18 issue -- or agreements, licensing agreements, would be
19 those that had the specific language that referenced in
20 1A the retired players.

21 **Q** **Let's stop at that assumption.**

22 A Okay.

23 **Q** **What's the basis for that assumption?**

24 A That was provided to me by counsel.

25 **Q** **Okay. What other assumptions have you made?**

1 A An assumption that the -- an escrow account --
2 my understanding is an escrow account was not
3 established but that if I looked to the actual actions
4 and administration by NFLPA/PI, that the reasonable
5 proxy for what that escrow would have looked like --
6 account would have looked like is the equal share fund,
7 the gross licensing revenues.

8 **Q What's the basis for that assumption?**

9 A That assumption is that as I look to what is
10 a -- an account that has gross licensing revenues -- has
11 what I think are group licensing revenues that are
12 distributed on an equal share basis, that is the most
13 relevant account for our purposes.

14 **Q What's the basis for assuming that's the most**
15 **relevant account?**

16 A Really, my opinion that it would -- that would
17 look like what an escrow account that should have been
18 established, that's what would -- would be included.

19 **Q What expertise are you applying in giving an**
20 **opinion that if an escrow account were established, it**
21 **would look like that account? What area of expertise?**

22 **Is that an economic conclusion?**

23 MR. KATZ: Object.

24 THE DEPONENT: It's a -- really a conclusion
25 at looking at how did the defendants actually behave

1 over the -- over the relevant time period.

2 And if you were going to have additional --
3 the retired players be deemed eligible, which of the
4 funds should they have been eligible to participate in.
5 That appeared to be the -- the most appropriate fund.

6 **Q (By Mr. Kessler) Do you hold yourself out as**
7 **an expert in the study of human behavior?**

8 MR. KATZ: Object.

9 THE DEPONENT: No.

10 **Q (By Mr. Kessler) Okay. Well, let me ask you**
11 **this -- and I really would like for you to just try to**
12 **give me a "yes" or "no" to this -- did you apply any**
13 **economic analysis in -- expertise in concluding that you**
14 **believe that if there was an escrow fund, it would look**
15 **like the GLR pools?**

16 **Any economics involved in that?**

17 MR. KATZ: Object.

18 THE DEPONENT: To the extent I'm trying to
19 understand the economics of NFLPA/PI and how they
20 allocate funds between the general licensing revenue and
21 premium accounts, as well as making their deductions,
22 there certainly are elements of economics. The logo
23 value is an element of economics.

24 So if you're -- strict sense of economics --
25 if you can be more defined in what you mean by

1 "economics" --

2 **Q** **(By Mr. Kessler)** I'm just saying, what basis
3 **as an expert -- I understand as a person you may have an**
4 **opinion. But as an expert, what basis do you have to**
5 **offer an opinion that if there was an escrow account, it**
6 **would be an equal share escrow account that looked like**
7 **the GLR pool?**

8 **A** Innocence is in --

9 MR. KATZ: Object.

10 You may answer.

11 **THE DEPONENT:** In the analysis I am attempting
12 to perform -- let's take it on the breach of contract.
13 The allegation is they weren't paid for certain
14 royalties that they should have been entitled to around
15 a group licensing program.

16 I am looking at what accounts, what did the
17 NFLPA/PI actually do around a group licensing program.
18 I can identify that that account is how they
19 administered or handled those types of funds.

20 **Q** **(By Mr. Kessler)** Okay. But we also know, do
21 **we not, that NFLPA set up the ad hoc programs which also**
22 **involved group licensing, right?**

23 MR. KATZ: Object to form.

24 **THE DEPONENT:** There are certain group
25 licenses where monies go into the ad hoc accounts.

1 **Q** **(By Mr. Kessler) Right. So as an expert, why**
2 **would, in your view -- do you have an expert opinion**
3 **that the escrow fund would more look like the GLR pool,**
4 **okay, than it would look like either the ad hoc**
5 **agreement arrangements or the premium license agreement**
6 **arrangements for active players?**

7 **What expertise do you apply in making that**
8 **judgment?**

9 MR. KATZ: Object.

10 THE DEPONENT: Part of it is some of the
11 guidance from counsel around language of being divided
12 between a player and an escrow account and then for all
13 eligible NFLPA members who have signed a group licensing
14 authorization.

15 And so as I look to where would I find a -- a
16 surrogate for something where a group of eligible
17 players have signed a GLA and how did they administer
18 that program, that's the most likely.

19 **Q** **(By Mr. Kessler) Okay. Well, let's look at**
20 **that.**

21 **What did counsel advise you about the meaning**
22 **of divided between the player and an escrow account?**

23 **Let's start with that.**

24 MR. KATZ: Object.

25 THE DEPONENT: Open to interpretation and that

1 part of that may have been that -- the anticipation is
2 that the monies would have all gone into an escrow
3 account and then have been divided.

4 I know that Noll articulated -- maybe it was
5 something where some would go to the player and some
6 would go to the -- to the escrow account as well.

7 I'm not here to interpret that language.

8 If plaintiffs proffer that what that meant is
9 that the monies from general licensing revenue should
10 have gone into a fund, an equal share fund, I've -- I've
11 identified an equal share fund in which these -- they
12 could have participated.

13 Q (By Mr. Kessler) Well, if it says divided
14 between the player and an escrow account, what expertise
15 are you applying to conclude it would all go into an
16 escrow account --

17 MR. KATZ: Object.

18 Q (By Mr. Kessler) -- as opposed to being
19 divided between the player?

20 Doesn't some of it have to be divided between
21 the player?

22 MR. KATZ: Object.

23 THE DEPONENT: Not necessarily. We --

24 Q (By Mr. Kessler) Okay. So you think the
25 words "will be divided between the player and escrow

1 going to get a deal and someone else is, there could be
2 a benefit for everyone to be sharing in fees.

3 **Q (By Mr. Kessler) So players who got deals for**
4 **themselves would be worse off by being in the GLR pool,**
5 **and players whose rights were not used would be better**
6 **off.**

7 **Is that your testimony?**

8 MR. KATZ: Object.

9 THE DEPONENT: No. Players have the ability
10 to participate in both. I see that the equal share pool
11 is just that. It is -- it is for contracts or
12 agreements that look to large group assignments, and
13 that is divided equally regardless of the player's
14 status within -- within the league or other -- other
15 matrix that you might have as a measurement, years in
16 the league, Super Bowl wins --

17 **Q (By Mr. Kessler) How do you define large**
18 **group assignments in your last sentence?**

19 MR. KATZ: Did you finish your answer, sir?

20 THE DEPONENT: I hadn't.

21 -- versus --

22 MR. KATZ: You have to let him finish,
23 Mr. Kessler.

24 THE DEPONENT: -- versus the players who have
25 a greater stature, also have the ability to go and

1 premium -- in fact, they can -- they can get premium
2 fees even on an agreement that goes into the GLR.

3 There's ad hoc. There are -- there are side deals.

4 They're not -- they are not exclusive. In
5 fact, we see active players participating in both.

6 **Q (By Mr. Kessler) How do you define large**
7 **groups as you just used that in your answer?**

8 MR. KATZ: Object.

9 THE DEPONENT: That was a poor choice of
10 words. I should have stuck to the language around group
11 licensing programs.

12 **Q (By Mr. Kessler) So six or more?**

13 A Yes.

14 **Q Okay. How do you distinguish between those**
15 **programs of six or more that are not in the GLR pool and**
16 **those that are for active players?**

17 **Do you know why?**

18 MR. KATZ: Object.

19 THE DEPONENT: I have used, for purposes of
20 this analysis, exactly what NFLPI did. I haven't been
21 able to ascertain a -- a policy document or how they
22 delineate how they -- how they do that.

23 And we do see agreements where there's a
24 combination of both.

25 **Q (By Mr. Kessler) Do you have an opinion as to**

1 **whether the retired player language in your first subset**
2 **of agreements actually conveys any rights to retired**
3 **players?**

4 MR. KATZ: Object.

5 Can you read that back, please.

6 MR. KESSLER: Let me ask a better question.

7 **Q (By Mr. Kessler) I'm referring now to what is**
8 **your first analysis, which you referred to as the --**

9 **A Subset?**

10 **Q -- you referred to it as a subset of player**
11 **pool A.**

12 **Do you have any opinion as to whether that**
13 **retired player language that appears in the agreements**
14 **in that subset actually conveys any rights to use**
15 **retired players' names or images?**

16 MR. KATZ: Object.

17 THE DEPONENT: I certainly don't have a legal
18 conclusion, no.

19 **Q (By Mr. Kessler) Do you have any expert**
20 **conclusion about that, legal or not?**

21 MR. KATZ: Object.

22 THE DEPONENT: I was asked to assume that a
23 question of liability will be, "Are those the relevant
24 contracts to which retired players should have received
25 some type of an equal share?" And that's how I built

1 the model.

2 Q (By Mr. Kessler) Right. So you were told by
3 counsel to make that assumption, and you made that
4 assumption in that model, correct?

5 A Yes.

6 Q Okay. Now, going back to 630. We were going
7 through the assumptions that you made.

8 You refer in the top of the next page --
9 actually, I can do this a little bit better. Let me go
10 to page 3.

11 You talk here about the damages for breach of
12 fiduciary duty?

13 A Yes.

14 Q And you say that you've been advised that
15 "damages for breach of fiduciary duty under applicable
16 law should be a reasonable connection to the defendants'
17 wrongful acts, or that the damages are the natural and
18 probable consequences of the wrongful act."

19 I assume you've been advised about that by
20 counsel; is that correct?

21 A Yes.

22 Q Okay. Now, looking at the different possible
23 breaches here, one of the breaches that's mentioned here
24 is that -- is -- under No. 2, is failing to accurately
25 report group licensing revenues to members of the GLA

1 **class.**

2 **Do you see that?**

3 A Yes.

4 **Q If that is the only breach, how does your**
5 **damage model in any way represent the damages that will**
6 **be suffered by that particular alleged breach? Failure**
7 **to report.**

8 A First off, Counselor, if -- if plaintiffs are
9 able to show that somehow, had members of the class had
10 that information, they would have behaved differently, I
11 could see how an equal share program would be the
12 appropriate measure of damages.

13 In other words, I get a report. I receive
14 zero. I don't get a report that tells me what efforts
15 are being made, what's planned in the future, I just get
16 zero.

17 It could be that that would have stimulated
18 activity if someone was to say, "I don't understand
19 what's going on. Explain the program to me." And
20 ultimately, then, there would have been an equal -- an
21 equal share determined based on the language.

22 I see that somewhat -- in the reporting, as
23 somewhat of a supplemental to the others, but I would --
24 I would leave that to the trier of fact.

25 I isolated that's -- that's how I would see

1 someone applying it.

2 **Q Okay. Let me understand this.**

3 **Isn't it true that every retired player who**
4 **received nothing would know that they received nothing?**

5 MR. KATZ: Object.

6 THE DEPONENT: By -- by receiving no
7 documentation, they would know they received nothing.

8 **Q (By Mr. Kessler) Right. Okay.**

9 **So it wouldn't make any difference whether**
10 **they got a piece of paper saying they received nothing**
11 **or they received nothing.**

12 **They'd have the same information, right?**

13 MR. KATZ: Object.

14 THE DEPONENT: I -- I disagree with that, at
15 least as a blanket statement for all -- for all the
16 members of the class.

17 **Q (By Mr. Kessler) Okay. Have you seen any**
18 **evidence out of all these retired -- you know, most of**
19 **the members of the GLA class did not receive any --**
20 **well, strike that.**

21 **Do you know of any retired player who received**
22 **nothing, who took any actions to indicate that he**
23 **expected to receive something?**

24 MR. KATZ: Object.

25 THE DEPONENT: Counselor, I think there were

1 **Fame agreement.**

2 A I have not.

3 MR. KATZ: Object.

4 You have to pause for a moment.

5 **Q (By Mr. Kessler) Let's look back at 630, on**
6 **page --**

7 A I guess, Counselor, if I may amend my answer
8 there.

9 **Q Go ahead.**

10 A As it relates to the breach of fiduciary duty,
11 if there was some type of -- part of the -- part of the
12 claims is placing themselves in a position of conflict
13 of interest, acting adversely to the interests of
14 retired NFL players.

15 If there was some type of a -- that that's an
16 example. I guess the fact that I have then gone to the
17 equal share pool could be considered a damages. But I
18 haven't -- I haven't made that exact nexus, which I
19 thought was your question.

20 **Q Okay. Well, let me ask you that, then.**

21 **Why is placing themselves in a position of**
22 **conflict of interest and acting adversely to the**
23 **interests of retired NFL players who signed the GLA at**
24 **all related to your damage calculations based on retired**
25 **players getting an equal share of the GLR pool?**

1 MR. KATZ: Object.

2 THE DEPONENT: Legally, my understanding would
3 be if they -- if they put themselves in this position
4 and intentionally or unintentionally -- no,
5 intentionally didn't -- didn't represent the retired
6 players appropriately, a measure would be that they
7 would have had access to the equal share --

8 Q (By Mr. Kessler) Well, why is --

9 A -- pool.

10 Q Why is there a connection between having a
11 conflict of interest and having access to the GLR pool?

12 How do you draw that conclusion?

13 MR. KATZ: Object.

14 THE DEPONENT: I draw that -- that plaintiffs
15 are attempting to argue is that there should have been,
16 for the group licensing programs, an account that was
17 established -- escrow account that was established that
18 was going to be for all eligible NFLPA members divided
19 between the player in an escrow account. That's -- that
20 is this language.

21 When I look and see what actually happened,
22 what type of an account would have been available, I
23 look to the GLR, the equal share account as that's --
24 that is the best proxy for what should have been
25 available.

1 of" --

2 Q (By Mr. Kessler) Okay.

3 A -- "former players."

4 Q Okay. What I'm asking you, though, is: Does
5 your -- does your analysis make any assumption one way
6 or the other?

7 Let's say there was a licensing program that
8 the jury found only involved the licensing of active
9 players and no retired players at all.

10 Does your damages study make any assumption as
11 to whether or not the GLA class should be able to share
12 in money that was solely generated from active player
13 licensing?

14 MR. KATZ: Object.

15 THE DEPONENT: There is an assumption there,
16 yes.

17 Q (By Mr. Kessler) What is that assumption?

18 A If that was for more than six or more active
19 or present or retired players -- so in this instance, it
20 would just be the active players -- those moneys would
21 be included in the escrow account that I have
22 analyzed.

23 Q Okay. So in your damages study, even if every
24 single dollar in the GLR pool was found by the jury to
25 be solely attributable to only the licensing of active

1 **player rights, you would still assume that retired**
2 **players should be able to get an equal share of that**
3 **money, correct?**

4 MR. KATZ: Object.

5 THE DEPONENT: With the understanding that all
6 of those revenues are for six or more --

7 Q (By Mr. Kessler) **Active players.**

8 A -- active players and that that goes into the
9 equal share pool. Then, yes, that is how I have
10 calculated it.

11 Q **And you've done that based on an assumption**
12 **that what this language means is that retired players**
13 **should get the money involving six or more players, even**
14 **if the six or more players are all active players?**

15 MR. KATZ: Object.

16 THE DEPONENT: That's the assumption.
17 That's -- that's all that is in that escrow account,
18 yes.

19 Q (By Mr. Kessler) **But that's the assumption of**
20 **your damages study?**

21 A Yes.

22 Q **Okay. Now, is it also true that in your**
23 **but-for world that you have constructed in your damages**
24 **study, any retired player who wanted to could sign the**
25 **GLA and participate in the active -- in the GLR pool?**

1 don't participate in the program in any case.

2 So it may very well be that even if you
3 announce this to the world, that some of those players
4 wouldn't participate in any case.

5 **Q (By Mr. Kessler) Okay. But under your**
6 **theory --**

7 MR. KATZ: Did you finish?

8 **Q (By Mr. Kessler) I am sorry. Did you**
9 **finish?**

10 A Yes.

11 **Q Okay. Under your but-for world, not the**
12 **actual world. Okay. I agree with you in the actual**
13 **world. Many retired players don't sign GLA forms.**

14 **In your but-for world where any retired player**
15 **who signed the GLA form would automatically have the**
16 **right to participate in the equal share in the GLR pool,**
17 **whether or not his rights were used or not, but would**
18 **have that right to participate; No. 2, would be free to**
19 **do ad hoc licensing on his own, which is also part of**
20 **your but-for world and that would not be included in the**
21 **GLR pool, which is also part of your but-for world; and**
22 **was not limited to doing individual licensing outside of**
23 **the NFLPA and Players, Inc., which is also part of**
24 **but-for world, what would be the economic reason why any**
25 **retired player who knew about that would not want to**

1 **sign up and get some free money.**

2 MR. KATZ: Object.

3 THE DEPONENT: So the -- the question that is
4 posed isn't relevant to my analysis in that I simply
5 looked at potential class members who are both retired
6 players and who signed the GLAs that have the specific
7 language. There are other retired players who signed
8 different GLAs, which --

9 Q (By Mr. Kessler) Okay.

10 A -- have not been included. You can see, at a
11 later point in time, it doesn't have the language.

12 So the hypothetical isn't necessary for my
13 analysis.

14 Q Okay. Wait --

15 A The class, as I understand it, are only those
16 players who had signed the relevant GLAs, and that's all
17 that's included in my analysis.

18 Q Maybe you are not understanding my question.

19 Okay. In a but-for world you are trying to
20 create for damages purposes, the world that would have
21 existed had defendants complied with the law as
22 plaintiffs are interpreting it, correct?

23 MR. KATZ: Object.

24 THE DEPONENT: In a general sense, yes.

25 Q (By Mr. Kessler) Okay. Have you done any

1 analysis to determine whether -- if defendants had
2 compiled with the law as plaintiffs are interpreting
3 it -- okay? -- whether that would have caused an
4 increase in the number of retired players signing GLAs
5 with the same language as the Adderley GLA so that that
6 would have effect of reducing the equal share to all the
7 GLA class members?

8 MR. KATZ: Object.

9 THE DEPONENT: I wasn't -- I wasn't asked to
10 do that analysis --

11 Q (By Mr. Kessler) And you haven't done that?

12 MR. KATZ: Are you finished with your answer.

13 THE DEPONENT: And --

14 MR. KATZ: You need to stop interrupting him,
15 Mr. Kessler.

16 THE DEPONENT: And I don't think it's relevant
17 for what we were attempting to do.

18 Q (By Mr. Kessler) And you haven't done it?

19 A I have not done it because it's not relevant
20 to this class.

21 Q Okay. Well, wouldn't it be relevant to the
22 class if there -- if there were 13,000 retired players
23 signing GLA forms so that each of their equal shares
24 would be less?

25 MR. KATZ: Object.

1 THE DEPONENT: It's an interesting analysis.
2 I wasn't asked to do that and I didn't do that.

3 Q (By Mr. Kessler) Well, do you agree it would
4 be relevant to them?

5 MR. KATZ: Object.

6 THE DEPONENT: I think there's a whole series
7 of analyses, including liability points, around this
8 class as to why others didn't sign up or who did sign up
9 and who stopped signing up, and so to simply assume that
10 there now would be 13,000, I don't have -- I don't have
11 basis for that.

12 Q (By Mr. Kessler) Okay. I'm not asking you to
13 assume 13,000.

14 Did you assume that any new class -- any new
15 retired players would sign up in your analysis?

16 A Not for purposes --

17 MR. KATZ: Object. Object.

18 THE DEPONENT: Not for purposes of the damage
19 analysis.

20 Q (By Mr. Kessler) Okay. Now, I would like to
21 direct your attention to the next paragraph.

22 In the last sentence you said, "I have defined
23 causation as the fact that the retired players did not
24 receive any payments from the general licensing pool
25 (further definition below.)"

1 Q (By Mr. Kessler) Well, is there anything in
2 principle that would prevent retired -- prevent the
3 NFLPA from including retired players in the equal share
4 pool -- in the pool and treating them the same way they
5 treat practice squad players, giving them each \$1,000?

6 What would stop that from happening?

7 MR. KATZ: Object.

8 THE DEPONENT: That's not how it was
9 practiced.

10 Q (By Mr. Kessler) Okay. But what was not
11 practiced was not to include retired players at all,
12 correct?

13 MR. KATZ: Object.

14 THE DEPONENT: Correct.

15 Q (By Mr. Kessler) So how do you know, if
16 retired players were included, they wouldn't be treated
17 like practice squad players, as opposed to treated like
18 other active players?

19 What's the principal basis for assuming one as
20 opposed to the other?

21 MR. KATZ: Object.

22 THE DEPONENT: Several.

23 The first is how the program was actually
24 designed and administered for those active NFLPA
25 individuals. That was done as equal share.

1 I don't see any tiering within the active
2 players for any type of other -- any type of other
3 matrix, one.

4 Two, I really looked to the -- this
5 establishment of an escrow account; that is, the only
6 escrow account that I can see that was established.

7 And I then looked at how it was administered
8 and make the assumption that had you included those
9 retired players into that account, they would have been
10 treated equally.

11 **Q (By Mr. Kessler) Okay. Are you familiar with**
12 **the concept of an escrow account from your studying in**
13 **accounting courses?**

14 A I'm familiar with escrow accounts from a
15 variety of --

16 **Q Okay.**

17 A -- sources.

18 **Q From all of your sources, is there requirement**
19 **you are aware of in general where an escrow account**
20 **should be -- has to necessarily be equally divided**
21 **between its beneficiaries?**

22 MR. KATZ: Object.

23 THE DEPONENT: They will be -- escrow accounts
24 can be set up individually and -- and how payments are
25 designated and what are the commitments or covenants

1 that have to be met before they are distributed. It
2 varies.

3 I want to say that Dr. Rasher talked about
4 other accounts within other sport organizations were
5 also administered on an equal share, but I want to go
6 back and revisit that.

7 Q (By Mr. Kessler) I'm just asking you a simple
8 question.

9 Is there anything in the words "escrow
10 account" alone that would indicate to you that whenever
11 you saw an escrow account, it would always be equally
12 distributed among its beneficiaries, if it had more than
13 one beneficiary?

14 MR. KATZ: Object.

15 THE DEPONENT: And, Counselor, is this a
16 general proposition, or are we talking about --

17 Q (By Mr. Kessler) General proposition.

18 A -- in this agreement?

19 No, it could be set up a variety of ways.

20 Q Okay.

21 A Yeah.

22 Q Now, in this case -- okay? -- active players
23 are not on the active roster of an NFL team, correct --
24 I am sorry -- practice squad players are not on the
25 active roster of an NFL team, correct?

1 MR. KATZ: Object.

2 THE DEPONENT: That's my understanding, yes.

3 Q (By Mr. Kessler) Okay. Retired players are
4 not on the active roster of an NFL team, correct?

5 A That would certainly be my general
6 understanding, but the whole Brett Favre, I'm trying to
7 understand if he's even on a roster.

8 My general understanding is I would agree with
9 you, Counselor. There might be some exceptions of which
10 I'm not fully aware.

11 Q All right. Let's assume I'm right. Let me
12 represent to you -- okay? -- that retired players are
13 not on an active roster and the practice squad players
14 are not.

15 What is your expert basis for concluding that
16 if retired players were included in the GLR pool, they
17 would not be more similarly treated to practice squad
18 players, who, like them, are not on an active NFL roster
19 as opposed to the active NFL roster players?

20 MR. KATZ: Object.

21 THE DEPONENT: It's -- it's an assumption that
22 goes to eligibility and the eligibility requirements and
23 the signing of a -- of a GLA.

24 Q (By Mr. Kessler) Do you have any basis for
25 that assumption to distinguish one from the another?

1 MR. KATZ: Object.

2 THE DEPONENT: The reason for my pause, I'm
3 trying to go back and remember the definition of a -- of
4 a retired player, what that means. I think we talked
5 about that earlier and the participation in the -- in
6 the escrow account.

7 I guess I would go back to, Counselor, I see
8 how the escrow account -- the -- the shared account was
9 administered, and my assumption is that the retired
10 players would have similar type of eligibility
11 requirements.

12 Now, not that they were on a squad but that
13 they were officially a retired player and that they had
14 signed GLAs and, therefore, would be similarly
15 positioned to active players for purposes of the
16 administration of the equal share form.

17 **Q Is there anything else you can articulate as**
18 **the basis for that assumption, other than what you've**
19 **already testified to?**

20 MR. KATZ: Object.

21 THE DEPONENT: Not at this time.

22 **Q (By Mr. Kessler) By the way, you mentioned**
23 **other sports' unions. Other sports' unions don't**
24 **distribute any money to retired players, do they?**

25 MR. KATZ: Object.

1 "alternatively, failing to distribute to retired players
2 equal share of the fund from which the active players
3 were paid."

4 Do you understand that plaintiffs are arguing
5 in the alternative that either there was a breach by
6 failing to create an escrow account or there was a
7 breach by failing to distribute an equal share of the
8 fund from which the active players are paid; is that
9 your understanding?

10 MR. KATZ: Object.

11 THE DEPONENT: Yes, Counselor, either there
12 was -- there was not a escrow account that was
13 established or if the equal share fund is the escrow
14 account, that the retired players didn't receive their
15 distribution from that.

16 Q (By Mr. Kessler) If the breach was failing to
17 establish an escrow account --

18 MR. KATZ: Object.

19 Q (By Mr. Kessler) Okay. So that one.

20 Okay. And there's no reference in the GLA to
21 how the escrow account money would be shared and what
22 proportion.

23 It says, how would an equal share damages
24 theory be a measure of the damages in that case?

25 MR. KATZ: Object.

1 THE DEPONENT: We would look to an escrow
2 account that was established. There is an account and
3 look to how that was administered.

4 Q (By Mr. Kessler) What makes the GLR pool an
5 escrow account?

6 A Based on my definition, there are moneys --
7 these are licensing royalties, minimum fees, et
8 cetera -- that are being collected with a purpose down
9 the road for some type of distribution, and so there
10 isn't one check comes in and there's immediately an
11 overall distribution. But it's an account to hold
12 moneys with a specific designation and that ultimately
13 those moneys are distributed.

14 Q So in your definition of escrow account,
15 anytime moneys are brought in and their purpose is to
16 distribute, that's an escrow account; that is all that
17 is required?

18 MR. KATZ: Object.

19 THE DEPONENT: That's -- that's not what I
20 said, Counselor.

21 Q (By Mr. Kessler) I thought that's what you
22 said.

23 What else about the -- what else about the GLR
24 pool makes it an escrow account, other than the fact you
25 said that moneys came in and they were being held to be

1 a variety of failed financial institutions.

2 **Q** **Was there a court proceeding involved with**
3 **that particular one?**

4 **A** There were a variety.

5 **Q** **Well, the one you were involved in, was there**
6 **a specific court proceeding?**

7 MR. KATZ: Object.

8 THE DEPONENT: I have -- I have to go back and
9 look, Counselor.

10 **Q** **(By Mr. Kessler) Okay. In looking on page 3,**
11 **you list -- you have a description after the long**
12 **paragraph about different theories going to different**
13 **things.**

14 **It says, "Theories 1 through 4, if proven,**
15 **would entitle plaintiffs to an equal share royalty**
16 **payment"; do you see that?**

17 **A** Yes.

18 MR. KATZ: What page are you on?

19 MR. KESSLER: Page 3.

20 MR. KATZ: What paragraph?

21 MR. KESSLER: Under the long paragraph,
22 there's a series of bullets.

23 MR. KATZ: Okay. Thank you.

24 **Q** **(By Mr. Kessler) Okay. The next one says,**
25 **"Theory 5 is addressed in the adjustment for changed**

1 market calculations."

2 Does that mean, in your opinion, that the
3 adjustment for changed market condition damages would
4 only be awarded if theory 5 is accepted by the jury? Is
5 that what you are saying?

6 MR. KATZ: Object.

7 THE DEPONENT: If the -- if the \$8 million is
8 deemed as part of a breach of fiduciary duty that
9 adjustment, I've cured for that calculation within the
10 changed market conditions.

11 Q (By Mr. Kessler) Would it also be -- would
12 that adjustment also be made just for a simply breach of
13 the GLA without any finding of breach of fiduciary
14 duty?

15 MR. KATZ: Object.

16 THE DEPONENT: I -- Counselor, I can't -- I
17 can't interpret the contract that -- that is not my
18 expertise.

19 If plaintiffs were to argue that somehow
20 the -- in not paying -- in particularly, they didn't pay
21 on the \$8 million -- that was a breach of contract. The
22 trier of fact could apply that change and condition as
23 a -- as a damages model.

24 I don't have an opinion, though, if that's a
25 breach of contract or not.

1 Q (By Mr. Kessler) Okay. Who prepared the
2 first draft of this supplemental report?

3 MR. KATZ: Object.

4 THE DEPONENT: I did.

5 Q (By Mr. Kessler) You physically, yourself,
6 did it, I'm asking, as opposed to your staff --

7 A Yeah.

8 Q -- or someone else?

9 MR. KATZ: You have to pause.

10 Object.

11 You may answer.

12 THE DEPONENT: Yes, Counselor, the first one I
13 really dictated.

14 Q (By Mr. Kessler) Okay. Take a look at
15 footnote 7 of your supplemental report?

16 MR. KATZ: What page?

17 MR. KESSLER: Page 7, footnote 7.

18 Q (By Mr. Kessler) It states here that in using
19 the 6 percent interest rate, now you are relying on the
20 advice of counsel; is that correct?

21 A Yes.

22 Q Okay. And you are relying on the fact that
23 each statute that you identified provide for prejudgment
24 interest as opposed to postjudgment interest?

25 MR. KATZ: Object.

1 THE DEPONENT: My understanding was that it
2 was statutory rate of interest changing from 10 percent
3 in California to 6 percent in Virginia and DC and that
4 the appropriate application to bring the moneys owed and
5 bring them forward was to apply the 6 percent.

6 Q (By Mr. Kessler) Do you know if the statutes
7 that you are referencing here apply to prejudgment
8 interest or postjudgment interest --

9 MR. KATZ: Object.

10 Q -- or both?

11 MR. KATZ: Object.

12 THE DEPONENT: I didn't read them in detail,
13 Counselor.

14 Q (By Mr. Kessler) Did you read them at all?

15 A No.

16 MR. KATZ: If we can just take a two-minute
17 break when it's convenient.

18 MR. KESSLER: Yes, I will do that in just a
19 minute. I'm just seeing if I have anything else on
20 this.

21 Q (By Mr. Kessler) Did you consider at all what
22 rate of return retired players could actually have
23 earned on their money during the damages period, if they
24 put it in a relatively safe investment like a treasury
25 or something like that?

1 MR. KATZ: Object.

2 THE DEPONENT: I think I discussed that with
3 counsel, and the challenge of doing that -- everyone has
4 different -- different risk thresholds and -- and trying
5 to come up with something that would be applicable to
6 the class didn't make sense, and then counsel advised me
7 that the appropriate -- would be to use this statutory
8 rate.

9 Q (By Mr. Kessler) Okay.

10 A So no -- no real investigation.

11 Q Okay. So you are not offering any expert
12 opinion, you are just using the rate counsel advised you
13 to use?

14 A That's correct.

15 MR. KESSLER: Okay. That's an appropriate
16 point to take a break, if you would like.

17 MR. KATZ: Okay.

18 (Recess taken.)

19 MR. KESSLER: Okay. Let's take a look at page
20 8 of document -- what is it? 630?

21 MR. CLARK: Yes.

22 Q (By Mr. Kessler) You talk at the top of this
23 page -- well, also in the middle about a customary
24 percentage.

25 Okay. What is the term "customary percentage"

1 Q Okay?

2 A Yes.

3 Q Step 1 was to take the GLR calculations. And
4 those are simply lifting the numbers that are stated on
5 an NFLPA/PI document, correct?

6 A For the model that contemplates all general
7 licensing revenues that were in the equal share pool,
8 yes.

9 Q So that model, you just lift the number that's
10 there on the papers.

11 MR. KATZ: Object.

12 THE DEPONENT: Ultimately. I mean, you
13 attempt to gain an understanding. We tried to -- well,
14 we had a deposition of Eyrich, attempting to understand
15 what are the various adjustments that are made and
16 reconciling those amounts.

17 Q (By Mr. Kessler) I understand you got an
18 understanding. But I'm saying, the steps you took
19 for -- for the model that uses the whole pool number,
20 you just took the whole pool number from the documents
21 with no adjustments, right?

22 A Outside of the adjustments that are made
23 within the calculation.

24 Q You don't make those adjustments, somebody
25 else made those adjustments in NFLPA.

1 MR. KATZ: Object.

2 THE DEPONENT: That's correct, to get the
3 initial overall pool number.

4 Q (By Mr. Kessler) Okay. Stop there.

5 Then when you were, for example, taking out
6 the NFL sponsorship number, which was in the pool,
7 correct?

8 A (Deponent nods head.)

9 Q What you did for that was you looked at the
10 NFL sponsorship number in the PA/PI documents and just
11 subtracted each year. You just took out the total for
12 the NFL sponsorship agreement from the total GLR pool.

13 You did simple arithmetic, right?

14 MR. KATZ: Excuse me. Can you read that
15 back.

16 (Record read as follows:

17 "QUESTION: What you did for that
18 was you looked at the NFL sponsorship
19 number in the PA/PI documents and just
20 subtracted each year. You just took out
21 the total for the NFL sponsorship
22 agreement from the total GLR pool.

23 You did simple arithmetic, right?")

24 MR. KATZ: Object.

25 THE DEPONENT: No. I wouldn't -- I wouldn't

1 characterize it that way.

2 There are -- there's an adjustment
3 specifically made to the NFL sponsorship and Internet
4 agreement.

5 Now, it's supposed to be 25 percent. As you
6 go through the documents, it's not clear how that number
7 is calculated. Part of that is because there are
8 minimums associated with the Internet aspect versus
9 minimums associated with the sponsorship.

10 So went through and verified that those
11 calculations were correct and then pull -- because you
12 already have some money being pulled out. And then
13 pulled out separately the amounts attributable to the
14 NFL sponsorship and Internet.

15 **Q (By Mr. Kessler) Okay. Those numbers, those**
16 **calculations you described appeared in the PA documents,**
17 **correct?**

18 **You didn't have to invent those numbers. They**
19 **were just in the PA documents.**

20 A Yes.

21 **Q So what you did is you copied the PA number**
22 **for the NFL sponsorship agreement amount that was in the**
23 **pool and you subtracted it, correct?**

24 MR. KATZ: Object.

25 THE DEPONENT: Really, it's more of a -- it's

1 an isolation because that's one of the aspects that's in
2 question as far as it relates to the liability issues --

3 Q (By Mr. Kessler) Okay.

4 A -- so it was isolated.

5 Q Right. But when you wanted to create the
6 variation that didn't include it, all I'm saying is --
7 I'm not trying to be complicated; I just want to
8 understand it.

9 You took the total GLR pool number that PA
10 reported and you subtracted the sponsorship agreement
11 number that PA reported and you came to a sum. And that
12 was now your calculation of the pool without the NFL
13 sponsorship agreement, right?

14 A Yes.

15 Q Okay. And when you wanted to get down to the
16 agreements that only had the language that counsel
17 identified for you -- okay? -- did you take a list of
18 those agreements and then calculate the revenues for
19 each of those agreements and add them up? Or did you
20 take the agreements that didn't have that language, add
21 them up and subtract them from the total?

22 I assume it's one way or the other. Which did
23 you do?

24 A Yeah, the --

25 MR. KATZ: Object.

1 THE DEPONENT: The practical application was
2 to run through concordance on all of the agreements the
3 relevant language and then find and pull all those.
4 Then we also had counsel verify that those were
5 appropriate.

6 You then go back into -- because you won't
7 find that in the summary documents to which we're
8 referring. You go back into the support behind the
9 calculations of the GLR equal share pool, and you can
10 find for each of the contracts -- that's one of my
11 exhibits -- the amounts that were included, and then you
12 add those -- add those total.

13 Q Let me understand this.

14 You went through all the agreements looking
15 for the language that counsel identified and came up
16 with a list of agreements.

17 That was the first step.

18 A Yes.

19 Q Then you showed it to counsel and said, "Did
20 we find the right group? Do you have any comments about
21 it?"

22 A Yes.

23 Q Then you had your final list of agreements,
24 and you went to the NFLPA listing of -- backup data that
25 showed the amounts generated by each agreement,

1 correct?

2 A In the respective years, yes.

3 Q And then you -- you extracted that amount for

4 each agreement and added that all up.

5 A Yes.

6 Q And that's how you came with your subset of

7 player pool A, your total amount.

8 A For the relevant revenues.

9 Q Yes.

10 A Yes.

11 Q And then to determine the number of active

12 players in each year, you went through the NFLPA

13 documents and -- this is for active players -- and

14 simply counted up the number of active players who were

15 distributed to each year, right?

16 A Yes.

17 Q Okay. And to get the number of -- of retired

18 players you were going to count, you looked through all

19 the GLA forms -- okay? -- and you counted up each year

20 the number of retired players who had GLAs during the

21 particular -- in effect, during the particular year you

22 were looking at, correct?

23 A Yes.

24 Q Okay. And then you divided the player royalty

25 pools you calculated by the total combined number of

1 term. If --

2 Q (By Mr. Kessler) The amount of damages.

3 MR. KATZ: Well, let him finish.

4 THE DEPONENT: If the amount of money would be
5 the same that would be allocated to each of those
6 players, yes, that's what the model cares for. Someone
7 who is destitute, getting an additional \$3,000, that
8 means a lot more than someone who has several million
9 dollars, if you're defining injury.

10 Q (By Mr. Kessler) What I hear you saying is
11 that plaintiffs' counsel told you the theory of
12 plaintiffs is that the breach was not giving an equal
13 share; therefore, the damages is an equal share. Okay.

14 What I'm now asking you is something a little
15 bit different, which is that one of the breaches of
16 fiduciary duty alleges conflict of interest, for
17 example.

18 You're aware of that, right?

19 A Yes.

20 Q Okay. Taking out plaintiffs' counsel's theory
21 that the only actionable injury was failure to
22 participate in the GLR share, is it your opinion, as a
23 damage expert, that for a conflict of interest, in
24 general, every class member would suffer an identical
25 injury, an identical amount of injury?

1 MR. KATZ: Object.

2 THE DEPONENT: In assessing the potential
3 damages, I have not looked to the premium appearances,
4 ad hoc, side deals, any of those monies which an
5 individual active player or retired player can pursue
6 and can be assisted by NFLPI.

7 What I attempted to do was to construct a
8 model that would look at an escrow account for all
9 eligible NFL members divided between the player who've
10 signed the GLA.

11 In that instance, as I have looked to how a
12 like-type account, if not the account, has been
13 administered, it was on a equal share basis. Therefore,
14 the retired players, regardless of their status in the
15 league, would receive an equal amount of these monies.

16 Q (By Mr. Kessler) Okay. I'm really not trying
17 to trick you. I just want to understand and get a
18 yes-or-no answer.

19 So I understand your position is, which is --
20 you're entitled to have your position -- is that the
21 only possible damages in this case would be that
22 everybody suffered the exact amount of injury.

23 That's your expert opinion.

24 MR. KATZ: Object.

25 THE DEPONENT: Based on how the current

1 account, the GLR equal share account, was established
2 and administered, that's the most reasonable way to
3 measure the damages.

4 **Q (By Mr. Kessler) Okay. What would be other**
5 **ways to measure it?**

6 MR. KATZ: Object.

7 THE DEPONENT: Well, Counselor, you offered a
8 hypothetical that potentially the NFLPA/PI would have
9 had some type of a policy where, similar to practice
10 squad players, retired players only get a certain
11 amount.

12 I haven't seen any language to that effect or
13 documentation to that effect. That's an example that
14 you threw out; there would be some type of sliding
15 scale.

16 **Q (By Mr. Kessler) Any other examples --**

17 MR. KATZ: Jeff, are we going to take our
18 break?

19 MR. KESSLER: I thought it was to give you a
20 different answer. He's the one --

21 MR. KATZ: Well, you can ask questions before
22 the break, after the break. I just need a two-minute
23 break.

24 MR. KESSLER: All right. Let's take a
25 two-minute break.

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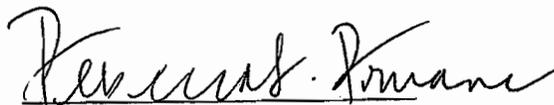
I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: July 23, 2008



REBECCA L. ROMANO

CSR No. 12546