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21 *Attorneys for Plaintiffs*

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

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

Plaintiffs,

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

Defendants.

CIVIL ACTION NO. C07 0943 WHA

**PLAINTIFFS' MOTION IN LIMINE NO. 3,
 REQUESTING EXCLUSION OF EVIDENCE
 AND ARGUMENT RELATED TO MR.
 ADDERLEY'S PURPORTED FIDUCIARY
 RELATIONSHIP WITH MEMBERS OF
 RETIRED PROFESSIONAL FOOTBALL
 PLAYERS FOR JUSTICE**

Judge: Honorable William H. Alsup
 Date: September 9, 2008
 Time: 2:00 p.m.
 Place: Courtroom 9, 19th Floor

1 **I. The Court Should Exclude Any Evidence, Testimony, Argument or Reference that Mr.**
2 **Adderley's Involvement with Retired Professional Football Players for Justice ("RPFPJ")**
3 **Created a Fiduciary Relationship Between Adderley and Retired Player Members.**

4 In Defendants' Opposition to Plaintiffs' Motion for Class Certification, Defendants argue
5 that *Mr. Adderley and Mr. Parrish* breached *their* fiduciary duties to retired player members of
6 RPFPJ by, *inter alia*, failing to adequately monitor Mr. Parrish's use of approximately \$5000 of
7 solicited donations. Neither Defendants nor retired players are accusing Mr. Adderley of
8 breaching any fiduciary duty in this lawsuit, and Mr. Adderley's relationship with RPFPJ is
9 completely irrelevant in determining whether Defendants breached any fiduciary duty to the class
10 members. The Court should exclude this evidence and argument.

11 A. Mr. Adderley's relationship with RPFPJ is irrelevant and unduly prejudicial.

12 Plaintiffs bring a claim of breach of fiduciary duty against Defendants, arguing that the
13 GLAs, *inter alia*, created a fiduciary relationship between Plaintiffs and Defendants, and
14 Defendants breached their fiduciary duty to Plaintiffs. Plaintiffs expect Defendants to confuse the
15 issues by arguing that the class representative is a fiduciary to the members of RPFPJ, and that
16 Mr. Adderley breached his fiduciary duties to those members. First, Mr. Adderley's acts in
17 relation to the members of RPFPJ are wholly inapposite to whether Defendants are liable for
18 breaches of contract and fiduciary duty, as Plaintiffs claim. Second, this testimony is unfairly
19 prejudicial, as the discussion of a second "fiduciary relationship" may confuse the jurors,
20 especially when that purported relationship has no affect on the breach of fiduciary duty claim
21 that will be presented to the jury. As such, the Court should exclude this evidence and argument,
22 *in limine*, under Rules 402 and 403.

23 B. Mr. Adderley's Purported Deficient Oversight of Mr. Parrish Is a "Bad Act"
24 Inadmissible Under Rule 404(b).

25 Any accusation that Mr. Adderley abused any fiduciary relationships to members of
26 RPFPJ will adversely affect the jury's evaluation of his character. The Supreme Court has
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1 recognized that this provides a basis for exclusion under Rule 404(b). *See Huddleston v. United*
2 *States*, 485 U.S. 681, 685 (1988) (“Federal Rule of Evidence 404(b) -- which applies in both civil
3 and criminal cases -- generally prohibits the introduction of evidence of extrinsic acts that might
4 adversely reflect on the actor’s character, unless that evidence bears upon a relevant issue in the
5 case such as motive, opportunity, or knowledge.”) Mr. Adderley’s relationship with RPFPI does
6 not bear upon any relevant issues in this case, thus, this evidence should be excluded under Rule
7 404(b).
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9 Moreover, a Ninth Circuit panel has recognized that, under Rule 404(b), “there must be
10 sufficient evidence for the jury to find the [actor] committed the other act.” *Duran v. City of*
11 *Maywood*, 221 F.3d 1127, 1132-33 (9th Cir. 2000). For Defendants to prove up any purported
12 breach of fiduciary duty by Mr. Adderley, the Court must allow, in effect, a “trial within a trial,”
13 requiring details of the factual relationship between Mr. Adderley and the members of RPFPI,
14 any acts of Mr. Parrish related to RPFPI, and Mr. Adderley’s knowledge and purported
15 acquiescence in those acts. Given the limited value of such evidence, the Court may properly
16 exclude this line of argument as a waste of time. *See id.* at 1133 (upholding exclusion of
17 evidence of a shooting because, *inter alia*, inclusion would require multiple witnesses, create
18 undue delay, and result in a waste of time).
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1 **II. Conclusion**

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3 Plaintiffs respectfully request that the Court grant its Motions in Limine.

4 Respectfully submitted,

5 Dated: August 19, 2008

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7 By: 

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PROOF OF SERVICE

I, Daniel Q. Crim, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 1001 Page Mill Road, Building 2, Palo Alto, CA 94304-1006. On August 19, 2008, I served the following documents:

1. **Plaintiffs' Motion In Limine No. 1, Requesting Exclusion Of Evidence And Argument Related To Bernard Parrish;**

2. **Plaintiffs' Motion In Limine No. 2, Requesting Exclusion Of Evidence Or Argument Relating To The Possibility Of Suing Additional Parties For Relief;**

3. **Plaintiffs' Motion In Limine No. 3, Requesting Exclusion Of Evidence And Argument Related To Mr. Adderley's Purported Fiduciary Relationship With Members Of Retired Professional Football Players For Justice;**

4. **Plaintiffs' Motion In Limine No. 4, Requesting Exclusion Of Parol Evidence Tending To Prove The Intent Of The Parties To Third-Party Licensing Agreements;**

5. **Plaintiffs' Motion In Limine No. 5, Requesting Exclusion Of Evidence Or Argument Relating To Dismissed Causes Of Action And The Uncertified Putative Class;**

6. **Plaintiffs' Motion In Limine No. 6, Requesting Exclusion Of Evidence And Arguments Of Legal Conclusions Made By Herb Adderley; and**

7. **Plaintiffs' Motion In Limine No. 7, Requesting Exclusion Of Evidence, Testimony And Argument Related To The Nfl Sponsorship And Internet Agreement.**

- By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail, addressed as set forth below.
- By transmitting via facsimile the document listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- By placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for overnight delivery.

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By electronic mail to the below email addresses:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 19, 2008, at Palo Alto, California.



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19 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
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21 BERNARD PAUL PARRISH, HERBERT
ANTHONY ADDERLEY, WALTER
22 ROBERTS III,

23 Plaintiffs,

24 v.

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

27 Defendants.
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Case No. C 07 0943 WHA

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTIONS IN LIMINE
NOS. 1, 3 AND 5**

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ARGUMENT

Plaintiffs seek in their Motions in Limine Nos. 1, 3 and 5 (“Mot. No. 1, 3, and 5,” respectively) to exclude all evidence and argument related to (i) Bernard Parrish; (ii) Adderley’s relationship with the Retired Professional Football Players for Justice (“RFPFJ”); and (iii) the dismissed causes of action and the uncertified putative class, respectively. With the exception of references to any decision or comments by the Court, this evidence should be admissible at trial because it goes directly to the motives for this litigation and the motives and credibility of both Mr. Adderley and Plaintiffs’ retired player witnesses in pursuing the GLA Class claims in this case. If this evidence were to be excluded, Defendants would be deprived of their fundamental right to challenge the credibility of Plaintiffs’ witnesses.

Plaintiffs seek to exclude “any evidence or testimony regarding Bernard Parrish, including deposition testimony, documents authored by Mr. Parrish, and communications authored or received by Mr. Parrish” on the ground that his claims are purportedly distinct from those of the GLA Class, and because Mr. Parrish’s statements about the union will allegedly “not help a jury determine any issues in this lawsuit.” Mot. No. 1, at 2-3.

Plaintiffs, however, ignore the fact that evidence relating to Mr. Parrish and his involvement in this case is highly relevant to enable the jury to assess the credibility of the claims asserted by the GLA Class. In particular, this evidence will be relevant to expose the motivations of Mr. Adderley and the other player witnesses identified by Plaintiffs and to help the jury assess the biases and hidden connections which undermine the credibility of their testimony. See Ruffin v. City of Boston, 146 Fed. Appx. 501, 506 (1st Cir. 2005) (evidence about dismissed claims is still relevant to show bias).

Indeed, the evidence will establish that the claims made by the GLA Class are unequivocally the product of Mr. Parrish’s dominating influence and motivations. For example, Mr. Adderley testified that it was Mr. Parrish who recruited him to be involved with this case and that it was Mr. Parrish who explained to him his duties as a class representative. Adderley Depo. 15:22-16:9, 246:1-15 (attached as Exhibit 1 to the Declaration of David Greenspan

1 (“Greenspan Decl.”), dated October 8, 2008). Moreover, it was Mr. Parrish – not Mr. Adderley
2 – who selected class counsel and worked to develop all of the claims in this lawsuit. Parrish
3 Depo. 193:10-198:10; Adderley Depo. 246:1-15 (Greenspan Decl., Exs. 2 & 1).

4 Similarly, Walter Beach – whom Plaintiffs did not disclose as a witness until
5 August 2008 (long after the Court’s denial of Mr. Parrish’s motion for class certification) – is a
6 former teammate and “very good friend” of Mr. Parrish. Beach Depo. 45:23-46:13 (Greenspan
7 Decl., Ex. 3). Not surprisingly, Mr. Beach testified that he was recruited by Mr. Parrish to be a
8 witness in this case. Id. (“[Parrish] just asked could he give my name to the attorneys, and I told
9 him ‘of course.’”); see also id. at 56:2-15 (agreeing with Parrish’s statement that “Upshaw and
10 his cadre of agents, goons and NFLPA insiders [are] trying to confuse and manipulate the players
11 . . . widows and survivors”). Plaintiffs also belatedly disclosed as witnesses – after the Parrish
12 class certification motion was denied – Bruce Laird and Clifton McNeil, both of whom are
13 retired NFL players. Not surprisingly, both also have substantial connections to Mr. Parrish.
14 Mr. McNeil is Mr. Parrish’s former teammate and Mr. Laird was an active cohort with Mr.
15 Parrish in his vendetta against the union. See Email from Bernard Parrish to Bruce Laird, at
16 CLASS002715 (“I sure want you on our Board [of the RFPFJ], but I don’t intend to lose control
17 over this lawsuit or this non-profit . . .”) (Greenspan Decl., Ex. 4); email from Bernard Parrish to
18 Ben Lynch, dated November 24, 2007, at CLASS003161 (“When elected Executive Director [of
19 the NFLPA, Parrish] will name Bruce Laird, Assistant Executive Director.”) (Greenspan Decl.,
20 Ex. 5).

21 Evidence that Mr. Parrish – who did not sign a GLA – recruited and directs the
22 GLA Class’s witnesses is highly relevant to their motives and credibility and will help the jury
23 determine whether their testimony about key issues in this case, e.g., their claimed understanding
24 of the Retired Player GLAs, is believable. United States v. Abel, 469 U.S. 45, 52 (1984) (“Proof
25 of bias is almost always relevant because the jury, as finder of fact and weigher of credibility,
26 has historically been entitled to assess all evidence which might bear on the accuracy and truth of
27 a witness’ testimony.”); United States v. Hankey, 203 F.3d 1160, 1171 (9th Cir. 2000)
28 (“Evidence is relevant . . . if it has a mere tendency to impeach a witness’ credibility by a

1 showing of bias or coercion."); Lewy v. S. Pac. Transp. Co., 799 F.2d 1281, 1298 (9th Cir. 1986)
2 ("[Plaintiff] was entitled to introduce evidence of [witness'] bias both by cross-examining her and
3 through presentation of extrinsic evidence . . ."). This evidence, therefore, is admissible. Abel,
4 469 U.S. at 52 ("A witness' and a party's common membership in an organization, even without
5 proof that the witness or party has personally adopted its tenets, is certainly probative of bias.");
6 Hankey, 203 F.3d at 1171 ("The point of a bias inquiry is to expose to the jury the witness'
7 special motives to lie, by revealing facts such as . . . personal animosity or favoritism towards the
8 defendant."); Obrey v. Johnson, 400 F.3d 691, 697 (9th Cir. 2005) ("[E]vidence that the
9 defendant has made disparaging remarks about the class of persons to which plaintiff belongs[]
10 may be introduced to show that the defendant harbors prejudice towards that group."), quoting
11 Lam v. Univ. of Haw., 164 F.3d 1186, 1188 (9th Cir. 1999) (internal quotation marks omitted).

12 Simply put, Defendants are entitled to challenge the motives and credibility of
13 Plaintiffs' witnesses. To do so, it will be relevant to introduce evidence on cross-examination
14 about Mr. Parrish and his forty-year vendetta against the NFLPA, and the influence which Mr.
15 Parrish currently has over Mr. Adderley and Plaintiffs' other witnesses.

16 Similarly, there is no basis for Plaintiffs to seek to exclude evidence about Mr.
17 Adderley's relationship with the RFPFJ. Plaintiffs assert that any argument by Defendants at
18 trial that "Mr. Adderley breached his fiduciary duties" owed to RFPFJ members is not relevant.
19 Mot. No. 3, at 2. Defendants, however, do not intend to prove at trial any breach of fiduciary
20 duty by Mr. Adderley with respect to the members of RFPFJ. There is, therefore, no risk of any
21 "trial within a trial" on this issue. By contrast, Defendants intend, and are entitled, to introduce
22 at trial evidence that Mr. Adderley is the Co-President of RFPFJ, an organization whose stated
23 purpose is filing class action lawsuits and addressing other complaints about the NFLPA that
24 have nothing to do with retired player licensing. See RFPFJ Statement of Purpose, available at
25 <http://www.playersforjustice.org/aboutus.html> ("The organization will engage in activities like
26 bringing class action lawsuits, testifying before Congress, and providing information to the
27 media highlighting the situation of those whose former physically demanding careers have
28 resulted in long-term damage to their health."). Such evidence is relevant to Mr. Adderley's

1 motives and credibility. United States v. Pierson, 121 F.3d 560, 563 (9th Cir. 1997) (evidence
2 regarding witness's motive to testify is relevant to his credibility); cf. Abel, 469 U.S. at 51-52, 56
3 (the fact that a witness belongs to a particular organization may be probative of bias). Further,
4 evidence proving that Mr. Adderley regularly defers to Mr. Parrish with respect to the activities
5 of RPJPJ will help the jury assess whether Mr. Adderley's testimony in this case is another
6 deferral to the direction and influence of Mr. Parrish. This evidence is admissible, therefore,
7 because it is probative of Mr. Adderley's credibility and is not at all confusing.

8 The same is true of evidence relating to Plaintiffs' claims that have been
9 superseded or dismissed. Although Defendants agree that neither party should refer to any
10 commentary or ruling by the Court – including the Court's dismissal of certain claims by
11 Plaintiffs, the Court's rulings on Plaintiffs' motion for class certification, and its denial of
12 Defendants' motion for summary judgment – evidence that Plaintiffs' factual claims in this case
13 have changed multiple times goes to the veracity of their newest factual complaints about
14 Defendants' licensing activities. For example, Mr. Adderley testified at his deposition that when
15 he brought this case, his only licensing complaint against Defendants related to his ad hoc license
16 with Reebok, and that he did not understand that he was entitled under the Retired Player GLA to
17 any share of active player licensing revenues. Adderley Depo. 77:13-21; 91:16-22 (Greenspan
18 Decl., Ex. 1).

19 Even Plaintiffs concede that evidence about the changing nature of their claims is
20 relevant to the credibility of Plaintiffs' witnesses: "References to the number or nature of
21 superseded claims [could suggest that] Plaintiffs had difficulty coming up with a viable claim,
22 thereby impugning their credibility." Mot. No. 5, at 2 (emphasis added). This is precisely why
23 this evidence, about the changing nature of Plaintiffs' factual claims, is relevant and admissible.
24 This evidence tends to prove that the most recent testimony of Mr. Adderley and Plaintiffs' other
25 retired player witnesses about their purported understanding of the Retired Player GLA is either
26 manufactured for this litigation, motivated by Mr. Parrish's and the witnesses' personal vendettas
27 against the union, or both. Evidence about the changing nature of Plaintiffs' claims is thus
28 admissible and helpful to the jury's determination of the credibility of the witnesses and claims

1 in this case. Cf. Ruffin, 146 Fed. Appx. at 506 (evidence going to dismissed claims is relevant to
2 show bias on remaining claims).¹

3 **CONCLUSION**

4 For all of the foregoing reasons, Plaintiffs' Motions in Limine Nos. 1, 3 and 5
5 should be denied except that no party should be permitted at trial to refer to any commentary or
6 rulings of the Court, including the Court's decisions on Defendants' motions to dismiss,
7 Plaintiffs' motion for class certification and Defendants' motion for summary judgment.

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9 Date: October 8, 2008

DEWEY & LEBOEUF LLP

10 BY: /s/ Jeffrey Kessler
11 Jeffrey L. Kessler
12 *Attorneys for Defendants*

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27 ¹ The sole case cited by Plaintiffs provides no support for them here. That case does not address
28 whether the excluded evidence could have been used to impeach any witness or was relevant to
any remaining claims. See Motion No. 5, at 2 citing Redwood Christian Schools v. County of
Alameda, No. C-01-4282 SC, 2007 U.S. Dist. LEXIS 8287, at *6 (N.D. Cal. Jan. 26, 2007).