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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT
 SAN FRANCISCO DIVISION

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

Plaintiffs,

25 NATIONAL FOOTBALL LEAGUE
 26 PLAYERS ASSOCIATION, a Virginia
 27 corporation, and NATIONAL FOOTBALL
 28 LEAGUE PLAYERS INCORPORATED
 d/b/a PLAYERS INC, a Virginia
 corporation,

Defendants.

CIVIL ACTION NO. C07 0943 WHA

**PLAINTIFFS' MOTION IN LIMINE NO. 8,
 REQUESTING EXCLUSION OF EVIDENCE
 AND ARGUMENTS RELATING TO
 PLAINTIFFS' COUNSEL'S CONTINGENCY
 FEE INTEREST**

Judge: Honorable William H. Alsup
 Date: October 15, 2008, 2:00 p.m.
 Place: Courtroom 9, 19th Floor

1 **I. The Court Should Exclude Any Evidence, Testimony, Argument or Reference to Class**
2 **Counsel's Contingency Fee Interest or Possibility of Recovery in this Case.**

3 Plaintiffs request that the Court preclude Defendants from introducing evidence to the jury
4 relating to Plaintiffs' counsel representing them on a contingency fee basis, or as to any recovery
5 that may eventually inure to Plaintiffs' counsel's benefit, as such evidence is irrelevant to any
6 factual issue in this case. Such evidence would also waste time, confuse the jury, and unduly
7 prejudice Plaintiffs.
8

9 The remaining claims in this case relate to Defendants' breach of the GLA, and
10 Defendants' breach of their fiduciary duty to the GLA Class. Evidence relating to Plaintiffs'
11 counsel's form of payment, whether contingency or otherwise, does not help the jury determine
12 any of the factual issues posed to them. The evidence is also highly prejudicial, as it may taint the
13 jury's perception of Plaintiffs' counsel as Plaintiffs' advocate, in light of counsel's financial
14 interest in the outcome of the case. Given the lack of probative value, the Court should exclude
15 any such evidence pursuant to Rule 402 and Rule 403. Other courts have granted similar motions
16 in limine. *See Pucci v. Litwin*, No. 88-10293, 1993 U.S. Dist. LEXIS 13902, at *1 (N.D. Ill. Oct.
17 4, 1993); *Falise v. Am. Tobacco Co.*, No. 99-CV-7392, 2000 U.S. Dist. LEXIS 22344, at *4
18 (E.D.N.Y. Nov. 30, 2000); *Bailey PVS Oxide (Delta) LLC v. Plas-Tanks, Inc.*, No. 3:02-CV-7363,
19 2005 U.S. Dist. LEXIS 11250, at *4 (N.D. Ohio June 6, 2005).
20

21 Despite this, Defendants have included exhibits that refer directly to this contingency fee
22 interest, or suggest that Plaintiffs' counsel has a personal stake in the outcome of the lawsuit.
23 Exhibit 2382 (Garza Decl., Ex. A) states that Plaintiffs' counsel is "gambling up to \$2 million" on
24 this lawsuit. *See also* Exhibit 2352 (Garza Decl., Ex. E) (similar statements). Furthermore,
25 Defendants have included exhibits 160, 307, and 321, (Garza Decl., Exs. B-D) which suggest that
26 class counsel are affiliated with Retired Professional Football Players for Justice, an organization
27
28

1 that has purportedly advocated for the type of litigation at issue in this case. The Court should
2 exclude the above-listed exhibits, and any testimony, argument, evidence or reference to class
3 counsel's contingent interest in this case, or other financial recovery in this case.
4

5 **II. Conclusion**

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


7 Respectfully submitted,

8 Dated: 25 SEPT, 2008

MANATT, PHELPS & PHILLIPS, LLP

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and National Football League Players Incorporated d/b/a Players Inc
18

19 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

20 BERNARD PAUL PARRISH, HERBERT
21 ANTHONY ADDERLEY, WALTER
ROBERTS III,

22 Plaintiffs,
23

24 v.

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

27 Defendants.
28

Case No. C 07 0943 WHA

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION IN LIMINE
NO. 8**

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ARGUMENT

In their Motion in Limine No. 8, Plaintiffs seek to: (1) “preclude Defendants from introducing evidence to the jury relating to Plaintiffs’ counsel representing them on a contingency fee basis, or as to any recovery that may eventually inure to Plaintiffs’ counsel’s benefit”; and (2) exclude specified exhibits, numbered 160, 307, and 321, that “suggest that class counsel are affiliated with Retired Professional Football Players for Justice, an organization that has purportedly advocated for the type of litigation at issue.” Motion No. 8 at 2-3. Defendants have no issue with the first part of Plaintiffs’ Motion, and do not contest it.

However, there is no basis for Plaintiffs’ request to exclude Exhibits 160, 307, or 321, or any other evidence of connections between this litigation and Retired Professional Football Players for Justice (“RPF PJ”), because that evidence goes directly to the credibility of Plaintiff Herb Adderley. Specifically, Mr. Adderley, along with former Plaintiff Bernard Parrish, is Co-President of RPF PJ, an organization whose stated purpose is filing class action lawsuits and addressing other complaints about the NFLPA that have nothing to do with retired player licensing. See RPF PJ Statement of Purpose, available at <http://www.playersforjustice.org/aboutus.html> (“The organization will engage in activities like bringing class action lawsuits, testifying before Congress, and providing information to the media highlighting the situation of those whose former physically demanding careers have resulted in long-term damage to their health.”).

Evidence relating to RPF PJ, and Mr. Adderley’s involvement with that organization and its goals, are not at all confusing, but, even more importantly, such evidence is critical to assessing the credibility of Mr. Adderley and other witnesses affiliated with RPF PJ. See United States v. Abel, 469 U.S. 45, 52 (1984) (“Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness’ testimony.”); United States v. Hankey, 203 F.3d 1160, 1171 (9th Cir. 2000) (“Evidence is relevant . . . if it has a mere tendency to impeach a witness’ credibility by a showing of bias or coercion.”); Lewy v. S. Pac. Transp. Co., 799 F.2d 1281, 1298 (9th Cir. 1986) (“[Plaintiff] was entitled to introduce evidence

1 of [witness's] bias both by cross-examining her and through presentation of extrinsic evidence . .
2 ..").

3 In particular, this evidence will be relevant to demonstrate how Mr. Adderley and
4 another named witness, Mr. Bruce Laird, have personal interests that reflect adversely on their
5 credibility, and should be taken into account by the jury in assessing their believability. One
6 such example is a reference in a document that Mr. Parrish sought to have Mr. Laird join the
7 Board of Directors of RFPFJ, but only so long as Mr. Parrish would not "lose control over this
8 lawsuit." See Email from Bernard Parrish to Bruce Laird, at CLASS002715 ("I sure want you
9 on our Board [of RFPFJ], but I don't intend to lose control over this lawsuit or this non-profit . . .
10 .") (attached as Exhibit 4 to the Declaration of David Greenspan, dated October 8, 2008). Mr.
11 Laird's response to this inquiry goes to the heart of his credibility.

12 Defendants are entitled to challenge the motives and credibility of Plaintiffs and
13 their witnesses. Evidence about RFPFJ – and its connection to Mr. Adderley and Mr. Laird – is
14 simply part of assessing the credibility of these witnesses, which is essential to any fair trial of
15 this case.

17 CONCLUSION

18 For all of the foregoing reasons, Defendants respectfully request that Plaintiffs'
19 Motion in Limine No. 8 be denied in part, as reviewed above.

20
21 Date: October 8, 2008

DEWEY & LEBOEUF LLP

22 BY: /s/ Jeffrey L. Kessler
23 Jeffrey L. Kessler
24 *Attorneys for Defendants*