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18 UNITED STATES DISTRICT COURT  
 19 NORTHERN DISTRICT OF CALIFORNIA  
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 21 SAN FRANCISCO DIVISION  
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28 JOINT FINAL PRE-TRIAL ORDER  
 CASE NO. C07 0943 WHA

266929.1

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

4 Plaintiffs,

5 V.

6 NATIONAL FOOTBALL LEAGUE  
7 PLAYERS ASSOCIATION, a Virginia  
8 corporation, and NATIONAL FOOTBALL  
LEAGUE PLAYERS INCORPORATED  
d/b/a PLAYERS INC, a Virginia  
corporation,

9 Defendants.

CIVIL ACTION NO. C07 0943 WHA

**JOINT FINAL PRE-TRIAL ORDER**

**JOINT FINAL PRE-TRIAL ORDER**

12  
13  
14 The parties hereby submit the following Joint Final Pre-Trial Order pursuant to the Court's  
15 Guidelines for Trial and Final Pretrial Conference in Civil Jury Cases and Federal Rule of Civil  
16 Procedure 26(A)(3).

17  
18 **I. CLAIMS AND DEFENSES**

19 **Plaintiffs' Claims**

20 Plaintiff Herbert Adderley is a Hall of Fame NFL cornerback who played for the Green Bay  
21 Packers and the Dallas Cowboys for more than 10 years. Mr. Adderley is the representative of a  
22 class consisting of retired NFL players who signed GLAs with the NFLPA that were effective  
23 between February 14, 2003 and February 14, 2007 containing the same operative language as  
24 Adderley's GLA (the "GLA Class"). There are approximately 2056 such retired players in the GLA  
25 Class (not including 13 opt outs). Defendant National Football League Players Association  
26 ("NFLPA") acts as the labor union for professional football players in the National Football League.

27  
28 JOINT FINAL PRE-TRIAL ORDER  
CASE NO. C07 0943 WHA

1 Defendant National Football League Players Incorporated ("PI") is the licensing and marketing  
2 subsidiary of the NFLPA.

3 Plaintiffs contend that the NFLPA promoted a Retired Player Group Licensing Program,  
4 through which it actively encouraged retired players to enter into Group Licensing Authorizations  
5 ("GLAS") which granted the NFLPA the right to use the player's name, signature, facsimile, voice,  
6 picture, photograph, likeness and/or biographical information in the Retired Group Licensing  
7 Program. The GLA defines a "group licensing program" as any program or license "in which a  
8 licensee utilizes a total of six (6) or more present or former NFL player images in conjunction with  
9 or on products that are sold at retail or used as promotional or premium items." This expansive  
10 definition effectively makes the Defendants the sole source of player licenses. Defendants convinced  
11 thousands of retired players to execute GLAs and the incentive for a retired player to enter into the  
12 GLA was the promise of a share of royalties:

13  
14 [T]he moneys generated by such licensing of retired player  
15 group rights will be divided between the player and an escrow  
16 account for all eligible NFLPA members who have signed a group  
17 licensing authorization form.

18 The GLA and the totality of the circumstances, including the relationship between the retired  
19 player and his union, the NFLPA, created a fiduciary relationship between the GLA Class members  
20 and the Defendants.

21 After soliciting and acquiring the GLAs, the NFLPA assigned these rights to PI. In turn, PI  
22 entered into profitable group licensing agreements with scores of third parties, such as Electronic  
23 Arts and Topps. The express and unambiguous terms of these third party agreements include a  
24 collective license to both active and retired player rights. The third party license agreements also  
25 precluded the licensees from making independent agreements with the retired players. Being the de  
26 facto exclusive provider of player group licensing rights was beneficial for Defendants and the  
27 Defendants sought to eliminate competition.

1 PI's agreements with the third party licensees generate millions of dollars guaranteed  
2 minimum revenues for PI every year that are paid regardless of which player images, if any, its  
3 licensees actually use. Such payments do not relate to any specific player and make no distinction  
4 between active and retired players.

5 The GLA provides that Defendants will establish an escrow account and that each player will  
6 share in the revenues generated by the licensing of collective group rights. In breach of their  
7 contractual and fiduciary obligations, the Defendants failed to create an escrow account from which  
8 the GLA Class members should have been paid. The Defendants did create an account from which  
9 they paid out an "equal share" of the royalties from collective group licensing, but only to active  
10 players. In breach of their contractual and fiduciary obligations, Defendants distributed the revenues  
11 that it generated in connection with its collective group licensing program in equal shares to every  
12 "eligible NFLPA member," whether famous or unknown. However, members of the GLA Class  
13 have not received their "equal share" of the revenues, because Defendants exercised their discretion  
14 to determine (secretly) that the retired players were not "eligible." Thus, in breach of their  
15 contractual and fiduciary obligations, Defendants failed to pay to Adderley and the GLA Class any  
16 of the guaranteed licensing revenues generated under the EA Agreement, the TOPPS Agreement and  
17 the myriad other agreements which license both active and retired player rights.

18 In addition to paying only to active players monies that should have been shared with the  
19 retired players, Defendants used retired player monies to line their own pockets, in breach of their  
20 contractual and fiduciary obligations. In the 2000 NFLPA-PI Agreement, Defendants agreed to keep  
21 64% of all group licensing revenue per year (which later rose to 69%), a portion of which should  
22 have gone to retired players, in breach of their contractual and fiduciary obligations. This award,  
23 which is well over any acceptable agency commission, was signed off by Gene Upshaw and Doug  
24 Allen, the two highest-ranking officers in both organizations, without any independent appraisal, in  
25 breach of their contractual and fiduciary obligations. Further, in a February 28, 2006 amendment  
26 to the 2000 NFLPA-PI Agreement, Defendants agreed, unilaterally and without notice to retired  
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1 players, that \$8 million of gross licensing revenue should be "reallocated" to the Defendants which  
2 was unjustified and in breach of their contractual and fiduciary obligations. Even though Defendants  
3 stated that they would subsequently conduct an independent third-party appraisal to assess the  
4 appropriateness of their decision, Defendants have conceded that no such appraisal occurred, in  
5 breach of their contractual and fiduciary obligations. Thus, instead of complying with the express  
6 terms of the GLAs signed by Adderley and other retired members of the NFLPA, PI has, with the  
7 concurrence of or at the direction of the NFLPA, diverted millions of dollars to PI and the NFLPA.  
8 Defendants have attempted to defend their conduct by asserting that the license agreements with  
9 third parties like EA were not intended to convey the right to retired players. If retired player rights  
10 were not included in the license agreements with third parties (contrary to the express language of  
11 those agreements), the Defendants' conduct is even more egregious and wrongful. If Defendants  
12 assertions are correct, not only did Defendants fail to negotiate vigorously for inclusion of retired  
13 players, in breach of their contractual and fiduciary obligations as agents of the GLA Class members,  
14 but Defendants did not even bother to inform prospective licensees like TOPPS of the identity of the  
15 retired players that had already granted their collective group rights to the NFLPA, in breach of their  
16 contractual and fiduciary obligations. If Defendants intended to include only specific retired players  
17 in specific promotions, they still could have included all retired players in the group license and  
18 shared revenues with them. Indeed, by failing to do so, Defendants placed themselves in a position  
19 of gross conflict and breached their fiduciary duty by failing to inform the retired players of the  
20 conflict.

21 Although Defendants claim that the retired players simply had no value, this is disproved  
22 both by Defendants' substantial multi-year efforts to solicit them to sign GLAs, and the third-party  
23 licensees' proven use of retired players. Furthermore, in many instances, the Defendants encouraged  
24 or allowed their licensees' to "scramble" the identities of retired players in their products in an effort  
25 to narrowly avoid actual "usage" and to avoid having to pay retired players license fees, in breach  
26 of their contractual and fiduciary obligations. The evidence will show that the most popular vintage

1 game in history, the EA Madden NFL videogame, allowed players to construct "vintage teams" and  
2 scrambled the identity of many class members<sup>1</sup>. In other cases, the Defendants negotiated for below  
3 market rates for retired player licenses, in breach of their contractual and fiduciary obligations. In  
4 any case and in further breach of their contractual and fiduciary obligations, the Defendants failed  
5 to report or disclose any information to the Class Members information regarding the licenses, fees,  
6 escrow account, or royalties of the collective group licensing.

7 Plaintiffs contend that each of the above actions constitute both a breach of the contractual  
8 obligations of the defendants under the GLA, including a breach of the covenant of good faith and  
9 fair dealing, and a breach of the fiduciary duties Defendants, including those duties imposed by  
10 agency, owed each Class Member, including the duty of loyalty, duty of care, and the duty to  
11 disclose. More specifically, plaintiffs contend that it is both a breach of the terms of the GLA and  
12 a breach of fiduciary duty owed by Defendants to them in: (i) failing to adequately market the retired  
13 players; (ii) failing to disclose their actions; (iii) defining "eligibility" in such a way as to deprive the  
14 retired players of their shared escrow, (iv) failing to establish an escrow account on behalf of the  
15 GLA Class (v) failing to accurately report group licensing revenues to members of the GLA Class,  
16 (vi) failing to distribute revenues to the members of the GLA Class that should have been distributed,  
17 (vii) failing to distribute to retired players their equal share of the fund from which the active players  
18 were paid, (viii) misappropriating funds totaling eight million dollars or more that should have been  
19 paid, in part, to the GLA Class, (ix) misappropriating 64-69% of the funds for themselves, (x) failing  
20 to include the retired players in the active players' group licenses; and (xi) placing themselves in a  
21 position of conflict of interest and acting adversely to the interest of retired NFL players who signed  
22 a GLA. Further, Plaintiffs contend that the Defendants acted with evil motive, actual malice,  
23 deliberate violence or oppression, or with intent to injure, or in willful disregard for the rights of the  
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25 <sup>1</sup> By letter to the Court dated July 30, 2008 in response to a question from the Court, Plaintiffs provided a list of 612  
26 class members that had been "scrambled" by EA in the Madden 2007 PC video game. Further checking of the data shows  
27 that there some data errors and the correct number is actually 586 class members. Plaintiffs have tendered a new summary  
28 exhibit on the Exhibit List attached hereto as Exhibit "G" setting forth the correct numbers.

1 GLA Class members; and that the Defendants conduct was outrageous, grossly fraudulent, or  
2 reckless toward the GLA Class members.

3 **Defenses**

4 **Defendants' Statement of Defenses**

5 Defendants have not breached the Retired Player Group Licensing Authorizations ("Retired  
6 Player GLAs") signed by GLA Class members. Any revenue from the licensing of GLA Class  
7 members' retired player rights was paid to the GLA Class members whose retired player rights were  
8 licensed, with the agreement of those players. There was no retired player money generated to place  
9 in an escrow fund, and thus the decision not to set up an escrow account with no funds could not be  
10 a material breach of the Retired Player GLA. Plaintiffs are improperly seeking shares of revenues  
11 generated solely by active player licensing in the gross licensing revenue ("GLR") pool, to which  
12 Plaintiffs have no claim under the Retired Player GLA. All of the revenues from the license  
13 agreements with Electronic Arts, Inc. ("EA"), the Topps Company, and other licensees put at issue  
14 by Plaintiffs were solely attributable to active – not retired – player licensing. The accounts in which  
15 GLR pool moneys were held were not escrow accounts, and were not the "escrow account" referred  
16 to in the Retired Player GLA.

17 Additionally, Defendants were not in a fiduciary relationship with the GLA Class members,  
18 and Defendants have not engaged in any conduct that would amount to a breach of any fiduciary duty  
19 to the GLA Class members. With respect to Plaintiffs' claim that a fiduciary relationship exists  
20 between the parties, the Court certified the GLA Class's breach of fiduciary duty claim "only insofar  
21 as [it] arises out of the GLAs between the NFLPA and retired players." Accordingly, the only  
22 fiduciary duty theory that Plaintiffs may pursue is an "express" or "direct" agency relationship  
23 purportedly arising out of the Retired Player GLA. GLA Class members never had the required  
24 day-to-day control over Defendants' licensing operations for such a fiduciary relationship to arise.  
25 Although Plaintiffs continue to argue that a fiduciary relationship arose out of "the totality of the  
26 circumstances, including the relationship between the retired player and his union," such a theory  
27

1 has been legally precluded by prior rulings of the Court and is, in any event, without any basis in fact  
2 or law.

3 There is also no merit to Plaintiffs' allegations about Defendants breaching any purported  
4 fiduciary duties. Whenever GLA Class members' rights were licensed, those retired players received  
5 the licensing revenues that were generated. Nor was it a breach of any fiduciary duty to the GLA  
6 Class to distribute active player licensing revenues in the GLR pool only to active players. Further,  
7 Plaintiffs have presented no evidence that Defendants failed to adequately market GLA Class  
8 members, or that third party licensees had any interest in paying to acquire the licensing rights of  
9 most GLA Class members. In fact, there is no evidence that any but a small minority of GLA Class  
10 members had licensing rights with any economic value at all. In addition, contrary to Plaintiffs'  
11 assertions, Defendants provided retired players with more than adequate information about  
12 Defendants' licensing activities.

13 Defendants did not breach any contractual or fiduciary duties by retaining a percentage of the  
14 GLR pool to fund their respective union and licensing operations. Any monies retained by  
15 Defendants out of the GLR pool (e.g., the percentage allocation between the NFLPA and Players Inc  
16 and the \$8 million "reallocation") consisted only of active player licensing revenues to which GLA  
17 Class members have no contractual or other legal entitlement. Moreover, these allocations were  
18 approved by the NFLPA Board of Player Representatives who had legal authority to determine the  
19 division and use of these active player licensing revenues.

20 Plaintiffs' other factual allegations in support of their breach of contract and breach of  
21 fiduciary duty claims are also without merit. For example, Plaintiffs continue to make claims about  
22 Defendants' purported efforts to "eliminate competition," but the Court previously dismissed  
23 Plaintiffs' California Unfair Competition Law claims. Similarly baseless is Plaintiffs' claim that  
24 "Defendants negotiated for below market rates for retired player licenses." The only purported  
25 evidence Plaintiffs have come forward with to support this claim relates to an ad hoc license  
26



1 agreement between EA and the Pro Football Hall of Fame against which Plaintiffs have asserted no  
2 claim and seek no damages in this case.

3 Equally without merit is Plaintiffs' new argument that Defendants "encouraged or allowed  
4 their licensees to 'scramble' the identities of retired players in their products in an effort to narrowly  
5 avoid actual 'usage' and to avoid having to pay retired player license fees." This new claim is  
6 unsupported by any admissible evidence, flatly at odds with Plaintiffs' claim that EA and other  
7 licensees did pay license fees for the right to use GLA Class members' rights, and improperly seeks  
8 to penalize Defendants for a third party's (EA's) conduct (which Defendants do not, in any event,  
9 believe violated the intellectual property rights of any GLA Class members).

10 Finally, all of the GLA Class claims fail for the additional reason that Plaintiffs have no proof  
11 of any damages suffered by each of the individual GLA Class members, and thus could only be  
12 entitled to nominal damages at best, even if liability were proven. The economic value of the  
13 licensing rights of the members of the GLA Class varied widely (with most GLA Class members'  
14 licensing rights having no economic value at all), yet Plaintiffs base their damages claim solely on  
15 an equal share payment to all GLA Class members from the active player revenues in the GLR pool.  
16 Plaintiffs cannot prove that any of the licensing revenues in the GLR pool were due to GLA Class  
17 members. Plaintiffs' damages study also is based entirely on speculation and conjecture. Further,  
18 there is no basis in fact or law for Plaintiffs' claims for punitive damages, attorneys' fees, or any  
19 additional "class representative" damages for Mr. Adderley.

20

21 **II. RELIEF SOUGHT**

22 Plaintiffs seek the following relief:

23 On their breach of contract claim:

- 24 1. A judgment that each of the Defendants have breached one of more of their obligations under  
25 the GLA;  
26 2. For actual damages in an amount to be determined at trial;

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- 1 3. For interest on all sums awarded as damages;
- 2 4. For an award of prejudgment interest and costs of suit to the extent permitted by law;
- 3 5. For attorneys' fees;
- 4 6. For additional compensation for Mr. Adderley as named Class Representative;
- 5 7. For such other and further relief as the Court deems just and proper.

6 On their breach of fiduciary duty claim:

- 7 1. A judgment that Defendants have breached their fiduciary duties by (i) failing to adequately  
8 market the retired players; and/or (ii) failing to disclose their actions; and/or (iii) defining  
9 "eligibility" in such a way as to deprive the retired players of their shared escrow, and/or  
10 (iv) failing to accurately report group licensing revenues to members of the GLA Class,  
11 and/or (v) failing to distribute revenues to the members of the GLA Class that should have  
12 been distributed, and/or (vi) failing to distribute to retired players their equal share of the  
13 fund from which the active players were paid, and/or (vii) failing to establish an escrow fund  
14 for the GLA Class, and/or (viii) failing to include the retired players in the active players'  
15 group licenses; and/or (ix) misappropriating funds totaling eight million dollars or more that  
16 should have been paid, in part, to the GLA Class, and/or (x) misappropriating 64-69% of the  
17 funds for themselves, and/or (xi) placing themselves in a position of conflict of interest and  
18 acting adversely to the interest of retired NFL players who signed a GLA.
- 19 2. For actual damages in an amount to be determined at trial;
- 20 3. For disgorgement of all benefits unfairly derived by Defendants;
- 21 4. For punitive damages in an amount sufficient to deter Defendants;
- 22 5. For interest on all sums awarded as damages;
- 23 6. For an award of prejudgment interest and costs of suit to the extent permitted by law;
- 24 7. For attorneys' fees;
- 25 8. For additional compensation for Mr. Adderley as named Class Representative;

1 9. For such other and further relief as the Court deems just and proper.

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3 **III. STIPULATED FACTS**

4 1. Herbert Adderley is a retired professional football player who played for more than 10  
5 years in the National Football League ("NFL") for the Green Bay Packers and the Dallas  
Cowboys.

6 2. The National Football League Players Association ("NFLPA") is a nonprofit Virginia  
7 corporation. The NFLPA's headquarters are in Washington, D.C.

8 3. National Football League Players, Inc. ("Players Inc") is a Virginia corporation, owned  
9 79% by the NFLPA and 21% by the Professional Athletes Foundation, that is engaged in,  
among other things, the business of licensing the rights of present and some former NFL  
players. Its headquarters are in Washington, D.C.

10 4. Plaintiff Adderley is the named representative of a class of all retired NFL players who  
11 executed a Retired Player Group Licensing Authorization (sometimes referred to as a  
12 "group licensing agreement") ("GLA") with the NFLPA that was in effect at any time  
13 between February 14, 2003 and February 14, 2007 and which contains the following  
language: "[T]he moneys generated by such licensing of retired player group rights will  
be divided between the player and an escrow account for all eligible NFLPA members  
who have signed a group licensing authorization form" (the "GLA Class").

14 5. The GLA Class consists of 2056 members, who are listed in Exhibit A attached hereto.<sup>2</sup>

15 6. The NFLPA sublicensed the rights acquired by the GLAs to Players Inc pursuant to a  
16 March 1, 2000 agreement (A true and correct copy of which is attached hereto as Exhibit  
B ).

17 7. Plaintiff Adderley executed a GLA on May 1, 2001, which was effective from May 1,  
18 2001 to December 31, 2003. (A true and correct copy of which is attached hereto as  
Exhibit C).

19 8. Plaintiff Adderley executed another GLA on November 22, 2002, which was effective  
20 from November 22, 2002 to December 31, 2005. (A true and correct copy of which is  
attached hereto as Exhibit D).

21 9. GLA Class member Walter Beach III executed a GLA on May 23, 2003, which was  
22 effective from May 23, 2003 to December 31, 2006. ( A true and correct copy of which is  
attached hereto as Exhibit E).

23 10. GLA Class member Bruce Laird executed a GLA on April 19, 2000, which was effective  
24 from April 19, 2000 to December 31, 2003. (A true and correct copy of which is attached  
hereto as Exhibit F).

25

26 <sup>2</sup> Defendants reserve their right to correct the number of GLA Class members and/or the attached list of GLA Class  
27 members prior to trial should Defendants discover that this information – which was provided by Plaintiffs just prior to  
the parties' deadline for filing their Stipulated Facts – is inaccurate.

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- 11. GLA Class member Laird executed a GLA on January 5, 2004, which was effective from January 5, 2004 to December 31, 2006. (A true and correct copy of which is attached hereto as Exhibit H).
- 12. GLA Class member Clifton McNeil executed a Retired Player GLA on June 21, 2002, which was effective from June 21, 2002 to December 31, 2005. (A true and correct copy of which is attached hereto as Exhibit I).
- 13. Plaintiffs do not seek to recover in this case any moneys paid to some GLA Class members under separate, so-called "ad hoc " license agreements.
- 14. Defendants entered into a license agreement with EA in 2005. (A true and correct copy of which is attached hereto as Exhibit J).
- 15. EA manufactures and sells a video game called EA Madden Football, a new version of which has been released annually for the past 20 years. The game simulates pro football play and is one of the top ten best-selling video games of all time.
- 16. Doug Allen was the Assistant Executive Director of the NFLPA from 1986 to 2006 and the President of Players Inc from 1994 to 2006.
- 17. Beginning in June 1983, Gene Upshaw was the Executive Director of the NFLPA. For all relevant times, he was also Chairman of Players Inc. Mr. Upshaw died on August 20, 2008.
- 18. Richard Berthelsen has served as General Counsel to the NFLPA since 1983, and also currently serves as Interim Executive Director of the NFLPA following the death of Gene Upshaw.
- 19. Patricia Allen was the Executive Vice-President & Chief Operating Officer of Players Inc from 1994 to 2006.
- 20. The 2004-2006 NFLPA Retired Members Directory states: "The NFLPA Retired Players Department has obtained Group Licensing Assignment agreements (GLAs) from more than 2,900 retired NFL players, and is in the process of building up our list so that PLAYERS INC can provide more opportunities to retirees."
- 21. LaShun Lawson was an employee of Players Inc and acted as the Assistant Vice President of Multimedia for Players Inc.

1 22. Trace Armstrong is a retired professional football player who played for 15 seasons in the  
2 NFL, for the Chicago Bears, Miami Dolphins, and Oakland Raiders. He was President of  
3 the NFLPA from 1995 to 2003.

4 **IV. FACTUAL ISSUES WHICH REMAIN TO BE TRIED**

5 **A. Plaintiffs' Breach of Contract Claim**

6 **1. Joint Factual Issues for Breach of Contract Claim**

7 1. Whether Defendants engaged in conduct that breached the terms of the  
8 Retired Player GLAs entered into by the GLA Class members.

9 2. Whether the EA, Topps, and other license agreements at issue licensed the  
10 group licensing rights of GLA Class members.

11 3. Whether Defendants breached their contractual obligations to the GLA Class  
12 by allegedly failing to accurately report on any group licensing revenues owed to the GLA Class.

13 4. Whether Defendants breached their contractual obligations to the GLA Class  
14 by allegedly failing to adequately disclose material information regarding the group licensing  
15 program.

16 5. Whether Defendants breached their contractual obligations to the GLA Class  
17 by reallocating \$8 million to the NFLPA and Players Inc in the calculation of the gross licensing  
18 revenue ("GLR") pool.

19 6. Whether Defendants breached their contractual obligations to the GLA Class  
20 by allegedly failing to adequately market the GLA Class to potential licensees.

21 7. How much damages, if any, have the GLA Class members suffered as a result  
22 of any breach of contract by Defendants.

23 **2. Plaintiffs' Additional Factual Issues for Breach of Contract Claim**

24 1. Whether the GLA Class members were entitled to a share of the licensing  
25 revenues received by Defendants from third party licenses.

26 2. Whether Defendants engaged in conduct that violated the covenant of good  
27 faith and fair dealing implied in the retired player GLAs.

1                   3.       Whether Defendants breached their contractual obligations to the GLA Class  
2 by failing to distribute royalties received from the collective licensing of player image rights.

3                   4.       Whether Defendants breached their contractual obligations to the GLA Class  
4 by failing to tell them they were not "eligible" for a portion of an escrow account, despite the  
5 language of the GLA.

6                   5.       Whether Defendants breached their contractual obligations to the GLA Class  
7 by failing to create an escrow account as required by the GLA.

8                   6.       Whether Defendants breached their contractual obligations to the GLA Class  
9 by allocating 64% - 69% of the royalties received from collective group licensing for themselves.

10                  7.       Whether Defendants breached their contractual obligations to the GLA Class  
11 by allegedly defining "eligibility" to exclude retired players.

12                  8.       Whether Defendants breached their contractual obligations to the GLA Class  
13 by allegedly misappropriating funds to themselves.

14                  **3.       Defendants' Additional Factual Issues for Breach of Contract Claim**

15                  1.       Whether the revenues in the GLR pool were solely attributable to agreements  
16 that licensed only active player rights.

17                  2.       Whether the GLR pool uses an escrow account and, if it does, whether it is  
18 the escrow account referred to in the Retired Player GLA.

19                  3.       Whether the GLR pool contains any money attributable to the licensing of  
20 GLA Class members' group licensing rights.

21                  4.       Whether the Retired Player GLAs entitled GLA Class members to share in  
22 revenues generated solely by the licensing of active players' rights.

23                  5.       Whether Plaintiffs have proven injury and the amount of damages to each  
24 individual GLA Class member.

25                  6.       Whether the damages evidence submitted by Plaintiffs provides a reasonable  
26 measure of each GLA Class member's damages without resort to speculation or guesswork.

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1                   7.       Whether Plaintiffs have proven an amount of damages caused by any breach  
2 of contract by Defendants in an amount greater than zero or a nominal amount.

3 **B.       Plaintiffs' Breach of Fiduciary Claim**

4                   **1.       Joint Factual Issues for Breach of Fiduciary Duty Claim**

5                   1.       Whether the Retired Player GLAs created a fiduciary duty between  
6 Defendants and the GLA Class members.

7                   2.       Whether Defendants engaged in conduct that breached any fiduciary duty that  
8 Defendants allegedly owed to the GLA Class members.

9                   3.       Whether the EA, Topps, and other license agreements at issue licensed the  
10 group licensing rights of GLA Class members.

11                  4.       Whether Defendants breached any fiduciary obligations to the GLA Class by  
12 allegedly misappropriating funds owed to the GLA Class.

13                  5.       Whether Defendants breached any fiduciary obligations to the GLA Class by  
14 allegedly failing to accurately report on any group licensing revenues owed to the GLA Class.

15                  6.       Whether Defendants breached any fiduciary obligations to the GLA Class by  
16 reallocating \$8 million to the NFLPA and Players Inc in the calculation of the GLR pool.

17                  7.       Whether Defendants breached any fiduciary obligations to the GLA Class by  
18 allegedly failing to adequately disclose material information regarding the group licensing program.

19                  8.       Whether Defendants breached any fiduciary obligations to the GLA Class by  
20 allegedly placing themselves in a conflict of interest and acting adversely to the interests of the GLA  
21 Class members.

22                  9.       Whether Defendants breached any fiduciary obligations to the GLA Class by  
23 allegedly failing to adequately market the GLA Class to potential licensees.

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1                   10.     How much damages, if any, have the GLA Class members suffered as a result  
2 of any breach of fiduciary duty by Defendants.

3                   **2. Plaintiffs' Additional Factual Issues for Breach of Fiduciary Duty Claim**

4                   1.     Whether Defendants were fiduciaries of the GLA Class.

5                   2.     Whether the facts show that an agency relationship was created between  
6 Plaintiffs and Defendants.

7                   3.     Whether the circumstances surrounding the execution and operation of the  
8 GLAs established a fiduciary relationship between Plaintiffs and Defendants.

9                   4.     Whether Defendants breached their fiduciary obligations to the GLA Class  
10 by failing to distribute royalties received from the collective licensing of player image rights.

11                  5.     Whether Defendants breached their fiduciary obligations to the GLA Class  
12 by failing to tell them they were not "eligible" for a portion of an escrow account, despite the  
13 language of the GLA.

14                  6.     Whether Defendants breached their fiduciary obligations to the GLA Class  
15 by failing to create an escrow account as required by the GLA.

16                  7.     The amount of benefits which the Defendants have unfairly derived from their  
17 breaches of fiduciary duties to Plaintiffs.

18                  8.     Whether Defendants breached their fiduciary obligations to the GLA Class  
19 by allocating 64% - 69% of the royalties received from collective group licensing for themselves.

20                  9.     Whether Defendants breached any fiduciary obligations to the GLA Class by  
21 allegedly defining "eligibility" to exclude retired players.

22                  10.    Whether Defendants breached their fiduciary obligations to the GLA Class  
23 by allegedly failing to include them in each of the active player group licenses.

24                  11.    Whether Defendants acted with actual malice toward the GLA Class members,  
25 or acted under circumstances amounting to a willful and wanton disregard of the GLA Class  
26 members' rights.



1           **3. Defendants' Additional Factual Issues for Breach of Fiduciary Duty Claim**

2           1. Whether the Retired Player GLAs entitled GLA Class members to share in  
3 revenues generated solely by the licensing of active players' rights.

4           2. Whether the allocation of the active player group licensing revenues in the  
5 GLR pool breached any fiduciary obligations to the GLA Class.

6           3. Whether the GLA Class Members had sufficient control over Defendants'  
7 day-to-day licensing operations to constitute a principal-agent relationship.

8           4. Whether the revenues in the GLR pool were solely attributable to agreements  
9 that licensed only active player rights.

10          5. Whether the GLR pool uses an escrow account and, if it does, whether it is  
11 the escrow account referred to in the Retired Player GLA.

12          6. Whether the GLR pool contains any money attributable to the licensing of  
13 GLA Class members' group licensing rights.

14          7. Whether Plaintiffs have proven injury and the amount of damages to each  
15 individual GLA Class member.

16          8. Whether the damages evidence submitted by Plaintiffs provides a reasonable  
17 measure of each GLA Class member's damages without resort to speculation or guesswork.

18          9. Whether Plaintiffs have proven an amount of damages caused by any breach  
19 of contract by Defendants in an amount greater than zero or a nominal amount.

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21 **V. LEGAL ISSUES TO BE DETERMINED**

22           Apart from pretrial legal questions (such as the parties' respective motions in limine and  
23 disputed proposed jury instructions), the parties believe that there are currently no legal issues to be  
24 determined by the Court.  
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1 **VI. JURY INSTRUCTIONS**

2 Attached hereto as Exhibit K is the parties' proposed Joint Set of Instructions on Substantive  
3 Issues of Law.

4 Attached hereto as Exhibits L and M are the parties' proposed Special Verdict forms.  
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7 **VII. VOIR DIRE AND JURY QUESTIONNAIRE**

8 Attached hereto as Exhibit N is the parties' proposed Joint Voir Dire Questions.

9 Attached hereto as Exhibit O is a proposed Jury Questionnaire prepared jointly by the parties,  
10 which they request that the Court approve and distribute prior to Voir Dire. The parties believe the  
11 use of a questionnaire in this case, which has received significant public attention and involves  
12 well-known defendants and professional athlete plaintiffs, will allow prospective jurors to accurately  
13 express their opinions and biases without impacting the opinions of others in the jury panel. This  
14 questionnaire has been designed to obtain the information the Court asks jurors to provide. The  
15 parties plan to quickly analyze the juror's responses and do not expect the questionnaire to extend  
16 the time spent on jury selection beyond that which would be anticipated for a trial with well-known  
17 litigants. To the contrary, the parties believe that their joint proposed Jury Questionnaire would be  
18 an efficient tool to mitigate the need for the extended voir dire that this case would otherwise require.  
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22 **VIII. WITNESS LIST**

23 Attached hereto as Exhibit P is Plaintiffs' Witness List.

24 Attached hereto as Exhibit Q is Defendants' Witness List.  
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1 Pursuant to Federal Rule of Evidence 615, but subject to the exceptions therein, the parties  
2 request that the Court order the exclusion of witnesses from the courtroom until after such witness  
3 has completed his or her testimony. This request is made without waiver of the exceptions identified  
4 in Rule 615, such as an officer or employee designated as a representative of a party which is not a  
5 natural person.  
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8 **IX. JOINT TRIAL EXHIBIT LIST**

9 Attached hereto as Exhibit R is the parties' Joint Trial Exhibit List.  
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12 **X. DEFENDANTS' PROPOSAL FOR WITNESS SUMMARIES**

13 It has come to the Defendants' attention that, following the testimony of a trial witness, the  
14 Court sometimes invites counsel to offer to the jury a brief summary of the witness's testimony in  
15 order to put that witness's testimony into context and to provide clarification where necessary and  
16 appropriate. The Defendants believe that in this case such a procedure would be particularly helpful  
17 to the jury and therefore request that they be permitted to present such witness summaries after the  
18 conclusion of each witness's testimony. The Defendants understand any time used for witness  
19 summaries will be brief and will be deducted from the trial time allocated by the court to each party.  
20

21 The Plaintiffs are opposed to witness summaries. They believe that the jury does not benefit  
22 from having the lawyers tell it what it just heard, that they are likely argumentative and disruptive  
23 to the flow of trial, and are inefficient and an unnecessary use of time.  
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25 Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable William H. Alsup  
United States District Court Judge