

Exhibit 5
to the
Clark Declaration

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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

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

20 Plaintiffs

21 vs.

22 NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION, a Virginia
23 corporation, and NATIONAL FOOTBALL
LEAGUE PLAYERS INCORPORATED
24 d/b/a PLAYERS INC, a Virginia
corporation,

25 Defendants.

CIVIL ACTION NO. C07 0943 WHA

**THIRD AMENDED COMPLAINT FOR
BREACH OF CONTRACT, BREACH OF
FIDUCIARY DUTY, AN ACCOUNTING
AND VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE § 17200**

**CLASS ACTION
JURY TRIAL DEMANDED**

1 Plaintiff Bernard Parrish (“Parrish”), Herbert Anthony Adderley (“Adderley”), and Walter
2 Roberts, III (“Roberts”) by and through their undersigned attorneys, bring this complaint on behalf
3 of themselves and other similarly situated retired NFL players against National Football League
4 Players, Inc. (“PLAYERS INC”), and its parent labor union, the National Football League Players
5 Association (the “NFLPA” or the “Players Union”), as follows:

6 **I. INTRODUCTION**

7 This is a class action lawsuit brought by Parrish, Adderley and Roberts on behalf of
8 themselves and three classes of retired NFL football players against the NFLPA and PLAYERS
9 INC. Plaintiffs allege that the Defendants have breached contractual and fiduciary duties to
10 Adderley and to those retired players who have signed what Defendants have referred to both as a
11 Group Licensing Agreement or Group Licensing Authorization (hereafter “GLA”) with the
12 NFLPA during the class period (the “GLA Class”). Plaintiffs also continue to allege that the
13 NFLPA has breached fiduciary duties to Adderley, Parrish and to those retired members of the
14 NFLPA whom Defendants purported to represent during the class period (the “Retired NFLPA
15 Member Class”). Plaintiffs seek relief on behalf of Adderley and the GLA Class for breach of
16 contract, breach of fiduciary duty, and an accounting. Plaintiffs also seek relief on behalf of
17 Parrish and the Retired NFLPA Member Class for breach of fiduciary duty.

18 In addition, solely for purposes of preserving the claims and issues for appeal (*see Forsyth*
19 *v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997)), Plaintiffs respectfully re-allege, and
20 incorporate by reference, the claims under Bus. & Prof. Code § 17200 previously asserted by
21 Roberts, and on behalf of the 17200 California Resident Class.

22 **II. JURISDICTION AND VENUE**

23 1. The Court has subject matter jurisdiction under 28 U.S.C. § 1332 (diversity
24 jurisdiction) because one or more Class members is a citizen of a state different from Defendants,
25 there are more than 100 class members, and, on information and belief, the aggregate amount in
26 controversy exceeds the jurisdictional amount of \$5 million.

27 2. Venue in this Court is proper under 28 U.S.C. § 1391 because a substantial part of
28 the events or omissions giving rise to the claims occurred in this district.

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III. INTRADISTRICT ASSIGNMENT

3. Pursuant to Local Civil Rule 3-2, assignment of this action to the San Francisco division of this Court is proper because a substantial part of the events or omissions giving rise to the claims herein occurred in San Mateo County.

IV. PARTIES

A. PLAINTIFFS

4. Plaintiff BERNARD PAUL PARRISH, a resident of Florida, is a former defensive back who starred with the Cleveland Browns from 1959 through 1966. Parrish graduated with a degree in Building Construction from the University of Florida, School of Architecture and Fine Arts. He was the CEO and President of a commercial construction company for over 20 years that employed over 3,000 tradesmen, laborers and engineers (both union and non-union), building hotels, medical and office buildings, and housing for officer and enlisted men on AFB's in eight states. Prior to entering the NFL, Parrish was a baseball All-American at the University of Florida (where he is also a member of the school's Hall of Fame) and played one year of professional baseball. As a pro football player, Parrish played in two Pro Bowl games. In 1964, Parrish led the Browns to an NFL World Championship, beating Johnny Unitas and Coach Don Shula's heavily-favored Colts 27-0. Parrish has been an advocate for retired players for many years. He is the author of a best selling book, *They Call It A Game*.

5. Plaintiff HERBERT ANTHONY ADDERLEY, a resident of New Jersey, is a former NFL cornerback who starred for the Green Bay Packers and the Dallas Cowboys from 1961 through 1972. Adderley played in five Pro Bowl games during the 1960's. He also played in seven NFL championship games, including four of the first six Super Bowl games. Adderley is one of only two players in pro football history to play on six World Championship teams. Adderley's 60-yard interception return for a clinching touchdown for the Packers in Super Bowl II was the first touchdown scored by a defensive player in Super Bowl history. He was enshrined in the Pro Football Hall of Fame in 1980. In 1999, Adderley was ranked number 45 on *The Sporting News'* list of the 100 Greatest Football Players. Adderley has signed a number of GLAs with the

1 NFLPA. In addition, Adderley paid membership dues to the NFLPA at least in 2003, 2004, and
2 2005. On information and belief, his membership expired in February 2006.

3 6. Plaintiff WALTER ROBERTS III, a resident of Northern California since 1979, is a
4 former wide receiver and kick returner who starred in the NFL from 1964 to 1970. A former
5 California state and national long-jump champion in 1960, Roberts went on to play with the
6 Cleveland Browns from 1964 to 1966 and was a member of the Cleveland Browns team that
7 defeated Johnny Unitas and Coach Don Shula's heavily-favored Colts 27-0 in the 1964 World
8 Championship. Roberts also led the league in kickoff returns that same year. Following his stint
9 with the Browns, Roberts played with the New Orleans Saints during their inaugural season in
10 1967 and helped the Saints win their first game in franchise history by scoring three touchdowns in
11 a 31-24 victory over the Philadelphia Eagles. Roberts also played for Coach Vince Lombardi and
12 the Washington Redskins in 1969 and 1970. Following his career in professional football, Roberts
13 co-owned a building supplies company called JR Builders Specialties, Inc. He is a competitor
14 and/or potential competitor to Defendants for the marketing of his image, and still receives many
15 requests for autographs for trading cards bearing his image.

16 **B. DEFENDANTS**

17 7. The NFLPA, formed in 1956, is a Virginia corporation that acts as the labor union
18 for professional football players in the National Football League. The NFLPA's principal place of
19 business is 2021 L Street, Washington, D.C.

20 8. Almost all active NFL players grant the right to market their names and images to
21 the NFLPA under the Collective Bargaining Agreement with the NFL (the "CBA"). Even though
22 retired NFL players are not and cannot be a party to the CBA, the NFLPA solicits membership
23 from retired NFL players and charges them annual dues for membership in the association.

24 9. The NFLPA has already been served and has appeared in this lawsuit.

25 10. Formed in 1994, PLAYERS INC is a for profit corporation owned by the NFLPA.
26 According to a Form 990 filed by Defendant NFLPA, PLAYERS INC is 79% owned by the
27 NFLPA (*see Exhibit A*). Douglas Allen ("Allen"), President of PLAYERS INC during the
28 relevant statute of limitations period (and until his departure in January of 2007), confirmed that

1 the remaining share of PLAYERS INC is owned by the Professional Athletes Foundation, a
2 501(c)(3) organization. PLAYERS INC is a Virginia corporation with its principal place of
3 business at 2021 L Street, Washington, D.C.

4 11. PLAYERS INC and the NFLPA have sought to become the exclusive representative
5 for group licensing of active and retired players with respect to licensed products, such as trading
6 cards and video games, television and radio programming, personal appearances, autograph
7 signings, an Internet site, and events such as the Super Bowl. On information and belief,
8 PLAYERS INC receives gross licensing revenues of over \$50 million per year based on the
9 licensing of products of over \$700 million per year.

10 12. PLAYERS INC has already been served and has appeared in this lawsuit.

11 **V. SUBSTANTIVE ALLEGATIONS OF ADDERLEY AND THE GLA CLASS**

12 **A. DEFENDANTS' GROUP LICENSING PROGRAM**

13 13. The NFLPA promotes a "Retired Players Group Licensing Program," through
14 which it solicits retired players to grant to the NFLPA a group license, giving it the ". . . non-
15 exclusive right to market the retired player's name, number, likeness, voice, facsimile signature,
16 photograph, picture, and/or biographical information (collectively "image") in the NFLPA Retired
17 Group Licensing Program." See **Exhibits B** and **C** (GLAs signed by Herb Adderley, attached
18 hereto and incorporated by reference). The NFLPA has solicited Adderley (and other retired NFL
19 members) to provide their name and image rights to the NFLPA pursuant to this form of GLA.

20 14. The NFLPA grants the rights that it obtains pursuant to the group license
21 agreements that it receives from retired players to PLAYERS INC in accordance with an
22 Agreement between the NFLPA and PLAYERS INC dated as of March 1, 2000 (the "NFLPA-
23 PLAYERS Agreement", a copy of which is attached hereto as **Exhibit D** and incorporated herein
24 by reference).

25 15. On its website dated February 6, 2007, PLAYERS INC defines these group
26 licensing rights and programs as follows:

27 Group licensing programs are defined as those programs in which a
28 licensee utilizes a total of six (6) or more NFL players in conjunction with
or on products that are sold at retail or used as promotional or premium

1 items. The players may be depicted *individually* on a product as part of a
2 series or collectively with other players.

3 Some PLAYERS INC group licensing programs utilize as few as 6 players
4 and others as many as 1,800 league-wide. PLAYERS INC works with
5 more than 60 licensees whose products include: Trading cards (500+
6 players), Videogames (1,500+ players), Apparel (1,000+ players) and
7 Collectibles (75+ players) (emphasis added). See **Exhibit E**.

8 PLAYERS INC's group licensing rights and programs are found in numerous license agreements
9 with third parties.

10 16. As detailed below, although the GLAs signed by Adderley and, on information and
11 belief, by other members of the GLA Class during the limitations period, were purportedly non-
12 exclusive, the actual operation of the GLAs, and the interpretation of them by the NFLPA and
13 PLAYERS INC effectively rendered Adderley and the other class members powerless to market
14 themselves in connection with football and/or with the vast majority of potential NFL sponsors.

15 **B. ADDERLEY AND OTHER GLA CLASS MEMBERS ENTERED INTO
16 GLAS WHICH PROVIDED FOR DISTRIBUTION OF LICENSING
17 REVENUES TO ALL PARTICIPANTS IN THE GROUP LICENSING
18 PROGRAM**

19 17. As noted above, Adderley entered into several versions of a GLA with the NFLPA
20 as part of its Retired Group Licensing Program, including two GLAs that were still in effect within
21 the period of the statute of limitations. On information and belief, numerous other retired players
22 signed GLAs containing language substantively identical to the language appearing in the two
23 most recent Adderley GLAs.

24 18. Adderley first signed a GLA with the NFLPA in 1993, prior to the formation of
25 PLAYERS INC, and signed a second GLA in 1996. Adderley then entered into a third GLA on
26 May 1, 2001, which expired on December 31, 2003. A copy of the GLA signed by Plaintiff
27 Adderley in 2001 is attached hereto as **Exhibit B** and incorporated herein by reference. On
28 November 22, 2002, Adderley signed a GLA that remained in effect until December 31, 2005. A
copy of the GLA signed by Plaintiff Adderley in 2002 is attached hereto as **Exhibit C** and
incorporated herein by reference (the "Adderley 2002 GLA"). Both of these GLAs were still in
effect during the relevant statute of limitations period.

1 19. The version(s) of the GLA executed by Adderley and in effect during the limitations
2 period required that revenues be shared between *all* participants of Defendants' group licensing
3 program. The Adderley GLA states, in relevant part, that "*it is further understood that the*
4 *moneys generated by such licensing of retired player group rights will be divided between the*
5 *player and an escrow account for all eligible NFLPA members who have signed a group*
6 *licensing authorization form.*" (emphasis added). See Exhibits B and C.

7 **C. DEFENDANTS LICENSED THE RIGHTS OF ADDERLEY AND OTHER**
8 **RETIRED PLAYERS TO LICENSEES AS PART OF THE GROUP**
9 **LICENSING PROGRAM**

10 20. On various occasions, Defendants have disputed that they have licensed retired
11 players' rights in connection with their group licensing programs. Contrary to Defendants' claims,
12 Defendants have licensed retired player rights to many of its licensees (*and have been paid for*
13 *those rights*), regardless of whether those rights were ever exercised. The best example of this is
14 PLAYERS INC's licensing relationship with Electronic Arts, Inc. ("EA"), a company
15 headquartered in San Mateo County that produces the "Madden NFL" series of football
16 videogames that are the most popular in the world.

17 21. In an agreement between PLAYERS INC and EA effective from March 1, 2004
18 through February 28, 2005, a copy of which is attached hereto as **Exhibit F** and incorporated
19 herein by reference (the "EA 2004 Agreement"), PLAYERS INC represented in Paragraph 1(A)
20 that it had acquired group licensing rights for certain retired players :

21 (A) PLAYERS INC. represents that it is a licensing
22 affiliate of the National Football League Players Association
23 ("NFLPA"); that the NFLPA has been duly appointed and is acting
24 on behalf of the football players of the National Football League
25 would have entered into a Group Licensing Authorization, either in
26 the form attached hereto as Attachment "A" or through the
27 assignment contained in Paragraph 5(b) of the NFL Player
28 Contract, which have been assigned to PLAYERS INC.; and that in
such capacity PLAYERS INC. has the right to negotiate this
contract and the right to grant rights and licenses described herein.
Licensee acknowledges that PLAYERS INC. also on occasion
secures authorization for inclusion in PLAYERS INC. licensing
programs from players, *including but not limited to retired players*,
who have not entered into such Group Licensing Authorization, but
who, nevertheless, authorize PLAYERS INC. to represent such
players for designated PLAYERS INC. licensed programs.
(emphasis added).

1 22. The former president of PLAYERS INC, Doug Allen, who signed the EA 2004
2 Agreement on behalf of PLAYERS INC, confirmed that the language of Paragraph 1(A) included
3 those retired players who did not sign the specific GLA form attached as Exhibit A to the EA 2004
4 Agreement (designed for active NFL players), but who instead signed another form of GLA, like
5 Adderley, or otherwise granted their rights to the NFLPA.

6 23. In Paragraph 2(A) of the EA 2004 Agreement, PLAYERS INC granted a license to
7 the retired players referenced in Paragraph 1(A):

8 (A) Upon the terms and conditions hereinafter set forth,
9 PLAYERS INC. hereby grants to Licensee and Licensee hereby
10 accepts the non-exclusive right, license and privilege of utilizing
11 ... the names, likenesses (including, without limitation, numbers),
12 pictures, photographs, voices, facsimile signatures and/or
13 biographical information (hereinafter "identity") of the NFL players
14 referenced in Paragraph 1(A) above, for products(s) in the form of
15 video and computer football simulation, arcade-style, and manager
16 games....

17 *See* EA 2004 Agreement, **Exhibit F**, Paragraphs 1(A) and 2(A).

18 24. Allen, who signed the EA 2004 Agreement on behalf of PLAYERS INC,
19 confirmed that the language of Paragraph 2(A) included those retired players who signed GLAs, or
20 otherwise granted their group licensing rights to the NFLPA.

21 25. In December 2004, EA and PLAYERS INC entered into an historic exclusive
22 contract (the "EA 2005 Agreement"), a copy of which is attached hereto as **Exhibit G** and
23 incorporated herein by reference. In the EA 2005 agreement (effective from March 1, 2005
24 through February 28, 2010), PLAYERS INC represented in Paragraph 1(A), just as it had in the
25 EA 2004 Agreement, that it had acquired group licensing rights for certain retired players :

26 (A) PLAYERS INC represents that it is a licensing
27 affiliate of the National Football League Players Association
28 ("NFLPA"); that the NFLPA has been duly appointed and is acting
on behalf of the football players of the National Football League
who have entered into a Group Licensing Authorization, either in
the form attached hereto as Attachment "A" or through the
assignment contained in Paragraph 4(b) of the NFL Player
Contract, which have been assigned to PLAYERS INC.; and that in
such capacity PLAYERS INC. has the right to negotiate this
contract and the right to grant rights and licenses described herein.
Licensee acknowledges that PLAYERS INC. also on occasion
secures authorization for inclusion in PLAYERS INC. licensing

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programs from players, *including but not limited to retired players*, who have not entered into such Group Licensing Authorization, but who, nevertheless, authorize PLAYERS INC. to represent such players for designated PLAYERS INC. licensed programs. (emphasis added).

26. In Paragraph 2(A) of the EA 2005 Agreement, just as in the EA 2004 Agreement, PLAYERS INC granted EA a license to the retired players referenced in Paragraph 1(A):

(A) Upon the terms and conditions hereinafter set forth, *PLAYERS INC. hereby grants to Licensee and Licensee hereby accepts the exclusive right, license and privilege of utilizing* the trademarks and names of PLAYERS INC. which may be amended from time to time by PLAYERS INC. and the names, likenesses (including, without limitation, numbers), pictures, photographs, voices, facsimile signatures and/or biographical information (hereinafter "identity") *of the NFL players referenced in Paragraph 1(A) above*, for products(s) in the form of video and computer football simulation, arcade-style, and manager games . . . (emphasis added).

See EA 2005 Agreement, **Exhibit G**, Paragraphs 1(A) and 2(A).

27. The revenues generated by the EA 2005 Agreement were significant; EA guaranteed a minimum annual royalty of \$25,000,000 per year. Paragraph 6(C) of the 2005 Agreement makes clear that the guaranteed minimum royalty payments that PLAYERS INC is entitled to receive are due and payable *regardless of whether EA makes any use of any retired player's licensed rights*:

Such advances and guaranteed minimum royalty payments shall be made by Licensee as specified herein *whether or not Licensee uses the rights licensed hereunder*, and no part of such guaranteed minimum royalty payments shall be repayable to Licensees" (emphasis added).

EA 2005 Agreement, **Exhibit G**, Paragraph 6(C).

28. Defendants have licensed retired players' rights and images, as granted pursuant to the Retired Players Group Licensing Program, to other licensees, including, but not limited to, the Upper Deck Company and the Topps Company. These licenses have generated guaranteed minimum payments to PLAYERS INC that should have been shared with retired players who signed GLAs with the NFLPA.

1 **D. DEFENDANTS BREACHED THEIR CONTRACTUAL OBLIGATIONS**
2 **TO ADDERLEY AND THOSE RETIRED PLAYERS WHO HAVE SIGNED**
3 **SIMILAR GLAS BY FAILING TO SHARE LICENSING REVENUE**
4 **WITH THEM**

5 29. PLAYERS INC and the NFLPA breached the terms of the Adderley GLA(s) by
6 failing to share the revenue they received from such licenses – including the guaranteed minimum
7 royalties under the EA Agreements, and other licensing royalties – with retirees. As noted above,
8 the Adderley GLAs provide that moneys generated by licensing of retired player rights “. . . will
9 be divided between the player and an escrow account for all eligible NFLPA members who have
10 signed a group licensing authorization form.” See **Exhibits B and C.**

11 30. On information and belief, PLAYERS INC and the NFLPA created a bank account
12 – a “licensing revenue depository account” – from which they transferred money for a variety of
13 purposes. Rather than complying with the express terms of the GLAs signed by Adderley and
14 other retired members of the NFLPA, however, PLAYERS INC and the NFLPA entered into a
15 scheme designed to deprive the retired NFLPA members of their rightful share of the funds
16 deposited in such account, and to appropriate to themselves substantial sums.

17 31. More specifically, the 2000 NFLPA-PLAYERS Agreement (referred to in
18 Paragraph 14 above and, on information and belief, still in effect today), provides for the
19 distribution of royalties to those who have entered into GLAs. Paragraph 4(B) of the NFLPA-
20 PLAYERS Agreement provides for a royalty in the amount of sixty per cent (60%) of gross
21 licensing revenue to be paid “to such players as have currently licensed NFLPA to use their Group
22 Licensing rights and who meet the eligibility requirements of Section 4(D). . .” See **Exhibit D.**
23 This Agreement, however, which was made without the knowledge of Adderley or the other retired
24 players, confirms the breach of the GLA by, among other things, not providing for payments to
25 retired players, who, on information and belief, never received any payments pursuant to the GLA
26 (see, e.g., Paragraph 4(A)(v) et. seq. of **Exhibit D.**) The sixty percent (60%) of gross licensing
27 revenue should have been paid to an “escrow account for all eligible NFLPA members [including
28 retired NFLPA members] who signed a group licensing authorization form.”

1 32. Each of the active players of the NFLPA who have signed GLAs have, on
2 information and belief, been paid an “equal share” royalty from the sixty percent (60%) royalty
3 specified in the NFLPA-PLAYERS Agreement. However, the retired NFL players and members
4 who signed GLAs have not, on information and belief, been paid any portion of the guaranteed
5 minimum revenues.

6 33. Defendants have arbitrarily, unnecessarily and wrongfully excluded retired NFLPA
7 members who signed a GLA from a share of such revenues. There is no valid reason to exclude
8 those retired players who signed GLAs from an “equal share” royalty. Indeed, Allen recently
9 acknowledged that the NFLPA could include retired NFL players like Adderley and other GLA
10 Class members.

11 34. The guaranteed minimum royalties under the EA 2004 Agreement and EA 2005
12 Agreement, and payable under additional licenses referenced in Paragraph 28 above, are not
13 related to any specific player and make no distinction between amounts paid for active NFL
14 players and retired players. Pursuant to the NFLPA-PLAYERS Agreement, such royalties should
15 have been distributed on an “equal share” basis to all retired players who had executed GLAs.
16 Nevertheless, despite the NFLPA’s promise in Adderley’s GLAs and its obligations to Adderley
17 and other members of the GLA Class, licensing revenues were not divided between the player and
18 all eligible NFLPA members who had signed a GLA. In fact, an email from Doug Allen dated
19 October 27, 2006 (attached as **Exhibit H** and incorporated herein by reference) confirms that only
20 358 of 3,500 retired players received payments in 2005. These payments amounted to a fraction of
21 PLAYERS INC’s NFL player licensing business.

22 35. The GLAs were drafted solely by PLAYERS INC and should be construed strictly
23 against the NFLPA and PLAYERS INC.

24 **E. DEFENDANTS BREACHED THEIR CONTRACTUAL OBLIGATIONS**
25 **TO ADDERLEY AND OTHER RETIRED PLAYERS WHO SIGNED**
26 **SIMILAR GLAS BY RETAINING AMOUNTS OF GROSS LICENSING**
27 **REVENUE AND BY “RE-ALLOCATING” \$8 MILLION IN LICENSING**
28 **REVENUE THAT SHOULD HAVE BEEN PAID TO NFLPA MEMBERS**

36. In addition to their failure to distribute “equal share” royalties to those retired
players, including Adderley, who signed GLAs from the sixty percent (60%) of gross licensing