

Exhibit 5
to the
Clark Declaration

- 1 • By failing to act in good faith on behalf of retired NFLPA members (whom Defendants
2 have now admitted they represent) who did not sign a GLA in pursuing commercial and
3 marketing opportunities on their behalf and/or informing the retired NFLPA members of
4 any benefits that may be owing to them in connection with opportunities that were pursued
5 on behalf of retired NFLPA members.

6 79. Because Defendants have breached their obligations to Retired NFLPA Members,
7 Parrish seeks return of all NFLPA dues paid by him and on behalf of a class of other retired
8 NFLPA members who paid dues during the period of the statute of limitations, but did not sign a
9 GLA according to the records of the NFLPA.

10 **VI. ADDITIONAL SUBSTANTIVE ALLEGATIONS REGARDING PREVIOUSLY**
11 **DISMISSED CLAIMS UNDER CALIFORNIA BUSINESS & PROFESSIONS CODE**
12 **§ 17200**

13 **A. THE NFLPA AND PLAYERS INC HAVE UNFAIRLY COMPETED AND**
14 **WRONGFULLY INTERFERED WITH THE MARKETING OF THE**
15 **IMAGES OF RETIRED NFL PLAYERS**

16 80. Solely for purposes of preserving Plaintiffs' right to appeal the Court's September
17 6, 2007 Dismissal of claims arising under Bus. & Prof. Code § 17200 (*see Forsyth v. Humana,*
18 *Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997)), as asserted by Roberts on behalf of the 17200
19 California Resident Class, Plaintiffs respectfully re-allege, and incorporate by reference,
20 allegations made in Paragraphs 1-52, 71-80 and the Prayer for Relief of the Second Amended
21 Complaint as though set forth fully herein.

22 **VII. CLASS ACTION ALLEGATIONS**

23 81. Plaintiffs bring this class action on behalf of themselves and all others similarly
24 situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action is maintainable
25 as a class action pursuant to Rule 23(a), (b) and (d).

26 **A. THE GLA CLASS**

27 82. Plaintiff Herb Adderley brings claims of breach of contract and breach of fiduciary
28 duty, on behalf of a nationwide class seeking damages and an accounting (the "GLA Class").

83. The GLA Class is defined as all those retired NFL Players who at any time have
sent an executed GLA to the NFLPA containing language similar or identical to the Adderley 2002

1 GLA, that was in effect during the period beginning at the earliest point of the statute of limitations
2 and continuing until the expiration of the last such GLA. Excluded from the GLA Class are the
3 NFLPA, PLAYERS INC, and their directors, officers and employees.

4 **B. THE RETIRED NFLPA MEMBER CLASS**

5 84. Plaintiff Parrish represents a class of retired NFLPA members (the “Retired NFLPA
6 Member Class”).

7 85. The Retired NFLPA Member Class is defined as retired NFL players who joined the
8 NFLPA as retired members and paid dues to the NFLPA within the period of the statute of
9 limitations, but, according to the records of the NFLPA, did not sign a GLA. Excluded from the
10 Class are the NFLPA, PLAYERS INC, and their directors, officers and employees.

11 86. The above Classes meet the numerosity standard in Rule 23(a)(1) because, although
12 the exact numbers are unknown to Plaintiffs, on information and belief each alleged class consists
13 of at least hundreds of retired NFL players, who are geographically dispersed throughout the
14 United States, California and perhaps elsewhere. The joinder of each of these players is
15 impracticable. The disposition of their claims through this class action will provide substantial
16 benefits to both the parties and the Court.

17 87. The size of the Classes and the identities of their individual members are
18 ascertainable through Defendants’ records.

19 88. Members of these Classes may be notified of the pendency of this action by
20 techniques and forms commonly used in class actions, such as by published notice, e-mail notice,
21 website notice, first class mail, or combinations thereof, or by other methods suitable to this class
22 and deemed necessary and/or appropriate by the Court.

23 89. There is a well-defined community of interest and common questions of law and
24 fact affecting the members of the GLA Class as required by 23(a)(2). The questions of law and
25 fact common to the GLA Class predominate over any questions affecting only individual members
26 and include, but are not limited to, the following:

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- 1 a) Whether PLAYERS INC and/or the NFLPA have breached their contractual
- 2 obligations and fiduciary duties to each member of the GLA Class by the acts and
- 3 omissions, among others described above;
- 4 b) Whether PLAYERS INC licensed the rights of retired NFL players who signed
- 5 GLAs to EA and other licensees of PLAYERS INC;
- 6 c) Whether retired NFL players who signed GLAs were and are entitled to a share of
- 7 the gross licensing revenue constituting guaranteed minimum payments paid to
- 8 PLAYERS INC by EA and other licensees of PLAYERS INC;
- 9 d) Whether retired NFL players who signed GLAs were and are entitled to an “equal
- 10 share” royalty from the guaranteed minimum payments paid to PLAYERS INC by EA
- 11 and other licensees of PLAYERS INC;
- 12 e) Whether Adderley and the GLA Class are entitled to an accounting showing all
- 13 revenue received by Defendants from group licensing and whether and how that revenue
- 14 was distributed to PLAYERS INC, the NFLPA and among the members of the GLA
- 15 Class; and
- 16 f) Whether Adderley and the GLA Class are entitled to damages, punitive damages,
- 17 costs and attorneys’ fees as a result of the unlawful conduct of Defendants.

18 90. There is a well-defined community of interest and common questions of law and
19 fact affecting the members of the Retired NFLPA Member Class as required by 23(a)(2). The
20 questions of law and fact common to the Retired NFLPA Member Class predominate over any
21 questions affecting only individual members and include, but are not limited to, the following

- 22 a) Whether the NFLPA and PLAYERS INC owed a fiduciary duty to retired players
- 23 who joined the NFLPA and paid dues, but did not sign a GLA;
- 24 b) Whether the NFLPA and PLAYERS INC are estopped to deny the agency
- 25 relationship to retired NFLPA members who paid dues but did not sign a GLA
- 26 c) Whether the NFLPA and PLAYERS INC breached their fiduciary duties to retired
- 27 players who joined the NFLPA and paid dues, but did not sign a GLA;

1 d) Whether PLAYERS INC has meddled or interfered with the rights of Parrish and
2 other members of the Retired NFLPA Member Class through contracts and agreements
3 with licensees; and

4 e) Whether Parrish and the Retired NFLPA Member Class are entitled to a refund of
5 all dues paid to the NFLPA, and other damages.

6 **VIII. CLAIMS FOR RELIEF**

7 **FIRST CAUSE OF ACTION**

8 **(Breach of Contract – GLA Class)**

9 **(Against Both Defendants)**

10 91. Plaintiffs incorporate by reference paragraphs 1 through 90 above as though set
11 forth fully herein.

12 92. On information and belief, Adderley and other GLA Class members entered into a
13 version of GLA(s) with PLAYERS INC and/or the NFLPA within the period of the statute of
14 limitations. The GLA form signed by Plaintiff Adderley in 2002 is attached as **Exhibit C**. On
15 information and belief, each GLA, including the one signed by Adderley and other members of the
16 GLA Class, is a valid and binding contract between those retired players and the NFLPA.

17 93. According to PLAYERS INC's website, retired players sign a GLA with the
18 NFLPA. In turn, the NFLPA assigns (and will continue to assign) the rights under those
19 Agreement(s), including the Agreements signed by Adderley and other members of the GLA
20 Class, to PLAYERS INC.

21 94. The version of the GLA executed by Adderley and in effect during the limitations
22 period provides, in relevant part, that "*it is further understood that the moneys generated by such*
23 *licensing of retired player group rights will be divided between the player and an escrow account*
24 *for all eligible NFLPA members who have signed a group licensing authorization form.*"
25 (emphasis added). (**Exhibit C**) (emphasis added).

26 95. On information and belief, Adderley and other GLA Class members performed any
27 and all obligations required of them under the GLA(s).

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1 **THIRD CAUSE OF ACTION**

2 **(Accounting – GLA Class)**

3 **(Against Both Defendants)**

4 103. Adderley incorporates by reference paragraphs 1 through 102 above as though set
5 forth fully herein.

6 104. By virtue of his status as a signatory of the Adderley 2002 GLA and a retired
7 member of the NFLPA, Adderley is entitled to information concerning monies due to him from the
8 NFLPA and/or PLAYERS INC. As set forth in the NFLPA Constitution, Adderley and other class
9 members have a right to receive from the NFLPA, “. . . information which may affect his
10 retirement benefits *or other benefits he may be entitled to* as an NFL player.” NFLPA
11 Constitution, Art. II, p. 7.

12 105. By virtue of the acts and omissions described above, Adderley does not have
13 adequate information to determine what monies are due to him as a result of Defendants actions
14 pursuant to the Adderley 2002 GLA. Indeed, Defendants have admitted that they have not made
15 an accounting to retired NFL players of licensing and/or marketing distributions except by
16 providing them with distributions of monies Defendants believe are owed them. *See Exhibit N*
17 (Responses to Requests for Admission, No. 15).

18 106. The exact amount of money received and distributed by PLAYERS INC in
19 connection with the licensing and marketing of Adderley and the GLA Class, including monies
20 distributed to or misappropriated by PLAYERS INC and the NFLPA, is unknown and cannot be
21 ascertained without an accounting of the funds.

22 107. On information and belief, a balance is due to Plaintiffs and there is no adequate
23 remedy at law to obtain that balance without an accounting.

24 **FOURTH CAUSE OF ACTION**

25 **(Breach of Fiduciary Duty – Retired NFLPA Member Class)**

26 **(Against both Defendants)**

27 108. Plaintiffs incorporate by reference paragraphs 1 through 107 above as though set
28 forth fully herein.

1 allegations made in Paragraphs 1-52, 71-80 and the Prayer for Relief of the Second Amended
2 Complaint as though set forth fully herein.

3 **VIII. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray as
5 follows:

- 6 a. That the Court determines that this action may be maintained as a class action under
7 Rule 23 of the Federal Rules of Civil Procedure, and that Ronald S. Katz of
8 MANATT, PHELPS & PHILLIPS, LLP be appointed as lead class counsel.
- 9 b. That Plaintiffs and each and every member of the three Classes recover (i) damages
10 determined to have been sustained by each of them, including punitive damages,
11 (ii) restitution as provided by law, and (iii) that joint and several judgments in favor
12 of Plaintiffs and each and every member of the three Classes, respectively, be
13 entered against the Defendant.
- 14 c. That an accounting by accountants of Adderley's choice be ordered by the Court at
15 the expense of the Defendants.
- 16 d. That Plaintiffs and other members of the three classes recover their costs of this suit,
17 including reasonable attorneys' fees, as provided by law.
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e. That Plaintiffs and the other members of the three classes be granted such other, further and different relief as the nature of the case may require or as may seem just and proper to this Court.

Respectfully submitted,
Dated: November 15, 2007

/s/Ronald S. Katz
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