

# **EXHIBIT C**

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18  
19 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
20 **SAN FRANCISCO DIVISION**

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 (“RPFPJ”); 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

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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).<sup>1</sup>

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 <sup>1</sup> 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).