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Attorneys for Plaintiffs

21 UNITED STATES DISTRICT COURT
 22 NORTHERN DISTRICT
 23 SAN FRANCISCO DIVISION

24 HERBERT ANTHONY ADDERLEY, on
 25 behalf of himself and all others similarly
 26 situated,

Plaintiffs,

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

Defendants.

CIVIL ACTION NO. C07 0943 WHA

**PLAINTIFFS' STATEMENT IN RESPONSE
 TO COURT'S REQUEST FOR
 INFORMATION RE DISPOSITION OF
 AWARD AND AWARD OF ATTORNEYS'
 FEES AND COSTS**

1 Plaintiffs respectfully submit this statement to the Court regarding the proposed
2 disposition of the award and the prospective application for attorney fees and costs and state as
3 follows:

4 **A. Disposition of the Award**

5 Plaintiffs expect the proposed disposition of the award to present few challenges or issues.
6 Because the amount awarded to the Plaintiffs is not allocated to a specific time period, Plaintiffs’
7 counsel will have their experts determine proper disposition of the award to the Class based upon
8 the years that GLA(s) were in existence and signed by each class member and based upon the
9 final amount of the award, after attorneys’ fees and costs are determined. Because a notice to the
10 class, an objection period, and a potential hearing are required to determine the appropriate
11 award of fees and costs to Plaintiffs’ counsel, it would make sense to combine the notice and
12 hearing for disposition of the award with the notice and hearing with respect to the award of
13 attorneys fees and costs. However, counsel will follow any direction from the Court as to the
14 timing of the hearing.

15 **B. Application of Attorney’s Fees**

16 The Federal Rules of Civil Procedure provide the applicable procedure to determine an
17 award of attorneys’ fees in a class action:

18 Federal Rule of Civil Procedure 23(h) provides that in a certified class action such as this,
19 the court may award reasonable attorney's fees and nontaxable costs that are authorized by law.
20 Class counsel are entitled to an award of attorney fees in connection with the creation of a
21 “common fund” such as the judgment in this case. *Wells v. Allstate Ins. Co.*, 557 F.Supp.2d 1,
22 6 (D.D.C. 2008); *In re Baan Co. Securities Litigation*, 288 F.Supp.2d 14, 21 (D.D.C. 2003); *In*
23 *re Daou Systems, Inc., Securities Litigation*, 2008 WL 1832428 (S.D.Cal.) (slip op.) A claim for
24 an award must be made by motion under Rule 54(d)(2), subject to the provisions of subdivision
25 (h), at a time the court sets. Rule 23(h)(1). Notice of the motion must be served on all parties
26 and, for motions by class counsel, directed to class members in a reasonable manner. *Id.* A
27 class member, or a party from whom payment is sought, may object to the motion. Rule 23(h)(2).
28 The court may hold a hearing and must find the facts and state its legal conclusions under Rule

1 52(a). Rule 23(h)(3). The court may refer issues related to the amount of the award to a special
2 master or a magistrate judge, as provided in Rule 54(d)(2)(D). Rule 23(h)(4).

3 The broader rule related to attorneys fee applications, Rule 54(d)(2), provides that, unless
4 a statute or a court order provides otherwise, the motion for attorneys fees and costs must:

- 5 (i) be filed no later than 14 days after the entry of judgment;
- 6 (ii) specify the judgment and the statute, rule, or other grounds entitling
7 the movant to the award;
- 8 (iii) state the amount sought or provide a fair estimate of it; and
- 9 (iv) disclose, if the court so orders, the terms of any agreement about fees
10 for the services for which the claim is made.

11 Rule 54(d)(2)(B).

12 Subject to Rule 23(h), the court must, on a party's request, give an opportunity for
13 adversary submissions on the motion in accordance with Rule 43(c) or 78. The court may decide
14 issues of liability for fees before receiving submissions on the value of services. The court must
15 find the facts and state its conclusions of law as provided in Rule 52(a). Rule 54(d)(2)(C). *See*
16 *also*, Local Rule 54-6. (Motion for Attorney's Fees.)

17 Plaintiffs counsel expect to file their motion for attorneys fees and costs within the 14 day
18 deadline, absent other direction from the Court. Counsel anticipate handling the motion in a
19 manner similar to class certification, with a first class mailing to all class members through a class
20 administrator, an objection date, and a noticed hearing date. Court approval will be sought for the
21 form and manner of notice and the dates of objection and hearing. Counsel will, of course, follow
22 any further direction from the Court on this matter.

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Dated: November 14, 2008

Respectfully submitted,
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