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12 Attorneys for Plaintiffs

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

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

20 Plaintiffs,

21 NATIONAL FOOTBALL LEAGUE  
 22 PLAYERS INCORPORATED d/b/a  
 23 PLAYERS INC, a Virginia corporation,

24 Defendant.

CIVIL ACTION NO. C07 0943 WHA

**PLAINTIFFS' REPLY IN SUPPORT OF  
 MOTION TO APPOINT MANATT, PHELPS  
 & PHILLIPS, LLP AS INTERIM CLASS  
 COUNSEL**

Date: May 31, 2007  
 Time: 8:00 a.m.  
 Judge: William Alsup

25 Plaintiffs BERNARD PAUL PARRISH, HERBERT ANTHONY ADDERLEY, and  
 26 WALTER ROBERTS III, on behalf of themselves and all others similarly situated, submit their  
 27 Reply in Support of Plaintiffs' Motion to Appoint Manatt, Phelps & Phillips, LLP as Interim  
 28 Class Counsel, as follows:

1 **I. INTRODUCTION**

2 Plaintiffs' Motion to Appoint Manatt, Phelps & Phillips, LLP ("Manatt") as Interim Class  
3 Counsel ("Motion") should be granted. Defendant offers several reasons why the Motion should  
4 be denied, none of which is persuasive.

5 First, Defendant contends that the Court should not grant this "extraordinary" request now  
6 because there are no competitive class actions pending. But this request is far from extraordinary,  
7 as Rule 23(g)(2)(A) expressly authorizes the Court to "designate interim class counsel to act on  
8 behalf of the putative class *before* determining whether to certify the action as a class action."  
9 (emphasis added). If the Court decides, however, that this Motion is premature, it should be  
10 denied without prejudice.

11 Second, Defendant argues that Manatt has irreparable conflicts because of its alleged  
12 involvement in the creation of an organization called the Retired Professional Football Players  
13 For Justice ("RPFJ") and therefore cannot adequately represent the interests of the class. But  
14 there are no such conflicts, let alone "irreparable" ones. As set forth in Plaintiffs' Opposition to  
15 Defendant's Motion for Sanctions and the Supplemental Declaration of Ronald S. Katz attached  
16 hereto ("Supp. Katz Decl."), Mr. Katz is not identified as an officer or director of that  
17 organization; has never been an officer or director of that organization; is not a founder of that  
18 organization; and has no association with that organization except being listed as outside  
19 litigation counsel (although the organization has not engaged in and is not engaging in litigation).  
20 [Supp. Katz Decl., ¶¶ 2-4.] That "association" -- the same role that Dewey Ballantine plays for  
21 PLAYERS INC -- hardly creates a conflict with the putative class.

22 Third, Defendant contends that Manatt did not properly research the facts and law prior to  
23 filing this action. This contention is erroneous. As set forth in the Declaration of Ronald S. Katz  
24 filed with the underlying Motion, Manatt thoroughly investigated the facts and law involved in  
25 this case. Defendant does not dispute any of the facts set forth in the Katz Declaration; instead it  
26 makes broad assertions and legal arguments (without citation to authority) as to why Plaintiffs'  
27 claims lack merit. Such assertions and arguments are not evidence, and should be rejected.

1 Finally, Defendant attacks the adequacy of the class representatives (Messrs. Adderley,  
2 Parrish, and Roberts) in an attempt to turn the Motion into a class certification motion. Aside  
3 from lacking merit, the adequacy of the proposed class representatives is not relevant to this  
4 matter.

5 Manatt is qualified to act as counsel to the putative class, and there is no reason to delay  
6 its designation as class counsel, which is authorized by statute. Accordingly, Plaintiffs request  
7 that Manatt be designated interim class counsel effective immediately.

## 8 **II. ARGUMENT**

### 9 **A. Rule 23(g)(2)(A) Authorizes the Court to Appoint Interim Class Counsel** 10 **Prior to Certification of a Class**

11 Rule 23(g)(2)(A) of the Federal Rules of Civil Procedure states “the court may designate  
12 interim counsel to act on behalf of the putative class before determining whether to certify the  
13 action as a class action.” Rule 23(g)(2)(A) sets no limits as to time or scope.

14 Defendant contends that the appointment of interim class counsel is “unnecessary,” yet it  
15 fails to support this assertion. In fact, the appointment of interim class counsel enables the class  
16 to effectively and efficiently engage in discovery and motion practice before a ruling on class  
17 certification (and “final” appointment of class counsel). Fed. R. Civ. 23, Advisory Committee  
18 Notes, 1993 Amendments, Subdivision (g), Paragraph 2(A). Defendant has not claimed and  
19 cannot claim *any* prejudice to it by this appointment.

### 20 **B. This Lawsuit Was Instituted for a Proper Purpose After a Thorough** 21 **Review by Counsel of the Facts and Law in Dispute**

22 As set forth in the underlying Motion, Plaintiffs’ counsel spent several months  
23 investigating the merits of this action. Motion, 4-7. Specifically, Manatt spent numerous hours  
24 conducting a pre-filing investigation of this action, which included traveling to Florida to engage  
25 in a personal visit with Mr. Parrish, meeting with other potential class members, obtaining  
26 relevant documents, consulting with expert witnesses, and thoroughly researching the law upon  
27 which this action is based. Motion, 5.

1 Similarly, this action was not brought for an improper purpose. Rather, Plaintiffs' claims  
2 for breach of fiduciary duty, unjust enrichment and accounting are well-grounded in both fact and  
3 law. Opposition to Motion for Sanctions, 8-12. The claims are supported by facts discovered  
4 after diligent investigation by Plaintiffs and their counsel -- drawn primarily from PLAYERS  
5 INC's own statements and documents -- and corroborated by third party sources. *See, e.g.*,  
6 Opposition to PLAYERS INC's Motion for Judgment on the Pleadings ("Opposition to the  
7 JOP"), 2, 4-5.

8 Absent admissible evidence or legal authority, PLAYERS INC asserts that Plaintiffs'  
9 lawsuit is harassing and that publicity regarding this suit is somehow illicit. But PLAYERS INC  
10 has not shown that these alleged public statements were part of a pattern of harassing or vexatious  
11 behavior, cannot prove that the lawsuit is frivolous or a mere "fishing expedition," and cannot  
12 dispute that its own documents and actions provide the basis for these challenged statements.

13 **C. Defendant's Ad Hominem Attack on Manatt Through Unsubstantiated**  
14 **Claims of "Irreparable Conflict" with the Class Is Inaccurate and**  
15 **Incorrect.**

16 Defendant argues that Manatt should be precluded from acting as class counsel because of  
17 irreparable conflicts, primarily counsel's alleged role in the RFPFJ. But PLAYERS INC has  
18 shown no basis for its allegation that counsel was or is involved with Plaintiffs' formation of  
19 RFPFJ, other than inadmissible (and inaccurate) newspaper articles.

20 Contrary to PLAYERS INC's argument, RFPFJ is a not-for-profit organization, aimed  
21 solely at advancing the rights of retired NFL players. [Declaration of Bernard Paul Parrish filed  
22 concurrently with Opposition to Motion for Sanctions ("Parrish Decl."), ¶ 4.] No one receives  
23 any compensation from RFPFJ, which was not founded by counsel. [Supp. Katz Decl., ¶ 4.]  
24 RFPFJ is currently engaged in no commercial or licensing activities, and if it engages in such  
25 activities in the future, its intention is to do that on a cooperative, non-profit basis in which all  
26 retired players share equally. Parrish Decl., ¶ 5. Contrary to PLAYERS INC's arguments,  
27 Manatt has derived no financial gain from any association with RFPFJ, and Mr. Katz is not an  
28 officer or director, but rather outside litigation counsel available if the organization ever brings a

1 litigation, which it has not yet done. *Id.*, ¶ 6. There is simply no conflict based on Manatt's role  
2 as outside counsel.

3 In support of its contention that an "irreparable conflict" exists, Defendant cites two cases  
4 where a court disqualified class counsel because of conflicts of interests. Motion, 9. However,  
5 neither of these cases is applicable here. In fact, it is not at all surprising that these courts refused  
6 to appoint interim class counsel as in each circumstance, the attorney was a member of the  
7 putative class. *See Armstrong v. Powell*, 230 F.R.D. 661, 681 (W.D. Okla. 2005) (noting concern  
8 over plaintiff's counsel being a percipient witness and member of the putative class); *Fechter v.*  
9 *HMW Indust.*, 117 F.R.D. 362 (E.D. Pa. 1987) (rejecting class certification on the grounds that  
10 plaintiff's counsel's membership in plaintiff class created appearance of impropriety).<sup>1</sup> Because  
11 Manatt is not a member of the putative class, this line of cases is irrelevant.

12 Defendant next suggests that there is a conflict of interest because "it clearly is in the best  
13 interests of members of the putative class that PLAYERS INC's group licensing programs be as  
14 successful as possible, thereby generating the maximum royalties for the class members."  
15 Opposition, 8. Given the allegations that PLAYERS INC is breaching its fiduciary duties to the  
16 retired players, being unjustly enriched at their expense, and not providing them with information,  
17 this contention is disingenuous at best. Also, RPFPI currently has no licensing program, and, if it  
18 had one, it would not preclude any retired player from participating in PLAYERS INC's program.

19 **D. The Adequacy of the Class Representatives is Not at Issue Here**

20 Defendant devotes considerable time addressing the alleged inadequacy of Messrs. Parrish  
21 and Roberts as class representatives. Opposition, 10-11. This is irrelevant to this Motion because  
22 Plaintiffs have not yet moved to certify a class; they seek only to have Manatt named as interim  
23 counsel. As such, Plaintiffs will not burden the Court by responding to arguments that have no  
24 bearing on this Motion. Plaintiffs will address these issues at the appropriate time, and until then,  
25

26  
27 <sup>1</sup> Defendant cites a third case, *Piambino v. Bailey*, 757 F.2d 1112 (11th Cir. 1985), in support of its "irreparable  
28 conflict" argument. That case does not help Defendant either as the Eleventh Circuit found *after* certification that  
class counsel could not represent all of the various subclasses due to conflicts that arose within the class. Because no  
class has been certified, let alone conflicting subclasses, Defendant's reliance on this case is misplaced.

1 simply refer the Court to their Oppositions to the Motion for Sanctions and Motion for Judgment  
2 on the Pleadings for reasons why these individuals are appropriate class representatives.

3 **III. CONCLUSION**

4 For the foregoing reasons, Plaintiffs respectfully request that their Motion to Appoint  
5 Manatt, Phelps & Phillips as Interim Class Counsel be GRANTED.

6 Dated: May 17, 2007

Respectfully submitted,

7 /s/Ronald S. Katz

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