

**Exhibit A**  
**to the**  
**Declaration of Herbert Anthony Adderley in**  
**Support of Motion for Final Approval of**  
**Settlement and of Proposed Plan of Distribution**

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12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT  
15 SAN FRANCISCO DIVISION  
16

17 HERBERT ANTHONY ADDERLEY, on  
18 behalf of himself and all others similarly  
19 situated,

20 Plaintiffs,

21 vs.

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

25 Defendants.  
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CIVIL ACTION NO. C07 0943 WHA

**DECLARATION OF HERBERT  
ANTHONY ADDERLEY IN SUPPORT OF  
CLASS COUNSELS' APPLICATION FOR  
FEES, EXPENSES, AND AN INCENTIVE  
PAYMENT FOR CLASS  
REPRESENTATIVE, HERBERT  
ADDERLEY**

1 I, Herbert Anthony Adderley, declare as follows:

2 1. I am a party to this lawsuit. I am submitting this Declaration in support of Class  
3 Counsels' application for an award of attorneys' fees in connection with services rendered in this  
4 action. The following declaration is based upon my personal knowledge. If called as a witness I  
5 could and would competently testify to the facts set forth herein.

6 2. I am a retired professional football player who played for more than 10 years in the  
7 National Football League ("NFL") for the Green Bay Packers and the Dallas Cowboys. I was  
8 elected to be a member of the professional football Hall of Fame in 1980.

9 3. I did not keep a contemporaneous record of the time I spent working on this case.  
10 However, based on my knowledge of the tasks I performed in connection with this case from  
11 February 2007 to the present, I believe that I spent over 550 hours assisting Plaintiffs' counsel in  
12 the prosecution of this case. This is a conservative estimate.

13 4. I spent approximately 10 hours assisting Plaintiffs' counsel on each of the three  
14 complaints that were filed in this action, for a total of 30 hours.

15 5. I also spent approximately 10 hours searching for and collecting documents in  
16 response to discovery requests sent by Defendants' counsel, and in specifically addressing  
17 Defendants' subsequent criticism of the scope of my document production, for which I eventually  
18 provided a signed declaration. In addition, I spent approximately 20 hours assisting Plaintiffs'  
19 counsel in responding to other discovery requests, including Plaintiffs' responses to Defendants'  
20 interrogatory requests, for which I provided a signed verification.

21 6. I spent approximately 30 hours reviewing correspondence from February 2007 to  
22 the present. This includes correspondence sent to and received by Plaintiffs' counsel by and from  
23 Defendants' counsel, as well as e-mails sent to me by Plaintiffs' counsel.

24 7. I spent approximately 8 hours a day for 4 days – for a total of 32 hours – in  
25 connection with my deposition. This includes time I spent preparing for and attending my  
26 deposition. This also includes time I spent subsequently reviewing the transcript of my  
27 deposition and working with Plaintiffs' counsel to correct errors in the transcript.

28 8. Over the last 20 months, I spent approximately 5 hours a day for 5 days – for a

1 total of 25 hours – meeting with counsel in connection with this case.

2 9. Even though I was precluded from seeing any of Defendants’ confidential  
3 documents and information until May 2008, once I was allowed access to such documents, I spent  
4 approximately 180 hours reviewing them.

5 10. I spent approximately 10 hours a day for 24 days – for a total of 240 hours – in  
6 connection with the trial in this matter. This includes the time I spent attending every single day  
7 of trial (which began at 7:30 a.m.) despite my physical discomfort resulting from a back surgery,  
8 and the time I spent traveling from my home near Philadelphia to the location of the trial in San  
9 Francisco. It also includes the time I spent working with Plaintiffs’ counsel to prepare for my  
10 role as a witness.

11 11. There were many retired players who supported me in this lawsuit. Attached as  
12 Exhibit A is an article referring to the type of support I received from retired players during trial.  
13 Many retired players also congratulated me upon hearing of the verdict. However, I am aware of  
14 the tension between retired players and the National Football League Players Association  
15 (“NFLPA”), as well as the tension that existed between retired players and Gene Upshaw who, up  
16 until August 2008, was the head of both the NFLPA and Players Inc.

17 12. I had a legitimate concern that Defendants would retaliate against me because of  
18 my participation in this lawsuit. For example, I am aware that Gene Upshaw told the press in  
19 June 2007 (4 months after this lawsuit was filed) that he would break the neck of Hall of Fame  
20 guard Joe DeLamielleure, a leading advocate of retired NFL players, for questioning the modest  
21 benefits retired players receive from their union. Attached as Exhibit B is an article discussing  
22 Mr. Upshaw’s comment. In addition, I have witnessed firsthand Defendants’ aggressive behavior  
23 in response to this lawsuit, including Defendants’ counsel’s aggressive (and oppressive) behavior  
24 towards me at my deposition and the demeaning statements they made about me when opposing  
25 Plaintiffs’ motion for class certification. This behavior, combined with statements such as the  
26 one made about Mr. DeLamielleure by Mr. Upshaw, further confirmed my fear of retaliation.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on November 25 2008.

Herbert A. Adderley  
Herbert Anthony Adderley

**Exhibit A**  
**to the**  
**Declaration of Herbert Anthony Adderley In**  
**Support of Class Counsels' Application for Fees,**  
**Expenses, and an Incentive Payment for Class**  
**Representative, Herbert Adderley**

FOCUS - 31 of 33 DOCUMENTS

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November 11, 2008 Tuesday 2:29 AM GMT

**SECTION:** SPORTS NEWS

**LENGTH:** 640 words

**HEADLINE:** Jury orders NFL union to pay \$28.1M to retirees

**BYLINE:** By PAUL ELIAS, Associated Press Writer

**DATELINE:** SAN FRANCISCO

**BODY:**

A federal jury on Monday ordered the NFL Players Association to pay **\$28.1 million to retired players** after finding the union failed to properly market their images.

The jury said the union owed the retirees \$7.1 million in actual damages for failing to include them in lucrative marketing deals with Electronic Arts Inc., the maker of the popular "Madden NFL" video games, sporting card companies and other sponsorship agreements.

Hall of Fame cornerback Herb **Adderley** filed the lawsuit last year on behalf of 2,056 **retired players** who contend the union failed to actively pursue marketing deals on their behalf with video games, trading cards and others sports products.

The lawyers and judge still must decide how to divvy up the jury's award, some of which will go to attorneys' fees.

**Adderley**, 69, played cornerback for the Green Bay Packers and Dallas Cowboys and appeared in four of the first six Super Bowls. He appeared every day in court wearing his yellow "NFL Alumni" sports jacket and wept when the jury's verdict was read.

"I won three Super Bowls and this feels better than all of them combined," **Adderley** said immediately after the verdict was announced. "I always felt I had one big play left."

Several **retired players** either testified during the trial or appeared in the court to lend support, including retired Green Bay Packers quarterback Bart Starr, who attended the last day of testimony on Friday.

Richard Berthelsen, the union's acting executive director, said outside court that the **NFLPA** would ask the trial judge, U.S. District Court Judge William Alsup, to toss out the verdict. If that fails, it intends to appeal.

"It's an unjust verdict and we are confident it will be overturned," union lawyer Jeffrey Kessler said.

Lawyers representing **Adderley and the retired players** told the jury during the three-week trial that the union actively sought to cut them out of licensing deals so active players could receive bigger royalty payments. As proof, the retirees pointed to a 2001 letter from an **NFLPA** executive telling Electronic Arts Inc. executives to scramble the images of **retired players** in the company's popular Madden video game, otherwise the company would have to pay them.

EA's Madden game contains 143 "vintage" teams populated with no-name players that closely resemble **Adderley** and other retirees. Yet only active players received a cut of the EA deal, the union's largest, which surpassed \$35 million for 2008.

Jury orders NFL union to pay \$28.1M to retirees Associated Press Online November 11, 2008 Tuesday 2:29 AM GMT

Ronald Katz, a lawyer representing the retirees, told jurors that longtime union chief Gene Upshaw and other union leaders "betrayed the trust of their members" by neglecting the **retired players**, who pay \$50 a year to keep their union membership. Upshaw died of cancer in August.

Kessler unsuccessfully urged the jury to award far less, arguing the union could suffer economic harm if it had to pay a large amount.

"It was the only sports union that tried to do **retired players'** licensing deals," Kessler said.

The union's primary defense during trial was that EA, trading card companies such as Topps and Upper Deck and other companies paid licensing fees exclusively for active players.

But the retirees represented at trial all signed "group licensing agreements" that promised the union would do its best to market their images. The jury found otherwise.

"We felt we had to send a message that the union needs to represent and protect all its members," said Susan Smith, part of the 10-person jury that voted unanimously in favor of the retirees. "We felt the players' union didn't do that."

The jury's verdict is the latest salvo in an increasingly rancorous relationship between the **NFLPA** and many **retired players**, who have complained that the union has forgotten what past players have contributed to building the NFL into a highly profitable industry that richly compensates owners and players alike.

**LOAD-DATE:** November 11, 2008



**Exhibit B**  
**to the**  
**Declaration of Herbert Anthony Adderley In**  
**Support of Class Counsels' Application for Fees,**  
**Expenses, and an Incentive Payment for Class**  
**Representative, Herbert Adderley**

82 of 129 DOCUMENTS

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**DAILY NEWS**  
NEW YORK'S HOMETOWN NEWSPAPER  
Daily News (New York)

June 10, 2007 Sunday  
SPORTS FINAL EDITION

**SECTION:** SPORTS; Pg. 64

**LENGTH:** 2120 words

**HEADLINE:** WHERE IS THE LOVE? Retired players looking for help after building NFL juggernaut

**BYLINE:** By GARY MYERS DAILY NEWS SPORTS WRITER

**BODY:**

Harry Carson had not played a game in nearly two decades when he stood at the podium at his Hall of Fame induction in Canton last summer and displayed the leadership skills that made him one of the all-time great Giants.

He used the powerful forum to bring the plight of the retired player from whispers into the public consciousness. He pleaded for the league and the union not to forget retired players in need, not to leave behind those who had helped construct the foundation of what is now a \$7 billion-a-year industry.

"If we made the league what it is, you have to take better care of your own," Carson said that day.

He wasn't referring to the players who had become CEOs or real estate moguls or who are now head coaches making \$5 million per year. He meant the players who have run out of money because their pensions are inadequate, the ones who are disabled with no financial relief because of rejected applications, the ones who struggle to pay medical bills for physical ailments that didn't need attention until 25 years after they stopped playing what is perhaps the most brutal game in professional sports.

In the 10 months since Carson's speech, NFL player pensions and disability payments have become hot-button issues. Carson has been invited to testify at a congressional hearing on June 26 that will deal with the disability payment process.

**Gene Upshaw**, a Hall of Famer and the executive director of the NFL Players Association, is the No. 1 target of the former players. Two weeks ago, Carson told the Daily News that he believes Upshaw is "irrelevant." Carson instead met with commissioner Roger Goodell and has decided to deal with him on the retired players' issues.

"I told Roger there is a dark cloud and it's not going to go away," Carson says.

Asked last week if Upshaw should be fired, Carson told the Daily News, "Personally, yeah. Let's look at it like this. He's been doing a great job for the current players. From that standpoint, no, he shouldn't be replaced. If you're talking about the retired players, then hell yeah."

Because so many of the retired players believe Upshaw only cares about today's players and isn't doing enough for the 9,000 retired players, a movement has developed - led by former Colts and Chargers safety Bruce Laird - for the Retired Players Association to defect from the NFLPA umbrella. "We are not represented," Laird says. "With all the millionaires and smart businessmen we have, with a tremendous group of intelligent players out there in the business world, we want to represent ourselves."

Upshaw has not taken the criticism well. After the Charlotte Observer last year quoted several Hall of Famers who were critical of the way retired players are treated, Upshaw fired back in the Observer: "The bottom line is I don't work

WHERE IS THE LOVE? Retired players looking for help after building NFL juggernaut Daily News (New York) June 10, 2007 Sunday

for them. They don't hire me and they can't fire me. They can complain about me all day long. They can have their opinion. But the active players have the vote. That's who pays my salary."

Upshaw claims his comments were taken out of context and that he was referring only to Bills guard **Joe DeLamielleure**, who said the goal of every former player should be to "get rid of Upshaw." Then, in a Philadelphia Daily News story two weeks ago, Upshaw lowered the argument to locker room trash-talk. "A guy like DeLamielleure says the things he said about me; you think I'm going to invite him to dinner? No. I'm going to **break his...damn neck.**"

DeLamielleure said he took the threat seriously. "Obviously, it was very ill-advised," Laird says.

Carson, who has been a success in many post-career enterprises, including sports consulting, says Upshaw received an icy reception when he spoke at the Hall of Fame luncheon the day before the induction ceremony last summer. "Most of the people tuned him out," Carson says.

Upshaw notes that Carson has not called him to voice suggestions or complaints, which Carson acknowledges. Upshaw adds, "The history of what I have done for retired players - no one has done what I have. The record is there. I have been the only one fighting for retired players since I took this job. I created the retired players department in 1983."

Upshaw can claim he has done the most, says former Packers guard Jerry Kramer, because he's been the only one at the negotiating table for 25 years. Kramer, who played 11 years in the NFL, has done well since retiring after the 1968 season, and starting Gridiron Greats, an organization that raises money through auctions to help retired players. But Kramer thinks that Upshaw could do more and believes the union chief is a little too concerned with money and power.

"Gene is in a very well-paid position. Just like young players who sign their first contract and have a ton of money and a new Bentley, there is a certain intoxication from money and fame," Kramer says. "Gene may be so enamored of his position and infatuated with himself, he just can't see anything else or think of anybody else but him."

This year, \$61 million will be paid to retired players in pension and disability, including the recently created "88 Plan" to assist players with dementia. The NFLPA last year paid out \$1.5 million through its Players Assistance Trust to retired players.

"We could be doing more, but I think we are headed in the right direction," Giants co-owner John Mara says. "The owners are certainly much more aware of the situation than they were five years ago."

In every collective bargaining agreement since 1993, improvements have been made to the retired players' pension. In the most recent CBA, which was negotiated last year, a 25% pension increase was given to players who played before 1982 and 10% to those after 1982. Goodell, who along with Upshaw helped form an alliance that will seek reasonable-cost health care for former players, last week defended him.

Still, many retired players, Carson says, want to oust Upshaw. "They are just that bitter. Just that hostile," Carson says. "They are angry with Gene. I told Roger we need to call a timeout, get all the parties to the table and do what is best for everyone involved."

Dick Lynch, a Giants cornerback from 1959-66 and now an analyst on the team's radio broadcasts, is sitting on the patio of his Douglaston home overlooking Little Neck Bay. The Giants of his era were a family and he's worried about them - his close friend Alex Webster in particular.

"(The league and the union) can spend some of the billions they are making to help these fellas," Lynch says.

Lynch has done well in his post-playing career and was fortunate to have health insurance through his broadcasting work. Until 1993, players had to pay for their own health and dental insurance when their careers were over. Now, the players' benefits extend for five years after retirement.

"I think players should have lifelong health care," Carson says. "Five years after you leave football, you still feel relatively fine. When you get down the road, your body starts to break down."

Lynch knows for sure that many of the physical problems players experience don't happen within five years. "I had both my hips replaced when I was 60," he says. "I got the crap kicked out of me coming up stopping those blocks for those sweeps the Packers used to run all the time."

WHERE IS THE LOVE? Retired players looking for help after building NFL juggernaut Daily News (New York) June 10, 2007 Sunday

Should the obligation extend if the player is suffering from a health issue that is not football-related? Carson says the answer is yes. "If it is going to impact his income to create a negative situation for him, then I'm for players having universal health care from the league, Players Association or all who are involved," he says.

Webster, who lives in Hobe Sound in south Florida, was a running back who played for the Giants from 1955-64 and was their head coach from 1969-73. He is in remission from lung cancer, suffers from emphysema, has a big oxygen tank in his house, a portable one he takes with him, and gets around with a cane and walker. His wife Louise is going blind. He has an HMO for his medical needs. "You don't get the doctors you want," he says. "We can't afford to have a health plan."

He is 76 years old and his wife says their living expenses soak up just about all of his NFL pension, which has increased to \$2,900 per month, and an annuity that is at \$1,800 per month and decreasing. "What I did save, what little I'm getting from Social Security, what the league sends me, I'm just getting by on," Webster says. "I don't know what is going to happen when the few bucks I have run out."

He applied for aid from the Dire Needs Fund run by the NFL Alumni Association last year, but says he was turned down. The board is comprised mainly of former players. "They said the money I had coming in was too much. There are a lot of guys worse than me," he says. "I finished playing back in the '60s. My last salary was about 20 grand. I finished coaching in the '70s and the most I made was \$60,000."

Sources say he applied for reimbursement for household expenses, but because his income was over \$50,000 in 2006, he was not eligible. His case is still under review.

He worked for several corporations after football, but says he was let go before qualifying for a pension. Webster says he has not called the Giants for assistance. "I wouldn't call them," he says. "Well (Wellington Mara) is gone. Young John (Mara) is running the business now. I hate to be obligated or make anybody feel obligated."

Webster was able to attend the 50-year reunion of the Giants' 1956 championship team last year. "We will certainly reach out to him," Mara says. "He's more than a former player. He's been a good family friend for many years. I've known him for almost my entire life."

Webster is a proud man, but wonders why the NFL can't do more. "Everything I hear from the old-timers is the NFL has got so much money in that damn savings, what the hell are they saving it for?" he says. "I'm 76 years old, I put in my dues, I'm getting a few bucks back with my pension, but they could help out a lot of people."

Webster is fortunate he waited until he was 62 to start drawing his pension. Kramer said he began taking his pension at 45 because of reports that players may not live past 54. As a result, his pension is just \$454 per month.

The difficulty players have in getting approved for disability is a focus of the congressional hearing. "You have to jump through so many hoops," Carson says.

The NFL says 284 former players are receiving disability payments this year totaling \$19 million, including some that receive as much as \$224,000 annually. Laird says Johnny Unitas, who died in 2002, was turned down for disability despite nerve damage in his arm. It has been reported that former lineman Conrad Dobler has been turned down several times despite doctors saying he is 90% disabled. "Guys felt that if Johnny could not get help, nobody would get help," Kramer says.

Carson does not carry health insurance because of the cost. He pays for health care out of his own pocket. Two years after his career ended in 1988, he was diagnosed with post-concussion syndrome. In the late '90s, he applied to the NFL for disability payments. He says a doctor referred by the league examined him for 15 minutes and a couple of weeks later, his claim was denied.

He says he suffered 15-18 concussions in his career - and he's aware of former players who suffered dementia and the possible connection to head injuries.

"When I look at those guys, in a way I see myself and my future," he says. "When I'm 68 or 70, will I have the shakes? Will I have dementia? Will I know faces? I think about that. I can't put that out of my mind. Back then, I didn't know what I was getting myself into."

Kramer's Gridiron Greats held an auction during Super Bowl week in Miami and Carson auctioned himself off for a round of golf that went for thousands to a bidder from the Los Angeles area, with the money going to retired players in need. They got together in Thousand Oaks, Calif., three weeks ago to play.

WHERE IS THE LOVE? Retired players looking for help after building NFL juggernaut Daily News (New York) June 10, 2007 Sunday

"We can find creative ways to take care of ourselves," Carson says. "If we buy some retirement homes in Arizona and Florida so these guys dealing with dementia and Alzheimer's can go live their lives in dignity, then we are going to do it."

So far, many players feel they may have to. Even an owner as beloved by the players as Wellington Mara used to refer to the game as "the product."

"We were the product. What do you do with the product when the game is over for them?" Carson says. "Do you discard it? I guess they are not legally obligated to do anything. Morally, I think they are. If I was in their position, I would have the conscience to take care of my product."

Carson got the ball rolling with his Hall of Fame speech. "If I had to do it over again," he says now, "I would have said more."

**GRAPHIC:** Players such as Giants' Alex Webster (29), battling illnesses well after their playing days, are getting little help from league they helped build. Photo by Daily News Former Giants linebacker Harry Carson used Hall of Fame acceptance speech last August to cast light on the plight of retired players. Photo by Getty

**LOAD-DATE:** June 10, 2007