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

16 HERBERT ANTHONY ADDERLEY,
on behalf of himself and all others
similarly situated,

17 Plaintiff

18 vs.

19 NATIONAL FOOTBALL LEAGUE
20 PLAYERS ASSOCIATION, a Virginia
corporation, and NATIONAL
21 FOOTBALL LEAGUE PLAYERS
INCORPORATED d/b/a PLAYERS
22 INC, a Virginia corporation,

23 Defendants.

CIVIL ACTION NO. C07 0943 WHA

**CLASS COUNSELS' MOTION
FOR APPROVAL RE SECOND
DISTRIBUTION FROM THE
SETTLEMENT FUND**

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1 Pursuant to the Court’s November 23, 2010 Order, Counsel for the GLA Class (“Class
2 Counsel”) hereby certifies and attests as follows:

3 1. On November 23, 2009, the Court granted Class Counsel’s Motion for Final
4 Approval of the Settlement Agreement and Proposed Plan of Distribution.
5

6 **THE INITIAL MAILING OF CLAIM FORMS**

7 2. Shortly thereafter, on December 11, 2009, Class Counsel caused The Garden City
8 Group, Inc. (the “Class Administrator”) to mail each Class Member for whom Class Counsel
9 has a known address a Claim Form and Release (“Claim Form”) in the form attached as Exhibit
10 A to the Declaration of Lewis T. LeClair, filed concurrently herewith. *See* Declaration of Lewis
11 T. LeClair (“LeClair Decl.”) ¶ 1 and Exh. A; Declaration of Jennifer M. Keough (“Keough
12 Decl.”) ¶ 3. The Claim Form stated that the recipient must return a completed Claim Form to the
13 Claims Administrator on or before February 9, 2010. LeClair Decl. ¶ 1 and Exh. A; Keough
14 Decl. ¶ 3.
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16 3. The Class Administrator received 1,571 Claim Forms that were postmarked on or
17 before the February 9, 2010 deadline, and distributed funds to each of the Class Members who
18 submitted a Claim Form by that deadline. Keough Decl. ¶ 4. 482 Class Members did not submit
19 a completed claim form by that deadline, and as a result, approximately \$1,619,787.71 remained
20 in the Settlement Fund. *Id.*
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22 **THE SECOND MAILING OF CLAIM FORMS AND EXTENSION TO JUNE 1, 2010**

23 4. In order to give those Class Members who did not submit a Claim Form by the
24 February 9, 2010 deadline another chance, Class Counsel caused a second notice in the form
25 attached as Exhibit B to the Declaration of Lewis T. LeClair to be sent to each of those Class
26 Members who did not timely submit a Claim Form and for whom Class Counsel had a known
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1 address.¹ LeClair Decl. ¶ 2 and Exh. B; Keough Decl. ¶ 6. This Claim Form extended the
2 deadline to June 1, 2010. LeClair Decl. ¶ 2 and Exh. B; Keough Decl. ¶ 6.

3 5. Class Counsel notified the Court of their intentions and this plan in a notice that
4 was filed on March 22, 2010. *See* Class Counsels' Notice Regarding Distributions from the
5 Settlement Fund, Docket

6 6. The Class Administrator received 1,792 completed Claim Forms that were
7 postmarked on or before the June 1, 2010 deadline, and distributed funds to each of the 1,792
8 Class Members who submitted a Claim Form by that deadline. LeClair Decl. ¶ 3 and Exh. C;
9 Keough Decl. ¶ 7 and Exh. A. The Class Administrator also received seven "incomplete" claim
10 forms that were postmarked on or before the June 1, 2010. LeClair Decl. ¶ 4 and Exh. E;
11 Keough Decl. ¶ 8 and Exh. B.

12 7. One player submitted a Claim Form that was postmarked after the June 1, 2010
13 deadline. Keough Decl. ¶ 9. Class Counsel also is aware of one player who claims to have
14 submitted a completed claim form but for whom there is no record of receipt by Class Counsel or
15 the Class Administrator.

16 8. Despite two mailings and efforts to update the addresses for missing class
17 members, there are 259 Class Members who did not submit claim forms by the June 1, 2010
18 deadline. Keough Decl. ¶ 10.

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24 ¹ 5. Despite the fact that each Class Member's address was run through the United States
25 Postal Service's National Change of Address database, 261 Claim Forms were returned to the
26 Class Administrator as undeliverable with no forwarding address. The Class Administrator
27 conducted additional searches to locate addresses for the 261 Class Members whose forms were
28 returned as undeliverable. In accordance with the direction of Class Counsel, the Class
Administrator did not resend a Claim Form to those Class Members whose initial Claim Forms
were returned as undeliverable, unless the Class Administrator was able to find a new address for
such Class Members through its additional searches. Keough Decl. ¶ 5.

THE PLAN FOR FINAL DISTRIBUTION

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2 9. According to the Proposed Plan of Distribution, and as stated in both Claim
3 Forms caused to be sent by Class Counsel, any unclaimed funds from the first installment of the
4 Gross Settlement Amount will be pooled with the second installment of the Gross Settlement
5 Amount and distributed to the Class Members that have submitted a completed a Claim Form.
6 See Proposed Plan of Distribution at 3 (“To the extent that there are any funds remaining in the
7 Net Settlement Fund after distributions to each Class Member (because of unclaimed funds, or
8 for any other reason, such funds shall also be distributed to Class Members using the same
9 methodology described above unless the amounts are *de minimis*, i.e., are less than the expected
10 cost of distribution.
11

12 10. Defendants funded the second installment of the Gross Settlement Amount into
13 the escrow account by June 5, 2010, as required under Paragraph 34 of the Settlement
14 Agreement. LeClair Decl. ¶ 6.
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16 11. At present, there is \$11,353,971.08 to be distributed among those Class Members
17 who submitted Claim Forms. Class Counsel has re-calculated the amount each of these Class
18 Members should receive for his second payment using the same methodology described in the
19 Proposed Plan of Distribution. The amount that each Class Member is set to receive is listed in
20 the payment matrix attached as Exhibit F to the LeClair Declaration.
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DEALING WITH LATE OR DEFICIENT CLAIM FORMS

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23 12. Class Counsel’s only interest is in distributing the funds fairly and pursuant to the
24 Court’s orders. Class Counsel currently intends to distribute these funds in the manner
25 described in the Court-approved Proposed Plan of Distribution and both Claim Forms caused to
26 be sent by Class Counsel. However, in accordance with common sense and practice, Class
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1 Counsel intends to reserve funds for the seven Class Members who did submit timely claim
2 forms, but in a deficient manner. Once the deficiencies are corrected, funds will be distributed to
3 those Class Members.

4
5 13. A more difficult question is presented by Class Members who failed to submit a
6 claim form timely, despite two opportunities and an extended deadline. It is important to bring
7 closure to the process, and if further extensions are granted, how can funds be distributed without
8 further reservation for additional forms that may be received in the next weeks or months?
9 Accordingly, Class Counsel does not intend to distribute any funds to those two players
10 specifically identified in Paragraph 7 of above, unless otherwise ordered to do so by the Court.

11 **SUMMARY OF RESERVED FUNDS**

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13 14. The \$11,353,971.08 mentioned above does not include \$111,415.43 that Class
14 Counsel is reserving to: (1) pay the seven Class Members who submitted timely but deficient
15 claim forms and who have yet to be paid their respective share of the initial distribution of the
16 Gross Settlement Amount, and (2) administrative expenses. LeClair Decl. ¶ 8.

17 15. The \$111,415.43 that Class Counsel is reserving breaks out as follows:

18 a. \$38,098.44 in order to pay the seven Class Members who have submitted
19 timely but deficient claim forms once those deficiencies are corrected;

20 b. \$65,597.35 in order to pay the Class Administrator in connection with its
21 June 24, 2010 (LeClair Decl. Exh. G);

22 c. \$7,139.64 to reimburse McKool Smith, as McKool Smith inadvertently
23 paid one-half of the Class Administrator's April 21, 2010 invoice which should have been paid
24 from the Settlement Fund (LeClair Decl. Exh. H); and
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1 d. \$580 to compensate Class Counsel's damages expert, LECG, for its
2 work in confirming the accuracy of the payment matrix referenced above (LeClair Decl.
3 Exh. I).

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5 16. In the event the Court declines to order any or all of the amounts in Paragraph 15,
6 Class Counsel will add such amount(s) to the amount available to the Class Members and re-
7 calculate the payment matrix accordingly.

8 **DEFENDANTS DO NOT OBJECT TO THE RELIEF SOUGHT IN THIS MOTION**

9 17. Class Counsel have contacted Defendants' counsel about this motion. Defendants
10 take no position with respect to the distribution or administration of the Settlement Fund,
11 including the calculation of the amounts that each former player will receive; however,
12 Defendants do not object to the relief that Class Counsel seek by this motion.

13
14 **CONCLUSION**

15 18. For the foregoing reasons, Class Counsel respectfully requests an Order from the
16 Court authorizing: (1) the Claims Administrator to distribute to those 1,792 Class Members who
17 timely submitted complete Claim Forms a second payment in the amounts identified on the
18 payment matrix attached as Exhibit F to the LeClair Declaration; (2) the Claims Administrator to
19 distribute to those seven Class Members who submitted timely but deficient Claim Forms
20 payment in the total amount of \$38,098.44; (3) Class Counsel to pay the Class Administrator
21 \$65,597.35 in connection with its June 24, 2010 invoice; (4) Class Counsel to pay \$7,139.64 to
22 reimburse McKool Smith as McKool Smith inadvertently paid one-half of the Class
23 Administrator's April 21, 2010 invoice which should have been paid from the Settlement Fund;
24 (5) Class Counsel to pay \$580 to LECG for confirming the accuracy of the payment matrix; and
25 (6) Class Counsel not to distribute any funds to those Class Members who either did not submit a
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1 Claim Form that was postmarked on or before June 1, 2010, or for whom the Class
2 Administrator doe not have any record of having received a Claim Form on or before June 1,
3 2010.

5 Respectfully submitted,

6 Dated: July 2, 2010

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