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11 *Attorneys for Plaintiffs*

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

15 CIVIL ACTION NO. C07 0943 WHA

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

17 Plaintiff

18 vs.

19 **CLASS COUNSELS' RESPONSE**  
20 **TO JULY 6, 2010 ORDER**

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.

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1 Counsel for the GLA Class (“Class Counsel”) hereby responds to the Court’s July 6,  
2 2010 Order styled “Questions to Counsel Regarding Final Distribution of Settlement Funds” in  
3 which the Court raised questions on five different topics.

4 **TOPIC NO. 1: CLASS MEMBERS INCLUDED IN THE MAILINGS**

5 *The class list submitted at trial included 2,074 retired NFL players (TX 2054). Twelve of*  
6 *these class members submitted timely opt-out requests. This means that 2,062 class members*  
7 *should have been mailed a claim form (Dkt. 482). Counsel shall please explain: (i) of these 2,062*  
8 *class members, how many were included in the first mailing of claim forms and (ii) how many*  
9 *were included in the second mailing of claim forms?*

10 Response: As an initial matter, the correct number of Class Members who should have  
11 been mailed a claim form is 2,059 Class Members. The reason for this is explained in Class  
12 Counsel’s response to Topic 3 below.

13 Of those 2,059 Class Members, all were included in the first mailing of claim forms. *See*  
14 *Supplemental Declaration of Lew LeClair in Support of Class Counsel’s Motion Regarding the*  
15 *Second Distribution from the Settlement Fund (“Supp. LeClair Decl.”) ¶ 3; Supplemental*  
16 *Declaration of Jennifer M. Keough in Support of Class Counsel’s Motion Regarding the Second*  
17 *Distribution from the Settlement Fund (“Suppl. Keough Decl.”) ¶ 3. Unfortunately, 488 Class*  
18 *Members failed to return a completed Claim Form in connection with the initial mailing. Suppl.*  
19 *Keough Decl. ¶ 4. Therefore, in March 2010, GCG mailed each of those 488 Class Members a*  
20 *second Claim Form. Id.; Supp. LeClair Decl. ¶ 4.*

21 **TOPIC NO. 2: CLASS MEMBERS NOT INCLUDED IN THE MAILINGS**

22 *Counsel shall list the names of any class members (excluding those who timely opted out)*  
23 *who were not included in either the first or second round of mailings. If any class members fit*  
24 *this description, counsel shall explain why they were never mailed a claim form.*

25 Response: There were no Class Members who were not included in either the first or  
26 second round of mailings. As explained above, all 2,059 Class Members were included in the  
27 first mailing of claim forms and 488 of those Class Members (*i.e.*, those who did not respond to  
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1 the initial claim form) also received a second Claim Form. Supp. LeClair Decl. ¶¶ 3-4; Suppl.  
2 Keough Decl. ¶¶ 3-4.

3 **TOPIC NO. 3: THE BASIS FOR THE 2,059 CLASS MEMBERS NUMBER**

4 *The declarations submitted in support of the instant motion refer to 2,059 class members*  
5 *rather than 2,062 class members (see, e.g., LeClair Decl. ¶ 5). Counsel must explain this*  
6 *discrepancy. If there are any errors (such as duplicate entries) in the list of 2,062 class members,*  
7 *this must be brought to the Court’s attention and explained in detail by counsel.*

8 Response: The Court is correct that the class list proffered by Defendants at trial (TX  
9 2057) includes the names of 2,074 retired NFL players. See Supp. LeClair Decl. ¶ 1. Twelve of  
10 the players on the class list timely opted out of the lawsuit, leaving 2,062 Class members. *Id.*  
11 Class Counsel used the class list (TX 2057) as the template for its payment matrix. *Id.* ¶ 2.  
12 When preparing the payment matrix, Class Counsel identified three names on the class list that  
13 were listed multiple times: (i) Curt DiGiacomo (TX 2057 at pages 42 and 48); (ii) Patrick D.  
14 Heenan (TX 2057 at pages 72 and 74); and (iii) Mike Schnitker (TX 2057 at page 152, lines 4  
15 and 7). *Id.* When one accounts for the twelve players who timely opted out of the lawsuit and  
16 the three duplicate entries, there are a total of 2,059 players that should have been mailed a  
17 Claim Form. *Id.*

18 **TOPIC NO. 4: CLASS MEMBERS WITH “UNDELIVERABLE” ADDRESSES**

19 *Counsel have indicated that the addresses used for the first mailing of claim forms were*  
20 *obtained from the United States Postal Service’s National Change of Address database. Counsel*  
21 *further explained that 261 of these claim forms were nevertheless returned as “undeliverable.”*  
22 *Counsel (or the claims administrator) shall please describe in greater detail the “additional*  
23 *searches” that were performed to locate new addresses for the 261 class members whose claim*  
24 *forms were returned as “undeliverable.”*

25 Response: Of the 2,059 Class Members who were included in the first mailing of claim  
26 forms, 261 of the forms were returned as “undeliverable.” Suppl. Keough Decl. ¶ 3. In an  
27 attempt to remedy this, Class Counsel instructed the Class Administrator to conduct “advanced  
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1 address searches” in an attempt to identify the addresses of those 261 Class Members. *Id.* ¶ 5;  
2 Supp. LeClair Decl. ¶ 5. As part of the “advanced address searches”, the Class Administrator  
3 attempted to locate an updated address for the relevant Class Members by submitting the name,  
4 address, phone number and, if available, Social Security number, to Choicepoint, a Lexis-based  
5 database that aggregates publically available records, such as utilities and financial records.  
6 Suppl. Keough Decl. ¶ 5. In addition, the Class Administrator used the available address  
7 information to look up Class Member phone numbers using a reverse directory look-up on the  
8 internet and subsequently made attempts to contact these individuals by phone in order to get  
9 updated addresses. *Id.* The Class Administrator’s communications team then conducted a  
10 calling campaign to locate updated address information for class members whose Claim Forms  
11 were returned as “undeliverable”. *Id.*

12 **TOPIC NO. 5: FURTHER EFFORTS TO CONTACT CLASS MEMBERS WITH**  
13 **“UNDELIVERABLE” ADDRESSES**

14 *In this connection, of the 261 class members whose claim forms were returned as*  
15 *“undeliverable” after the first round of mailings, how many were mailed a second claim form?*  
16 *Of these second mailings, how many were again returned as “undeliverable”?*

17 Response: Following the “advanced address searches” explained above, the Class  
18 Administrator sent each of the 261 Class Members whose claim forms were previously returned  
19 as “undeliverable” a second Claim Form. Suppl. Keough Decl. ¶ 6. Of those 261, 203 were  
20 returned as “undeliverable” for a second time. *Id.*

21 **CONCLUSION**

22 Class Counsel believes that it has acted diligently and fairly in undertaking reasonable  
23 efforts to notify each of the Class Members about this lawsuit. Supp. LeClair Decl. ¶ 7. 1,571 of  
24 these Class Members timely returned claim forms on or before February 9, 2010. *Id.* Another  
25 229 Class Members timely returned claim forms on or before the extended June 1, 2010  
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1 deadline. *Id.* Each of these 1,800 players has been waiting patiently for his second payment from  
2 the settlement of this lawsuit.

3 For these reasons and the reasons given in Plaintiffs' July 2, 2010 Motion for Approval  
4 Re Second Distribution From The Settlement Fund, Class Counsel respectfully request that that  
5 Motion be granted.

6 Respectfully submitted,

7 Dated: July 12, 2010

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