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

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

16  
17 Plaintiff

18 vs.

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

23 Defendants.  
24  
25  
26  
27

CIVIL ACTION NO. C07 0943 WHA

**CLASS COUNSELS' STATUS  
UPDATE AND MOTION FOR  
FINAL ORDER APPROVING  
PAYMENTS TO THE GLA  
CLASS**

1 Counsel for the GLA Class (“Class Counsel”) submit the following status update, and  
2 report concerning efforts to find additional class members and transmission of third Claim Forms  
3 to Class Members for whom they recently obtained updated address information. Class Counsel  
4 also seek final approval with respect to payments to the GLA Class, including determination of  
5 all remaining issues.

6 **I. BACKGROUND FACTS**

7 As this Court is aware, Class Counsel and their claims administrator, the Garden City  
8 Group (the “Claims Administrator”), have worked diligently since late 2009 to locate and send  
9 Claim Forms to each member of the GLA Class.

10 On November 23, 2009, the Court granted Class Counsel’s Motion for Final Approval of  
11 the Settlement Agreement and Proposed Plan of Distribution. Shortly thereafter, on December  
12 11, 2009, Class Counsel caused the Claims Administrator to mail each Class Member for whom  
13 Class Counsel has a known address a first Claim Form and Release (“Claim Form”). *See*  
14 Declaration of Ronald S. Katz (“Katz Decl.”) ¶ 2; Declaration of Jennifer M. Keough (“Keough  
15 Decl.”) ¶ 3. The Claim Form stated that the recipient must return a completed Claim Form to the  
16 Claims Administrator on or before February 9, 2010, to share in the settlement amount. Katz  
17 Decl. ¶ 2; Keough Decl. ¶ 3.

18 The Claims Administrator received 1,571 Claim Forms that were postmarked on or  
19 before the February 9, 2010 deadline, and distributed funds to each of the Class Members who  
20 submitted a Claim Form by that deadline. Keough Decl. ¶ 4. Nine Class Members timely  
21 returned Claim Forms but such forms were deficient in some manner. *Id.* Four hundred and  
22 eighty eight Class Members did not submit a completed Claim Form by the deadline. *Id.* Of  
23 those 488 Class Members who did not return a completed Claim Form, 261 Class Members had  
24 Claim Forms that were returned as “undeliverable”. *Id.*

25 In light of the large number of “undeliverable” Claim Forms, Class Counsel instructed the  
26 Claims Administrator to conduct “advanced address searches” for those 261 Class Members in  
27 an effort to identify updated addresses. Keough Decl. ¶ 5. This process entailed having the

1 Claims Administrator try to locate updated addresses by submitting the names, addresses, phone  
2 numbers and, if available, Social Security numbers to Choicepoint, a Lexis-based database that  
3 aggregates publicly available records, such as utility and financial records. *Id.* The Claims  
4 Administrator also used available address information to look up Class Member phone numbers  
5 using a reverse directory look-up on the internet and to subsequently make attempts to contact  
6 these individuals by phone in order to get an updated address. *Id.*

7 Despite the fact that the deadline for submitting a completed Claim Form had passed,  
8 Class Counsel then authorized the Claims Administrator to send a second notice to each of those  
9 Class Members who did not timely submit a Claim Form and for whom Class Counsel had a  
10 known address. Katz Decl. ¶ 3; Keough Decl. ¶ 5. Class Counsel notified the Court of their  
11 intentions on March 22, 2010. *See* Class Counsels’ Notice Regarding Distributions from the  
12 Settlement Fund, Docket No. 681.

13 The Claims Administrator mailed each Class Member for whom it had a known address a  
14 second Claim Form in or around March 2010. Keough Decl. ¶ 6. This Claim Form extended the  
15 deadline to June 1, 2010. *Id.* By the time the June 1, 2010 deadline had passed, the Claims  
16 Administrator had received a total of 1,792 completed Claim Forms and had distributed funds to  
17 each of those 1,792 Class Members. *Id.* The Class Administrator also received seven  
18 “incomplete” claim forms that were postmarked on or before the June 1, 2010.<sup>1</sup> *Id.* Two Class  
19 Members – Lester Hayes and Eric Davis – submitted Claim Forms after the June 1, 2010  
20 deadline and thus have yet to be paid. *Id.*

21 Unfortunately, despite the diligent efforts of Class Counsel and the Claims Administrator,  
22 202 of the second Claim Forms that were sent in or around March 2010 were returned as  
23 “undeliverable” a second time. Keough Decl. ¶ 7. Therefore, following the Court’s July  
24 21,2010 Order, the Claims Administrator, with the assistance and under the supervision of Class  
25 Counsel, took the additional step of using social security information provided confidentially by  
26

27 <sup>1</sup> Class Counsel is still working with the Claims Administrator to cure these deficiencies and  
28 fully intends to include these seven Class Members in the final distribution of payments.

1 Defendants to run additional advanced address searches in an attempt to find updated address  
2 information for those 202 Class Members whose Claim Forms were previously returned as  
3 “undeliverable”. *Id.* As a result of these collective efforts, and based on information provided  
4 by Defendants and calls received by retired players, Class Counsel and the Claims Administrator  
5 obtained updated contact information for 76 additional Class Members. *Id.* This information  
6 was conveyed to the Court in a filing made on August 12, 2010. *See* Response re Order Class  
7 Counsels’ Response to July 21, 2010 Order, Docket No. 709.

8 On Friday, August 13, 2010, this Court instructed Class Counsel to send out a third Claim  
9 Form to each of those 76 additional Class Members for whom Class Counsel and the Claims  
10 Administrator was able to obtain updated addresses, and to give those players four weeks to  
11 respond. *See* Order Authorizing Third Round of Mailings, Docket No. 714. Attached as **Exhibit**  
12 **A** to the Keough Declaration is a list of these 76 players.

13 **II. STATUS UPDATE SINCE THE COURT’S AUGUST 13, 2010 ORDER**

14 Following the Court’s August 13, 2010 Order, the third Claim Forms were individually  
15 populated by the Claims Administrator and then mailed on August 23, 2010. Katz Decl. ¶ 4;  
16 Keough Decl. ¶ 8. The deadline to submit a completed third Claim Form was September 20,  
17 2010. Keough Decl. ¶ 8. Around this time, Class Counsel also obtained updated contact  
18 information from three Class Members who called to inquire about the lawsuit. Katz Decl. ¶ 5.  
19 These Class Members were Kerry L. Cash, Stephen Wisniewski, and Otis Wonsley. *Id.* Because  
20 Class Counsel never had current addresses for these three Class Members, and thus previous  
21 efforts to reach them had been unsuccessful, Class Counsel instructed the Claims Administrator  
22 to immediately send them third Claim Forms. *Id.*<sup>2</sup>

23  
24  
25 <sup>2</sup> On July 27, 2010, former Oakland Raider Jack Tatum passed away. A third claim form was  
26 sent to his widow, Denise Tatum, on September 3, 2010, and returned to Class Counsel. Katz  
27 Decl. ¶ 6. In addition, a third claim form was returned to Class Counsel by the widow of Don R.  
28 Paul. *Id.* Class Counsel intend to distribute to these individuals the share of the Settlement Fund  
to which their husbands were entitled.

1 As of September 27, 2010, the Claims Administrator's records indicated that 32 of the 76  
2 additional Class Members (or their representatives)<sup>3</sup> to whom the Claims Administrator sent a  
3 third Claim Form had submitted completed Claim Forms. Keough Decl. ¶ 9. Attached as  
4 **Exhibit B** to the Keough Declaration is a list of those 32 players who submitted completed  
5 Claim Forms. In addition, all three of the Class Members from whom Class Counsel got updated  
6 addresses after the August 23, 2010 submitted completed Claim Forms.

7 All told, Class Counsel has received completed Claim Forms from 1,837 Class Members,  
8 which represents approximately 89% of the Class. Class Counsel also has disbursed  
9 \$8,176,320.81 in Settlement Funds to date, with \$11,457,182.75 remaining in the Escrow  
10 Account.

11 **III. SIX CLASS MEMBERS RETURNED CLAIM FORMS AFTER THE DEADLINE**

12 Six Class Members contacted the Class Administrator or Class Counsel and indicated that  
13 they did not receive the Claim Form that was mailed to them, or that they returned the Claim  
14 Form even though the Class Administrator does not have a record of it. Katz Decl. ¶ 7. These  
15 six Class Members are: Georgia Buchanan, Darrell Colbert, Ray Ethridge, Nick Lowery, Ray  
16 Perkins and Doug Williams. *Id.*

17 Unlike the three Class Members discussed above, the situations for each of these six  
18 Class Members is unique. The individual situation for each of these six Class Members is  
19 summarized on **Exhibit 1** to the Katz Declaration. Class Counsel sent each of them a letter  
20 informing them that they were not entitled to any settlement funds under the strict terms of the  
21 claims process because of the failure to return a completed Claim Form by the deadline. Katz  
22 Decl. ¶ 8. Nonetheless, Class Counsel requested additional information so that Class Counsel  
23 could seek guidance from the Court with respect to their specific situations. *Id.* In order to assist  
24 the Court, Class Counsel asked these Class Members to submit a completed third Claim Form,  
25

26 <sup>3</sup> Charles M. Patrick's representative is Betty Patrck; Ed Pine is confirmed as trustee of the estate  
27 of Jack Pine; Judith Ballman is the surviving spouse of Gary Ballman; and Marion Klein is the  
28 surviving spouse of Richard J. Klein. Keough Decl. ¶ 10.

1 which was enclosed, along with a letter explaining why they either did not or were unable to  
2 timely return a Claim Form within the deadline. *Id.* Collectively attached as **Exhibit 2** to the  
3 Katz Declaration are the six letters (with enclosures) that Class Counsel sent. Five letters were  
4 sent Certified Mail Return Receipt Requested and Class Counsel received Return Receipts for all  
5 five letters.<sup>4</sup> The sixth letter was sent via e-mail because of time concerns. *Id.*

6 As of September 27, 2010, five of these six Class Members – including the Class Member  
7 to whom Class Counsel sent the letter via e-mail – responded with written explanations: Georgia  
8 Buchanan, Darrell Colbert, Ray Ethridge, Ray Perkins and Nick Lowery. Katz Decl. ¶ 10.  
9 These responses are collectively attached as **Exhibit 3** to the Katz Declaration. One other  
10 player, Doug Williams, returned a completed Claim Form, but did not submit an explanatory  
11 response. *Id.*

12 In addition to these six members, as previously noted, two players – Lester Hayes and  
13 Eric Davis –received but did not timely submit a first or second Claim Form by either of the  
14 original two deadlines.

15 After due consideration of all that has occurred with respect to efforts to contact former  
16 players and to get settlement funds distributed to all who are eligible, Class Counsel recommends  
17 that the Court authorize payment from the Settlement Fund to all that currently have a Claim  
18 Form on file with the Claims Administrator, whether or not the Forms were late or deficient  
19 (assuming that deficiencies are ultimately corrected).

### 20 **III. RELIEF REQUESTED**

21 Class Counsel respectfully request that the Court issue a final order approving payment of  
22 the settlement funds to Class Members. As a part of that ruling, Class Counsel requests that the  
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24 <sup>4</sup> Class Counsel also sent a letter and third claim form to a seventh Class Member, Randy White.  
25 Mr. White claims that he never received a first or second claim form, and the Class  
26 Administrator does not have a record of receiving any from him. Mr. White's letter and claim  
27 form was sent Certified Mail Return Receipt Requested and Class Counsel received a Return  
28 Receipt for Mr. White. Class Counsel also phoned Mr. White to follow up on their letter.  
Unfortunately, as of the time of this filing, Mr. White has not responded to Class Counsel's  
communications. Katz Decl. ¶ 9.

1 Court make a ruling authorizing or denying payment from the Settlement Fund to the six Class  
2 Members mentioned above and discussed on **Exhibit 1** to the Katz Declaration, as well for the  
3 two players whose Claim Forms were received after the deadline. Class Counsel further requests  
4 that they be authorized to send final payments to each of the Class Members who is entitled to a  
5 share of the Settlement Fund in the amount to which each Class member is entitled.

6 Attached as **Exhibit 4** to the Katz Declaration is a spreadsheet showing how much each  
7 player who has submitted a third claim form is expected to receive. This spreadsheet includes  
8 the eight players mentioned in the preceding paragraph.<sup>5</sup> The accuracy of the numbers in this  
9 spreadsheet have been confirmed by Class Counsels' damages expert, LECG.

10 In addition, Class Counsel request that they be authorized to pay the Claims  
11 Administrator all outstanding fees through completion of the project, as well as their damages  
12 expert, LECG, for confirming the accuracy of the numbers. Attached as **Exhibit C** to the  
13 Keough Declaration is an invoice from the Claims Administrator.<sup>6</sup> Attached as **Exhibit 6** to the  
14 Katz Declaration is the invoice from LECG. Class Counsel further request that they be allowed  
15 to reimburse McKool Smith, P.C. in the amount of \$7,139.64 for funds that McKool  
16 inadvertently paid to the Claims Administrator that should have come out of the Settlement  
17 Fund.

18 **IV. CONCLUSION**

19 Class Counsel respectfully request that the Court provide the relief requested above,  
20 approve final payment, and order the settlement process closed. Class Counsel believe that it is  
21 time to bring the settlement process to an end and to close administration of the settlement.  
22 Substantial efforts have been made to locate all eligible Class Members and the Court has been  
23

24 <sup>5</sup> Should the Court deny payment to any of the eight Class Members, Class Counsel will amend  
25 the spreadsheet to reflect the Court's ruling and submit it to the Court for final approval. For  
26 purposes of information as to the effect of the Court's ruling, **Exhibit 5** to the Katz Declaration  
27 is spreadsheet showing how much each player who has submitted a third claim form would be  
28 expected to receive if the eight Class Members discussed above were excluded. As before, the  
accuracy of the numbers in this spreadsheet have been confirmed by LECG.

<sup>6</sup> Please note that this invoice does not include past due fees to the Claims Administrator in the  
amount of \$14,185.52.

1 diligent in protecting the rights of the absent Class Members. Although it is entirely possible  
2 that one or more Class Members could surface following the final payments requested by this  
3 Motion, Class Counsel does not believe that it is in the best interest of the Class Members as a  
4 whole to retain any remaining funds or to continue the process of settlement administration with  
5 ongoing costs. Finality is important and any retained funds would likely not be able to be  
6 distributed to Class Members if no further missing Class Members were to surface because  
7 administrative costs would exceed the amount to be distributed.

8  
9 Respectfully submitted,

10 Dated: October 5, 2010

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