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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

HERBERT ANTHONY ADDERLEY, on	)	
behalf of himself and all others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	NO. C 07-00943 WHA
	)	
NATIONAL FOOTBALL LEAGUE PLAYERS	)	
ASSOCIATION, a Virginia	)	
corporation, and NATIONAL FOOTBALL	)	
LEAGUE PLAYERS INCORPORATED d/b/a/	)	
PLAYERS INC., a Virginia	)	
corporation,	)	
	)	San Francisco, California
Defendants.	)	Thursday
	)	November 19, 2009
	)	2:40 p.m.

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

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**BY: LEWIS T. LECLAIR**

(Appearances continued on next page)

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Official Reporter - U.S. District Court**

1 APPEARANCES (CONT'D)

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**BY: CHARLES H. SAMEL**

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1           **THE CLERK:** Calling Civil Action C. 07-0943,  
2 *Herbert Adderley versus National Football League Players*  
3 *Association.* Counsel.

4           **MR. KATZ:** Good morning, your Honor. Good to see you  
5 again. Ron Katz, for the plaintiffs. With me is co-counsel  
6 Lew LeClair, and my colleague, Ryan Hilbert.

7           Mr. Adderley and Mr. Parcher send their regrets,  
8 your Honor. For medical reasons, they are unable to attend.

9           **THE COURT:** Very well. Thank you.

10          **MR. SAMEL:** Good afternoon, your Honor.  
11 Charles Samel, for defendants.

12          **THE COURT:** All right. Welcome back. We're here on  
13 a final hearing on a proposed class settlement. And are there  
14 any class members here, or anyone else who wants to speak on  
15 this?

16          All right. I don't see anyone. Who is raising their  
17 hand? All right. Let's hear from Mr. Katz.

18          **MR. KATZ:** Thank you, your Honor. May it please the  
19 Court. Your Honor has been a stern taskmaster on the  
20 settlement approval, and therefore, I think it's been very  
21 heavily papered. And I hope that it's adequate for your  
22 purposes. I know that your Honor does not like for me to go  
23 over things that we've already put in the papers.

24          **THE COURT:** Listen. Let me just ask something; like  
25 let's go over the plan of distribution.

1           **MR. KATZ:** Sure.

2           **THE COURT:** What is that?

3           **MR. KATZ:** Well, the plan of distribution --  
4 your Honor will recall from the trial that basically our  
5 damages theory was an equal-share theory that mimicked what was  
6 done for the active players. And that's exactly what the plan  
7 of distribution is.

8           We look at how much -- what percentage of the fund  
9 was distributed in each of the years, what players had signed  
10 up for each of those years, and then we figure out their share  
11 for those years, so that if someone only signed up for one  
12 year, they would receive less than someone that had signed up  
13 for two years or three years. So it will exactly mimic what  
14 would have happened, but for the misconduct.

15           **THE COURT:** Now, there was one objection that said  
16 somebody was so insignificant, they never even got on the  
17 football field, and yet they are still able to participate to  
18 the same extent as somebody who was out there, playing in every  
19 game. So what's your response to that objection?

20           **MR. KATZ:** Well, first of all, your Honor, as you  
21 know, there was a class action, so one of the issues was, you  
22 know, that -- that there had to become issues of fact and law.  
23 Those had to predominate. The equal-share theory was a very  
24 important factor in getting over those legal hurdles. So,  
25 although some players are better than others -- some may have

1 played a down, some may have played a thousand downs -- it's an  
2 equal-share theory; just as for the active players, whether  
3 you're a journeyman or whether you're a star or whether you  
4 play a down or you don't play a down or you're on the taxi  
5 squad, you get an equal share. That was extremely significant  
6 for getting this certified as a class action.

7           We did file something on this issue yesterday,  
8 your Honor. And we have had an additional thought on it which  
9 I think may ease your Honor's concern, if you have one.

10           **THE COURT:** What was that that you filed?

11           **MR. KATZ:** The additional thought is that you'll  
12 recall there were two brothers that filed yesterday. One  
13 was -- the Khayat brothers. Mr. Eddie Khayat listed five  
14 people that he said never played a down. He acknowledged --  
15 seemed to acknowledge that four of those had signed contracts.  
16 He said there was one who claimed he played, but he doesn't  
17 know of anyone who knew of this person.

18           We think that a way of satisfying this concern is we  
19 have to send out a form to the class members. We have to send  
20 out a form to get their tax-identification numbers when they  
21 are paid. And when we send out that form, we can ask them to  
22 check a box that says that they played in the N.F.L., they  
23 signed a contract, or they meet the criteria of the class, or  
24 we could even have them sign that they declare that under  
25 penalty of perjury.

1           And that would keep out -- if there is this one  
2 person out there, he was unnamed, his team was unnamed, so we  
3 can't really do any further research on it. We think that that  
4 would settle that problem.

5           Another benefit of the plan of distribution is that  
6 there will be no moneys that don't go to class members, because  
7 this is going to be paid in two tranches. If, for example, we  
8 get something back from the first tranche that says, "Address  
9 is no longer good" or the person, you know, can't be found, or  
10 whatever, that just goes into the pot for the second  
11 distribution, which, of course, is going to be going to people  
12 who received the first distribution. So I think that that  
13 really eliminates the concern, your Honor, if there was one.

14           I mean, I do think we have -- we were diligent in our  
15 discovery. There's no reason to question the integrity of  
16 defendants' discovery requests. And -- but I do think that  
17 this is an extra step that we can take, so that your Honor can  
18 ease that concern.

19           **THE COURT:** So what was -- this form they would say  
20 under penalty -- it would have the class definition?

21           **MR. KATZ:** Right.

22           **THE COURT:** And then they would say, under penalty of  
23 perjury, they are, indeed -- they would specify that they --  
24 well, how will they get a -- I may not have the record. One of  
25 the problems is I don't want to put too big of a record-keeping

1 burden on the class members.

2 **MR. KATZ:** Right.

3 **THE COURT:** So how are they going to know what years  
4 they had a GLA for?

5 **MR. KATZ:** We know that, your Honor. We have their  
6 GLAs. We have everybody's GLAs. There are -- there have been  
7 two categories of -- some people say, "I know I signed a GLA,  
8 but I don't have it." Unless they can produce one, it's not in  
9 the defendants' records. I think those people are just out of  
10 luck.

11 With respect to those who Mr. Khayat --

12 And, as I say, it comes down to one questionable  
13 case, who say, "Well, he shouldn't be in there. He wasn't  
14 really" -- really, there are two criteria. You have to be a  
15 retired player, and you have to have signed a GLA.

16 When we send out this form to them, what we say: You  
17 are going to be getting such-and-such, because you signed a GLA  
18 for this year, this year, and this year. And check off this  
19 box that you are a retired player who signed a GLA, et cetera.  
20 We can cross-check that, because some of them may say, "Well,  
21 you say I signed it for '04 and '05. I actually signed it for  
22 '06." We can check on that; but I don't think that it would  
23 put a heavy -- the only burden that would be on them is, like I  
24 say, if they were a retired player. And it's -- this is a  
25 little shadowy, sometimes, at the edges with the taxi squads;

1 some of the older teams. You know, the Green Bay packers were  
2 originally meat packers. I don't know who showed up on Sunday  
3 for the games, et cetera; but this would be a very, very small  
4 number of cases; but all they would have to say is, "I was a  
5 retired player, and I signed a GLA."

6 **THE COURT:** How do you deal with those six or so  
7 where they weren't in your records? And would you send them a  
8 form, too, to let them try to prove that they were -- did sign  
9 a GLA?

10 **MR. KATZ:** I don't know how we would draw that line,  
11 your Honor, because there's probably over 10,000 retired  
12 players who did not sign GLAs. Again, how the program was run,  
13 et cetera -- you know, that's not something that I was  
14 responsible for. And it was not something that the case was  
15 about. I mean, your Honor was very, very clear with us. This  
16 case is about three things. GLA -- and I don't know how we  
17 could salvage those.

18 **THE COURT:** Were they expressly invited to provide us  
19 with a copy of their GLA?

20 **MR. KATZ:** Yes. Everyone who has called. We receive  
21 calls every day. Everyone who calls with that complaint, we  
22 say, "Please provide us with a signed copy of the GLA, or if  
23 you would like to contact the NFLPA, here's the name of  
24 Mr. Berthelsen. Contact him to see if their records are  
25 correct," but basically, the defendants have done a painstaking

1 search of this. We have every reason to believe that their  
2 painstaking search was accurate.

3 Obviously, nothing's perfect. If somebody can  
4 demonstrate that there was an imperfection, of course, we would  
5 deal with that.

6 And your Honor does have continuing jurisdiction over  
7 this. And so, you know, with respect to problems that may or  
8 may not arise because of the plan of distribution -- and I  
9 think there would be few, quite frankly -- we can come to the  
10 Court and get a resolution of those.

11 **THE COURT:** So this form would -- would indicate what  
12 your records say as to how many years they had a GLA, and then  
13 they would sign at the bottom, verifying under penalty of  
14 perjury that the information is correct, or if it needs to be  
15 corrected, they would indicate how it has to be corrected?

16 **MR. KATZ:** Right.

17 The one thing that we need from them, you know, just  
18 going back to Mr. Kayak's (phonetic) letter, is to certify that  
19 they were a retired player, because the definition of "class"  
20 is you have to be a retired player to sign a GLA. So we think  
21 that everyone is, but this would smoke out anyone who is not.

22 **THE COURT:** If everything went well, when would the  
23 last payments be made?

24 **MR. KATZ:** I think it's June 5th, 2010.

25 **MR. SAMEL:** Well, that's --

1 (Discussion off the record)

2 **MR. KATZ:** Oh, yeah. That would be the payment to  
3 the escrow. And then, of course, it would just be an  
4 administrative matter for getting the money out from that time.  
5 There won't be any hesitation to get it out, but it probably  
6 would take a week or two.

7 **THE COURT:** All right. Well, I don't have any other  
8 questions on that part.

9 I do have a question or two on your -- some of the  
10 other things. You know, on the expenses here, Mr. LeClair is  
11 spending \$1,899 for air travel alone to attend a deposition in  
12 New York.

13 **MR. KATZ:** I believe that was a coach fare,  
14 your Honor. It's a refundable coach fare. I know your Honor  
15 doesn't probably travel as much as you did when you were in  
16 private practice. Basically what the airlines do now is they  
17 have a system for sensing out if you're a business person and  
18 you must do that travel. So if you're making your reservation  
19 within a day or two and it's nonrefundable, they really sock it  
20 to you. Many of the nonrefundable-coach fares are more  
21 expensive than the first-class fares. They've become very,  
22 very sophisticated.

23 **THE COURT:** Why should the class be penalized for  
24 that? You should think ahead, and get the cheaper fare a few  
25 weeks ahead of time, instead of waiting until the last minute,

1 Mr. LeClair. You know how bad this looks? I mean, here are  
2 these football players, struggling. Struggling. And here you  
3 are, raking off \$1,900 for one airplane trip.

4 **MR. LECLAIR:** Your Honor, I just wanted to point out  
5 that American Airlines so dominates Dallas-Fort Worth, and they  
6 so dominate the route between New York and Dallas, that the  
7 fares are utterly ridiculous.

8 **THE COURT:** Maybe you should drive next time.  
9 John Madden won't get on a plane. Get on a train or something.

10 **MR. LECLAIR:** Your Honor, if your Honor is at all  
11 troubled by that, write it off. It's not -- that's not  
12 important to me.

13 I do -- I do believe, as I explained, that this is a  
14 problem created by American Airlines; not by us. And if you  
15 reserve in advance and get a nonrefundable fare, and the depo  
16 moves, you end up paying twice as much as when you rebook it.

17 **THE COURT:** Well, here's Mr. Katz. \$729-a-night  
18 hotel.

19 **MR. KATZ:** That was --

20 **THE COURT:** \$729?

21 **MR. KATZ:** I'm trying to think.

22 **THE COURT:** Well, I'll give you the date. Mid  
23 September '08.

24 **MR. KATZ:** Oh. I think that's when I met  
25 Mr. Adderley in Philadelphia. Yes. Mr. Adderley. Yeah, that

1 was too high, but I think we did make an adjustment. I think  
2 we did make an adjustment for -- didn't we dial down on that?  
3 If -- I may have. We have our legal assistant here,  
4 your Honor. I think we dialed down all of the hotel bills.

5 **THE COURT:** I couldn't tell. It was like throwing --  
6 it was a mess. It was a bunch of -- it was a bunch of things  
7 thrown together. It was -- it's -- yes, you did say that  
8 you -- you knocked off some, but I couldn't -- but yet here it  
9 is right here. So I don't know if this was one of the items  
10 that they got written down or not, but --

11 **MR. KATZ:** Well, I think, your Honor, if you look  
12 at -- let me make two points, if I may.

13 **THE COURT:** Well, okay.

14 **MR. KATZ:** First of all, we -- we did make writeoffs  
15 to compensate for things that would look this way to  
16 your Honor; but there's a second point which I think is even  
17 more important, your Honor, and that is -- let's say I spent  
18 \$798 for a hotel room. I was at risk for losing that entire  
19 \$798. I believe I had a business reason for meeting  
20 Mr. Adderley at The Ritz that night. We were lucky that  
21 Mr. Adderley was able to join us last year; but the point is; I  
22 took that risk. I felt that it was a businesslike thing to do.  
23 And the risk paid off -- okay? -- but I wasn't doing it for  
24 that hotel room.

25 **THE COURT:** Listen. You could have gotten a room for

1 a lot less than \$729 a night. So you -- yes. And you could  
2 have taken less of a risk. I mean, you're gambling with the  
3 possible recovery by the class.

4 Here's one. You told me that Mr. Parcher's airfare  
5 was all written off, but I see "L.P. Parcher, \$2,550 airfare,  
6 round trip from J.F.K. in New York to S.F.O., to attend trial."

7 **MR. KATZ:** Legal Assistant, Donna Wishon.

8 Your Honor, I brought her here for exactly this type of  
9 question. May she address the Court?

10 **THE COURT:** Come on up. Come on up.

11 **MS. WISHON:** We didn't write Mr. Parcher's airfare  
12 all the way off.

13 **THE COURT:** I'm not going to -- I can't even reach  
14 that far. I'm not going to do anything to you.

15 **MS. WISHON:** The --

16 **MR. KATZ:** She's not used to appearing in federal  
17 court, your Honor.

18 **THE COURT:** Let's hear what you have to say.

19 **MS. WISHON:** We didn't actually write it all the way  
20 off. We reduced it to what it would have been if it was  
21 refundable coach at that time.

22 **THE COURT:** All right.

23 **MS. WISHON:** And, if I may --

24 **THE COURT:** I thought it was a total writeoff. I was  
25 told it was a total writeoff; but that's -- I'll go back and

1 see how it was represented in your briefs.

2 **MS. WISHON:** And, if I may, his hotel room you were  
3 just talking about, I believe, was for both him and  
4 Mr. Adderley. It all came out --

5 **MR. KATZ:** Oh, that's right. I paid Mr. Adderley's  
6 hotel room.

7 **THE COURT:** Well, that's more reasonable.

8 **MR. KATZ:** But also, your Honor, the -- you know, I  
9 think one of the fundamental rules of the world is the  
10 Golden Rule, you know: Treat others as you would treat  
11 yourself. And we didn't do anything unusual. We weren't  
12 living high on the hog here. We were trying to conduct our  
13 business in its normal way.

14 And I understand that we don't live in the same way  
15 that everybody else lives. We don't have the same sort of  
16 business that everybody else has, but nothing unreasonable was  
17 done here, your Honor; nothing that we were not willing to pay  
18 ourselves, that we don't pay ourselves on a regular basis, and  
19 that we put ourselves at risk for here.

20 So I think that that's a fair standard to use. I  
21 mean, the Golden Rule. I can't cite it to you from the Federal  
22 Reports, but you know, I know your Honor's familiar with it.

23 **THE COURT:** All right. May I ask again? Are there  
24 any class members here who wish to be heard?

25 All right. I don't have a ruling for you here yet,

1 but I'm going to -- I am going to approve the settlement. And  
2 I'm going to, of course, give you some attorneys' fees and  
3 costs, but I may adjust it some. All right.

4 **MR. KATZ:** Your Honor, may I just consult with my  
5 colleagues for one moment before you finish?

6 **THE COURT:** Sure.

7 **MR. KATZ:** Now, also we have -- you may have them as  
8 well. We have the proposed order providing final approval of  
9 settlement. And we have the proposed final judgment. I don't  
10 know if you have those.

11 **THE COURT:** Hand them up to me so I will -- I will  
12 want to make sure that what I send out --

13 **MR. KATZ:** How many copies would you like?

14 **THE COURT:** Just one is enough, so that I can make  
15 sure that I've covered all of the bases.

16 **MR. KATZ:** Right now I also, your Honor, understand  
17 that you have a -- an order site -- a proposed order website or  
18 something. We'll e-mail it to those; to that site.

19 Let me just consult for one second on the subject of  
20 Mr. Parcher's airfare.

21 (Whereupon a document was tendered to the Court).

22 **THE COURT:** Okay.

23 **MR. LECLAIR:** Administrative claim.

24 **MR. KATZ:** Oh, that's right. Yes, we have a couple  
25 of other matters, too.

1           **MR. LECLAIR:** The -- under the settlement agreement,  
2 which I approved in the preliminary approval order, your Honor,  
3 we're entitled to pay the class-notice fees out of the  
4 administrative fund that exists; the escrow fund.

5           I did know -- it's about \$18,000 we got billed for,  
6 we wanted to pay out of the fund. I didn't know if your Honor  
7 wanted to submit a separate motion and order on that, or  
8 whether the prior approval was sufficient. We'll do it either  
9 way your Honor wants us to do that.

10           **THE COURT:** Why don't you do a short written order?  
11 I approve it. Now let's do it in writing. Submit a written  
12 order for that.

13           **MR. LECLAIR:** Thank you, your Honor.

14           **MR. KATZ:** Your Honor, a couple of other points.

15           We do believe that we wrote off all of Mr. Parcher's  
16 airfares, but there may have been a stray receipt that got in  
17 there.

18           **THE COURT:** Well, no, but you just said it was -- it  
19 was not all -- it was written down, as to what coach would have  
20 been. That's what your legal assistant just told me.

21           **MR. KATZ:** Right. And I've just consulted with the  
22 legal assistant. Our best current belief, your Honor --  
23 there's a lot of paper to deal with here. We're not perfect.  
24 We're the first ones to say that.

25           **THE COURT:** It's on your spreadsheet right here.

1 Which one of these? I'm sorry. Now I misplaced it, but --

2 **MR. KATZ:** Well, let me say it this way, your Honor.

3 **THE COURT:** Right here. Manatt expense breakdown.

4 **MR. KATZ:** Right. It's --

5 **THE COURT:** It's the fourth item down: 2,550.

6 **MR. KATZ:** Your Honor, I'm -- I've never won an  
7 argument with a federal judge, and I don't think I'm going to  
8 start now. Let me say this. If we didn't write it off, we  
9 will write it off. Okay? Is that fair enough?

10 **THE COURT:** Fine. Probably what I will do is make a  
11 horseback adjustment.

12 **MR. KATZ:** A what?

13 **THE COURT:** A horseback adjustment. That's something  
14 that Mr. LeClair would know about.

15 **MR. KATZ:** I have no idea.

16 **THE COURT:** He would know what it is. And it's known  
17 out here as a "haircut," but I don't think you need to submit  
18 more paperwork on the expenses.

19 **MR. KATZ:** Right, but we just want to be straight  
20 with your Honor.

21 **THE COURT:** But I want you to know we looked at this  
22 carefully. And it was not easy for us to reconstruct what you  
23 were trying to tell us, because there were things like this in  
24 there where, on the one hand, you said it was all written off;  
25 but here it is on your chart, so --

1           **MR. KATZ:** One other point, your Honor. And that is  
2 the incentive fee for Mr. Adderley. We have asked for \$60,000,  
3 which I think --

4           **THE COURT:** You know how I feel about incentive fees.

5           **MR. KATZ:** I don't, actually, but --

6           **THE COURT:** I will tell you. Rule 23 got along very  
7 well for many decades when you were a young man and I was a  
8 young man and we came up. Incentive fees didn't creep into the  
9 lexicon until the mid nineties. It's a gimmick. It's a  
10 gimmick to buy off the named plaintiff, because the deal is not  
11 good enough for the named plaintiff, so they give them a little  
12 extra on the side; but my view is incentive fees are almost  
13 always bad, because -- because if it's not good enough for the  
14 named plaintiff, it's not good enough for the rank and file in  
15 the class.

16           I am inclined to give him all of his out-of-pocket  
17 expenses, because he was here for the trial and all that. I  
18 think that would be -- that would be okay; but to try to  
19 compensate him extra like this was -- he was supposed to be  
20 doing this for the good of the order, not as a profit center.  
21 So that's the way I feel.

22           **MR. KATZ:** Well, your Honor --

23           **THE COURT:** I don't like incentive fees.

24           **MR. KATZ:** Right. May I respond?

25           **THE COURT:** Yes.

1           **MR. KATZ:** Mr. Adderley worked over 550 hours on this  
2 case. Mr. Adderley subjected himself to a lot of problems with  
3 a very powerful organization: The NFLPA. He put himself out  
4 there. He came out here, thousands of miles from his home. He  
5 lived here for weeks. He became -- I don't know why they chose  
6 the strategy of attacking Mr. Adderley, but they did. And he  
7 was abused at his deposition. I complained about that. He  
8 went through hell.

9           When he went up there on the witness stand, I'm  
10 telling you, he would rather face Jim Brown coming out of the  
11 back field on a screen pass, than go up there. That was not  
12 his field; that's Mr. Kessler's field. And he bore it all, and  
13 he did it with grace. And I think "incentive fee" is the wrong  
14 word. He didn't do this because of that fee. He didn't even  
15 find out about that fee until very late in the game. He earned  
16 that fee. He earned that fee and he generated monies for this  
17 class, for this group of needy people; the first monies that  
18 they're going to get.

19           And believe me. Every call I get, every day -- and I  
20 get many of them now -- "Can we get this by Christmas?" It  
21 would mean so much to them. So I agree with you about the  
22 phrase "incentive fees." And this is not an incentive fee.  
23 This is -- this is a --

24           **THE COURT:** Well, you shunt use that phrase. That  
25 phrase is the thing that gets me going.

1           **MR. KATZ:** Well, that was a mistake. Mistakes were  
2 made. Mistakes were made.

3           **THE COURT:** Mistakes were made.

4           **MR. KATZ:** And that was one of them; but Mr. Adderley  
5 deserves this. And he's not doing well, your Honor. I know  
6 that sympathy doesn't enter into it, but when he came out  
7 here -- believe me -- that was a true act of courage.

8           **THE COURT:** Where does he live now?

9           **MR. KATZ:** He lives in Mantua, New Jersey.

10          **THE COURT:** All right. I'll think about it. Okay.  
11 Anything more? Is that it?

12          **MR. KATZ:** I think that's it, your Honor.

13          **THE COURT:** All right. Okay. I'll be back in five  
14 minutes or so for the 3:00 o'clock calendar.

15          **MR. KATZ:** One other comment I just wanted to make,  
16 your Honor. I believe that this was the only class action that  
17 went to trial last year.

18          **THE COURT:** In the whole country?

19          **MR. KATZ:** In the country? I believe so. I'm not  
20 absolutely sure. And I personally felt it was a privilege to  
21 be able to participate; that it does take a strong judicial  
22 hand to make it happen. It's very complex. So thank you very  
23 much.

24          **THE COURT:** We'll see you soon.

25                 (At 3:10 p.m. the proceedings were adjourned)

**CERTIFICATE OF REPORTER**

I, LYDIA ZINN, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in C. 07-0943 WHA, Herbert Adderley v. National Football League Players Association, were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

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/s/ Lydia Zinn, CSR 9223, RPR

Wednesday, July 28, 2010