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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY DEPUTY

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9 **and NFL MANAGEMENT COUNCIL**

BY FAX

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 **CHARGERS FOOTBALL COMPANY,**
13 **LLC and NATIONAL FOOTBALL**
14 **LEAGUE MANAGEMENT COUNCIL,**

Case No. **09 CV 2116 JAH**

WMC

15 **Plaintiffs,**

COMPLAINT

16 **v.**

17 **STEVEN FOLEY and NATIONAL**
18 **FOOTBALL LEAGUE PLAYERS**
19 **ASSOCIATION.**

20 **Defendants.**

OK

1 For their Complaint against Defendants/Respondents Steve Foley (“Foley”) and
2 the National Football League Players Association (“NFLPA”), Plaintiffs/Petitioners
3 Chargers Football Company, LLC (the “Chargers”) and the National Football League
4 Management Council (the “NFL Management Council”) hereby allege as follows:

5 **JURISDICTION AND VENUE**

6 1. This is an action to confirm an arbitration award pursuant to section 301 of
7 the Labor Management Relations Act, 29 U.S.C. § 185 *et seq.* This Court has subject
8 matter jurisdiction over this matter under 28 U.S.C. § 1331 and 29 U.S.C. § 185(c).

9 2. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 29 U.S.C.
10 § 185(a).

11 **PARTIES**

12 3. The Chargers are one of the member clubs of the National Football League
13 (“NFL”) with its principal place of business in San Diego, California.

14 4. The NFL Management Council is an unincorporated, non-profit association
15 of the member clubs of the NFL with its principal place of business in New York, New
16 York. The NFL Management Council is the sole and exclusive bargaining
17 representative of present and future employer member clubs of the NFL.

18 5. Steven Foley is a former professional football player who was employed by
19 the Chargers in San Diego, California at all times relevant to this action.

20 6. The NFLPA is a labor organization certified by the National Labor
21 Relations Board as the exclusive bargaining representative of all NFL players. The
22 NFLPA regularly represents players employed in the Southern District of California, and
23 some of its members reside in this judicial district.

1 FACTS

2 7. The parties are bound by a Collective Bargaining Agreement (“CBA”)
3 negotiated between the NFL Management Council (on behalf of the NFL member clubs,
4 including the Chargers) and the NFLPA (on behalf of all NFL players, including Foley).
5 Relevant portions of the CBA are attached as Exhibit A.

6 8. All NFL Players must enter into an NFL Player Contract, which is
7 incorporated in and governed by Article XIV and Appendix C of the NFL CBA. *See Ex.*
8 *A at 39-44; 231-39.*

9 9. In accordance with the CBA, on March 4, 2004, the Chargers and Foley
10 entered into an NFL Player Contract setting forth the terms of Foley’s employment.

11 10. The NFL CBA contains an arbitration provision that mandates that all
12 disputes between the parties involving the interpretation of, application of, or
13 compliance with the NFL CBA and the NFL Player Contract be submitted to final and
14 binding arbitration before a mutually selected arbitrator. *See Ex. A, Art. IX, §§ 1, 6, &*
15 *8.*

16 11. Foley’s NFL Player Contract contains an arbitration provision that
17 mandates that “any dispute” between Foley and the Chargers “involving the
18 interpretation or application of any provision of this contract will be submitted to final
19 and binding arbitration” *Ex. A at 237, ¶ 19.*

20 12. Foley’s 2004-2006 NFL Player Contract with the Chargers contained a
21 “Signing, Reporting and Playing Bonus” clause that provided Foley with a
22 \$1,250,000.00 payment conditioned on Foley’s agreement to “adhere[] to all provisions
23 of” his Contract. *See “Opinion and Award” attached hereto as Exhibit B, at 2-3.* This
24 clause was incorporated into Foley’s re-negotiated contract for 2005-2009. *Id.* at 3-4.

25 13. The “Signing, Reporting and Playing Bonus” clause contained a default
26 provision, which states: “In the event [Foley] fails or refuses to report to Club, or fails
27 or refuses to practice or play with Club at any time for any reason . . . during the
28

1 duration of [the Contract], or [Foley] otherwise breaches the contract, then Player shall
2 be in default.” *Id.* at 3.

3 14. The “Signing, Reporting and Playing Bonus” default provision required
4 Foley to return \$416,666.67 to the Club in the event Foley defaulted in 2006. *Id.*

5 15. On September 3, 2006, Foley was involved in an altercation with an off-
6 duty police officer. As a result of that altercation, Foley received multiple gunshot
7 wounds and severely injured his leg and knee. *Id.* at 4-5.

8 16. As a result of Foley’s injuries, the Chargers placed Foley on Reserve/Non-
9 Football Injury status on September 4, 2006. Once placed on this status, Foley was
10 ineligible to practice and play with the Charges for the 2006 season. *Id.* at 5.

11 17. On February 5, 2007, the Chargers sent Foley a letter stating that Foley was
12 in default of his “Signing, Reporting and Playing Bonus” clause for the 2006 contract
13 year and demanded the return of \$416,666.67. *Id.*

14 18. The Chargers did not receive a response to the February 5, 2007 letter. *Id.*

15 19. On February 14, 2007, pursuant to Article IX of the CBA and Paragraph 19
16 of Foley’s Player Contract, the Chargers and the NFL Management Council filed a non-
17 injury grievance against Foley, demanding the return of his bonus money. *Id.*

18 20. On April 4, 2007, Foley and the NFLPA answered the non-injury grievance
19 filed by the Chargers and the NFL Management Council, denying the grievance in its
20 entirety. *Id.*

21 21. On December 5, 2008, an arbitration hearing was conducted before
22 Arbitrator Michael Beck, an NFL arbitrator. The hearing took place in San Diego,
23 California. Todd Flanagan, an attorney for the NFLPA, appeared on behalf of Foley.
24 David Gardi, an attorney for the NFL Management Council, appeared on behalf of the
25 Chargers. *Id.* at 1-2.

26 22. On May 26, 2009, Arbitrator Beck issued a written final award (“Award”).
27 *Id.*

28

1 23. In relevant part, the Award states as follows: “1. The San Diego Chargers
2 are contractually entitled to receive from Steve Foley the sum of \$416,666.67. 2.
3 Therefore, it is ordered that Steve Foley pay to the San Diego Chargers the sum of
4 \$416.666.67.” *Id.* at 12.

5 24. Under Article IX, Section 8 of the CBA, the Award constitutes the “full,
6 final and complete disposition of the grievance, and will be binding upon the player(s)
7 and Club(s) involved and the parties to this Agreement” Ex. A at 25.

8 25. To date, Foley has failed to repay the sum of \$416,666.67 to the Chargers
9 in accordance with the Award.

10 26. Foley has not sought to vacate, modify, or challenge the Award. The
11 statutory time period within which Foley would have been permitted to vacate, modify,
12 or challenge the Award has expired. *See* Cal. Code Civ. Proc. § 1288 (2009).

13 27. Foley, by his failure to pay the Chargers \$416,666.67 in accordance with
14 the Award, has violated the collectively bargained-for grievance and arbitration
15 procedures set forth in the CBA.

16 28. Plaintiffs/Petitioners are entitled to confirmation of the Award and entry of
17 judgment in conformity with the Award pursuant to the Labor-Management Relations
18 Act, 29 U.S.C. § 185.

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1 WHEREFORE, the Chargers Football Company, LLC and the National Football
2 League Management Council respectfully request that this Court enter an Order:

- 3 1. Confirming the Award;
- 4 2. Entering judgment in favor of the Chargers against Foley and the
5 NFLPA for the sum of \$416,666.67, plus interest from the date of
6 entry of the Award; and
- 7 3. Providing Plaintiffs/Petitioners with such other and further relief as
8 the Court deems proper.
- 9

10 Dated: September 28, 2009

AKIN GUMP STRAUSS HAUER & FELD LLP

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12 By: 

Gary McLaughlin

13 Attorneys for the CHARGERS FOOTBALL
14 COMPANY, LLC and NFL MANAGEMENT
15 COUNCIL
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JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED

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I. (a) PLAINTIFFS
Chargers Football Company, LLC and NFL Management Council

DEFENDANTS
Steven Foley and NFL Players Association

(b) County of Residence of First Listed Plaintiff San Diego, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASE)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Gary McLaughlin; Akin Gump Strauss Hauer & Feld LLP; 2029 Century Park East, Suite 2400; Los Angeles, CA 90067; 310-229-1000

Attorneys (If Known)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

09 CV 2116 JAH

BY FAX

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. 185
Brief description of cause:
Complaint to confirm arbitration award pursuant to Section 301 of the Labor Management Relations Act.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE
DOCKET NUMBER

DATE: 9/28/2009
SIGNATURE OF ATTORNEY OF RECORD: Gary McLaughlin

FOR OFFICE USE ONLY
RECEIPT # 5700 AMOUNT \$350.00 APPLYING IFP JUDGE MAG. JUDGE
MS 9/28/09

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS005700
Cashier ID: msweaney
Transaction Date: 09/28/2009
Payer Name: NATIONWIDE LEGAL INC

CIVIL FILING FEE

For: CHARGES V STEVEN FOLEY
Case/Party: D-CAS-3-09-CV-002116-001
Amount: \$350.00

CHECK

Check/Money Order Num: 113068
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.