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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION, a Virginia
corporation, and NATIONAL FOOTBALL
LEAGUE PLAYERS INCORPORATED
d/b/a PLAYERS INC., a Virginia
Corporation

Defendants.

No. C 07-00943 WHA

CLASS ACTION

**ORDER GRANTING MOTION
FOR FINAL APPROVAL OF THE
SETTLEMENT AGREEMENT
AND PROPOSED PLAN OF
DISTRIBUTION**

On November 19, 2009, the Court held a fairness hearing pursuant to FRCP 23(e)(2) on the settlement reached between Defendants National Football League Players Association and National Football League Players Incorporated, and Plaintiff Herbert Anthony Adderley, on behalf of himself and all others similarly situated, in this certified class action alleging breach of fiduciary duty and breach of contract.

Having scrutinized the terms of the settlement agreement, proposed plan of distribution, and adequacy of notice provided to class members, and having considered the motion for final approval of the settlement agreement, the declarations submitted therewith, oral argument by counsel, letters of objection to the settlement, the award of attorney's fees, costs, and expenses,

1 and all other documents of record in the case, the Court finds that the settlement agreement and
 2 distribution plan are in the best interests of the class, and are fair, reasonable, and adequate under
 3 the factors set forth in *Hanlon v. Chrysler*, 150 F.3d 1011 (9th Cir. 1998).

4 The settlement approved by the Court binds *only* the class as certified, defined as:

5 All retired NFL players who executed a group licensing authorization form (GLA)
 6 with the NFLPA that was in effect at any time between February 14, 2003 and
 7 February 14, 2007 and which contains the following language: “[T]he moneys
 8 generated by such licensing of retired player group rights will be divided between
 the player and an escrow account for all eligible NFLPA members who have
 signed a group licensing authorization form.”

9 Stipulation and Order Revising Class Definition and Notice (Docket No. 289). Falling within this
 10 definition were 2,074 retired NFL players (TX. 2054)¹, of which twelve submitted a valid and
 11 timely request for exclusion from the class pursuant to the class notice.² As such, the total
 12 number of class members who did not opt-out, and are therefore bound to the settlement, is 2,062.
 13 Both parties stipulated as to this final number in their “Amended Joint Stipulated Facts” filed
 14 before trial (Dkt. 482).

15 In finding that the settlement and distribution plan are fair and reasonable, fifty-three
 16 letters submitted by class members and non-class members regarding the terms of the settlement
 17 were considered by the Court. Two of these letters praised the outcome reached by class counsel.
 18 Of the remaining letters objecting to various aspects of the settlement, most did not make cogent
 19 objections to the settlement’s fairness, and over half of these letters were “form letters” drafted by
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 25 ¹ This class roster admitted at trial, listing the names of all 2,074 retired football players who signed
 26 qualifying GLAs and the years in which they signed those GLAs, was also made available online at
<http://retiredplayers.org>. It is still available as of the date this Order was filed.

27 ² The settlement agreement names and expressly excludes these “Opt-Outs” from the class. They are
 28 John Baker, Richard J. Kelvington, Lynn Chandnois, John E. Demarie, Dan Goich, Daniel V. Direzo, James
 “Scottie” Graham, Deacon Jones, Steve M. Largent, Brig Owens, Ben Gucci, Donald R. Testerman, and Andre
 Collins. A careful reader might notice that there are thirteen rather than twelve names. This is because Mr.
 Collins was later determined to not fall within the definition of the certified class (he is not among the 2,074).

1 a non-class member.³ Moreover, a significant number of objections were signed by non-class
2 members, whose rights are unaffected by this settlement.

3 One concern raised in a few letters, and discussed in depth at the fairness hearing, was the
4 treatment of non-class members who now claimed to be improperly excluded from the class list.
5 The Court agrees with class counsel that these individuals, who came forward only after notice of
6 the settlement was provided, should not be treated as class members under the settlement
7 agreement given their failure, despite opportunity according to counsel, to show that they signed
8 qualifying GLAs. Class counsel is ordered to notify these individuals promptly in writing,
9 quoting the language of this paragraph, of their non-class member status under the settlement
10 agreement. Similarly, the Court agrees with class counsel that current class members should be
11 required to attest to their entitlement to settlement proceeds before receiving funds under the
12 proposed plan of distribution.

13 Finally, the Court notes that the scope of release in the settlement agreement was
14 narrowed significantly to protect the interests of absent class members. At the hearing for
15 preliminary approval of the settlement, vague and overbroad language in the proposed release by
16 class members was rejected.⁴ Ultimately, the Court obtained modifications to the settlement
17 agreement expressly stating that claims against non-parties to the class action – such as Electronic
18 Arts and other licensees of the Defendants – were *not* released, and that the release was *limited to*
19 *certified or asserted claims*. Preliminary approval of the settlement was only granted after
20 numerous revisions were made to the original settlement agreement clarifying these issues, and
21 the Court was satisfied that the version of the agreement and notice of settlement mailed to class
22 members clearly communicated these limitations.

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25 ³ The form letter contained allegations that the initial version of the proposed settlement did *not* release
26 licensees of the defendant. This allegation is not supported by any evidence, and moreover, the final version of
the settlement contains language clearly stating that claims against licensees are not released.

27 ⁴ As an illustration, the original settlement agreement released “any and all claims” that Releasors
28 “ever had, now have, or hereafter can, shall, or may have against the Releasees, whether known or unknown,
that relate in any way” to the subject of the claims certified or alleged in the class action. Language defining the
scope of Releasors and Releasees was similarly sweeping in the original agreement.

1 Accordingly, the entire matter of the proposed settlement having been duly noticed, and
2 having been fully considered by the Court: IT IS HEREBY ORDERED that the Motion for Final
3 Approval of the Settlement Agreement and Proposed Plan of Distribution is **GRANTED**.⁵

4 IT IS FURTHER ORDERED that (1) upon consideration of the entire record by the Court,
5 the settlement agreement is deemed fair, reasonable, adequate, and in the best interests of the
6 class under the factors set forth in *Hanlon*; (2) the plan of distribution is approved as fair and
7 reasonable; and (3) the settlement shall be consummated subject to its terms

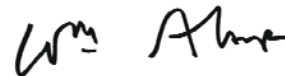
8 IT IS FURTHER ORDERED that class counsel notify non-class members who claimed to
9 be improperly excluded from the class list pursuant to the instructions set forth in this order.

10 IT IS FURTHER ORDERED that class counsel, as discussed and agreed upon at the
11 fairness hearing, send a written form to class members requiring each member to attest, under
12 penalty of perjury, that he is entitled to the share of the settlement fund that class counsel's
13 records indicates he will receive (e.g. that he is a retired football player and signed qualifying
14 GLAs in the years on record) before receiving any proceeds from the settlement. Class counsel
15 shall submit an exemplar of this form with a declaration confirming that delivery of this form has
16 taken place once such delivery has occurred. Once all funds have been distributed in accordance
17 with this order, counsel shall submit a final declaration certifying to full compliance, and bring
18 the case to a complete close.

19 IT IS FURTHER ORDERED that judgment is accordingly **ENTERED**, all certified and
20 asserted claims in this class action against all parties to the action are dismissed with prejudice to
21 the extent *limited* by the terms of the settlement agreement and this order, and the Court will
22 retain jurisdiction over this matter for the purpose of assuring compliance with the agreement.

23 **IT IS SO ORDERED.**

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25 Dated: November 23, 2009.



26 _____
WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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28 ⁵ The Court properly considered the reasonableness of attorney's fees and costs in evaluating the
fairness and adequacy of the settlement, as well as the reasonableness of the requested incentive fee for the lead
plaintiff, and has ruled on these issues by separate order.