

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

Kevin Turner and Shawn Wooden, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

National Football League and NFL Properties, LLC,
successor-in-interest to NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:

Shenaq PC v. [REDACTED]
Attorney Lien Dispute
(Doc. No. 10674)

AND

Howard and Associates, P.A. v. [REDACTED]
Attorney Lien Dispute
(Doc. No. 11049-11)

REPORT AND RECOMMENDATION

DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE

September 18, 2020

Before the Court for Report and Recommendation is the assertion of Attorney Liens by Shenaq PC ("Shenaq") and Howard and Associates, P.A. ("Howard") against the Award granted to their former joint client, Settlement Class Member ("SCM") [REDACTED], in the litigation that became part of this class action, *In re: National Football League Players' Concussion Injury Litigation*, No. 12-md-2323 (E.D. Pa.). Shenaq filed its Notice of Attorney's Lien ("Lien") and a

Petition to Establish Attorney's Lien (Doc. No. 10674) on June 14, 2019 seeking reimbursement of its costs and attorney's fees. Its former co-counsel, Howard, which entered into the original contingent fee agreement ("CFA") with [REDACTED], filed its own lien on April 8, 2020, seeking reimbursement of costs it expended and recovery of attorney's fees as well. (Doc. No. 11049-11.) [REDACTED] is currently represented by Pro Athlete Law Firm, P.A. ("Pro"). On June 18, 2019, after [REDACTED] retained Pro, the Claims Administrator issued to it a Notice of Shenag's lien. It issued a Notice of Howard's lien on April 29, 2020. [REDACTED]'s Notice of Monetary Award Claim Determination followed on July 1, 2020.

The District Court referred all Petitions for individual attorney's liens to this Magistrate Judge. (Doc. No. 7746). Rules Governing Attorneys' Liens ("Rules") were adopted on March 6, 2018 and amended on October 3, 2018. (Doc. Nos. 9760 and 10283). In accordance with these rules, the Claims Administrator has referred the Lien Dispute and the Withdrawal to this Court for Report and Recommendation.

Pursuant to Rule 24, the parties submitted a Withdrawal of Attorney's Lien Dispute (the "Withdrawal") dated September 8, 2020. The Withdrawal clearly indicates the portion of the Award that each law firm will receive and sets forth an agreement as to how to disburse any portion of the 5% holdback that may be released in the future. The agreement was negotiated by law firms that were informed and concerned about their own interest. Upon review of the Withdrawal and the contingency fee agreements, and in consideration of the Presumptive Fee Cap (Doc. No. 9863), we conclude that the fee to be paid to each firm is reasonable, does not exceed the percentage for which the parties contracted, and that the collective fees are within the percentage allowed under the 22% Presumptive Fee Cap. Accordingly, we conclude that the Withdrawal should be granted and that the Claims Administrator should be ordered to distribute the attorneys' fees to

the parties as set forth in the Withdrawal.¹ We also have reviewed the itemized costs submitted by the lienholder firms and the provision of the fee agreement [REDACTED] entered into that provided for reimbursement of costs expended by Howard and its associated counsel, Shenaq. We conclude that those forms are entitled to the costs reflected in the Withdrawal.

RECOMMENDATION

AND NOW, this 18th day of September, 2020, it is respectfully **RECOMMENDED** that the withdrawal of lien dispute be **GRANTED** and the Claims Administrator be ordered to distribute the attorneys' fees and costs as is set forth in the Withdrawal submitted by the Parties and in accordance with the provisions of the Settlement Agreement and all Court Orders regarding implementation.

The Parties may file objections to this Report and Recommendation. *See* Rule 25(d).

BY THE COURT:

/s/ David R. Strawbridge, USMJ
DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE

¹ Pursuant to the Court's Order Regarding Withholdings for Common Benefit Fund (Doc. No. 10104), 5% of the Award is currently being held in the Attorney's Fees Qualified Settlement Fund, where it must remain until further order of the Court. The Claims Administrator will ensure that if any portion of those funds are later released they will be paid pursuant to the agreed terms in the Withdrawal.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

KEVIN TURNER AND SHAWN
WOODEN, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE and
NFL PROPERTIES LLC, successor-in-
interest to NFL Properties, Inc.
Defendants.

No. 12-md-2323-AB

MDL No. 2323

Hon. Anita B. Brody

THIS DOCUMENT RELATES TO:

Shenaq PC v. [REDACTED]
Attorney Lien Dispute
(Doc. No. 10674)

AND

Howard and Associates, P.A. v.
[REDACTED]
Attorney Lien Dispute
(Doc. No. 11049-11)

ORDER

On February 16, 2021, the Court received notice that the Claims Administrator found evidence that Howard & Associates presented to the Court inflated costs for reimbursement in a lien dispute with a Settlement Class Member.

AND NOW, on this **22nd** day of **February, 2021**, it is **ORDERED** that the Report and Recommendation regarding the above-captioned attorney lien dispute (ECF No. 11190) is **REMANDED** to Judge Strawbridge for reconsideration in light of the Claims Administrator's findings.

S/Anita B. Brody
ANITA B. BRODY, J.

XC: Chambers of

Hon. David R. Strawbridge

Copies **VIA ECF**

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

Kevin Turner and Shawn Wooden, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

National Football League and NFL Properties, LLC,
successor-in-interest to NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:

Shenaq PC v. SPID 100008517
Attorney Lien Dispute No. 1469

AND

Howard and Associates, P.A. v. SPID 100008517
Attorney Lien Dispute No. 1646

SUPPLEMENTAL REPORT AND RECOMMENDATION

DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE

December 21, 2021

Before the Court for Report and Recommendation is the assertion of Attorney Liens by Shenaq PC ("Shenaq") and Howard and Associates, P.A. ("Howard") against the Award granted to their former joint client, Settlement Class Member ("SCM") No. 100008517, [REDACTED] ("Player"), in the litigation that became part of this class action, *In re: National Football League Players' Concussion Injury Litigation*, No. 12-md-2323 (E.D. Pa.). Player first entered into a contingent fee agreement ("CFA") with Howard in April 2017, and that firm later brought in Shenaq as co-counsel. Player is currently represented by lawyers at Pro Athlete Law Firm, P.A. ("Pro"), who

he retained on May 22, 2019 during the pendency of a claim filed in April 2019 by Shenaq.

Shenaq filed a Notice of Attorney's Lien in June 2019 "for reasonable attorney's fees plus reasonable expenses" and identified the petitioners as "Shenaq PC and its co-counsel," which it did not name.¹ (Lien Doc. 2a.) Howard filed its own lien in April 2020, seeking reimbursement of costs it expended and recovery of attorney's fees as well. (Lien Doc. 2b.)

Pro received notice from the Claims Administrator of Shenaq's lien on June 18, 2019 and of Howard's lien on April 29, 2020. The Claims Administrator ultimately approved Player for an award and issued a Notice of Monetary Award Claim Determination on July 1, 2020. With the approval of Player's award and the withholding of funds for counsel fee, the lien disputes became ripe for review.

The District Court referred all Petitions for individual attorney's liens to this Magistrate Judge, *see* Doc. No. 7746, and Rules Governing Attorneys' Liens ("Rules") were adopted on March 6, 2018 and amended on October 3, 2018. (Doc. Nos. 9760 and 10283). Pursuant to these Rules and through the Claims Administrator, we issued a Schedule of Document Submission on September 1, 2020 that was addressed to Pro, Shenaq, and Howard (the "Parties").

On September 8, 2020, the Parties submitted a global Withdrawal of Attorney's Lien Dispute form pursuant to Rule 24 (the "Withdrawal"), which addressed both of the pending liens. The Withdrawal set out an agreement that had been reached as to the portion of Player's Monetary Award that each law firm would receive as its fee from funds currently available for distribution, as well as how to allocate any portion of the 5% holdback that may be released in the future. The

¹ We suspect that the "co-counsel" to whom Shenaq referred was Howard, but resolution of this question is not necessary for the disposition we propose in this Report and Recommendation.

agreement was negotiated by law firms that presumably were informed and concerned about their own interest.

We reviewed the Withdrawal and the contingency fee agreements of Howard and Pro, and we understood Player to have consented to joint representation by Howard and Shenaq. In consideration of the Presumptive Fee Cap (Doc. No. 9863), we concluded that the fee to be paid to each firm was reasonable, as the allocations did not exceed the percentage for which the Parties contracted with Player and given that the collective fees were within the percentage allowed under the 22% Presumptive Fee Cap. We concluded that the Withdrawal should be granted and that the Claims Administrator should be ordered to distribute the attorneys' fees to the Parties as set forth in the Withdrawal. We also reviewed the itemized costs submitted by the lienholder firms and the provision of the fee agreement Player entered into that provided for reimbursement of costs expended by Howard and any associated counsel, which at some point came to be Shenaq. We concluded that the firms could recover the fees and the costs reflected in the Withdrawal.

On September 18, 2020 we submitted a Report and Recommendation to the Court that it grant the withdrawal of the lien dispute and order the Claims Administrator to distribute the attorneys' fees and costs as set forth in the Withdrawal. Before the Court rendered a final decision, however, it learned of a November 25, 2020 report from the Claims Administrator (updated on December 10, 2020) that an audit revealed evidence that Howard presented to the Court inflated costs for reimbursement in a lien dispute concerning representation of another SCM.² In that case,

² The Court has been provided a copy of the full Audit Report. A redacted version of the report and the subsequent "Special Masters' Rule 27 Decision on the Report of Adverse Finding Regarding Howard & Associates, P.A., and Related Parties" of June 22, 2021 is available at: https://www.nflconcussionsettlement.com/Docs/howard_associates_sm.pdf.

Howard also sought reimbursement for costs attributable to three providers for which it seeks reimbursement here. The Court remanded the Report and Recommendation in this case “for reconsideration in light of the Claims Administrator’s findings.” (Doc. 11291.)

A Closer Look

Representations as to costs in the lien filings

In this matter, Shenag first filed a lien on behalf of itself “and its co-counsel” – which it did not name – “for reasonable attorney’s fees plus reasonable expenses,” and noted that “[p]roof of Attorney’s lien will be submitted to the Claims Administrator.” It simultaneously submitted to the Claims Administrator a copy of Player’s CFA *with Howard* (not with Shenag) and a statement that “Shenag PC and its co-counsel, Howard & Associates, P.A. have incurred a total of \$6,648.96 in costs” in connection with “the workup” of Player’s concussion claim. (Lien Doc. 2a.) Howard filed its lien several months later and sought “reasonable attorney’s fees, plus expenses,” although it did not itemize any expenses in its lien filing for which it sought recovery.

Representations as to costs in the withdrawal submissions

The Claims Administrator served the Schedule of Document Submissions on September 1, 2020 calling for opening briefs to be filed in the lien dispute involving the three firms. A week later, the Parties presented their Withdrawal form, reflecting a proposed resolution of the attorney’s lien disputes. The Withdrawal agreement provided that Shenag would receive reimbursement for costs in the amount of \$6,648.96 and that Howard would similarly receive reimbursement for costs in the amount of \$3,850.00.³ The Withdrawal form advised the Parties that:

Costs for the current attorney or Attorney Lienholder(s) must have been provided to the Claims Administrator in the Statement of Fees and Costs and the Lien assertion(s), respectively. Each attorney

³ The Withdrawal also provided for a division of attorney’s fees among the three firms.

must attach to this Withdrawal an itemized list of costs with a brief description of each cost and the date each cost was incurred.

(Lien Doc. 11.) *See also* Lien Rule

Shenaq's Withdrawal form attached two additional pages concerning costs. The first purported to provide "an itemized list of costs incurred by Shenaq PC" but identified a different SCM. (Lien Doc. 12.) When we requested clarification as to the client for whom these costs were incurred, Shenaq re-submitted the list to identify Player by the correct name and SPID and modified the introductory language that referred to the costs incurred as "by Shenaq PC *and co-counsel*." (*Id.* (emphasis added).) The list of costs remained the same: \$998.96 for transportation and travel expenses; \$4,500.00 for a neuropsychology evaluation; and \$1,450.00 for a neurology evaluation. The list did not identify any of the providers of these evaluations and dated them only to "2018." The total added to \$6,948.96. The second page of the Withdrawal submission by Shenaq was the statement submitted to the Claims Administrator at the same time it filed its lien on the docket representing that "Shenaq PC and its co-counsel, Howard & Associates, P.A. have incurred a total of \$6,648.96 in costs in connection wit[h] the workup of [Player's] NFL Concussion Claim."

Howard also attached to its Withdrawal submission two pages concerning costs, neither of which made reference to the statement of Shenaq as to costs incurred by it or Howard. The first appended page was a chart that listed a column of "expense[s]" and another column identified only as "HA" – perhaps referencing Howard & Associates as the party that advanced the funds. Expenses listed as "Flights," "Uber," and "Lodging" did not have a corresponding cost under the "HA" column but rather were blank. However, "food" was listed as \$200.00; a particular MAF physician identified in the Audit Report as "Provider 8" was associated with a cost of \$2,500.00; two neuropsychologists identified in the Audit Report as "Providers 6 and 7" were associated with

a \$4,000.00 expense; and a “CDR” expense was listed as \$1,000.00. The total was \$7,700.00. A handwritten note added: “These expenses were incurred on 4/26/17.” The next page of the submission was a copy of a September 9, 2020 letter from Tim Howard of Howard & Associates to Player’s current counsel at Pro, repeating the list of costs described on the first page (and spelling out CDR as “Clinical Dementia Rating”) and reporting that the firm would provide a 50% discount and seek only \$3,850.00 for its costs. (Lien Doc. 13.)

When we compare the costs for which Howard and Shenaq seek reimbursement (whether “discounted” or not), the following chronology emerges:

Date cost allegedly incurred	Reason for expenditure	Amount of cost	Party seeking reimbursement
4/26/2017	[Provider 8] ⁴	\$2,500.00	Howard
4/26/2017	[Providers 6 & 7]	\$4,000.00	Howard
4/26/2017	Clinical Dementia Rating	\$1,000.00	Howard
4/26/2017	Food	\$200.00	Howard
2018	Transportation and travel expenses incurred as part of medical evaluations	\$998.96	Shenaq on behalf of “Shenaq and co-counsel” (Howard)
2018	Neurology evaluation (provider not identified)	\$1,450.00	Shenaq on behalf of “Shenaq and co-counsel” (Howard)
2018	Neuropsychology evaluation (provider not identified)	\$4,500.00	Shenaq on behalf of “Shenaq and co-counsel” (Howard)

We know that the providers listed by Howard from 2017 are the same ones whom Howard was found in the Claims Administrator’s Audit Report to have improperly influenced as to reports

⁴ These providers’ names were redacted from the publicly-filed version of the Audit Report and Special Masters’ decision. We refer to them as they were referred to in the redacted documents.

prepared for other SCMs who were Howard's clients.⁵ In addition, the Audit Report found evidence of widespread inflation of costs by Howard.⁶ While the Audit did not turn up evidence of what Howard actually paid to Providers 6, 7 or 8 for their contribution to the representation of his player clients, the Audit Report did find evidence of inflation of the cost of a "CDR."⁷ Therefore, we cannot recommend a Withdrawal be granted where Howard receives any reimbursement (even at a "discount" as its communication suggests) for costs it allegedly advanced on behalf of Player.

Shenaq has not identified by name the providers who conducted the neurology and neuropsychology evaluations it refers to in 2018, so we cannot assess at this time whether they are

⁵ The Audit Report revealed, for example, that Attorney Howard sent an email to these three providers on July 6, 2017 enclosing a "working draft report" in Microsoft Word format for them to use for any "updates" on testing previously done for his clients. (Audit Report at 28-29.) Subsequent email communications reveal that Providers 6 & 7 were being listed as signatories on neuropsychological testing reports for clients that neither had personally examined but rather whose testing had been administered by another individual, who lacked the credentials to render an opinion in the Settlement Program. (*Id.* at 29-30.) Provider 6 advised the Claims Administrator that she never personally examined any players, yet her name appeared in neurologist's reports as the source of the neuropsychological testing. (*Id.* at 27.)

⁶ The Audit Report suspected that in one case in which Howard sought costs as part of an attorney's lien, it listed the cost of a neurology evaluation at \$7,000 but only paid that provider \$3,500. The Audit Report also described "a picture of a complex process for cost billing that Howard has set up" using a case support services company for funding. The principal of that business, for example, advised Howard's then-preferred neurologist in one case to bill the funding company a discounted rate of \$500 or \$525 for an MRI (which was the facility's discounted cost, according to the neurologist) but that the funding company would then bill Howard \$1,000 for that MRI. The cost of \$1,000 would then be passed on to the client, leaving the funder and/or Howard to the difference. In a lien dispute involving a different client than referenced in the billing communications described above, Howard represented that an MRI from that same facility cost \$1,125, a mark-up of more than 100%.

⁷ Howard listed the CDR in this case, incurred on April 26, 2017, at \$1,000. In another case examined in the Audit, a CDR attributed to a particular nurse on January 4, 2017 was listed as \$900 yet that nurse told the Audit team that she was paid only \$500 per CDR evaluation. (Audit Report at 40.)

providers that may have been improperly manipulated in the manner described in the Audit report. But inasmuch as Shenag is seeking reimbursement on behalf of itself *and Howard*, we would be hesitant to accept the validity of the expenses without further information. We would expect that any repeated request by Shenag for reimbursement for expenses in this lien dispute would be supported by further information as to the dates on which the costs were advanced, the name of the provider that conducted the evaluation, and the entity that advanced the costs.

With the benefit of the findings of the Audit Report described above, we cannot recommend that the Withdrawal presently before the Court be granted, as it provides reimbursement to Howard (and to Shenag potentially acting on behalf of Howard) for costs which may be inflated and/or which are attributed to providers with whom Howard has interfered on behalf of other clients seeking awards in this Settlement Program. These concerns also extend to the question of whether the Court should approve of any Withdrawal proposal in which fees are allocated to Howard.

RECOMMENDATION

AND NOW, this 21st day of December, 2021, it is respectfully **RECOMMENDED** that the withdrawal of lien dispute be **DENIED** and the Claims Administrator be ordered to issue a new Schedule of Document Submissions for briefing and resolution of these lien disputes.

The Parties may file objections to this Report and Recommendation. *See* Rule 25(d).

BY THE COURT:

/s/ David R. Strawbridge, USMJ
DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA
CIVIL DIVISION

In re:

HOWARD & ASSOCIATES,
ATTORNEYS AT LAW, P.A.,

Assignor,

Case No. 2021-CA-001162

to

LARRY S. HYMAN,

Assignee.

_____ /

**AGREED ORDER ON ASSIGNEE'S MOTION FOR ORDER AUTHORIZING THE
TRANSITION AND ASSIGNMENT OF THE ASSIGNMENT ESTATE'S INTERESTS
IN THE NFL CONCUSSION LITIGATION TO GOLDBERG PERSKY WHITE P.C.**

ON 10-7-21 for a 54

THIS CASE came before the Court ~~without a~~ hearing upon the Motion of the assignee, Larry S. Hyman (the "Assignee"), for an order approving the transition and assignment of the Assignment Estate's interests in the NFL Concussion Litigation (the "Motion")¹ to Goldberg Persky White P.C. ("Goldberg"). The Assignee filed a *Notice of Intent to Upload Proposed Orders* (the "Notice") which was served on August 27, 2021, upon all interested parties with the legend informing the parties of their opportunity to respond within twenty-one (21) days of the date of service of the Notice and no party filed a response within the time permitted. Further, by submission of this order for entry, the submitting counsel represents that Virage SPV 2, LLC, the largest creditor, consents to its entry. Accordingly, it is

ORDERED that:

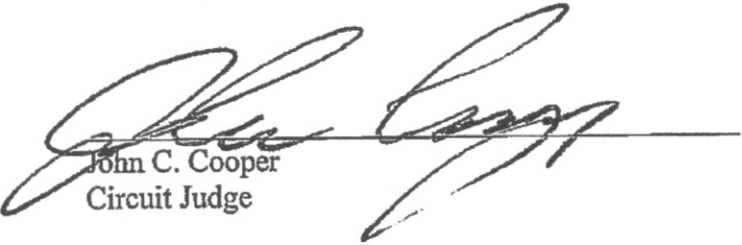
¹ Capitalized terms not otherwise defined herein shall have the meaning as ascribed to such terms in the Motion.

E-Filed and E-Served
by SB on OCT 18 2021

Exh. A. 1 2

1. The Motion is granted.
2. The Assignee is hereby authorized to transition and assign the Assignment Estate's interests in the NFL Concussion Litigation to Goldberg pursuant to the terms of the Agreement attached to the Motion as Exhibit A.

DONE AND ORDERED in Tallahassee, Leon County, Florida on this 18th day of October, 2021.


John C. Cooper
Circuit Judge

cc:

Plaintiff's counsel
shall serve all
interested persons
& entities.

J u

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

Kevin Turner and Shawn Wooden, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

National Football League and NFL Properties, LLC,
successor-in-interest to NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:

Shenag PC v. SPID 100008517
Attorney Lien Dispute No. 1469

AND

Howard and Associates, P.A. v. SPID 100008517
Attorney Lien Dispute No. 1646

ORDER

AND NOW, this 1st day of September, 2022, upon consideration of the Report and Recommendation of United States Magistrate Judge David R. Strawbridge (ECF No. 11563), and any objections thereto, it is **ORDERED** that:

1. The Report and Recommendation is **ADOPTED**;
2. The Withdrawal of the Lien Dispute is **REJECTED**; and
3. The Claims Administrator is **ORDERED** to issue a new Schedule of Document Submissions to the Parties as to the two lien disputes.

BY THE COURT:

s/ANITA B. BRODY, J.

ANITA B. BRODY, J.

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY LITIGATION

No. 2:12-md-02323-AB
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Kevin Turner and Shawn Wooden, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

National Football League and NFL Properties, LLC,
successor-in-interest to NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:

Shenaq PC v. SPID 100008517 (██████)
Attorney Lien Dispute No. 1469

AND

Howard and Associates, P.A. v. SPID 100008517
Attorney Lien Dispute No. 1646

EXPLANATION AND ORDER

DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE

November 23, 2022

Before the Court is an assertion of Attorney's Liens by Shenaq PC ("Shenaq") and Howard and Associates, P.A. ("Howard")¹ against the Award granted to their former joint client, Settlement Class Member ("SCM") No. 100008517, ██████ ("Player"), in the litigation that became part of this class action, *In re: National Football League Players' Concussion Injury Litigation*,

¹ The lien of Howard is now pursued by Goldberg, Persky & White, which was retained by a receiver appointed in Florida state court for the benefit of Howard's creditors.

No. 12-md-2323 (E.D. Pa.).² Player first entered into a contingent fee agreement (“CFA”) with Howard in April 2017, and that firm later brought in Shenaq as co-counsel. Player is currently represented by lawyers at Pro Athlete Law Firm, P.A. (“Pro”), which he retained on May 22, 2019 during the pendency of a claim filed in April 2019 by Shenaq.

Shenaq filed a Notice of Attorney’s Lien in June 2019 “for reasonable attorney’s fees plus reasonable expenses” and identified the petitioners as “Shenaq PC and its co-counsel,” which it did not name. (Lien Doc. 2a.) Howard filed its own lien in April 2020, seeking reimbursement of costs it expended and recovery of attorney’s fees as well. (Lien Doc. 2b.) Pro received notice from the Claims Administrator of Shenaq’s lien on June 18, 2019 and of Howard’s lien on April 29, 2020.

The Claims Administrator ultimately approved Player for an award and issued a Notice of Monetary Award Claim Determination on July 1, 2020. With the approval of Player’s award and the withholding of funds for counsel fee, the lien disputes became ripe for review under the Rules Governing Attorneys’ Liens (“Rules”), which were adopted on March 6, 2018 and amended on October 3, 2018. (Doc. Nos. 9760 and 10283.)

Initial Withdrawal Proposal

On September 8, 2020, Howard, Shenaq, and Pro (the “Parties”) submitted an initial Withdrawal of Attorney’s Lien Dispute form pursuant to Rule 24 (the “Initial Withdrawal”), which

² The District Court referred all Petitions for individual attorney’s liens to this Magistrate Judge. (Doc. No. 7746.) Rules Governing Attorneys’ Liens (“Rules”) were adopted on March 6, 2018 and amended on October 3, 2018. (Doc. Nos. 9760 and 10283.) Pursuant to Rule 12, the Parties were advised of their right to consent to have the Magistrate Judge issue a final Order to resolve this dispute. The Parties have so consented. Accordingly, this Explanation and Order will serve as the final decision of the Court concerning this attorney lien dispute.

addressed both of the pending liens. The Initial Withdrawal set out an agreement that had been reached as to the portion of Player's Monetary Award that each law firm would receive as its fee from funds available for distribution, as well as how to allocate any portion of the 5% holdback that may be released in the future. While that Withdrawal proposal was pending final court approval, however, the Court learned that a Claims Administrator audit indicated that Howard presented to the Court inflated costs for reimbursement in a lien dispute concerning representation of another SCM. In that case, Howard had sought reimbursement for costs attributable to three providers for which it sought reimbursement here. As a result, the Initial Withdrawal proposal was rejected and the matter was referred back to the Claims Administrator, which issued another schedule of document submissions for the litigation of the liens. *See generally* Doc. Nos. 11291, 11563, 11825.

Second Withdrawal Proposal

Guided by the Court's prior action, and with the involvement of new counsel acting on behalf of Howard, the Parties devised a new Withdrawal proposal, which they submitted to the Claims Administrator over the period of October 17-19, 2022. The Second Withdrawal sets out a new agreement that has been reached as to the portion of Player's Monetary Award that would be payable to the appropriate Parties as their fee from funds currently available for distribution, as well as an agreement on how to allocate any portion of the 5% holdback that may be released in the future. The Second Withdrawal also reflects a revised agreement as to the costs incurred by the Parties that will be reimbursed from Player's Award. The Second Withdrawal was negotiated by parties that are presumably concerned about their own interest and, as to Pro, to the interest of Player. The Parties are also presumably well-informed at this point about the positions of the other

Parties concerning allocation of fees and costs that may not have been properly incurred by Howard, given the Court's prior expression of its concerns.³

We have carefully considered the Second Withdrawal and the contingency fee agreements. In consideration of those documents and the Presumptive Fee Cap (Doc. No. 9863), we conclude that the fees to be paid to the firms as set out in the October 2022 Withdrawal are reasonable, do not exceed the percentage for which Player contracted, and do not exceed the percentage allowed under the 22% Presumptive Fee Cap. In addition, the costs sought by the firms are reasonable and recoverable under the fee agreements. Accordingly, the Second Withdrawal will be granted and the Claims Administrator is directed to distribute the attorneys' fees and costs to the Parties as set forth in the Withdrawal.⁴

³ To be clear, the costs incurred by Howard that were problematic in the prior proposed resolution are no longer requested by any party. The Court's concerns about fees allocated to Howard have also been addressed.

⁴ Pursuant to the Court's Order Regarding Withholdings for Common Benefit Fund (Doc. No. 10104), 5% of the Award is currently being held in the Attorney's Fees Qualified Settlement Fund, where it must remain until further order of the Court. The Claims Administrator will ensure that if any portion of those funds are later released they will be paid pursuant to the agreed terms in the Second Withdrawal.

AND NOW, this 23rd day of November, 2022, it is **ORDERED** that:

1. The Withdrawal of the Lien Dispute dated October 17-19, 2022 is **GRANTED**; and
2. The Claims Administrator is **ORDERED** to distribute the withheld funds in accordance with this decision, the provisions of the Settlement Agreement, and all Court Orders regarding implementation.

BY THE COURT:

/s/ David R. Strawbridge, USMJ
DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE