

**NFL**

**CONCUSSION SETTLEMENT**

*IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION*  
No. 2:12-md-02323 (E.D. Pa.)

**RULES GOVERNING  
THIRD-PARTY FUNDER  
VOLUNTARY COMPROMISE PROCESS**

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# RULES GOVERNING THIRD-PARTY FUNDER VOLUNTARY COMPROMISE PROCESS

## TITLE I: GENERAL

**Rule 1. The Purpose of These Rules.** These Rules govern Third-Party Funder Transactions. These Rules do not address the enforceability of the underlying agreements between Third-Party Funders and Settlement Class Members. *See generally In re Nat'l Football League Players' Concussion Injury Litig.*, 923 F.3d 96 (3d Cir. 2019). Instead, they outline an alternative dispute resolution process. Participation in this process is completely voluntary.

Any dispute over the enforceability or validity of a Third-Party Funder Transaction must be litigated or arbitrated in an appropriate forum outside of the claims administration context, subject to “the full array of standard contract defenses” available. *In re Nat'l Football League*, 923 F.3d at 112-13. As the Third Circuit has noted, “some of the class members are cognitively impaired, and it is possible that some of them lacked the capacity to contract at the time they entered into [these] agreements. . . . There may also be issues of unconscionability, fraud, or usury based on the high effective interest rates in the agreements,” which may function as “disguised predatory loans.” *Id.* at 112. However, if an agreement is found to be enforceable, a Settlement Class Member may risk incurring additional expenses by refusing to pay any of the disputed funds while the dispute over enforceability plays out. These risks may include potential interest obligations and/or the cost of defending a lawsuit. Settlement Class Members might consider seeking legal advice on their options.

**Rule 2. Adoption of These Rules.** The Special Masters have adopted these Rules in the exercise of their duties pursuant their appointment by the Court in its July 13, 2016 Order (Document 6871). The Special Masters may amend these Rules at any time *sua sponte* or after request by the Claims Administrator and such input from Class Counsel, the NFL Parties and the Claims Administrator as the Special Masters deem appropriate. These Rules were amended to their current form on January 10, 2020.

**Rule 3. Definitions Used in These Rules.** All capitalized terms used in these Rules will have the meanings given to them in the Settlement Agreement. In addition:

- (a) “Finalized Funding Request” means the moment that a Settlement Class Member’s Monetary Claim is placed on the monthly “Funding Request” list and the ten days for Funding Request Objections have passed, or the moment that all Funding Request Objections have been resolved. This term is meant to cover the moment that it becomes clear that the Settlement Class Member is going to be paid, without the possibility that a subsequent appeal, audit, Funding Request Objection, or other administrative process will alter or affect the payment.
- (b) “Funding Request Objection” means an objection to a funding request filed pursuant to the process described in Section 23.3(b)(iii) of the Settlement Agreement.

- (c) “Monetary Claims” means a Monetary Award, Supplemental Monetary Award or Derivative Claimant Award in the Settlement Program.
- (d) “Settlement Agreement” means the Amended Class Action Settlement Agreement dated as of June 25, 2014, as amended on February 13, 2015 (the “Settlement Agreement”) and approved in the Court’s May 8, 2015 Amended Final Approval Order and Judgment (Document 6534).
- (e) “Settlement Class Member” means a Retired NFL Football Player (or the Representative Claimant of a deceased or incompetent Retired NFL Football Player), or a Derivative Claimant, which is how this term is defined in the Settlement Agreement.
- (f) “Settlement Program” means the program for benefits for Settlement Class Members established under the Settlement Agreement.
- (g) “Special Master” and “Special Masters” mean any one or both of the two Special Masters appointed by the Court in its July 13, 2016 Order (Document 6871) or appointed in any subsequent Order of the Court.
- (h) “Third-Party Funder Transaction” means any agreement, contract, document, or arrangement between a Settlement Class Member and a third party under which: (i) the Settlement Class Member borrowed or received funds from a third party prior to receipt of a Monetary Award from the Settlement Program; and (ii) in exchange, either assigned/attempted to assign any settlement benefits—or promised to subsequently pay the proceeds of any eventual Monetary Award—to the third party once a Monetary Award Determination has been made. This definition is meant to be construed broadly, so as to cover all potential cash advance agreements where a third-party entity loans or advances funds in exchange for rights to receive payment from the proceeds of any future Monetary Award, or in exchange for rights to “step into the shoes of” the Settlement Class Member and “seek funds directly from” the Settlement Program.
- (i) “Third-Party Funder” means a person or entity that engaged in a Third-Party Funder Transaction with a Settlement Class Member.
- (j) “Voluntary Compromise Form” means the form described in Rule 5, below.

## **TITLE II: INFORMATION ON FUNDING AGREEMENTS**

**Rule 4. Declaration in SWS-5 Form.** Once a Settlement Class Member’s Monetary Claim becomes part of a Finalized Funding Request, the Claims Administrator will send him/her a Sworn Statement: Status of Assignment of Monetary Claim (“SWS-5”), which he/she must complete and return. The SWS-5 will do the following:

- (a) The SWS-5 will inform the Settlement Class Member that his/her Monetary Claim has become part of a Finalized Funding Request and that he/she will be

receiving payment for that Monetary Claim, without the possibility of subsequent appeal, audit, or other administrative processes that could potentially affect the award.

- (b) The SWS-5 will ask the Settlement Class Member to indicate whether or not he/she has assigned or attempted to assign any settlement benefits from his/her Monetary Claim to a Third-Party Funder or borrowed any funds against his/her Monetary Claim as collateral, and to provide all relevant related documents.
- (c) If the Settlement Class Member says “yes” to the question described in Rule 4(b), the SWS-5 will ask the Settlement Class Member for consent to inform the Third-Party Funder of the fact that the Settlement Class Member’s Monetary Claim will be paid. The SWS-5 will also provide the Settlement Class Member with the option to decline to participate in the Voluntary Settlement Process (described in Rule 5 below) and withhold consent to provide any information to the Third-Party Funder relating to the Settlement Class Member’s Monetary Claim.

### **TITLE III: VOLUNTARY COMPROMISE PROCESS**

**Rule 5. Compromise Form Process.** For any case involving a Third-Party Funder Transaction as disclosed under Rule 4, the Claims Administrator will offer the following opportunity for compromise. This process is completely voluntary. If a Settlement Class Member chooses to decline to participate in this process in his/her Form SWS-5, Steps One and Two below will not apply, and the Claims Administrator will directly pay the Settlement Class Member under Rule 6(a).

- (a) **Step One:** The Claims Administrator will issue a Compromise Form for the Third-Party Funder to sign and return within 30 days of receipt. The Compromise Form asks the Third-Party Funder to (i) indicate the amount that the Third-Party Funder would accept—or that the parties have agreed upon—to resolve any claims under the Third-Party Funder Transaction (the “Compromise Amount”); and (ii) rescind the all relevant agreements/contracts under the Third-Party Funder Transaction and relinquish all claims arising from the Third-Party Funder Transaction, in exchange for direct payment from the Claims Administrator of the Compromise Amount, subject to the Settlement Class Member’s consent (provided pursuant to Rule 5(b)). The Compromise Form will also provide the Third-Party Funder with the option to decline participation in the Compromise Form Process, in which case the Claims Administrator will directly pay the Settlement Class Member under Rule 6(a).
- (b) **Step Two:** If the Claims Administrator receives a timely completed Compromise Form from the Third-Party Funder within the 30-day period described in Rule 5(a), it will then send the Compromise Form to the Settlement Class Member and, if represented, to his/her lawyer. The Compromise Form includes an attachment for the Settlement Class Member to sign and return to the Claims Administrator within 30 days of receipt. The attachment asks the Settlement Class Member to (i) agree or disagree with the Compromise Amount described in Rule 5(a); and

(ii) consent or decline consent to the direct payment of that amount by the Claims Administrator to the Third-Party Funder—as outlined in Rule 6(b)—in exchange for the Third-Party Funder’s rescission of all relevant agreements/contracts under the Third-Party Funder Transaction and relinquishment of all claims arising under that Third-Party Funder Transaction.

**Rule 6. Payment Steps.** In cases triggering the Compromise Form Process outlined in Rule 5, the Claims Administrator will take the following steps to pay a Monetary Claim:

- (a) **No Complete Compromise Form.** If the Claims Administrator has not received a timely completed Compromise Form from the Third-Party Funder and/or the Settlement Class Member within the respective 30-day periods described in Rules 5(a) and 5(b), or if the Settlement Class Member or Third-Party Funder declines to participate in the Voluntary Compromise Process, the Claims Administrator will direct the Trustee to pay the Monetary Claim to the Settlement Class Member, subject to all payable liens and other applicable deductions under the Settlement Agreement and any Orders of the Court. This payment will be made directly to the Settlement Class Member, whether represented by a lawyer or proceeding *pro se*. Once payment has been made, any subsequent disputes between the parties must be litigated or arbitrated in an appropriate forum outside of the claims administration process. *In re Nat’l Football League*, 923 F.3d at 113.
- (b) **Complete Compromise Form.** If the Claims Administrator has received a timely completed Compromise Form signed and returned by both the Third-Party Funder and the Settlement Class Member within the respective 30-day periods described in Rules 5(a) and 5(b), the Claims Administrator will direct the Trustee to pay the Compromise Amount to the Third-Party Funder. This payment will be deducted from the Settlement Class Member’s Monetary Award. The Claims Administrator will also direct the Trustee to pay any remaining balance of the Monetary Award to the Settlement Class Member, subject to all payable liens and other applicable deductions under the Settlement Agreement and any Orders of the Court. If the Settlement Class Member is represented by a lawyer, this payment will be made to that lawyer. If the Class Member is *pro se*, this payment will be made directly to the Settlement Class Member.