IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAYLAND
(Northern Division)

PIO SAGAPOLUTELE
2926 Woodlawn Avenue
Honolulu, Hawaii 96822,

Civil Action No. _____

SEAN LAMAR SMITH
1101 East Parmer Lane
Austin, Texas 78753,

-and-

BRUCE SCHWAGER
25026 Almond Orchard Lane
Katy, Texas 77494,

Plaintiffs

v.

THE BERT BELL/PETE ROZELLE
NFL PLAYER RETIREMENT PLAN
Suite 2420
200 St. Paul Place
Baltimore, Maryland 21202-2040

-and -

THE NFL PLAYER SUPPLEMENTAL
DISABILITY PLAN
Suite 2420
200 St. Paul Place
Baltimore, Maryland 21202-2040,

Defendants.

* * * * * * * * * * * * * *

COMPLAINT FOR MONEY DAMAGES
AND FOR DECLARATORY RELIEF

Plaintiffs Pio Sagapolutele, Sean Lamar Smith, and Bruce Schwager complain and allege as follows:

EXHIBIT A

1. This is a complaint for money damages and declaratory relief under the Employee Retirement Income and Security Act, 29 U.S.C. §§ 1001, et seq. ("ERISA"). Two of the plaintiffs – Pio Sagapolutele and Sean Lamar Smith -- are retired defensive linemen who seek a fair disability pension for the crippling injuries they suffered while playing NFL football. In each case, defendants have ignored the findings of their own hand-picked doctors; insisted on evidence that is unavailable or not required by law; and suggested that plaintiffs were capable of employment despite overwhelming evidence that they were totally and permanently disabled from an early date following their retirements. The third plaintiff – Bruce Schwager -- has been denied any pension at all despite the fact that he is entitled to credit for at least four seasons when he was – according to the NFL's own records – on the Reserve List of the NFL team which drafted him, while he served in the United States Navy.

2. NFL football is a violent game by design. Careers are short; a player's livelihood can end in a split second on the playing field or even before the season starts, in training camp. The tradeoff for shorter careers and frequent, severe injuries is simple: generous disability and retirement benefits. These are not charity, but part of a bargain struck between wealthy owners and the union which supposedly represents the best interests of players. Sad to say, recent history has shown that the pension plan which administers those benefits has refused to live up to its end of the deal.

3. Defendants' actions are just the latest in a series of decisions that the courts have found to be "culpable, if not bad faith," based on "no relevant medical or employment evidence," "contradict[ed by] the unanimous medical opinion of examining experts," and lacking "a deliberate, principled reasoning process." Time after time,

Defendants have defied both the requirements of their own pension plan, and the rulings of both this Court and the Fourth Circuit. Plaintiffs now seek an award of money damages and declaratory relief to protect their rights under the NFL's retirement plan.

The Parties

4. Pio Sagapolutele, 39 years old, played defensive lineman from 1991 until 1999 for a series of NFL teams. His last game was in 1999 for the Carolina Panthers. He is a participant in the Bert Bell/Pete Rozelle NFL Player Retirement Plan (the "Plan" or the "NFL Plan").

5. Sean Smith, 43 years old, played defensive lineman from 1987 until 1990 for a series of NFL teams. His last game was in 1990 for the San Francisco 49ers. He is a participant in the NFL Plan.

6. Bruce Schwager is a 75-year old retiree who has been diagnosed with frontal-lobe dementia and is unable to work. He was drafted by the Chicago Cardinals in 1955, forced to leave training camp because of an injury, and placed on the team's Reserve List on August 26, 1955. He was then drafted and served in the United States Navy from 1956 to 1958, when he was honorably discharged. Thereafter, he was placed on waivers by the Cardinals on April 20, 1959, and released by the team on April 30, 1959. He subsequently was signed by the New York Titans in 1960, suffered a severe injury at training camp, and was then cut from the team. This lawsuit seeks to determine his number of credited seasons in the Plan, and thus his participation in, and right to benefits from, the Plan.

7. The Plan is an employee pension benefit plan within the meaning of Section 3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A), created for the benefit of the

employees of the National Football League's member teams. The Plan has historically had a multi-person Retirement Board which meets quarterly (typically, in January, April, July and October) for the purpose of deciding benefit claims. Half of the Board's six members are appointed by Gene Upshaw, the Executive Director of the National Football League Players Association (the "NFLPA"), the player's union. The other half are chosen by team owners.

8. More recently, the Plan has established a Disability Initial Claims Committee with only two members (the "DICC"), which makes the first ruling on certain claims. (Once again, half the DICC's members are appointed by Gene Upshaw, the union boss, and half by the owners). A participant must obtain a unanimous ruling from the DICC to prevail; if the Committee deadlocks, the claim is deemed denied. On information and belief, the DICC does not include any members with relevant health care or disability experience. The DICC was established in this fashion and with these rules to make it more difficult for participants to prevail in disability claims, and has achieved the intended result.

9. Defendant The NFL Player Supplemental Disability Plan (the "NFL Supplemental Plan"; the two Defendants are collectively the "NFL Plans") is an employee welfare benefit plan within the meaning of Section 3(1) of ERISA, 29 U.S.C. §1002(1), created for the purpose of paying disability benefits in excess of the limits for retirement plans. On information and belief, the NFL Plan makes all eligibility and classification decisions for disability benefits. The NFL Supplemental Plan is joined as a defendant for the purpose of providing complete relief to the plaintiffs.

Jurisdiction and Venue

10. This Court has subject-matter jurisdiction under Section 502(e) of ERISA, 29 U.S.C. § 1132(e), and 28 U.S.C. § 1331.

11. Venue is proper because the defendant ERISA plans are administered in Maryland and the wrongful denial of benefits took place here. 29 U.S.C. § 1132(e) and 28 U.S.C. § 1391.

Statement of Facts

A. Disability Benefits Under the NFL Plan

12. The Plan provides for "total and permanent disability" ("TPD") benefits, under Articles 5.1(a) and 5.2 of the Plan Document. Article 5.2 states that a player will deemed to be TPD if the Retirement Board finds that:

> he has become totally disabled to the extent that he is substantially prevented from or substantially unable to engage in any occupation or employment for remuneration or profit . . . A Player will not be considered to be able to engage in any occupation or employment for profit . . . merely because such person is employed by the League or an Employer, manages personal or family investments, is employed by or associated with a charitable organization, or is employed out of benevolence.

13. Section 5.1(a) of the Plan provides for "Active Football" disability benefits, defined as a disability resulting "from League football activities, [which] arises while the Player is an Active Player, and causes the Player to be totally and permanently disabled 'shortly after' the disability first arises." The Plan Document also provides for "Football Degenerative" benefits, under § 5.1(c), which are substantially less generous.

14. If a Player becomes TPD within six months after his disability first arises, § 5.1 of the Plan creates a conclusive presumption that the Player became TPD "shortly

after" the disability arose. If the Player becomes TPD six to twelve months after the disability arises, then it is up the NFL Plan's Retirement Board to determine whether the "shortly after" standard is satisfied. And if the Player becomes TPD more than twelve months after the disability arises, then he is conclusively deemed not to have satisfied the "shortly after" requirement.

15. Thus, an essential part of the Retirement Board's job is to determine when a player became totally and permanently disabled, in addition to the level of disability. This is sometimes known as the "effective date" of the benefits. Because the effective date can determine not only how far back the benefits will go, but also whether the claimant will qualify for Active Football benefits (as opposed to a lesser benefit), it is critical that this date be determined fairly.

16. Under § 5.2 of the Plan Document, the Plan has the right to select a "neutral physician" to perform a medical examination of a player who is applying for a disability, for the purpose of determining whether the disability arose from NFL play, and when it arose. In the event of a deadlock on the Retirement Board, as to whether a player is TPD, § 8.3(a) of the Plan Document provides that the Board may "submit such disputes to a Medical Advisory Physician for a final and binding determination regarding such medical issues."

17. Historically, the Plan had required that physicians appointed by the Plan complete a "Physician's Report" form which asked the examining doctor to determine "When did present disability occur?" The point of this question was to determine the date to which disability benefits should be retroactive, so that the retired player may receive all the benefits to which he is entitled. More recently, the Plan has changed its

form to delete this question. The effect, if not the purpose, of this change was to permit the Plan's Retirement Board and DICC to claim uncertainty about the onset date of claimants' total and permanent disability, and thus to deny claimants benefits to which they were entitled.

B. The Plan's History of Unfairness and Bad Faith

18. The Plan has a rich history of denying valid pension claims and acting in bad faith. In 2005, this Court entered judgment against the Plans in the amount of $1,689,220.24 in a case filed by the estate of Mike Webster, a longtime player for the Pittsburgh Steelers. Jani v. The Bert Bell/Pete Rozelle NFL Player Retirement Plan et al., 1:04-cv-01606-WDQ (D. Md.). Mike Webster had played offensive line in the NFL and sought Active Football benefits going back to the end of his football career. The unanimous medical evidence supported Mr. Webster's claim. In that case, like this one, defendants refused to award Active Football benefits and also claimed that the effective date should be set years after Mike Webster's retirement.

19. In the Webster case, this Court found in a November 7, 2005 memorandum opinion that "[g]iven the overwhelming evidence supporting Webster's claim, the Plan's decision indicates culpable conduct, if not bad faith." As a result, Defendants were required to pay Mr. Webster's attorneys' fees and costs in the District Court.

20. A unanimous panel of the U.S. Court of Appeals for the Fourth Circuit affirmed that ruling in a 35-page opinion on December 13, 2006. The appeals court held that the Plan "offered no relevant medical or employment evidence to contradict the unanimous medical opinion of examining experts" that Mr. Webster was entitled to

full Active Football benefits. Jani v. The Bert Bell/Pete Rozelle NFL Player Retirement Plan et al., No. 05-2386 (4th Cir.).

21. The Fourth Circuit also criticized the Plan's insistence on "contemporaneous medical evidence" in order to find a disability, and found that it would require "a leap of faith" to rule for the Plan. And once again, Defendants paid Mr. Webster's estate for attorneys' fees and costs incurred on their unsuccessful appeal.

22. Defendants did not learn from this experience. Immediately after the Fourth Circuit's ruling, on December 14, 2006, Gene Upshaw, the president of the NFL players' union (who appoints the union's members to the Retirement Board and speaks for the Plan) announced to the New York Times that "if the six-member board was presented with a similar situation with another retired player, it would follow the same course of action it took with Webster."

23. Mr. Upshaw's remarks were nothing new. Earlier in 2006, Upshaw responded to criticism of the Plan's handling of disability claims by telling the Charlotte Observer about his personal dislike of and bias against retired players: "'The bottom line is I don't work for them [former players]. They don't hire me and they can't fire me' . . . 'They can complain about me all day long. But the active players have the vote. That's who pays my salary.'"

24. As a direct result of this bias and animus against retired players, the Webster case is just one example of Defendants' deliberate refusal to obey the terms of the Plan and to decide disability benefit claims in a reasonable manner supported by substantial evidence. On January 14, 2008, the Fourth Circuit found in a second case that the Retirement Board had acted arbitrarily, had failed to use "a deliberate,

principled reasoning process," and had "abused its discretion" in denying a claim by the bankruptcy estate of ex-Redskin Wilber Marshall. The Fourth Circuit expressly criticized the Plan's practice of automatically establishing an "effective date" for benefits no earlier than the first examination by a Plan-selected doctor. The Plan was required to pay Mr. Marshall's estate additional benefits, change the effective date of his benefits, and pay his bankruptcy estate's attorneys' fees. Meiburger v. Bert Bell/Pete Rozelle NFL Player Retirement Plan, No. 06-2112 (4th Cir.).

25. Because of Defendants' wholesale refusal to comply with their duties under ERISA and under the Plans, both the U.S. House of Representatives and the U.S. Senate have recently conducted oversight hearing on the conduct of the Plans which have focused prominently on the bias against retired players and the unfairness of the Plans' decisions, including their actions in the Webster case.

C. Pio Sagapolutele

26. Pio Sagapolutele played defensive lineman for the Browns, Patriots, Saints and Panthers from 1991 until 1999. He suffered a wide variety of injuries during his career, which cover three to four pages, single spaced, of his medical examination records and have impaired some 25 different body parts (both hands, left hip, both shoulders, back, both knees, both elbows, both feet, and more). Two different doctors chosen by the Plan to examine him ran out of space on the Plan's form to describe his various injuries and impairments. The most significant injuries have caused post-traumatic arthritis which, combined with his NFL injuries, has caused him to be totally and permanently disabled, or TPD.

27. All of Mr. Sagapolutele's treating physicians who have offered opinions on the subject agree that he was TPD as of 1999, when he retired. Indeed, his injuries caused him to miss the 1999 regular season and led directly to his retirement.

28. As a direct result of Mr. Sagapolutele's injuries, his post-football employment has been minimal. He worked at a Patriots youth football camp (and then as a volunteer at his alma mater, San Diego State), but had to quit because (according to the NFL's own doctor) he "had difficulty with standing, walking and moving." He later worked briefly for the City of Honolulu checking building permits, but chronic pain required him to leave that job too.

29. His first comprehensive physical examination post-football was in February 2002. That doctor found that he was a "Qualified Injured Worker"; that he could not engage in work that required "prolonged standing and walking," "climbing, squatting or kneeling," or gripping or grasping; and that his disability "became fixed and stationary in approximately August 1999," the date that he retired from the NFL.

30. In 2003, Mr. Sagapolutele was evaluated for Social Security disability benefits and found to be disabled no later than February 2002. His exam found that he "cannot do much with his hands in terms of occupation," "cannot do much sitting, squatting, walking, heavy lifting, climbing, crawling and so forth," and that "[e]ven sitting for more than half an hour causes discomfort," meaning that he was unable to perform even sedentary jobs. Mr. Sagapolutele was also evaluated by an occupational therapist in 2004. The evaluation found that he was not employable in any occupation, including sedentary ones. No examination has ever found that he is employable at any identified occupation.

31. Mr. Sagapolutele applied to the Plan for disability benefits in July 2003. (He requested a disability application in 2001, but was told by a representative of the Plan to defer his application until he had applied for and received workers' compensation.) The Plan required him to undergo medical evaluations by three different orthopedists in 2003, 2004 and 2005. This "doctor shopping" is a typical practice by the Plan designed to minimize the likelihood that retired players will receive timely and fair decisions on their claims:

1. Gabriel Ma: Dr. Ma found in September 2003 that Mr. Sagapolutele was not TPD because he could supposedly work providing "motivation lectures to youngsters, coaching football teams and community services." He opined that he could work at a "light to medium duty job ***if available***." (Under the NFL Plan, volunteer work is not considered employment, and Mr. Sagapolutele had already found that he was physically incapable of coaching football.) Although Dr. Ma asserted that Mr. Sagapolutele was not TPD, he also found that Mr. Sagapolutele suffered from a 37% whole body impairment; that his disability was expected to last at least 12 months; and that his disability resulted from playing pro football. In a very bizarre note, Dr. Ma concluded that "Claimant will live with his pain and disability, well accepted [sic] and enjoy his life style in the future."

2. Gregory Mack: In his June 2004 exam, Dr. Mack initially checked that Mr. Sagapolutele was TPD, then crossed that out, but wrote that Mr. Sagapolutele would be "unable to be gainfully employed at any occupation" for "12 months, but possibly more, depending on stability i.e. progression of his medical

condition." When Mr. Sagapolutele's attorney asked the Plan to explain this contradiction, the Plan refused to act.

Dr. Mack listed five separate restrictions on Mr. Sagapolutele's ability to work (no use of hands, no "prolonged standing or ambulation, running, jumping, climbing, or crawling"), then stated that the combination of Mr. Sagapolutele's NFL injuries, plus his gout, made it unlikely he could work for a living. The Plan later found that Mr. Sagapolutele was TPD as of April 2004, two months ***before*** Dr. Mack performed his examination.

3. Allen Jackson: Dr. Jackson was chosen under the Plan Document as a Medical Advisory Physician, a provision which applies when the Retirement Board is deadlocked. His decision is supposed to be "final and binding" on the Board. In his February 2005 exam, Dr. Jackson found that Sagapolutele was TPD and that

> [Sagapolutele] has a long history of having multiple joint trauma with osteoarthritis that have given him significant degree of impairment over the past several years with some slight progression of those disabilities in the recent past.

Despite the fact that Dr. Jackson found in February 2005 that Mr. Sagapolutele's disability had persisted for "the past several years" with only "slight" change, and even though his decision was required to be "final and binding," the Plan granted benefits only to April 2004.

32. The Plan initially denied Mr. Sagapolutele's 2003 application for benefits outright, and later approved him only for Football Degenerative benefits (the lower level of benefits) and then only with an effective date of April 2004. His subsequent appeal was denied in January 2007. In both instances, the Plan relied heavily on the absence

of contemporaneous medical evidence of Mr. Sagapolutele's disability – despite the fact that (a) the Fourth Circuit had already held that such evidence was not required, (b) his treating physicians have already determined that he was disabled effective August 1999, when he retired, and (c) he even submitted contemporaneous medical evidence showing that he was TPD at least as early as February 2002.

D. Sean Smith

33. Sean Smith played defensive lineman for the Bears, and briefly for the 49ers, from 1987-1990. In the 1991 preseason, he broke his right hip (and additionally injured his left), but the injury was, remarkably, classed as a "severe groin sprain." He was unable to play and was cut shortly thereafter.

34. From 1991 on, Mr. Smith's hips (especially the right) - - which had begun in terrible shape because the NFL's doctors did not notice that they were broken - - got progressively worse. He did not consult an orthopedist because he was under the mistaken impression that his hip was merely sprained in 1991, not broken. His hips eventually deteriorated to the point where both of them had to be replaced. But because Mr. Smith could not afford the surgery, he was forced to move in December 2005 to Canada, where he had both hips replaced in 2006 and 2007.

35. Sean Smith's employment after 1991 was at best intermittent, and from 1997 on, his only "employment" consisted of work for a charity, and an attempt to work as a private investigator for a close friend. Mr. Smith's friend offered him this "employment" only as a favor, and then was forced to let him go because Mr. Smith was physically unable to perform the job. Individuals who knew Mr. Smith at the time

confirm that he was in crippling pain; needed assistance for walking and other simple tasks; and was unable to work.

36. Under the terms of the NFL Plan Document, neither work for a charity nor a job given "out of benevolence" can disqualify a plan participant from Total and Permanent Disability.

37. Mr. Smith finally applied to the NFL Plan for TPD benefits in March 2000. A physician selected by the Plan, Dr. Michael Brunet, examined him in May 2000, and confirmed that he had been injured while playing pro football "and was laboring under the idea that this was just a bad muscle sprain . . . and had not sought any medical treatment." At that point, Mr. Smith was already a candidate for a total hip replacement.

38. Dr. Brunet also found that Smith could "engage in employment," but based this conclusion ***solely*** on the fact that "[a]pparently he does some part time private investigation" and that work "is tolerable based on the fact that it is a self directed type of thing where he does sedentary type activity, can take breaks pretty much ad lib for his intolerance to sitting, standing or lying is pretty significant." In other words, Mr. Smith was "employable," but based entirely on work that is excluded from the Plan.

39. In a Plan-supplied form, the same doctor first checked "no" when asked if Smith was TPD, then answered the question "how long" will patient be unemployable: "until TOTAL hips particular [sic] Right can be done." As in Mr. Sagapolutele's case, the Plan took no steps to explain this contradiction.

40. The Plan required a second examination by a different physician, Dr. Bernard Bach, in August 2001. Dr. Bach was designated as a Medical Advisory Physician and, as above, his decision was supposed to be "final and binding" upon the

Retirement Board. Dr. Bach's exam found that Mr. Smith was disabled as a result of injuries to both hips (and needed both replaced) and that the disability had already persisted "well more than" 12 months by that point.

41. In October 2001, the Plan gave Mr. Smith the lower disability rating (Football Degenerative) and found that he was not disabled prior to September 2001 (the date of Dr. Bach's examination) because there was supposedly no contemporaneous medical evidence of his disability. Although ERISA required an opportunity to appeal from this decision, the Plan did not give him one.

42. In 2004, Mr. Smith hired a lawyer to challenge the prior decision, and submitted an additional medical examination report demonstrating his disability. The Plan finally realized it had broken the law by not giving Mr. Smith a prior appeal, and informed him by letter dated November 10, 2004 that his challenge to the decision would be treated as "a timely appeal from [the Board's] October 18, 2001 decision." The Plan rendered a final decision by letter dated July 20, 2005, which asserted that Mr. Smith was not entitled to additional benefits (either a higher disability rating or an earlier effective date) because there was no contemporaneous medical evidence of TPD until the August 2001 exam.

43. The Retirement Board reached this conclusion despite the fact that the Plan's own doctor found that Mr. Smith's disability had persisted "well more than" 12 months prior to September 2001 (in response to a question on the Plan's own form). Similarly, both the Webster and Marshall Fourth Circuit decisions have rejected the Plan's practices of arbitrarily setting the disability date at the time of the exam and of insisting on contemporaneous medical evidence. In the Webster case, for example, the

Plan actively sought and relied upon non-medical evidence (such as a private investigator's report, interviews, and press reports) to determine the date a player became TPD. Mr. Smith submitted such evidence to the Plan in affidavit form from multiple witnesses, but Defendants refused to consider it.

E. **Bruce Schwager**

44. Bruce Schwager was drafted by the Chicago Cardinals in 1955 after graduating from the Merchant Marine Academy, and signed a contract with the team. He attended training camp in 1955 but suffered from a ruptured eardrum and left camp as a result of his injury. The Cardinals then placed him on their Reserve List. He was subsequently drafted and served in the Navy from 1956 until his honorable discharge in December 1958. In March 1958, the Cardinals responded to Mr. Schwager's request for a release in order to play for another team by reminding him that he was still under contract and offering to discuss "a possible trade for his services."

45. The Cardinals placed Mr. Schwager on waivers on April 20, 1959, and those waivers expired on April 30, 1959. (The waiver list is simply the procedure by which a player's contract or NFL rights are made available by his current team to other teams in the league. During the procedure, the other teams may either file a claim to obtain the player or waive the opportunity to do so, thus the term waiver. In this case, Mr. Schwager's waivers expired without his contract being claimed by any other team.) Mr. Schwager therefore remained on the Cardinals' Reserve List for the 1955 to 1958 seasons.

46. Mr. Schwager's official NFL record notes that he was drafted by the Cardinals and "signed with the Cards 1/28/55." The record goes on to state that he was

"Reserve 8/26/55." The next entry says: "**WAIVERS** April 20, 1959 **EXPIRE** 4 P.M. April 30, 1959." (Emphasis in original.) In other words, he was placed on the Cardinals' Reserve List in 1995, on its waiver list in April 1959, and those waivers expired at the end of that month.

47. In July 1960, Mr. Schwager was signed as a free agent by the New York Titans and was offered a contract for $7500. At the Titan's training camp that summer, he suffered a severe injury to his chest and ribs and was subsequently cut from the team.

48. Mr. Schwager is currently in poor health and has been diagnosed with frontal-lobe dementia related to his football days. He has been classified as totally and permanently disabled by Social Security (and therefore entitled to disability benefits) for at least the past eighteen years.

49. At the suggestion of Andre Collins, a representative of the NFLPA, Mr. Schwager applied in 2004 for credit for the NFL seasons from 1955 until 1960. The Plan Document provides for such credit so long as Mr. Schwager was under contract and on the team's Active, Inactive or Reserve Lists during the time when three regular season games are played. (Other provisions in the Plan Document also provide credit to Mr. Schwager.) Because the NFL's own records show that Mr. Schwager was under contract and on the Cardinals' Reserve List from 1955 until 1958, he plainly qualified for at least this amount of credit. Indeed, the league's Retired Members Directory, prepared by the NFLPA, lists Mr. Schwager as a retired player with service with the Cardinals and the Titans, whose last year in the league was 1959.

50. The Plan denied Mr. Schwager's 2004 request for benefits, and he appealed. By letter dated July 22, 2005, the Plan denied his appeal, asserting that he was not on any team's Active, Inactive or Reserve Lists. Although Mr. Schwager asked the Plan for a copy of these Lists, the Plan failed to provide them. And although the NFL's own records shows that Mr. Schwager was on the Cardinals' Reserve List from 1955 until he was waived in 1959, the Plan has never addressed this point in refusing to recognize his claim.

COUNT I - PIO SAGAPOLUTELE

51. The allegations of paragraphs 1 through 50 are incorporated by reference, as if fully set forth herein.

52. Plaintiff has exhausted his remedies, as described above (or further exhaustion has been excused or would be futile for the reasons set forth above), and otherwise satisfied all prerequisites to the maintenance of this action.

53. By wrongfully denying Plaintiff the benefits due to him in accordance with the relevant Plan Document(s), the NFL Plans have failed to act in compliance with the language of the documents and instruments governing the plan in violation of ERISA, 29 U.S.C. §§ 1132(a)(1)(B) and (a)(3).

54. The actions taken by the NFL Plan and the NFL Supplemental Plan were wrongful, willful and taken in bad faith. Because of the animus and bias demonstrated by Gene Upshaw, who selects half the members of the Retirement Board and the DICC, the Plans' decisions are entitled to no deference and are subject to de novo review by this Court.

55. Plaintiff has accrued pension benefits that the Defendants, the NFL Plan and the Supplemental Plan, have refused to recognize.

WHEREFORE, Plaintiff requests:

A. A judgment declaring that

(1) The Defendants' refusals to award Active Football disability and a Total and Permanent Disability commencement date as of Plaintiff's retirement from the NFL in 1999 are void; and

(2) The Defendants are obligated to credit and pay Mr. Sagapolutele within the terms of an Active Football disability pension, with a Total and Permanent Disability commencement date as of his retirement from the NFL in 1999, without regard to any other limitation set forth in the Plan Document(s);

B. A preliminary and permanent injunction, enjoining the defendant Plans from reducing the benefits payable as described above;

C. A judgment awarding the Plaintiff retroactive pension credit and payments as described above, and placing Plaintiff in the same position in which he would have been if the Plans had acted properly upon providing Plaintiff with a disability application in 2001, including an appropriate interest factor; and

D. Such further monetary or equitable relief, including the award of compensatory and punitive damages and attorney's fees and costs, as this Court may deem appropriate.

COUNT II - SEAN SMITH

56. The allegations of paragraphs 1 through 50 are incorporated by reference, as if fully set forth herein.

57. Plaintiff has exhausted his remedies, as described above (or further exhaustion has been excused or would be futile for the reasons set forth above), and otherwise satisfied all prerequisites to the maintenance of this action.

58. By wrongfully denying Plaintiff the benefits due to him in accordance with the relevant Plan Document(s), the NFL Plans have failed to act in compliance with the language of the documents and instruments governing the plan in violation of ERISA, 29 U.S.C. §§ 1132(a)(1)(B) and (a)(3).

59. The actions taken by the NFL Plan and the NFL Supplemental Plan were wrongful, willful and taken in bad faith. Because of the animus and bias demonstrated by Gene Upshaw, who selects half the members of the Retirement Board and the DICC, the Plans' decisions are entitled to no deference and are subject to de novo review by this Court.

60. Plaintiff has accrued pension benefits that the Defendants, the NFL Plan and the Supplemental Plan, have refused to recognize.

WHEREFORE, Plaintiff requests:

A. A judgment declaring that

(1) The Defendants' refusals to award a Total and Permanent Disability commencement date no later than 1997 are void; and

(2) The Defendants are obligated to credit and pay Mr. Smith with a Total and Permanent Disability commencement date no later than 1997, without regard to any other limitation set forth in the Plan Document(s);

B. A preliminary and permanent injunction, enjoining the defendant Plans from reducing the benefits payable as described above;

C. A judgment awarding the Plaintiff retroactive pension credit and payments as described above, and placing Plaintiff in the same position in which he would have been if the Plans had acted properly upon plaintiff's 2000 filing, including an appropriate interest factor; and

D. Such further monetary or equitable relief, including the award of compensatory and punitive damages and attorney's fees and costs, as this Court may deem appropriate.

COUNT III - Bruce Schwager

61. The allegations of paragraphs 1 through 50 are incorporated by reference, as if fully set forth herein.

62. Plaintiff has exhausted his remedies, as described above (or further exhaustion has been excused or would be futile for the reasons set forth above), and otherwise satisfied all prerequisites to the maintenance of this action.

63. By wrongfully denying Plaintiff the benefits due to him in accordance with the relevant Plan Document(s), the NFL Plans have failed to act in compliance with the language of the documents and instruments governing the plan in violation of ERISA, 29 U.S.C. §§ 1132(a)(1)(B) and (a)(3).

64. The actions taken by the NFL Plan and the NFL Supplemental Plan were wrongful, willful and taken in bad faith. Because of the animus and bias demonstrated by Gene Upshaw, who selects half the members of the Retirement Board and the DICC, the Plans' decisions are entitled to no deference and are subject to de novo review by this Court.

65. Plaintiff has accrued pension benefits that the Defendants, the NFL Plan and the Supplemental Plan, have refused to recognize.

WHEREFORE, Plaintiff requests:

A. A judgment declaring that

(1) The Defendants' refusals to award Plaintiff the credited seasons sought by him are void; and

(2) The Defendants are obligated to credit and pay Mr. Schwager for at least seasons 1955-58, without regard to any other limitation set forth in the Plan Document(s);

B. A preliminary and permanent injunction, enjoining the defendant Plans from reducing the benefits payable as described above;

C. A judgment awarding the Plaintiff retroactive pension credit and retirement and/or disability payments, and placing Plaintiff in the same position in which he would have been if the Plans had acted properly upon plaintiff's initial application, including credit for a retirement pension starting at age 55 and an appropriate interest factor; and

D. Such further monetary or equitable relief, including the award of compensatory and punitive damages and attorney's fees and costs, as this Court may deem appropriate.

Dated: July 18, 2008

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