

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

CASE NO. _____

SHAWN WOODEN; and RYAN
FOWLER; individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

COMPLAINT – CLASS ACTION

NATIONAL FOOTBALL LEAGUE,

Defendant.

_____ /

COMPLAINT

The Plaintiffs Shawn Wooden and Ryan Fowler (the “Representative Plaintiffs”), individually and on behalf of all others similarly situated, sue the Defendant National Football League (the “NFL” or the “League”), and state as follows:

NATURE OF THE ACTION

1. This action arises from the concussion crisis afflicting former professional football players in the National Football League (the “NFL” or the “League”). For close to a century, evidence has linked concussions and long-term neurological problems, and specialists in brain trauma have been warning about the risks of permanent brain damage from repetitive concussions for decades. The NFL – as the organizer and purveyor of a professional sport in which head trauma is a regular and repeated occurrence – was aware of these risks but deliberately ignored and concealed them. Rather than warn its players that they risked permanent brain injury if they returned to play too soon after sustaining a concussion, the NFL actively deceived players, resulting in the players’ belief that concussions did not present serious, life-altering risks.

2. The NFL, through its own initiative and voluntary undertaking, created the Mild Traumatic Brain Injury Committee (the “MTBI Committee” or the “Committee”) in 1994. The Committee was ostensibly created to research and ameliorate the impact of concussions on NFL players.

3. Despite clear medical evidence that on-field concussions led directly to brain injuries and frequently had tragic repercussions for its retired players, the NFL failed to protect other players from suffering a similar fate, and failed to inform players of the true risks associated with such head trauma. Instead, the NFL purposefully misrepresented and/or concealed medical evidence on the issue. While athletes who had suffered concussions in other professional sports were being restricted from returning to play for full games or even seasons, NFL players who had suffered concussions were regularly being returned to play after having suffered a concussion in that same game or practice.

4. The NFL’s active and purposeful concealment of the severe neurological risks associated with concussions exposed players to dangers they could have avoided had the League provided them with accurate information. Many of these players, since retired, have suffered severe and permanent brain damage as a result of the NFL’s acts and/or omissions. In fact, the MTBI Committee’s concealment of relevant medical evidence over the years has caused an increased risk of life-threatening injury to players who were being kept in the dark.

5. The Representative Plaintiffs, on behalf of themselves and all others similarly situated, are bringing this action for injunctive relief in the form of medical monitoring with respect to brain injuries caused by repeated traumatic brain and head impacts received during the period when they were playing professional football.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are of diverse citizenship and the amount in controversy in this action exceeds \$75,000.00 dollars, exclusive of costs, interest, and attorneys' fees.

7. This Court also has original jurisdiction over this action under the Class Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original jurisdiction because there are more than one hundred (100) class members and because the amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs, for the class claim, and at least one of the Plaintiffs is a resident of a different state than the Defendant.

8. This Court has personal jurisdiction over the Defendant because it has substantial and continuous business contacts with the State of Florida, including but not limited to its having three (3) franchises which play in Florida, and derives substantial revenue from its contacts with Florida.

9. Venue is proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district, and because under 28 U.S.C. § 1391(c) Defendant is a corporation subject to personal jurisdiction in this District.

PARTIES

10. Plaintiff Shawn Wooden is a resident and citizen of the State of Florida. He played in the NFL from 1996 to 2004 for the Miami Dolphins and Chicago Bears.

11. Plaintiff Fowler is a resident and citizen of the State of Tennessee. He played in the NFL from 2004 to 2009 for the Tennessee Titans, Dallas Cowboys and New York Jets.

12. Defendant NFL, which maintains its principal place of business at 280 Park

Avenue, 15th Floor, New York, New York 10017, is an unincorporated association consisting of thirty-two (32) member football teams.

13. The NFL regularly conducts business in Florida, including, but not limited to the organizing and overseeing of games for the Miami Dolphins, Tampa Bay Buccaneers, and Jacksonville Jaguars teams, and selecting Florida cities to host the Super Bowl in Florida in 1968, 1969, 1971, 1976, 1979, 1984, 1989, 1991, 1995, 1999, 2001, 2005, 2007, 2009, and 2010.

14. The League is in the business of, among other things, operating the sole major professional football league in the United States. As such, the NFL promotes, organizes, and regulates the sport of professional football in the United States.

CLASS ACTION ALLEGATIONS

15. This action is brought and may properly be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b).

16. The Representative Plaintiffs bring this action for injunctive relief in the form of medical monitoring on behalf of themselves and all others similarly situated (the “Class”), with respect to which the NFL has acted or refused to act on grounds that apply generally to the class.

17. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Rule 23.

18. The Class is defined as:

All retired NFL players who played prior to the 2010 NFL season and who, during their NFL careers, suffered a concussion and were returned to contact play within ten (10) days of having suffered the concussion, and who, as of the date of class certification, are neither (a) advancing an individual personal injury claim for money damages against the NFL, nor (b) a salaried employee of the NFL.

19. Any differences in the laws of states that permit medical monitoring can be

accommodated through the creation of subclasses, which Plaintiffs shall identify in their motion for class certification.

20. Excluded from the Class is the NFL, its parents, subsidiaries, affiliates, members, officers and directors, any entity in which the NFL has a controlling interest, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

21. The Representative Plaintiffs reserve the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

22. The Class is so numerous and geographically so widely dispersed that joinder of all members is impracticable.

23. There are questions of law and fact common to the Class, and those common questions predominate over any questions affecting only individual Class members.

24. The questions of law and fact common to the Class include but are not limited to the following:

- i. Whether the Representative Plaintiffs and the Class were exposed to a greater than normal risk of brain injury following a return to contact play too soon after suffering an initial concussion;
- ii. Whether that greater than normal exposure level was caused by the NFL's negligent misconduct;
- iii. Whether the Representative Plaintiffs and the Class have an increased risk of developing latent neurological disorders as a proximate result of the increased exposure;
- iv. Whether a monitoring procedure exists that makes the early detection of those diseases or symptoms possible;
- v. Whether that prescribed monitoring regime is reasonably necessary according to contemporary scientific principles; and

vi. Whether the Representative Plaintiffs and the Class are entitled to the medical monitoring relief that they seek herein.

25. The Representative Plaintiffs' claims are typical of the claims of the Class that they represent, and the Representative Plaintiffs will fairly and adequately protect the interests of the proposed Class. The Representative Plaintiffs, like all Class members, have been damaged by the NFL's misconduct related to the concealment of the severe neurological risks associated with concussions. Further, the factual basis of the NFL's misconduct is common to all Class members, and represents a common thread of negligent misconduct resulting in injury to all members of the Class.

26. The Representative Plaintiffs have suffered the harm alleged and have no interests antagonistic to the interests of any other Class member.

27. The Representative Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class actions. Accordingly, Plaintiffs are adequate representatives and will fairly and adequately protect the interests of the Class.

28. The monitoring is medically reasonable and necessary and will allow the Class to avoid or minimize damages.

29. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court.

30. Individualized litigation would also create the potential for inconsistent or contradictory rulings.

31. By contrast, a class action presents far fewer management difficulties and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS

The NFL

32. The NFL is a \$9,000,000,000.00 dollar-per-year business.

33. The organization oversees America's most popular spectator sport, acting as a trade association for thirty-two (32) franchise owners.

34. The NFL governs and promotes the game of football, sets and enforces rules and League policies, and regulates team ownership.

35. It generates revenue mostly through marketing sponsorships, licensing merchandise, and by selling national broadcasting rights to the games. The teams share a percentage of the League's overall revenue.

36. Owing in part to its immense financial power and monopoly status in American football, the NFL has enormous influence over the education of team physicians, trainers, coaches, and football players at all levels of the game concerning the assessment and impact of football related injuries.

Concussions and CTE Generally

37. It has been well known for nearly a century that concussions and repetitive head injuries cause a myriad of long-term sequelae.

38. The American Association of Neurological Surgeons defines a concussion as "a clinical syndrome characterized by an immediate and transient alteration in brain function, including an alteration of mental status and level of consciousness, resulting from mechanical force or trauma."

39. The injury generally occurs when the head either accelerates rapidly and then is stopped, or is rotated rapidly. The results frequently include, among other things, confusion, blurred vision, memory loss, nausea, and sometimes unconsciousness.

40. Medical evidence has shown that symptoms of a concussion can reappear hours or days after the injury, indicating that the injured party has not healed from the initial blow.

41. According to neurologists, once a person suffers a concussion, he is up to four (4) times more likely to sustain a second one. Additionally, after suffering even a single concussion, a lesser blow may cause the injury, and the injured person requires more time to recover. This goes to the heart of the problem: players returning to play before allowing their initial concussion to heal fully.

42. Clinical and neuropathological studies by some of the nation's foremost experts have demonstrated that multiple concussions sustained during an NFL player's career can cause severe cognitive problems such as depression and early-onset dementia.

43. Repeated head trauma can also result in so-called "Second Impact Syndrome," in which re-injury to a person who has already suffered a concussion triggers swelling that the skull cannot accommodate.

44. Repeated instances of head trauma also frequently lead to Chronic Traumatic Encephalopathy ("CTE"), a progressive degenerative disease of the brain.

45. CTE involves the build-up of toxic proteins in the brain's neurons. This build-up results in a condition whereby signals sent from one cell to thousands of connecting cells in various parts of the brain are not received, leading to abnormal and diminished brain function.

46. CTE is found in athletes (and others) with a history of repetitive concussions. Conclusive studies have shown this condition to be prevalent in retired professional football players who have a history of head injury.

47. This head trauma, which includes multiple concussions, triggers progressive degeneration of the brain tissue. These changes in the brain are thought to begin when an athlete's brain is subjected to trauma, but symptoms may not appear until months, years, or even decades after the last concussion or the end of active athletic involvement. The brain degeneration is associated with memory loss, confusion, impaired judgment, paranoia, impulse-control problems, aggression, depression, and eventually progressive dementia.

48. The University of North Carolina's Center for the Study of Retired Athletes published survey-based papers in 2005 through 2007 that found a strong correlation between depression, dementia, and other cognitive impairment in NFL players and the number of concussions those players had received.

49. To date, neuropathologists have performed autopsies on over twenty-five (25) former NFL players. Reports indicate that over ninety percent (90%) of the players had CTE.

The NFL's Knowledge of the Dangers and Risks Associated with Concussions

50. For decades, the NFL has been aware that multiple blows to the head can lead to long-term brain injury, including but not limited to memory loss, dementia, depression, and CTE and its related symptoms.

51. CTE was first addressed in a 1928 article written by pathologist Harrison Martland, discussing "Punch Drunk" syndrome in a group of athletes exposed to repetitive brain trauma (the "Martland study"). The article was published in the *Journal of the American Medical Association*.

52. The Martland study was the first to link sub-concussive blows and “mild concussions” to degenerative brain disease.

53. In or about 1952, the *Journal of the American Medical Association* published a study of encephalopathic changes in professional boxers.

54. That same year, an article published in the *New England Journal of Medicine* recommended a three-strike rule for concussions in football (*i.e.*, recommending that players cease to play football after receiving their third concussion.)

55. In 1973, a potentially fatal condition known as “Second Impact Syndrome”—in which re-injury to the already-concussed brain triggers swelling that the skull cannot accommodate—was discovered. It did not receive this name until 1984.

56. Upon information and belief, Second Impact Syndrome has resulted in the deaths of at least forty (40) football players.

57. Between 1952 and 1994, numerous studies were published in medical journals including the *Journal of the American Medical Association*, *Neurology*, and the *New England Journal of Medicine*, warning of the dangers of single concussions, multiple concussions, and/or football-related head trauma from multiple concussions. These studies collectively established that:

- i. repetitive head trauma in contact sports has dangerous long-term effects on the brain;
- ii. post-mortem evidence of CTE was present in numerous cases of boxers and contact-sport athletes;
- iii. there is a relation between neurologic pathology and length of career in athletes who play contact sports;
- iv. immediate retrograde memory issues occur following concussions;

- v. mild head injury requires recovery time without risk of subjection to further injury;
- vi. head trauma is linked to dementia; and
- vii. a football player who suffers a concussion requires significant rest before being subjected to further contact.

58. By 1991, three distinct medical professionals/entities, all independent from the NFL—Dr. Robert Cantu of the American College of Sports Medicine, the American Academy of Neurology, and the Colorado Medical Society—developed return-to-play criteria for football players suspected of having sustained head injuries.

59. Upon information and belief, by 1991, the National Collegiate Athletic Association (“NCAA”) football conferences and individual college teams’ medical staffs, along with many lower-level football groups (*e.g.*, high school, junior high school, and pee-wee league) had adopted return-to-play criteria to protect football players even remotely suspected of having sustained concussions.

60. In 1999, the National Center for Catastrophic Sport Injury Research at the University of North Carolina conducted a study involving eighteen thousand (18,000) collegiate and high school football players. The research showed that once a player suffered one concussion, he was three times more likely to sustain a second in the same season.

61. A 2000 study, which surveyed 1,090 former NFL players, found that more than sixty percent had suffered at least one concussion, and twenty-six percent had suffered three or more, during their careers. Those who had sustained concussions reported more problems with memory, concentration, speech impediments, headaches, and other neurological problems than those who had not been concussed.

62. In 2004, a convention of neurological experts in Prague met with the aim of providing recommendations for the improvement of safety and health of athletes who suffer concussive injuries in ice hockey, rugby, football, and other sports based on the most up-to-date research. These experts recommended that a player never be returned to play while symptomatic, and coined the phrase, “when in doubt, sit them out.”

63. This echoed similar medical protocol established at a Vienna conference in 2001. These two conventions were attended by predominately American doctors who were experts and leaders in the neurological field.

64. Upon information and belief, in literally hundreds upon thousands of games and practices, concussed players—including those knocked entirely unconscious—were returned to play in the *same game or practice*.

65. Indeed, while the NFL knew for decades of the harmful effects of concussions on a player’s brain, it actively concealed these facts from coaches, trainers, players, and the public.

***The NFL Voluntarily Undertakes the Responsibility of Studying Concussions
Yet Conceals the Long-Term Effects of Concussions***

66. As described above, the NFL has known for decades that multiple blows to the head can lead to long-term brain injury, including, but not limited to, memory loss, dementia, depression, and CTE and its related symptoms.

67. Rather than take immediate measures to protect its players from these known dangers, the NFL instead formed a committee to study the issue in 1994. This Committee, the Mild Traumatic Brain Injury Committee (the “MTBI Committee” or the “Committee”), voluntarily undertook the responsibility of studying the effects of concussions on NFL players.

68. Through its creation of the MTBI Committee, the NFL affirmatively assumed a duty to use reasonable care in the study of concussions and post-concussion syndrome in NFL players, and to use reasonable care in the publication of data from the MTBI Committee's work.

69. Rather than exercising reasonable care in these duties, the NFL immediately engaged in a long-running course of negligent conduct.

70. The MTBI Committee's stated goal was to present objective findings on the extent to which a concussion problem existed in the League, and to outline solutions. The MTBI Committee's studies were supposed to be geared toward "improv[ing] player safety" and for the purpose of instituting "rule changes aimed at reducing head injuries."

71. By 1994, when the NFL formed the MTBI Committee, independent scientists, doctors, and neurologists alike were already convinced that all concussions—even seemingly mild ones—were serious injuries that can permanently damage the brain, impair thinking ability and memory, and hasten the onset of mental decay and senility, especially when they are inflicted frequently and without time to properly heal.

72. The MTBI Committee was intended to be independent from the NFL, consisting of a combination of doctors and researchers.

73. In actuality however, the MTBI Committee was not independent. It consisted of at least five members who were already affiliated with the NFL.

74. The Committee was headed by Dr. Elliot Pellman, a rheumatologist who lacked any specialized training or education relating to concussions, and who reportedly had previously been fired by Major League Baseball for lying to Congress regarding his resume. Dr. Pellman would go on to chair the MTBI Committee from 1994-2007, and his leadership of the Committee

came under frequent harsh outside criticism related to his deficient medical training, background, and experience.

75. The NFL failed to appoint any neuropathologist to the MTBI Committee.

76. From its inception in 1994, the MTBI Committee allegedly began conducting studies to determine the effect of concussions on the long-term health of NFL players. NFL Commissioner Roger Goodell (“Goodell”) confirmed this in June 2007 when he stated publicly that the NFL had been studying the effects of traumatic brain injury for “close to 14 years”

77. The MTBI Committee did not publish its first findings on active players until 2003. In that publication, the MTBI Committee stated, contrary to years of (independent) findings, that there were no long term negative health consequences associated with concussions.

78. The MTBI Committee published its findings in a series of sixteen papers between 2003 and 2009. According to the MTBI Committee, all of their findings supported a conclusion that there were no long term negative health consequences associated with concussions. These findings regularly contradicted the research and experiences of neurologists who treat sports concussions and the players who endured them.

79. Completely contrary to public findings and conclusions, the NFL’s team of hand-picked experts on the MTBI Committee did not find concussions to be of significant concern and felt it appropriate for players suffering a concussion to continue playing football during the same game or practice in which one was suffered. This recommendation and practice by the NFL, promoted by the MTBI Committee, was irresponsible and dangerous.

80. The MTBI Committee’s methodology and the conclusions reached in their research were criticized by independent experts due to the numerous flaws in the study design,

methodology, and interpretation of the data, which led to conclusions at odds with common medical knowledge and basic scientific protocol.

81. For example, in 2004 the MTBI Committee published a conclusion in which it claimed that the Committee's research found no risk of repeated concussions in players with previous concussions and that there was no "7- to 10- day window of increased susceptibility to sustaining another concussion."

82. In a comment to this publication, one independent doctor wrote that "[t]he article sends a message that it is acceptable to return players while still symptomatic, which contradicts literature published over the past twenty years suggesting that athletes be returned to play only after they are asymptomatic, and in some cases for seven days."

83. As further example, an MTBI Committee conclusion in 2005 stated that "[t]here was no evidence of any adverse effect" of a player returning to play in the same game after having suffered a concussion. "These data suggest," the Committee reported, "that these players were at no increased risk" of subsequent concussions or prolonged symptoms such as memory loss, headaches, and disorientation.

84. Yet, a 2003 NCAA study of 2,905 college football players found just the opposite: "Those who have suffered concussions are more susceptible to further head trauma for seven to 10 days after the injury."

85. Other contrary conclusions that the MTBI Committee published over several years include but are not limited to the following:

- i. an October 2006 article by Drs. Pellman and Viano stated that because a "significant percentage of players returned to play in the same game [as they suffered a concussion] and the overwhelming majority of players with concussions were kept out of football-related activities for less than 1 week, it can be concluded

that mild [concussions] in professional football are not serious injuries;”

- ii. that NFL players did not show a decline in brain function after a concussion;
- iii. that there were no ill effects among those who had three or more concussions or who took hits to the head that sidelined them for a week or more;
- iv. that “no NFL player experienced the second-impact syndrome or cumulative encephalopathy from repeat concussions;” and
- v. that NFL players’ brains responded and healed faster than those of high school or college athletes with the same injuries.

86. The Committee’s papers (the “Pellman Papers”) received significant criticism in the media from independent doctors and researchers, and were met with skepticism in peer review segments following each article’s publication.

87. Renowned experts Dr. Robert Cantu and Dr. Julian Bailes wrote harshly critical reviews of the studies’ conclusions.

88. The Pellman Papers were also criticized in the popular press by ESPN and the *New York Times* when repeated inconsistencies and irregularities in the MTBI Committee’s data were revealed.

89. An ESPN article described how the MTBI Committee failed to include hundreds of neuropsychological tests done on NFL players in the results of the Committee’s studies on the effects of concussions. The article further revealed that Dr. Pellman had fired a neuropsychologist for the New York Jets, Dr. William Barr, after Dr. Barr voiced concern that Dr. Pellman might be picking and choosing what data to include in the Committee’s research to get results that would downplay the negative effects of concussions.

90. As described in the following paragraphs, when faced with studies which implicated a causal link between concussions and cognitive degeneration, the NFL, through the MTBI Committee, continued to produce contrary findings which were false, distorted, and deceiving, all in an effort to conceal and deceive players and the public at large.

91. Between 2002 and 2007, Dr. Bennet Omalu examined the brain tissue of deceased NFL players, including Mike Webster, Terry Long, Andre Waters, and Justin Strzelczyk. Dr. Omalu concluded that the players suffered from CTE. Some of his findings were published in *Neurosurgery* articles.

92. In response to Dr. Omalu's articles, the MTBI Committee wrote a letter to the editor of *Neurosurgery* asking that Dr. Omalu's article be retracted.

93. In 2005, a clinical study performed by Dr. Kevin Guskiewicz found that retired players who sustained three or more concussions in the NFL had a five-fold prevalence of mild cognitive impairment in comparison to NFL retirees without a history of concussions. In doing this research, Dr. Guskiewicz conducted a survey of over 2,550 former NFL athletes. The MBTI Committee attacked and undermined the study, stating: "We want to apply scientific rigor to this issue to make sure that we're really getting at the underlying cause of what's happening. . . . You cannot tell that from a survey."

94. In August 2007, the NFL, in keeping with its deceit, issued a concussion pamphlet to players which stated: "Current research with professional athletes has not shown that having more than one or two concussions leads to permanent problems if each injury is managed properly. . . . Research is currently underway to determine if there are any long-term effects of concussion[s] in NFL athletes."

95. In a statement made around the time that the concussion pamphlet was released, NFL Commissioner Roger Goodell said, “We want to make sure all NFL players . . . are fully informed and take advantage of the most up to date information and resources as we continue to study the long-term impact on concussions.” The NFL decided that the “most up to date information” did not include the various independent studies indicating a causal link between multiple concussions and cognitive decline in later life.

The NFL’s Belated Acknowledgement of the Concussion Crisis

96. Facing increasing media scrutiny over the MTBI Committee’s questionable studies, Dr. Pellman eventually resigned as the head of the Committee in 2007. He was replaced as head by Dr. Ira Casson and Dr. David Viano, but remained a member of the Committee.

97. Dr. Casson continued to dismiss outside studies and overwhelming evidence linking dementia and other cognitive decline to brain injuries. When asked in a 2007 public interview whether concussions could lead to brain damage, dementia, or depression, Dr. Casson denied the linkage six separate times.

98. In June 2007, the NFL convened a concussion summit for team doctors and trainers. At the summit, Dr. Casson told team doctors and trainers that CTE has never been scientifically documented in football players.

99. When Boston University’s Dr. Ann McKee found CTE in the brains of two more deceased NFL players in 2008, a MTBI Committee representative characterized each study as an “isolated incident” from which no conclusion could be drawn.

100. In 2008, under increasing pressure, the NFL commissioned the University of Michigan’s Institute for Social Research to conduct a study on the health of retired players. Over 1,000 former NFL players took part in the study. The results of the study, released in 2009,

reported that “Alzheimer’s disease or similar memory-related diseases appear to have been diagnosed in the league’s former players vastly more often than in the national population---including a rate of 19 times the normal rate for men ages 30 through 49.”

101. The NFL, **who commissioned the study**, responded to these results by claiming that the study was incomplete, and that further findings would be needed. Other experts in the field found the NFL’s reaction to be “bizarre,” noting that “they paid for the study, yet they tried to distance themselves from it.”

102. After the results of this study were released, Representative John Conyers, Jr., Chairman of the House Judiciary Committee, called for hearings on the impact of head injuries sustained by NFL players.

103. At the first hearing in October 2009, NFL Commissioner Roger Goodell acknowledged that the NFL owes a duty to the public at large to educate them as to the risks of concussions due to the League’s unique position of influence: “In addition to our millions of fans, more than three million youngsters aged 6-14 play tackle football each year; more than one million high school players also do so and nearly seventy five thousand collegiate players as well. We must act in their best interests even if these young men never play professional football.”

104. Also at the October hearing, NFL Players’ Association Executive Director DeMaurice Smith stated, “[T]here have been studies over the last decade highlighting [connection between on-field injury and post career mental illness]. Unfortunately, the N.F.L. has diminished those studies, urged the suppression of the findings and for years, moved slowly in an area where speed should have been the impetus.”

105. Dr. Casson gave testimony at these hearings, and continued to deny the validity of other non-NFL studies, stating that “[t]here is not enough valid, reliable or objective scientific

evidence at present to determine whether or not repeat head impacts in professional football result in long term brain damage.”

106. In 2007, in a televised interview on HBO’s Real Sports, Dr. Casson definitively and unequivocally stated that there was no link between concussions and depression, dementia, Alzheimer’s disease, or “anything like [that] whatsoever.”

107. Shortly after the 2009 congressional hearings, however, the NFL announced that it would impose its most stringent rules to date on managing concussions, requiring players who exhibit any significant sign of concussion to be removed from a game or practice and be barred from returning the same day.

108. On or about December 20, 2009, the NFL publicly acknowledged for the first time, through its spokesman Greg Aiello, that “concussions can lead to long-term problems.”

109. In January 2010, the House Judiciary Committee held further hearings on football player head injuries. Representative Conyers noted that “until recently, the NFL had minimized and disputed evidence linking head injuries to mental impairment in the future.”

110. The NFL’s belated change of policy contradicted past recommendations by its MTBI Committee which had recommended as safe the League’s practice of returning players to the game after a concussion. In fact, the Committee had published a paper in 2005 that stated “[p]layers who are concussed and return to the same game have fewer initial signs and symptoms than those removed from play. Return to play does not involve a significant risk of a second injury either in the same game or during the season.”

111. In 2010, the NFL re-named the MTBI Committee to the “Head, Neck, and Spine Medical Committee” and announced that Dr. Pellman would no longer be a member of the panel. Drs. H. Hunt Batjer and Richard Ellenbogen were selected to replace Drs. Casson and Viano.

112. Under its new leadership, the Committee admitted that data collected by the NFL's formerly appointed brain-injury leadership was "infected," and said that their Committee should be assembled anew.

113. Dr. Batjer was quoted as saying, "[w]e all had issues with some of the methodologies described, the inherent conflict of interest that was there in many areas, that was not acceptable by any modern standards or not acceptable to us. I wouldn't put up with that, our universities wouldn't put up with that, and we don't want our professional reputations damaged by conflicts that were put upon us."

114. In June 2010, scientific evidence linked multiple concussions to yet another degenerative brain disease—Amyotrophic Lateral Sclerosis ("ALS"), commonly referred to as "Lou Gehrig's Disease."

115. In October 2011, Dr. Mitchel Berger of the Head, Neck, and Spine Medical Committee announced that a new study was in the planning process. He admitted that the MTBI Committee's previous long-range study was useless because "[t]here was no science in that." Dr. Berger further stated that data from the previous study would not be used. "We're really moving on from that data. There's really nothing we can do with that data in terms of how it was collected and assessed."

116. Now, the NFL requires its member teams to have concussion experts on the sidelines during games to clear players suspected of concussions prior to their return to play.

117. Notwithstanding this new policy, on October 23, 2011, San Diego Charger Kris Dielman plainly suffered a concussion early in a game and could be seen staggering back to the huddle. Despite the obvious brain injury, Mr. Dielman was neither evaluated by a doctor nor held out for even one play. He suffered grand mal seizures on the team's plane ride home.

118. Ten days later, in November of 2011, the League's injury and safety panel issued a directive telling its game officials to watch closely for concussion symptoms in players.

119. On or about December 21, 2011, the NFL alerted all thirty two teams that, effective immediately, an independently certified athletic trainer would be assigned to monitor all suspected concussion-related injuries. The independent trainers are paid by the NFL and approved by the NFL Players' Association. The trainers' sole purpose is to oversee the treatment of possible concussions and ensure that medical staff on each sideline are following proper League protocol and testing for any head trauma.

120. Why League policy changes, accurate information sharing, strict fines and warnings were not recommended by the NFL's so called "expert" committee soon after its creation in 1994 is difficult to comprehend. That it took sixteen (16) years to admit that there was a problem and to take real action to address that problem is willful and wanton and exhibits a reckless disregard for the safety of its players and the public at large.

THE REPRESENTATIVE PLAINTIFFS' SPECIFIC FACTUAL ALLEGATIONS

Plaintiff Shawn Wooden's Concussion History in the NFL and Injuries

121. Plaintiff Sean Wooden played in the NFL from 1996 to 2004.

122. Plaintiff Wooden sustained numerous diagnosed and undiagnosed concussions while playing in the NFL.

123. Plaintiff Wooden was returned to play too soon after having suffered his concussions and subsequently suffered other head injuries or blows to the head.

124. At no time did the NFL inform Plaintiff Wooden that he risked severe and permanent brain damage by returning to play too soon after sustaining a concussion. The NFL's failure was a substantial cause of his current injuries.

125. As a result of the numerous concussions suffered during his playing career, Plaintiff Wooden suffers from, *inter alia*, problems with short-term memory and migraine headaches. Plaintiff Wooden is also at heightened risk of developing further adverse neurological symptoms in the future.

Plaintiff Ryan Fowler's Concussion History in the NFL and Injuries

126. Plaintiff Ryan Fowler played in the NFL from 2004 to 2009.

127. Plaintiff Fowler sustained numerous diagnosed and undiagnosed concussions while playing in the NFL.

128. Plaintiff Fowler was returned to play too soon after having suffered his concussions and subsequently suffered other head injuries or blows to the head.

129. At no time did the NFL inform Plaintiff Fowler that he risked severe and permanent brain damage by returning to play too soon after sustaining a concussion. The NFL's failure was a substantial cause of his current injuries.

130. As a result of the numerous concussions suffered during his playing career, Plaintiff Fowler suffers from, *inter alia*, mood swings. Plaintiff Fowler is also at heightened risk of developing further adverse neurological symptoms in the future.

COUNT I—CLASS ACTION CLAIM FOR MEDICAL MONITORING

131. The Representative Plaintiffs adopt and incorporate by reference all prior paragraphs of this Complaint as if fully set forth herein.

132. As a result of the NFL's negligent misconduct, the Representative Plaintiffs and the Class have been exposed to a greater than normal risk of brain injury following a return to contact play too soon after suffering an initial concussion, thereby subjecting them to a proven increased risk of developing the adverse symptoms and conditions described above.

133. The Representative Plaintiffs and the Class have not yet fully begun to evidence many of the long-term physical and mental effects of the concussive injuries they sustained while playing in the NFL, which may remain latent and go undetected for some period of time.

134. These latent brain injuries require specialized testing that is not generally given to the public at large.

135. The available monitoring regime is specific for individuals exposed to concussions, and is different from that normally recommended in the absence of exposure to this risk of harm. The medical monitoring regime includes, but is not limited to, baseline exams and diagnostic exams which will assist in diagnosing the adverse health effects associated with concussions. This diagnosis will facilitate the treatment and behavioral and/or pharmaceutical interventions that will prevent or mitigate the various adverse consequences of the latent neurodegenerative disorders and diseases associated with the repeated traumatic head impacts that these players experienced while playing in the NFL.

136. The available monitoring regime is reasonably necessary according to contemporary scientific principles within the medical community specializing in the diagnosis of head injuries and their potential link to, *inter alia*, memory loss, early onset dementia, CTE, Alzheimer-like syndromes, and similar cognition-impairing conditions.

137. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Plaintiffs seek certification of a medical monitoring class in this matter, consisting of:

All retired NFL players who played prior to the 2010 NFL season and who, during their NFL careers, suffered a concussion and were returned to contact play within ten (10) days of having suffered the concussion, and who, as of the date of class certification, are neither (a) advancing an individual personal injury claim for money damages against the NFL, nor (b) a salaried employee of the NFL.

138. By monitoring and testing these former NFL players, the risk of each such player suffering the long term injuries, disease, and losses, as described above, will be significantly reduced.

139. Because the NFL has until now failed to properly, reasonably, and safely monitor, test, and/or otherwise study whether and when a player has suffered a concussion to minimize the risk of long-term injury or illness, medical monitoring is the most appropriate method to determine whether a particular individual is now at risk of long-term injury or illness associated with a concussive event.

140. Accordingly, the NFL should be required to establish a medical monitoring program that includes, *inter alia*:

- i. Establishing a trust fund, in an amount to be determined, that will pay for the medical monitoring, as necessary and appropriate, of all retired NFL players who played prior to the 2010 NFL season and who, during their NFL careers, suffered a concussion and were returned to contact play within ten (10) days of having suffered the concussion, and who, as of the date of class certification, are neither (a) advancing an individual personal injury claim for money damages against the NFL, nor (b) a salaried employee of the NFL; and
- ii. Notifying in writing all Class members that they should have frequent medical monitoring.

141. The Representative Plaintiffs and Class members have no adequate remedy at law because monetary damages alone cannot compensate them for the risk of long-term physical and economic losses due to concussive injuries. Without a Court-approved medical monitoring program as described herein, or established by the Court, the Representative Plaintiffs and Class members will continue to face an unreasonable risk of injury and disability, and any potential damages they suffer will be exponentially increased due to a lack of timely diagnosis.

WHEREFORE, the Representative Plaintiffs individually and on behalf of the proposed Class, demand a jury trial on all claims so triable, and pray for judgment as follows:

- i. Certification of the proposed Class pursuant to Federal Rule of Civil Procedure 23;
- ii. Designation of Plaintiffs as representatives of the proposed Class and designation of the Representative Plaintiffs' counsel as Class counsel;
- iii. The establishment of a medical monitoring program/regime which includes, among other things, those measures described above;
- iv. Costs and disbursements incurred by the Representative Plaintiffs in connection with this action, including reasonable attorneys' fees and costs pursuant to applicable law; and
- v. Such other relief as the Court deems just and proper.

Dated this 24th day of January, 2012.

Respectfully submitted,

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