

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

CHARLES RAY EASTERLING and his  
wife, MARY ANN EASTERLING, et al.,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE,  
INC.,

Defendant.

CIVIL ACTION  
Case No. 11-cv-05209-AB

**THE NATIONAL FOOTBALL LEAGUE'S  
PROPOSED DISCOVERY PLAN UNDER RULE 26(f)**

**I. Rule 26(a) Disclosures**

Counsel anticipate completing the self-executing disclosures on \_\_\_\_\_,  
as required by Rule 26(a).

**The NFL respectfully submits that Rule 26(a) Disclosures are premature given: (i) the NFL's petition to the Judicial Panel on Multidistrict Litigation (the "MDL Panel") pursuant to 28 U.S.C. § 1407 for an order transferring three actions pending against it in the United States District Court for the Central District of California for coordinated or consolidated pretrial proceedings with this action in the Eastern District of Pennsylvania; (ii) the NFL's motion to stay all proceedings in this action pending decision of the MDL Panel; and (iii) the NFL's motion to dismiss plaintiffs' claims.**

**Notwithstanding this position, if the Court wishes for the parties to proceed, the NFL respectfully submits that the parties complete the 26(a) initial disclosures on February 15, 2012.**

## II. Discovery Subjects

- A. Counsel agree that unless otherwise stipulated by the parties or ordered by the court, discovery shall proceed in accordance with the Federal Rules of Civil Procedure. This includes the amendments to the Federal Rules regarding electronic discovery effective December 1, 2006. If the parties agree to modifications to this default position, please list:

The NFL respectfully submits that this determination is premature given: (i) the NFL's petition to the MDL Panel pursuant to 28 U.S.C. § 1407 for an order transferring three actions pending against it in the United States District Court for the Central District of California for coordinated or consolidated pretrial proceedings with this action in the Eastern District of Pennsylvania; (ii) the NFL's motion to stay all proceedings in this action pending decision of the MDL Panel; (iii) the NFL's motion to dismiss plaintiffs' claims; and (iv) the complexity of this litigation, which includes both proposed class and individual claims.

Notwithstanding this position, the NFL proposes that, at minimum, the following modifications to the Federal Rules of Civil Procedure, and local rules, concerning discovery are in order:

- **Treatment of Plaintiffs for Written Discovery:** The NFL proposes that plaintiffs, who are all represented by the same counsel, be required to prepare a master set of written discovery limited to a total number of interrogatories, requests for the production of documents, and requests for admission, as set forth below. The NFL further proposes that limitations on its written discovery of plaintiffs be treated on an individual plaintiff basis (*e.g.*, 25 interrogatories of each plaintiff) given that the individual plaintiffs will have unique circumstances rendering blanket treatment impractical.
- **Depositions:** Although it is difficult to predict at this early stage of the litigation how many depositions will be necessary, the NFL proposes that: (i) it should be permitted to take the deposition of all named plaintiffs; (ii) the total number of depositions, including third-party witnesses (excluding expert witnesses), should be determined at a future date; (iii) fact witnesses will be deposed for a maximum of 7 hours on the record, as measured by the counter on the videotape; (iv) to the extent circumstances warrant additional time beyond seven hours for fact witness depositions, the NFL reserves its rights to obtain leave of the Court or to stipulate to such additional time; and (v) the number and length of expert depositions will be determined after disclosure of such experts by the parties.

- **Interrogatories:** The NFL proposes that: (i) the NFL, and the plaintiffs (in aggregate), each should be limited to 25 interrogatories, including discrete subparts, as provided in Federal Rules of Civil Procedure 33(a), and that contention interrogatories should be included in the 25 interrogatory limit; and (ii) to the extent future circumstances warrant additional interrogatories, the NFL reserves its rights to obtain leave of the Court or to stipulate to such additional interrogatories.
- **Document Requests:** The NFL proposes that: (i) the NFL, and the plaintiffs (in aggregate), each should be limited to 50 requests for production of documents, including subparts; and (ii) to the extent future circumstances warrant additional requests for the production of documents, the NFL reserves its rights to obtain leave of the Court or to stipulate to such additional requests for the production of documents.
- **Requests for Admission:** The NFL proposes that: (i) the NFL, and the plaintiffs (in aggregate), each should be limited to 75 requests for admission; and (ii) to the extent future circumstances warrant additional requests for admission, the NFL reserves its rights to obtain leave of the Court or to stipulate to such additional requests for admission.
- **Supplementation:** The parties will supplement their disclosures and discovery responses as required by Federal Rules of Civil Procedure 26(e).
- **Privilege Designations:** The NFL proposes that privileged documents created on or after the date of the commencement of this litigation need not be listed on a privilege log.

The NFL proposes that requested production format of documents, including electronically stored information, should be agreed upon by the parties at a future date following the decision of the MDL Panel and the decision by this Court on the NFL's motion to stay all proceedings in this action pending decision of the MDL.

B. Counsel agree that the subjects for discovery include:

The NFL, at a minimum, and with full reservation of its rights to seek additional discovery, will need discovery on the following subjects from plaintiffs and third parties:

- Histories of plaintiffs' football participation at all levels of play;
- Medical histories of plaintiffs;

- **Medical histories of plaintiffs’ genetically-related family members concerning neuro-cognitive issues;**
- **Head injury histories of plaintiffs at all levels of play;**
- **Risk factors for plaintiffs’ alleged injuries;**
- **Cause of plaintiffs’ alleged injuries;**
- **Risks of playing football;**
- **Symptoms of plaintiffs’ alleged injuries;**
- **Plaintiffs’ understanding of tackling methodologies;**
- **Return to play decisions and guidelines in athletic participation;**
- **Plaintiffs’ knowledge of NFL public statements alleged in the Amended Complaint;**
- **Medical and scientific studies relating to the issues alleged in Amended Complaint;**
- **Amateur football rules relating to the issues alleged in the Amended Complaint;**
- **Plaintiffs’ purported reliance on alleged conduct of the NFL;**
- **Plaintiffs’ workers compensation claims;**
- **Plaintiffs’ benefits claims;**
- **Plaintiffs’ residency from time of play in NFL to present;**
- **The nature of the class claim;**
- **The appropriateness of certifying a class of plaintiffs;**
- **The suitability of the proposed class representatives;**
- **Damages**

C. Counsel anticipate that the following depositions will be necessary (identify parties if known at this point):

**The NFL, as noted above, respectfully submits that the total number of depositions, including third-party witnesses (excluding expert witnesses), should be determined at a future date. The NFL similarly feels that a determination of deponents is premature at this time given the pendency of the NFL’s petition to the MDL Panel and its motion to dismiss plaintiffs’ claims in this action.**

**Notwithstanding this position, at minimum, counsel for the NFL anticipates taking the depositions of all named plaintiffs, and a significant number of third party deponents, including the treating physicians of the former player plaintiffs, given the medical and injury allegations at issue in this litigation.**

### III. Pretrial Timetable

- A. The Court will enter the default scheduling order, a copy of which is attached as Attachment B, unless the parties request an alternate discovery schedule. The parties request a close of discovery date of \_\_\_\_\_.
- B. Counsel may set forth below an alternative proposed scheduling order if agreed to by all parties. Counsel should use dates certain rather than contingent dates; if a date is difficult to specify, counsel should estimate it to the best of their ability.

**The NFL respectfully submits that it is premature to enter a scheduling order setting a close of discovery date at this time given (i) the NFL's petition pursuant to 28 U.S.C. § 1407 to the MDL Panel for an order transferring three actions pending against it in the United States District Court for the Central District of California for coordinated or consolidated pretrial proceedings with this action in the Eastern District of Pennsylvania, (ii) the NFL's motion to stay all proceedings pending decision of the MDL Panel, (iii) the NFL's motion to dismiss plaintiffs' claims; and (iv) the complexity of this litigation, which includes both proposed class and individual claims.**

**The NFL respectfully submits that it would be appropriate to revisit a scheduling order following the decision of the MDL Panel. Notwithstanding this position, the NFL requests that if the Court proceeds with issuing a scheduling order, given all of the uncertainties noted above, it only set a close of discovery date for no earlier than May 1, 2013 and that the other dates be revisited after the pending MDL issues are resolved.**

### IV. Alternative Dispute Resolution

- A. type of ADR, settlement conference etc.
- B. timing of ADR
- C. unless otherwise recommended, a settlement conference will be scheduled upon the close of all discovery.

**The NFL respectfully submits that ADR is premature at this time, and that a settlement conference should be scheduled upon the close of all discovery.**

V. Other Pretrial Issues

(e.g. protective orders, etc.)

**Protective Order: The NFL respectfully submits that a protective order should be entered in this case to protect the confidential information of the parties. The specific terms of such an agreement have not yet been reached. Once agreement as to the specific terms of a protective order is reached, the parties will submit a Stipulation and [Proposed] Protective Order for the Court's consideration.**

Dated: November 18, 2011

By: /s/ Dana B. Klinges

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**CERTIFICATE OF SERVICE**

I, Dana B. Klinges, hereby certify that on November 18, 2011, the foregoing National Football League's Proposed Discovery Plan Under Rule 26(f) has been filed electronically and is available for downloading and viewing from the Court's ECF system by all counsel of record.

Dated: November 18, 2011

By: /s/ Dana B. Klinges