BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE NATIONAL FOOTBALL LEAGUE LITIGATION	MDL DOCKET NO. _____

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TRANSFER AND COORDINATION OR CONSOLIDATION PURSUANT TO 28 U.S.C. § 1407

Pursuant to 28 U.S.C. § 1407, the National Football League ("NFL") respectfully submits this memorandum of law in support of its motion to transfer multiple actions pending against it in the United States District Courts for the Central District of California and the Eastern District of Pennsylvania (collectively, the "Actions") for coordinated or consolidated pretrial proceedings. As detailed below, the four immediate Actions—seeking to hold the NFL liable, through claims sounding in negligence and fraud, for purported damages sustained by former players who suffered concussions while playing football—involve the type of common allegations and raise common questions of fact that are particularly well suited for transfer and coordination. Transfer and consolidation is especially important where, as here, there are motions involving common questions of law that could lead to conflicting pretrial rulings. Accordingly, transfer and coordination or consolidation will ensure that the Actions proceed in a just and efficient manner.

Background

A schedule of the Actions is provided in accordance with the Panel's Rule 6.1(b)(ii). Each Action is described more specifically below.

Vernon Maxwell, et al.* v. *National Football League, et al.

On September 12, 2011, seventy-three former NFL players and certain of their wives served the NFL with a complaint filed in the Superior Court of California, Los Angeles County, against the NFL, NFL Properties LLC ("NFLP"), and Riddell, Inc., All American Sports Corporation, Riddell Sports Group, Inc., Easton-Bell Sports, Inc., Easton-Bell Sports, LLC, EB Sports Corp., and RBG Holdings Corp. (collectively, the "Riddell Defendants"). (*See Maxwell* Compl., attached to the Motion as Ex. B.) The NFL and NFLP, with the consent of the Riddell Defendants, removed the action to the United States District Court for the Central District of California on October 11, 2011 on the basis of federal question jurisdiction under section 301 of the Labor Management Relations Act ("LMRA"), because plaintiffs' claims arise from or are substantially dependent upon the terms of the collective bargaining agreements ("CBAs") pursuant to which the vast majority of players played in the NFL and thus are preempted by section 301. Plaintiffs moved to remand on November 7, 2011, claiming that none of their claims should be preempted by section 301 and thus no federal question jurisdiction exists. The NFL and NFLP filed an opposition brief on November 14, 2011, and will file motions to dismiss on November 17, 2011. The NFL and NFLP also plan to file a motion to stay all proceedings pending a decision by the Judicial Panel on Multidistrict Litigation on this motion.

The *Maxwell* complaint alleges, among other things, that the NFL had a "duty to protect the health and safety of its players by implementing rules, policies and regulations in an attempt to best protect its players," but breached that duty by purportedly failing to "warn and protect NFL players . . . against the long-term brain

injury risks associated with football-related concussions"; failing to "regulate and monitor practices, games, rules, equipment, and medical care so as to minimize the long-term risks associated with concussive brain injuries"; failing to "ensure accurate diagnosis and recording of concussive brain injury"; and failing to "enact league-wide guidelines and mandatory rules regulating post-concussion medical treatment and return-to-play standards for players who suffer a concussion." (*Maxwell* Compl. ¶¶ 114-15, 542, 548(b), 548(d).) The *Maxwell* complaint also alleges that "[f]or decades, Defendants have known that multiple blows to the head can lead to long-term brain injury," but that the NFL "made . . . material misrepresentations . . . that there was no link between concussions and later life cognitive/brain injury." (*Id.* ¶¶ 113, 124-25, 556.) Plaintiffs allege causes of action for negligence, "negligence-monopolist," fraud and loss of consortium against the NFL. (*Id.* ¶¶ 524-61, 587-89.)[1]

Dave Pear, et al.* v. *National Football League, et al.

On September 12, 2011, forty-seven former NFL players and certain of their wives served the NFL with a complaint filed in the Superior Court of California, Los Angeles County, against the NFL, NFLP and the Riddell Defendants. (*See Pear* Compl., attached to the Motion as Ex. C.) The NFL and NFLP, with the consent of the Riddell Defendants, removed the action to the United States District Court for the Central District of California on October 11, 2011 on the basis of federal question jurisdiction

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[1] Plaintiffs also allege causes of action for negligence and loss of consortium against NFLP arising from its purported breach of a "duty to ensure that the equipment it licensed and approved or required were of the highest possible quality and sufficient to protect NFL players." (*Maxwell* Compl. ¶¶ 562-66.) Plaintiffs also allege causes of action for strict liability for manufacturing and design defects, failure to warn, negligence and loss of consortium against the Riddell Defendants related to the manufacturing and sale of football helmets. (*Id.* ¶¶ 567-89.)

under section 301 of the LMRA because plaintiffs' claims arise from or are substantially dependent upon the terms of the CBAs pursuant to which the vast majority of players played in the NFL and thus are preempted by section 301. Plaintiffs moved to remand on November 7, 2011, claiming that none of their claims should be preempted by section 301 and thus no federal question jurisdiction exists. The NFL and NFLP filed an opposition brief on November 14, 2011, and will file motions to dismiss on November 17, 2011. The NFL and NFLP also plan to file a motion to stay all proceedings pending a decision by the Judicial Panel on Multidistrict Litigation on this motion.

The *Pear* complaint is identical in substance to the *Maxwell* complaint, and plaintiffs have designated the *Pear* case as related to the *Maxwell* case pursuant to California Rules of Court, rule 3.300.

Larry Barnes, et al.* v. *National Football League, et al.

On October 4, 2011, sixteen former NFL players and certain of their wives served the NFL with an amended complaint filed in the Superior Court of California, Los Angeles County, against the NFL, NFLP and the Riddell Defendants. (*See Barnes* Am. Compl., attached to the Motion as Ex. D.) The NFL and NFLP, with the consent of the Riddell Defendants, removed the action to the United States District Court for the Central District of California on October 11, 2011 on the basis of federal question jurisdiction under section 301 of the LMRA because plaintiffs' claims arise from or are substantially dependent upon the terms of the CBAs pursuant to which the vast majority of players played in the NFL and thus are preempted by section 301. Plaintiffs moved to remand on November 7, 2011, claiming that none of their claims should be preempted by section 301 and thus no federal question jurisdiction would exist. The NFL and NFLP filed an

opposition brief on November 14, 2011, and will file motions to dismiss on November 17, 2011. The NFL and NFLP also plan to file a motion to stay all proceedings pending a decision by the Judicial Panel on Multidistrict Litigation on this motion.

The *Barnes* complaint is identical in substance to the *Maxwell* and *Pear* complaints (with the addition of a wrongful death claim on behalf of the heir of a former player), and plaintiffs have designated the *Barnes* case as related to the *Maxwell* and *Pear* cases pursuant to California Rules of Court, rule 3.300.

Charles Ray Easterling, et al.* v. *National Football League

On October 6, 2011, seven former NFL players and certain of their wives served the NFL with an amended complaint filed in the United States District Court for the Eastern District of Pennsylvania. The NFL filed a motion to dismiss on November 9, 2011 on the basis that plaintiffs' claims are preempted under section 301 of the LMRA or otherwise fatally defective. The NFL also plans to file a motion to stay all proceedings pending a decision by the Judicial Panel on Multidistrict Litigation on this motion.

The *Easterling* complaint alleges, among other things, that the NFL had a "duty of care it owed the NFL players" and breached that duty by failing "to establish a proper and adequate methodology to monitor and detect when players suffer concussive or sub-concussive injury in practice or game play," failing "to take reasonable steps to develop appropriate and necessary guidelines for return to play following a concussion," and failing to "adopt and reasonably enforce . . . rules to minimize the risk of players suffering debilitating concussions." (*See Easterling* Am. Compl. ¶¶ 5, 17, 19, 47(g), attached to the Motion as Ex. A.) The *Easterling* complaint also alleges that "[s]ince the early 1970s," the NFL purportedly "has been well aware . . . that a history of multiple

concussions has been associated with players' greater risk of future brain deficits" and "that NFL players suffering repeated concussions were more likely to experience evolving symptoms of post-traumatic brain injury," but supposedly "continued to deny any connection or correlation between players suffering concussions and long-term chronic brain injury or illness." (*Id.* ¶¶ 8-10.) Plaintiffs allege claims for negligence, concealment, civil conspiracy, medical monitoring and loss of consortium against the NFL. (*Id.* ¶¶ 36-63.) Plaintiffs seek to bring their medical monitoring claim on behalf of a putative class. (*Id.* ¶ 31.)[2]

Argument

I.

THE ACTIONS SHOULD BE TRANSFERRED AND CONSOLIDATED FOR PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407

It is well settled that transfer under 28 U.S.C. § 1407(a) is appropriate where (1) different actions pending in federal courts involve "one or more common

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[2] The NFL and NFLP were served on November 8, 2011 with a summons and complaint in an action filed in Superior Court of the State of California, Los Angeles County, *Hardman, et al.* v. *Nat'l Football League, et al.*, which action the NFL intends to remove to the United States District Court for the Central District of California. Thus, the *Hardman* action will be a "tag-along action" to the pending actions described herein pursuant to Rule 1.1(h), Rules of the Judicial Panel On Multidistrict Litigation. The NFL will notify the Panel pursuant to Rule 7.1(a), Rules of the Judicial Panel On Multidistrict Litigation, once the matter is pending in district court, and will follow all related procedures to ensure that this case is properly considered for transfer and coordination or consolidation with the pending actions. The *Hardman* complaint, brought on behalf of a putative class of all former NFL players residing in California, alleges, among other things, that the NFL breached a duty to protect NFL players' health by failing to warn players about the long-term effects of concussions, and failing to regulate the sport so as to minimize the risk of such long-term injuries. The complaint also alleges that the NFL knew of – and denied – a purported link between multiple blows to the head and long-term brain injuries. Plaintiffs allege causes of action for declaratory judgment and medical

questions of fact"; and (2) transfer will promote "the convenience of parties and witnesses" and "the just and efficient conduct of such actions." 28 U.S.C. § 1407(a); *see, e.g.*, *In re Avaulta Pelvic Support Sys. Prods. Liab. Litig.*, 746 F. Supp. 2d 1362, 1363 (J.P.M.L. 2010) (ordering transfer and centralization of actions involving common questions of fact).

Both criteria for transfer are easily satisfied here.

A. The Actions Involve Common Questions of Fact

Transfer and coordination or consolidation of pretrial proceedings is appropriate where common questions of fact exist. *See In re "Factor VIII or IX Concentrate Blood" Prods. Liab. Litig.*, 853 F. Supp. 454, 455 (J.P.M.L. 1993) (consolidation proper where there are common questions of fact regarding defendants' conduct); *see also In re Phenylpropanolamine Prods. Liab. Litig.*, 173 F. Supp. 2d 1377, 1379 (J.P.M.L. 2001) (noting that "Section 1407 does not require a complete identity or even majority of common factual and legal issues as a prerequisite to centralization"). Indeed, the Panel regularly transfers negligence actions that involve common questions of fact. *See, e.g.*, *In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 474 F. Supp. 2d 1357, 1358 (J.P.M.L. 2007); *In re LLRICE 601 Contamination Litig.*, 466 F. Supp. 2d 1351, 1351 (J.P.M.L. 2006); *In re Bausch & Lomb Inc. Contact Lens Solution Prods. Liab. Litig.*, 444 F. Supp. 2d 1336, 1338 (J.P.M.L. 2006); *In re McDonald's French Fries Litig.*, 444 F. Supp. 2d 1342, 1343 (J.P.M.L. 2006).

Here, the Actions—all of which assert claims against the NFL premised on negligence and fraud—involve common questions of fact. (*See Maxwell* Compl. ¶¶

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monitoring, based on negligence and fraud, against the same defendants as those in the *Maxwell*, *Pear* and *Barnes* actions, as described above.

524-61; 587-89 (asserting causes of action for negligence, "negligence-monopolist," fraud and loss of consortium); *Pear* Compl. ¶¶ 355-92; 418-20 (same); *Barnes* Am. Compl. ¶¶ 170-207; 232-34 (same); *id.* ¶¶ 235-40 (asserting wrongful death cause of action); *Easterling* Am. Compl. ¶¶ 36-63 (asserting claims for negligence, concealment, civil conspiracy, medical monitoring and loss of consortium).)

First, the Actions allege that the NFL had a duty to its players regarding their health and safety. (*Maxwell* Compl. ¶ 542 ("duty to protect the health and safety of its players"); *Pear* Compl. ¶ 373 (same); *Barnes* Am. Compl. ¶ 188 (same); *Easterling* Am. Compl. ¶ 45 (NFL had "a duty . . . to minimize the risk of injury to the players").)

Second, the Actions allege that the NFL breached its purported duty by:

- Failing to monitor games and practices so as to detect and minimize concussive injuries in players. (*Maxwell* Compl. ¶ 548(b) (failing to "regulate and monitor practices, games . . . so as to minimize the long-term risks associated with concussive brain injuries"); *Pear* Compl. ¶ 379(b) (same); *Barnes* Am. Compl. ¶ 194(b) (same); *Easterling* Am. Compl. ¶ 19 (failing "to establish a proper and adequate methodology to monitor and detect when players suffer concussive or sub-concussive injury in practice or game play").);

- Failing to ensure the proper diagnosis and treatment of concussive injuries in players. (*Maxwell* Compl. ¶ 548(d) (failing to "ensure accurate diagnosis and recording of concussive brain injury"); *Pear* Compl. ¶ 379(d) (same); *Barnes* Am. Compl. ¶ 194(d) (same); *Easterling* Am. Compl. ¶ 47(g) (failing "to adopt rules . . . to minimize the risk of players suffering debilitating concussions").); and

- Failing to enact adequate return-to-play rules or guidelines. (*Maxwell* Compl. ¶ 115 (failing to "enact league-wide guidelines and mandatory rules regulating . . . return-to-play standards for players who suffer a concussion"); *Pear* Compl. ¶ 87 (same); *Barnes* Am. Compl. ¶ 56 (same); *Easterling* Am. Compl. ¶ 17 (failing "to take reasonable steps to develop appropriate and necessary guidelines for return to play following a concussion").).

Third, the Actions allege that the NFL purportedly knew of a link between head injuries and long-term cognitive deficits:

- The *Maxwell*, *Pear* and *Barnes* complaints allege that "[f]or decades, Defendants have known that multiple blows to the head can lead to long-term brain injury, including memory loss, dementia, depression and CTE and its related symptoms." (*Maxwell* Compl. ¶ 113; *Pear* Compl. ¶ 85; *Barnes* Am. Compl. ¶ 54.)

- The *Easterling* complaint states that, "[s]ince the early 1970s," "the defendant has been well aware . . . that a history of multiple concussions has been associated with players' greater risk of future brain deficits[,]" and "that NFL players suffering repeated concussions were more likely to experience evolving symptoms of post-traumatic brain injury including headaches, dizziness, loss of memory, etc." (*Easterling* Am. Compl. ¶¶ 8-9.)

Fourth, the Actions allege that the NFL concealed a supposed link by disputing academic studies purporting to establish that concussions sustained in football cause cognitive problems:

- The *Maxwell*, *Pear* and *Barnes* complaints allege that, in response to "a series of clinical and neuropathological studies performed by independent scientists and physicians demonstrat[ing] that multiple NFL induced-concussions cause cognitive problems," "the NFL, to further a scheme of fraud and deceit, had members of the NFL's Brain Injury Committee deny knowledge of a link between concussion and cognitive decline and claim that more time was needed to reach a definitive conclusion on the issue." (*Maxwell* Compl. ¶¶ 124-125; *Pear* Compl. ¶¶ 96-97; *Barnes* Am. Compl. ¶¶ 65-66.)

- The *Easterling* complaint alleges that "[d]uring the decades of the 1990s and 2000s, the defendant through its authorized agents disputed and actively sought to suppress the findings of others that there is a connection between on-field head injury and post career mental illness." (*Easterling* Am. Compl. ¶ 15.)

In sum, the allegations against the NFL central to the Actions are the same. Thus, they involve complex common questions of fact, making transfer to a single forum for consolidated pretrial proceedings appropriate.[3]

B. Transfer Will Further the Convenience of the Parties and Witnesses and Promote the Just and Efficient Conduct of the Actions

Transfer and coordination or consolidation here also will further the convenience of the parties and "promote the just and efficient conduct of such actions," 28 U.S.C. § 1407(a), by "eliminat[ing] duplication in discovery, avoid[ing] conflicting rulings and schedules, reduc[ing] litigation cost, and sav[ing] the time and effort of the parties, the attorneys, the witnesses, and the courts." *Manual for Complex Litigation* (Fourth) § 20.131 (2006); *In re Cont'l Grain Co.*, 482 F. Supp. 330, 332 (J.P.M.L. 1979) ("[c]entralization . . . is thus necessary in order to prevent duplication of discovery and eliminate the possibility of conflicting pre-trial rulings").

1. Transfer Will Avoid Duplication of Discovery

The Panel regularly transfers and consolidates proceedings to avoid subjecting defendants to overlapping discovery in similar actions pending in multiple jurisdictions. *See In re Ortho Evra Prods. Liab. Litig.*, 422 F. Supp. 2d 1379, 1381 (J.P.M.L. 2006) (centralizing actions to allow a single judge to formulate a streamlined pretrial program); *In re High Sulfur Content Gasoline Prods. Liab. Litig.*, 344 F. Supp. 2d

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[3] It makes no difference that the California Actions are individual actions and the Pennsylvania Action includes a claim on behalf of a putative class, or that the California Actions include certain defendants (NFLP and the Riddell Defendants) not sued in the Pennsylvania Action. *See In re Haven Indus., Inc. Sec. Litig.*, 415 F. Supp. 396, 398 (J.P.M.L. 1976) ("transfer under Section 1407 is not dependent upon a total identity of parties and issues but rather on the existence of common questions of fact") (citation omitted); *In re Penn. Life Co. Sec. Litig.*, 389 F. Supp. 981, 983 (J.P.M.L. 1975) ("we perceive no justification for conducting separate pretrial proceedings of the class and individual actions").

755, 757 (J.P.M.L. 2004) (finding transfer warranted to eliminate duplicative discovery among other reasons).

The Actions all have been commenced within the past three months and no discovery has yet to occur in any of the Actions. Given the overlap of factual issues and similarity of the claims (and thus defenses), however, to the extent that any claims survive the NFL's motion to dismiss, discovery in each case will cover common issues. Thus, unless transfer and coordination or consolidation is ordered here, the NFL will be subject to multiple overlapping discovery requests, and witnesses likely will be deposed numerous times in the different Actions on the same underlying events. *See In re Air Crash Disaster Near Chicago, Ill., on May 25, 1979*, 476 F. Supp. 445, 447 (J.P.M.L. 1979) (noting that if actions were not transferred "there inevitably would be repetitious depositions of scores of witnesses, repetitious examinations of thousands of documents, and yet other myriad duplications of pretrial proceedings").

2. Transfer Will Avoid Inconsistent Pretrial Rulings

Transfer also is warranted to avoid potentially conflicting pretrial rulings. *See, e.g.*, *In re Cygnus Telecomms. Tech., LLC, Patent Litig.*, 177 F. Supp. 2d 1375, 1376 (J.P.M.L. 2001) (centralizing actions in order to allow a single judge to rule on pretrial matters); *In re Phenylpropanolamine Prods. Liab. Litig.*, 173 F. Supp. 2d at 1379 (centralization necessary to prevent inconsistent pretrial rulings "especially with respect to questions of privilege issues, confidentiality issues and class certification").

This concern is particularly significant here because the NFL has moved to dismiss the claims in *Easterling*, and will move to dismiss the claims in *Maxwell*, *Pear*, and *Barnes*, as being preempted under section 301 of the LMRA or otherwise fatally defective. *See In re Practice of Naturopathy Litig.*, 434 F. Supp. 1240, 1243

(J.P.M.L. 1977) (when defendants plan to challenge the sufficiency of the complaints, the "presentation of these matters to a single judge will further the purposes of Section 1407").

It is well settled that section 301 of the LMRA preempts all tort claims seeking to vindicate "state-law rights and obligations that do not exist independently of [a collective bargaining] agreement" or those "substantially dependent on analysis of [a collective-bargaining] agreement." *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202, 213, 220 (1985). As noted above, the relationship between the NFL and the vast majority of its former players is defined by the CBAs that were operative between 1968 through 2010.

The NFL motions to dismiss the Actions will be founded in large part (if not entirely) on the same CBA provisions. Given the desire of Congress for uniform federal labor law and interpretation of CBAs, transfer and coordination or consolidation of the Actions to a single judge to consider and rule on the NFL's motions will protect against inconsistent interpretation and analysis of those CBA provisions. *See Allis-Chalmers*, 471 U.S. at 209-10 ("Congress intended doctrines of federal labor law uniformly to prevail over inconsistent local rules") (internal quotation omitted); *Beidleman* v. *Stroh Brewery Co.*, 182 F.3d 225, 234 (3d Cir. 1999) ("the underlying reason for section 301 preemption [is] the need for uniform interpretation of contract terms to aid both the negotiation and the administration of collective bargaining agreements") (internal quotation omitted).

Moreover, to the extent that all claims are not dismissed at the outset, it is very likely that the parties' summary judgment motions will be premised on overlapping

documents and testimony, given the common factual allegations underlying the Actions. The presentation of these matters to a single judge for consideration also will further the purposes of section 1407. *In re Temporomandibular Joint (TMJ) Implants Prods. Liab. Litig.*, 844 F. Supp. 1553, 1554 (J.P.M.L. 1994) (noting that centralization is warranted in order to prevent inconsistent pretrial rulings, "especially with respect to class certifications and summary judgments").

3. Transfer Will Conserve the Resources of the Parties and the Judiciary

Transferring and consolidating the Actions also will conserve the parties' resources by minimizing the inconvenience and expense to the parties and witnesses. *See, e.g., In re Swine Flu Immunization Prods. Liab. Litig.*, 446 F. Supp. 244, 247 (J.P.M.L. 1978) (centralizing will have "salutary effect placing all swine flu actions before a single judge who will be in the best position to determine the manner and extent of . . . pretrial proceedings for the optimum conduct of the litigation as a whole, including minimizing the overall expense to the parties"). Absent transfer, the NFL will be forced to litigate the same issues in multiple jurisdictions simultaneously, resulting in a significant increase in expense and inconvenience. The transfer and coordination or consolidation of the Actions does not pose an inconvenience to plaintiffs in any meaningful way, as they reside in 30 different states[4] with 126 out of the 143 former players currently residing outside of the state in which they brought their complaint (including 120 out of 136 out-of-state former players in the California Actions).

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[4] Plaintiffs reside in Alabama, Arizona, California, Colorado, Florida, Georgia, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas,

Finally, because significant judicial resources would needlessly be expended if the Actions were to be litigated in different courts, the interests of judicial efficiency will best be served by placing the Actions before a single judge for pretrial purposes. *See, e.g., In re Union Pac. R.R. Co. Empl. Practices Litig.*, 314 F. Supp. 2d 1383, 1384 (J.P.M.L. 2004) (centralization is necessary to "conserve the resources of the . . . judiciary").

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In sum, to avoid duplication of discovery, to eliminate the possibility of inconsistent pretrial rulings, and in the interest of judicial economy and conserving the resources of the parties, the Actions should be transferred to a single forum for consolidated pretrial proceedings.

II.

THE EASTERN DISTRICT OF PENNSYLVANIA IS THE MOST APPROPRIATE FORUM FOR CONSOLIDATED PROCEEDINGS

Although the Panel may transfer the Actions to any district for consolidated pretrial proceedings under 28 U.S.C. § 1407, the NFL respectfully submits that the United States District Court for the Eastern District of Pennsylvania is the most appropriate transferee forum, for several reasons.

First, the Pennsylvania Action already is pending before Judge Anita B. Brody of the Eastern District of Pennsylvania, which is a relevant consideration supporting the selection of the district. *In re Cheerios Mktg. & Sales Practices Litig.*,

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Virginia, Washington and West Virginia. (*Maxwell* Compl. ¶¶ 1-75; *Pear* Compl. ¶¶ 1-47; *Barnes* Am. Compl. ¶¶ 1-16; *Easterling* Am. Compl. ¶¶ 23-29.)

655 F. Supp. 2d 1368, 1369 (J.P.M.L. 2009) (consolidating action and transferring it to district where an action was already pending).

Second, the Eastern District of Pennsylvania is a convenient forum for many plaintiffs, defendants and potential witnesses in the Actions. The NFL is headquartered in nearby New York, New York (as is NFLP). In addition, more than half of the plaintiffs in the California Actions reside in the Eastern part of the United States, with nearly half residing on the East Coast, and five of the seven plaintiffs in the Pennsylvania Action reside on the East Coast. (*See Maxwell* Compl. ¶¶ 1-75; *Pear* Compl. ¶¶ 1-47; *Barnes* Am. Compl. ¶¶ 1-16; *Easterling* Am. Compl. ¶¶ 23-29.); *In re Practice of Naturopathy Litig.*, 434 F. Supp. at 1243 (choosing the closest district in which an action is pending when documents and witnesses are located in a nearby district where none of the constituent actions is pending); *In re Ace Ltd. Sec. Litig.*, 370 F. Supp. 2d 1353, 1355 (J.P.M.L. 2005) (consolidating and transferring three actions to the Eastern District of Pennsylvania because an action was already pending there and it is an "accessible metropolitan court that possesses the necessary resources and expertise").

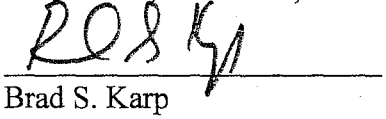
Third, Judge Brody has experience in handling complex litigations, including a recent action transferred by the Panel to her courtroom." *In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.*, 626 F. Supp. 2d 1353, 1353-54 (J.P.M.L. 2009).

Conclusion

For the foregoing reasons, the NFL respectfully requests that the Panel issue an Order transferring the Actions to the United States District Court for the Eastern District of Pennsylvania for consolidated pretrial proceedings.

Dated: New York, New York
November 15, 2011

Respectfully submitted,



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