

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CHARLES FRED ALEXANDER, JR.,	§	
GREGORY LOUIS LAFLEUR, LAMAR	§	
LAVANTHA LATHON	§	
V.	§	C.A. NO. _____
	§	
	§	
THE NATIONAL FOOTBALL LEAGUE	§	JURY TRIAL DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiffs Charles Fred Alexander, Jr., Gregory Louis LaFleur, and Lamar Lavantha Lathon file their Original Complaint against Defendant The National Football League, and for cause of action respectfully shows this Court as follows:

INTRODUCTION

1. The National Football League (“NFL” or “the League”) is America’s most successful and popular sports league. With 32 member teams, the league is a multi-billion dollar business. With so much money at stake, the NFL is and has always been eager to avoid negative publicity. As a result, the NFL regulates just about everything pertaining to their teams’ operations, including League policies, player appearance, marketing, and safety, among other items.
2. Football is a tough, aggressive, physically demanding sport. As such, it is vital to the safety of its players that the NFL act reasonably, through research, studies, and other means, to identify the risks of serious injury associated with playing professional football, to keep the teams and players informed of the risks that they identify, and to take reasonable steps based upon their findings to protect its players. Aware of this responsibility, the NFL, through its own initiative created the Mild Traumatic Brain Injury (“MTBI”) Committee in 1994 to research and presumably attempt to mitigate what was already a tremendous problem in the league –

concussions.

3. The large number of head injuries suffered by NFL players has been discussed in a wide variety of news articles and television segments, and was addressed recently by the League in an announcement that it would strictly enforce rules regarding illegal blows to the head. But the issue of head injuries is not a new problem at all; indeed, the League's players have been plagued by the devastating effects of concussions for decades.

4. Despite overwhelming medical evidence that on-field concussions have led directly to brain injuries and tragic repercussions for its retired players, the NFL not only failed to take effective action to try to protect its other players from suffering a similar fate, but also failed to even inform its players of the true risks associated with concussions. Instead, the NFL has consistently misrepresented and concealed medical evidence on this issue through its hand-picked committee of unqualified physicians who were ostensibly looking into this issue. While athletes in other professional sports who had suffered concussions were being effectively taken out of service for extended periods of time or even full seasons, NFL protocol was to routinely return players to the field who had suffered concussions during those same games.

5. The bottom line is that the NFL has put its profits ahead of the health of its players. Wanting their players on the field entertaining its fans, instead of training tables, and in an attempt to protect a multi-billion dollar business, the NFL has purposefully attempted to sidestep and obfuscate the concussion problem, and has consistently disputed the very real connection between concussions and brain injury. This has raised the ire of Congress, which has blasted the NFL's handling of the issue on multiple occasions, as well as unbiased expert neurologists who know the truth. The unfortunate reality is that in the 17 years since its formation, the MTBI has served as nothing but a roadblock to any real attempt to protect NFL

players from concussions and resultant brain injury. In fact, the committee's concealment and misrepresentation of relevant medical and study information over the years has caused an increased risk of life-threatening injury to players who were being kept in the dark.

6. At the end of the day, the NFL has not only failed to satisfy its duty to take the reasonable steps necessary to protect its players from devastating head injuries, it has done everything in its power to hide the issue and mislead its players concerning the risks associated with concussions.

THE PARTIES

7. At the time of the commencement of this action, Plaintiff Charles Fred Alexander, Jr. is a citizen of the State of Texas. Mr. Alexander played for the NFL member club Cincinnati Bengals.

8. At the time of the commencement of this action, Plaintiff Gregory Louis LaFleur is a citizen of the State of Louisiana. Mr. LaFleur played for the NFL member clubs St. Louis Cardinals and Indianapolis Colts.

9. At the time of the commencement of this action, Plaintiff Lamar Lavantha Lathon is a citizen of the State of Texas. Mr. Lathon played for the NFL member clubs Houston Oilers and Carolina Panthers.

10. Defendant NFL is a nonprofit, non-incorporated entity organized and existing under the laws of the State of New York, with its principal place of business at 280 Park Ave., 15th Fl., New York, NY 10017. The NFL has never been the employer of Plaintiffs, who were employed by independent clubs, named above, during their careers in the NFL.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), as there is

complete diversity of citizenship between the parties, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs.

12. This Court has personal jurisdiction over the NFL because it does substantial business in this District, has a franchise, the Houston Texans, that is located in this District, and derives substantial revenues from its contacts with this District.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(2) and 1391(b)(2) as a substantial part of the events and/or omissions giving rise to the claims emanate from activities within this District, and Defendant conducts substantial business in this District.

ALLEGATIONS APPLICABLE TO ALL COUNTS
THE NATIONAL FOOTBALL LEAGUE

14. The NFL oversees America's most popular spectator sport, football, and acts as a trade association for 32 franchise owners. The NFL is currently comprised of 32 teams.

15. The NFL governs and promotes the game of football, sets and enforces rules and League policies, and regulates team ownership. It generates revenue mostly through marketing sponsorships, licensing merchandise, and selling national broadcasting rights to the games. The teams share a percentage of the League's overall revenue. Founded in 1920 as the American Professional Football Association, the league has been known as the NFL since 1922.

16. NFL revenues far exceed any other sports league. Frequently surpassing \$7 billion annually, the NFL experienced its third most profitable year ever in 2008, earning some \$7.6 billion.

17. A Forbes Magazine article recently observed that 19 NFL franchises are worth \$1 billion or more. Even the lowest-valued of the 32 NFL teams is worth approximately \$800 million. Over the last 15 years, the values of franchises in the NFL have increased 500 percent.

18. According to a recent Wall Street Journal article, the NFL has spent nearly \$5.5 million

on lobbying firms since 2006, tripling its lobbying expenses over the previous four years. According to the article, these lobbying firms “address a host of issues from player concussions to Internet gambling to cable and satellite television matters and labor issues.”

19. Owing in part to its immense financial power and monopoly status in American football, the NFL has assumed enormous influence over the research and education of football injuries to physicians, trainers, coaches, and amateur football players at all levels of the game. Indeed, the website www.nflhealthandsafety.com states that USA Football, the sport’s national governing body, “is the Official Youth Football Development Partner of the NFL and the NFL Players Association. The independent non-profit organization leads the development of youth, high school and international amateur football. In addition, USA Football operates programs and builds resources to address key health and safety issues in partnership with leading medical organizations. The organization was endowed by the NFL and NFLPA through the NFL Youth Football Fund in 2002. USA Football stands among the leaders in youth sports concussion education, particularly for football.”

THE NATURE OF HEAD INJURIES SUFFERED BY NFL PLAYERS

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

21. Dr. Wise Young, a neurosurgery professor at New York University, described concussions as follows: “Picture your brain as a hunk of Jell-O floating in a bowl - your

cranium. When you get hit in the head, the bowl suddenly shifts and the Jell-O bangs against the side, then rebounds and bangs against the other side. At the same time, the Jell-O is twisted and wrenched. This smashing, jiggling and torquing of the brain causes strains and tears, snapping blood vessels, killing brain cells (neurons) and shearing the delicate connections (axons) that link this incredibly complex cerebral telephone system.” Further, “[w]hen somebody is severely injured, you see breaks of the axons and nerve fibers all over the brain.”

22. Medical evidence shows that symptoms of a concussion can reappear hours or days after the injury, indicating that the injured party had not healed from the initial blow. According to neurologists, once a person suffers a concussion, he is as much as four times more likely to sustain a second one. Additionally, after several concussions, a lesser blow may cause the same injury, and the injured player requires more time to recover.

23. Clinical and neuropathological studies by some of the nation’s foremost experts demonstrate that multiple concussions sustained during an NFL player’s career cause severe cognitive problems such as depression and early-onset dementia. Chronic Traumatic Encephalopathy (“CTE”) is a progressive, degenerative disease of the brain 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.

24. This head trauma, which includes multiple concussions, triggers progressive degeneration of the brain tissue. These changes in the brain can begin months, years, or even decades after the last concussion or 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. Not surprisingly, The University of North

Carolina's Center for the Study of Retired Athletes published survey-based papers in 2005 through 2007 that found a clear correlation between NFL football and depression, dementia, and other cognitive impairment.

25. To date, neuroanatomists have performed autopsies on 13 former NFL players who died after exhibiting signs of degenerative brain disease. Twelve of these players were found to have suffered from CTE.

THE NFL'S DEFICIENT RESPONSES TO THE CONCUSSION ISSUE

26. The NFL's concussion problem is not new. In 1994, following the well-publicized retirements of NFL players Al Toon and Merrill Hoge, both of whom had sustained serious head injuries while playing and had developed post-concussion syndrome, then-NFL Commissioner Paul Tagliabue established the Mild Traumatic Brain Injury ("MTBI") Committee to study, among other things, post-concussion syndrome in NFL players.

27. The NFL affirmatively assumed a duty to use reasonable care in the study of post-concussion syndrome, and to use reasonable care in the publication of data from the MTBI Committee's work.

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

29. Instead of naming a noted neurologist to chair the newly formed committee or, at least, a physician with extensive training and experience treating head injuries, Tagliabue appointed a puppet, Dr. Elliot Pellman, to this post.

30. Dr. Pellman, a rheumatologist with training in the treatment of joints and muscles, not head injuries, would go on to chair the MTBI Committee from 1994 to 2007. Dr. Pellman's leadership of this committee came under frequent harsh criticism for his deficient medical

training, background, and experience to head the committee and lead its research efforts, not to mention his bias.

31. By 1994, when the NFL's committee was formed, scientists and neurologists alike were already convinced that all concussions - even seemingly mild ones - were serious injuries that permanently damage the brain, impair thinking ability and memory, and hasten the onset of mental decay and senility, especially when they are inflicted frequently.

32. The NFL's team of hand-picked experts had a different take on the issue, however. They did not find concussions to be of significant concern and felt it more than appropriate for players suffering a concussion to continue playing football during the same game in which one was suffered.

33. When asked in or about 2005 about his history of concussions, San Francisco 49ers Quarterback Steve Young admitted to six "official" concussions. His definition of an official concussion: "When you're lying on your back and they cart you off. That's an 'official' concussion." With the NFL policy of minimizing the significance of concussions, players who suffered them were told not to be overly concerned, and were regularly returned to game action mere minutes after sustaining them.

34. The NFL's practice, set in motion by the MTBI Committee, was irresponsible and dangerous. In 2005, noted neurologist Dr. Dennis Choi, a professor and head of neurology at Washington University in St. Louis, discussed his opinion that the most pernicious concussions are those that occur before earlier concussions have healed. "The brain has a wonderful ability to partially heal itself," said Dr. Choi, but "[i]f you take another shot before healing has taken place, the chances of compounding the injury are very real."

35. In 1999, the National Center for Catastrophic Sport Injury Research at the

University of North Carolina in Chapel Hill conducted a study involving 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 one in the same season following the initial concussion.

36. A 2000 study, which surveyed 1,090 former NFL players, found that more than 60 percent had suffered at least one concussion, and 26 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.

37. The MTBI Committee has published multiple research articles since its inception. The findings of the committee have regularly contradicted the research and experiences of neurologists who treat sports concussions, and the players who endured them.

38. For example, in the October 2004 edition of *Neurosurgery*, the MTBI Committee published a paper in which it asserted 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."

39. In a comment to the study published in *Neurosurgery*, one 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."

40. For further example, in January, 2005 the Committee wrote that returning to play after a concussion "does not involve significant risk of a second injury either in the same game or during the season." However, 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 ten days after the injury.

41. In 2005, Dr. Bennet Omalu, at the time a Pittsburgh-area pathologist, studied the brain of former NFL player Mike Webster, who had recently committed suicide. Dr. Omalu determined that Webster suffered from CTE, and published his findings in the June 2005 edition of *Neurosurgery*. Three members of the NFL's MTBI Committee—Drs. Pellman, Viano, and Casson—attacked the article and said they wanted it retracted.

42. Dr. Julian Bailes, a neurosurgeon from West Virginia University, briefed the NFL Committee on the findings of Dr. Omalu and other independent studies linking multiple NFL head injuries with cognitive decline. Dr. Bailes recalled the MTBI Committee's reaction to his presentation: "the Committee got mad ... we got into it. And I'm thinking, 'this is a ... disease in America's most popular sport and how are its leaders responding? Alienate the scientist who found it? Refuse to accept the science coming from him?'"

43. In November, 2006, Dr. Omalu studied the brain of former NFL player Andre Waters, who had died of a self-inflicted gunshot wound. The analysis of Waters' brain tissue conducted by Dr. Omalu showed signs of CTE.

44. A November, 2006 ESPN *The Magazine* article described how the MTBI Committee failed to include hundreds of neuropsychological tests done on NFL players when studying the effects of concussions on the results of such tests. 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 effects of concussions.

45. Dr. Pellman stepped down as the head of the MTBI Committee in February, 2007. Dr.

Kevin Guskiewicz, research director of UNC's Center for the Study of Retired Athletes, said at the time that Dr. Pellman was "the wrong person to chair the committee from a scientific perspective and the right person from the league's perspective." Regarding the work of Dr. Pellman, Dr. Guskiewicz stated, "[w]e found this at the high school level, the college level and the professional level, that once you had a concussion or two you are at increased risk for future concussions"; but "[Dr. Pellman] continued to say on the record that's not what they find and there's no truth to it."

46. Dr. Pellman was replaced by Doctors Ira Casson and David Vaino. Dr. Casson continued to dismiss outside studies and overwhelming evidence linking dementia and other cognitive decline to brain injuries. When asked in 2007 whether concussions could lead to brain damage, dementia, or depression, Dr. Casson denied the linkage six separate times.

47. In June, 2007, the NFL convened a concussion summit for team doctors and trainers. At the summit, the co-chair of the MTBI Committee, Dr. Ira Casson, told team doctors and trainers that CTE has never been scientifically documented in football players.

48. In August, 2007, the NFL issued a concussion pamphlet to players. Independent scientists and neurologists were disgusted and dismayed by the following statement which appeared in the pamphlet: "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. It is important to understand that there is no magic number for how many concussions is too many."

49. The concussion pamphlet clearly created player reliance. "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." Evidently, the "most

up to date information” did not include the findings of Doctors Guskiewicz, Cantu, Omalu, or Bailes demonstrating a causal link between multiple concussions and later life cognitive decline.

50. In 2008, the University of Michigan’s Institute for Social Research conducted a study on the health of retired players, with over 1,000 former NFL players taking part. The results of the study, which were 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.” The NFL, which had commissioned the study, responded to its results by claiming that the study was incomplete. Further findings, it said, would be needed. Several 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.”

51. Shortly after the results from 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. In the first hearing, in October, 2009, Rep. Maxine Waters stated, “I believe you are an \$8 billion organization that has failed in your responsibility to the players. We all know it’s a dangerous sport. Players are always going to get injured. The only question is, are you going to pay for it? I know that you dearly want to hold on to your profits. I think it’s the responsibility of Congress to look at your antitrust exemption and take it away.”

52. NFL Commissioner Roger Goodell testified at the hearing. He stated that “[w]e are fortunate to be the most popular spectator sport in America. 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.” Goodell went on to testify that “[i]n the past 15 years, the NFL has made significant investments in medical and biomechanical research. All of that information has been made public, subjected to thorough and on-going peer review, published in leading journals, and distributed to the NFLPA and their medical consultants. We have been open and transparent, and have invited dialogue throughout the medical community.”

53. Also in the October hearing, NFLPA Executive Director DeMaurice Smith stated that the study was not the first study on this issue. “While this is the first NFL-accepted study that demonstrated a connection between on-field injury and post career mental illness, there have been studies over the last decade highlighting that fact. Unfortunately, the NFL has diminished those studies, urged the suppression of the findings for years, and moved slowly in an area where speed should have been the impetus.”

54. After the congressional hearings, the NFLPA called for the removal of Dr. Casson as MTBI co-chair. “Our view is that he’s a polarizing figure on this issue, and the players certainly don’t feel like he can be an impartial party on this subject,” said NFLPA assistant executive director George Atallah. Dr. Casson and Dr. David Viano resigned as co-committee chairmen after the 2009 congressional hearings. Again, Dr. Casson came under criticism during the hearings for his “continued denials of any link among retired players between injuries sustained in professional football and heightened rates of dementia.”

55. Shortly after the October, 2009 hearings, 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. The League’s former practice of allowing players to return to the field

when their concussion symptoms subside, a practice experienced by all Plaintiffs, has been soundly criticized for putting its players at risk.

56. In the apparent change in policy, the NFL indicated that “independent experts” would decide who could return to play and who had to sit out so their brain can heal. Not surprisingly, the “independent experts,” were selected by Dr. Pellman. The change contradicted past recommendations by the Committee, which had recommended as safe the league’s practice of returning players to the field after concussion. The committee had published a paper in the journal *Neurosurgery* 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.”

57. In December, 2009, an NFL spokesman stated that it was “quite obvious from the medical research that’s been done that concussions can lead to long-term problems.” This fact had been quite obvious to virtually every person involved in the study of concussions for more than a decade with the exception of the NFL and its so called “experts.”

58. On December 17, 2009, Cincinnati Bengals wide receiver Chris Henry, 26, died after falling from the back of a pickup truck. Doctors Omalu and Bailes performed a postmortem study on Henry’s brain and diagnosed Henry with CTE.

59. In January, 2010, the House Judiciary Committee held further hearings on Football Player Head Injuries. The committee chairman, Rep. John Conyers, Jr., noted that “until recently, the NFL had minimized and disputed evidence linking head injuries to mental impairment in the future.”

60. Dr. Casson provided oral and written testimony at the January 2010 hearings. He

continued to deny the validity of the other 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.”

61. Rep. Linda Sanchez soundly criticized the NFL at the hearings: “I find it really ridiculous that he’s saying that concussions don’t cause long-term cognitive problems. I think most people you ask on the street would figure that repeated blows to the head aren’t good for you.” She further commented that “[i]t seems to me that the NFL has literally been dragging its feet on this issue until the past few years. Why did it take 15 years?”

62. In 2010, the NFL re-named the MTBI Committee as the “Head, Neck, and Spine Medical Committee,” and announced that Dr. Pellman would no longer be a member of the Committee. Drs. H. Hunt Batjer and Richard G. Ellenbogen were selected to replace Drs. Casson and Viano. The two new co-chairmen selected Dr. Mitchel S. Berger to serve on the Committee.

63. Under its new leadership, the Committee admitted that data collected by the NFL’s former brain-injury leadership was “infected,” said that their Committee should be assembled anew. Attempting to distance itself from the prior regime, the new Committee formally requested that the group’s former chairman, Dr. Elliot Pellman, not speak at one of their initial conferences.

64. During a May, 2010 Congressional hearing, Congressman Anthony Weiner addressed Drs. Batjer and Ellenbogen with the following comment: “you have years of an infected system here, and your job is...to mop [it] up.” Step one should have been for the NFL’s Committee to issue an adequate warning to league players about the causal link between multiple on-field concussions and cognitive decline. At one juncture during the Congressional hearing, Rep. Weiner, infuriated by the answers he was being given by Dr. Ellenbogen, exclaimed, “You’re in

charge of the brains of these players!”

65. Shortly after the May, 2010 hearing, 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.”

66. The NFL continued its deficient response to head injuries as the 2010 season began, and the League’s concussion woes continued. In an early season game in 2010, when Eagles middle linebacker Stewart Bradley staggered on to the field and stumbled over, it was clear that he had suffered a head injury. Troy Aikman, the former Cowboys quarterback who had suffered multiple concussions and was analyzing the game on television, commented that “[i]t’s hard to imagine him coming back into this game in light of what we just saw.” But after about four minutes of real time, the Eagles sent Bradley back on the field. Bradley was soon removed from the game, this time diagnosed with a concussion. In the same game, Eagles Quarterback Kevin Kolb was also sidelined by a concussion. He too was initially cleared to play and briefly returned to the game.

67. Recently, when legendary New York Giants Linebacker Harry Carson was asked about the concussion issue, he was quoted as saying: “Physically, I have aches and pains, but that comes with playing the game. But if somebody tells you neurologically you could sustain some kind of brain damage that will go with you the rest of your life. If somebody had told me that a long time ago, I don’t frankly think I would have [played].”

68. After 16 years of essentially ignoring the issue, it appears as though the NFL has only just begun to take the concussion issue seriously. On October 20, 2010, in the wake of a series

of dangerous and flagrant hits resulting in concussions, the NFL levied fines totaling \$175,000 on three players: James Harrison, Brandon Meriweather, and Duanta Robinson. In discussing Meriweather's helmet to helmet hit on Baltimore Ravens Tight End Todd Heap, NFL Executive Vice President of Football Operations Ray Anderson was quoted as saying that "in our view, the hit was flagrant and egregious. Effective immediately, that's going to be looked at at a very aggressive level, which would include suspension without pay...What I would tell you is that if there are flagrant and egregious violations of our current rules, we will be enforcing, effective immediately, discipline at a higher level."

69. That same day, NFL Commissioner Roger Goodell forwarded a memo to all 32 NFL teams with a message that was to be read to all players and coaches. Also forwarded to each team was a video showing "what kinds of hits are against the rules." Goodell's memo provided in part that "violations of the playing rules that unreasonably put the safety of another player in jeopardy have no place in the game, and that is especially true in the case of hits to the head and neck. Accordingly, from this point forward, you should be clear on the following points: (1) Players are expected to play within the rules. Those who do not will face increased discipline, including suspensions, starting with the first offense; (2) Coaches are expected to teach playing within the rules. Failure to do so will subject both the coach and the employing club to discipline; (3) Game officials have been directed to emphasize protecting players from illegal and dangerous hits, and particularly from hits to the head and neck. In appropriate cases, they have the authority to eject players from a game."

70. Two days later, a second memo was sent out to all teams by Ray Anderson, providing each coach with the names of only his own players who have multiple infractions. As NFL Spokesman Greg Aiello stated, "the purpose was to provide an opportunity for the coach to give

extra caution to those players to abide by the safety rules.”

71. On February 17, 2011, former Chicago Bears and New York Giants player Dave Duerson committed suicide. Only 50 at the time of his death, Duerson had suffered months of headaches, blurred vision, and faltering memory. After his death, Boston University researchers determined that Duerson was suffering from CTE.

72. In October, 2011, Dr. Berger of the Head, Neck, and Spine Medical Committee announced that a new study was in the planning process. Addressing problems with the previous long-range study, a New York Times article noted that Dr. Berger said, “[t]here was no science in that.” Dr. Berger further stated that data from the previous study would not be used; “[w]e’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.”

73. In November, 2011, the League’s Injury and Safety Panel issued a directive telling its game officials to watch closely for concussion symptoms in players. The directive came 10 days after San Diego guard Kris Dielman sustained a head injury against the Jets and later had a grand mal seizure on the team’s flight home. Dielman sustained a head injury during a game on Oct. 23, finished playing in the game, and was not assessed until afterward.

74. Following a decade and a half of burying its head in the sand, the first serious actions taken to address the rampant concussion problem in the League has already had positive effects. NFL Officiating Chief Carl Johnson was quoted on NBC’s “Football Night in America,” stating that he’s “seen a change in players’ behavior in one week.”

75. Why League policy changes, accurate information sharing, strict fines, and warnings of this nature were not recommended by the NFL’s so called “expert” MTBI Committee soon after its creation in 1994 is difficult to comprehend. The fact that it took the

NFL 16 years to admit that there was a problem and to take any real action to address the problem is willful and wanton and demonstrates a reckless disregard for the safety of its players.

PLAINTIFFS' INJURIES

Fred Alexander, Jr.

76. Plaintiff Charles Fred Alexander, Jr. was selected by the Cincinnati Bengals in the 1979 NFL draft. Mr. Alexander played with the Bengals for seven seasons.

77. Mr. Alexander suffered numerous concussions during his seven year career in the NFL. At no time after suffering these concussions was Mr. Alexander warned about the dangers of returning to play too quickly. Nor was Mr. Alexander warned about the risk of long-term injury due to football related concussions. This lack of warnings was a substantial factor in causing his current injuries.

78. Mr. Alexander retired from the NFL in 1985. Since his retirement, he has suffered from various health ailments, including but not limited to severe migraine headaches, sleeping problems, dizziness, light-headedness, loss of short-term memory, other memory related problems, depression, blurred vision, loss of peripheral vision, problems with hearing, and other ailments.

Gregory Louis LaFleur

79. Plaintiff Gregory Louis LaFleur was selected by the Philadelphia Eagles in the 1981 NFL draft. He went on to play for the St. Louis Cardinals from 1981-1986, and finished his career with the Indianapolis Colts in 1986.

80. Mr. LaFleur suffered numerous concussions during his six year career in the NFL. At no time after suffering these concussions was Mr. LaFleur warned about the dangers of returning to play too quickly. Nor was Mr. LaFleur warned about the risk of long-term injury due to football

related concussions. This lack of warnings was a substantial factor in causing his current injuries.

81. Mr. LaFleur retired from the NFL in 1986. Since his retirement, he has suffered from various health ailments, including but not limited to severe migraine headaches, sleeping problems, dizziness, light-headedness, loss of short-term memory, other memory related problems, depression, blurred vision, loss of peripheral vision, problems with hearing, and other ailments.

Lamar Lavantha Lathon

82. Plaintiff Lamar Lavantha Lathon was selected by the Houston Oilers in the 1990 NFL draft. He played for the Oilers from 1990-1995. He went on to play for the Carolina Panthers from 1995-1999.

83. Mr. Lathon suffered numerous concussions during his ten year career in the NFL. At no time after suffering these concussions was Mr. Lathon warned about the dangers of returning to play too quickly. Nor was Mr. Lathon warned about the risk of long-term injury due to football related concussions. This lack of warnings was a substantial factor in causing his current injuries.

84. Mr. Lathon retired from the NFL in 1999. Since his retirement, he has suffered from various health ailments, including but not limited to severe migraine headaches, sleeping problems, dizziness, light-headedness, loss of short-term memory, other memory related problems, depression, blurred vision, loss of peripheral vision, problems with hearing, and other ailments.

85. The applicable statute of limitations is tolled because the NFL's fraudulent concealment of the dangers and adverse effects of head injuries made it impossible for Plaintiffs to learn of

the hazards to their health.

86. Plaintiffs did not become reasonably aware of the dangerous nature of, and the unreasonable adverse side effects associated with, nor establish any provable compensable damages caused by, their head injuries prior to two years before the date of this Complaint. The accrual of a complete cause of action relating to the cognizable physical manifestation of their injuries did not exist until that time.

87. The NFL was under a continuing duty to disclose the true character, quality, and nature of the after effects of head injuries. Because of the NFL's concealment of the true character, quality, and nature of these injuries, it is estopped from relying on any statute of limitations defense.

88. The NFL, in the course of its business, omitted material key facts about the effects of head injuries, which prevented Plaintiffs from discovering a link between their premature return to action and their head injuries.

COUNT I (Negligence)

89. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

90. The NFL, as the purveyor of safety rules for the League, owed Plaintiffs a duty to use reasonable care in researching, studying, and/or examining the dangers and risks of head injuries and/or concussions to NFL players, to inform and warn its players of such risks, and to implement reasonable league policies and/or take other reasonable action to minimize the risks of head injuries.

91. The NFL affirmatively and voluntarily established the MTBI Committee to examine the dangers and consequences of head injuries to NFL players, to report on its findings, to provide

information and guidance from its research and studies concerning concussions to teams and players, and to make recommendations to reduce the risks of concussions. The NFL was responsible for the staffing and conduct of the MTBI Committee.

92. Primarily, the NFL failed to use reasonable care in the manner in which it created the MTBI Committee and in the appointment of physicians to head the Committee who were not qualified for the job.

93. The NFL and its MTBI Committee also failed to use reasonable care in researching, studying, and/or examining the risks of head injuries and/or concussions in professional football, and in downplaying and in many cases denying both the severity of such injuries and the clear link between concussions and brain damage, thereby breaching its duty to its players, including Plaintiffs.

94. The NFL and its MTBI Committee failed to inform, warn, and/or advise its players and/or misinformed them of the risks and complications inherent in sustaining concussions, thereby breaching its duty to its players, including Plaintiffs.

95. The NFL and its MTBI Committee were further negligent, careless, and/or grossly negligent in the following respects:

- failing to use reasonable care in overseeing, controlling, and/or regulating policies and procedures of the League so as to minimize the risk of head injuries and/or concussions;
- failing to use reasonable care in the research and/or investigation of the concussion issue;
- failing to appoint a qualified physician or panel of physicians to head the aforesaid MTBI Committee;
- placing a physician in charge of the committee whose primary motive was to appease the NFL rather than to report accurately;
- disregarding independent scientific studies which showed the risks of head injuries and/or

concussions to NFL players' health;

- failing to acknowledge, either publically or to its players, the clear link between concussions and brain injuries being suffered by its players;
- failing to acknowledge, either publically or to its players, the linkage between playing football and long-term brain injuries;
- failing to make and/or timely make necessary League policy changes as it pertains to intentional hits to the head, hits to the head of a defenseless player, helmet to helmet hits, and concussions in general;
- publishing misleading and erroneous findings;
- failing to issue a timely warning, through a concussion pamphlet or other means to its players, concerning the causal link between concussions and later life cognitive decline;
- issuing misinformation and purposefully attempting to mislead its players through the concussion pamphlet which it issued in August 2007;
- collecting and reporting upon data that was “infected” and/or not reliable;
- causing, by and through its negligent conduct and omissions, an increased risk of harm to its players;
- failing to provide competent information to its teams, players, coaches, trainers, and medical personnel regarding the significance of head injuries and/or concussions, their symptoms and necessary and/or proper treatment of same; and
- creating a culture within the NFL in which concussions and their devastating effects would be commonplace.

96. As a direct and proximate result of the NFL's negligent, careless, and/or grossly negligent conduct and omissions as discussed above, Plaintiffs have suffered serious injuries, including but not limited to brain damage with a resultant loss therefrom.

97. That by reason of the foregoing negligence on the part of the NFL, Plaintiffs are informed and believes that their injuries are permanent and that they will permanently suffer from the effects of their injuries, including but not limited to continuous pain and suffering and severe

emotional distress.

98. That by reason of the foregoing negligence on the part of the NFL, Plaintiffs were compelled and will be compelled in the future to require medical aid and attention, with a resultant cost therefrom.

99. That by reason of the foregoing negligence on the part of the NFL, Plaintiffs have suffered a loss of opportunity of employment and will continue to suffer such loss of opportunity in the future with a resultant loss therefrom.

COUNT II (Fraud)

100. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

101. The NFL materially misrepresented the risk faced by Plaintiffs related to head injuries. The NFL's MTBI Committee, through misleading public statements, published articles, and the concussion pamphlet issued to the players, downplayed known long-term risks of concussions to NFL players.

102. Material misrepresentations were made by members of the NFL's committee on multiple occasions, including but not limited to testimony given at congressional hearings and the "informational" pamphlet which it issued to the players.

103. The material misrepresentations include the NFL's remarks that Plaintiffs were not at an increased risk of head injury if they returned too soon to an NFL game or training session after suffering a head injury.

104. The NFL's material misrepresentations also included its criticism of legitimate scientific studies which illustrated the dangers and risks of head injuries.

105. The NFL knew of the misleading nature of these statements when they were made.

106. The NFL knew or should have known that Plaintiffs would rely on these misrepresentations.

107. Plaintiffs relied on these misrepresentations when playing in the NFL. Had Plaintiffs known the real risks to their health, they would not have agreed to jeopardize their health.

108. As a direct and proximate result of the NFL's fraudulent conduct, Plaintiffs have suffered physical injuries, including, but not limited to memory and cognitive problems, and have suffered multiple economic losses.

COUNT III (Fraudulent Concealment)

109. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

110. The NFL's MTBI Committee concealed the risks of head injuries to Plaintiffs, and the risk to Plaintiffs if he returned to the playing field before making a proper recovery from his injuries.

111. The NFL's MTBI Committee, through misleading public statements, published articles, and the concussion pamphlet issued to players, concealed and downplayed known long-term risks of concussions to NFL players.

113. The concussion pamphlet clearly created player reliance. The NFL stated that "[w]e 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."

114. Further concealment of material information occurred in January, 2010. Dr. Casson provided oral and written testimony at the January, 2010 congressional hearings, where he continued to deny the validity of other studies.

115. The NFL failed to acknowledge, either publicly or to its players, the clear link between concussions and brain injuries beings suffered by NFL players.

116. The NFL failed to acknowledge, either publicly or to its players, the linkage between playing football and long-term brain injuries.

117. The NFL willfully concealed this information from Plaintiffs in order to prevent negative publicity and increased scrutiny of its medical practices.

118. The NFL knew that Plaintiffs would rely on the inaccurate information that it provided.

119. Plaintiffs relied on this inaccurate information during their NFL careers.

120. As a direct and proximate result of the NFL's fraudulent conduct, Plaintiffs have suffered physical injury, including, but not limited to, memory and cognitive problems, and multiple economic losses.

COUNT IV (Negligent Misrepresentation)

121. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

122. The NFL misrepresented the dangers that NFL players faced in returning to action too quickly after sustaining a head injury. The NFL's MTBI Committee, through public statements which it knew or should have known were misleading, published articles, and the issuance of the concussion pamphlet to its players, downplayed and effectively concealed the long-term risks of concussions to NFL players.

123. Material misrepresentations were made by members of the NFL's Committee on multiple occasions, including but not limited to testimony at congressional hearings and the "informational" pamphlet issued to players.

124. The misrepresentations included the NFL's remarks that Plaintiffs were not at an

increased risk of head injury if they returned too soon to an NFL game or training session after suffering a head injury.

125. The NFL's material misrepresentations also included its criticism of legitimate scientific studies that illustrated the dangers and risks of head injuries.

126. The NFL made these misrepresentations and actively concealed adverse information at a time when they knew, or should have known, because of its superior position of knowledge, that Plaintiffs faced health problems if they were to return to a game or practice too soon.

127. The NFL knew or should have known the misleading nature of these statements when they were made.

128. The NFL made misrepresentations and actively concealed information with the intention that Plaintiffs would rely on the misrepresentations or omissions in selecting their course of action.

129. As a direct and proximate result of the NFL's fraudulent conduct, Plaintiffs have suffered physical injury, including, but not limited to, memory and cognitive problems, and have suffered multiple economic losses.

COUNT V (Conspiracy)

130. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

131. The NFL actively and deliberately conspired with its team members and/or independent contractors, who were directed to continuously discount and reject the causal connection between multiple concussions suffered while playing in the NFL.

132. This conduct between the NFL and others was a proximate cause of the chronic injuries

and damages suffered by Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

- a) Awarding Plaintiffs compensatory damages against Defendant in an amount sufficient to fairly and completely compensate Plaintiffs for all damages;
- b) Awarding Plaintiffs punitive damages against Defendant in an amount sufficient to punish Defendant for its wrongful conduct and to deter similar wrongful conduct in the future;
- c) Awarding Plaintiffs costs and disbursements, costs of investigations, attorneys' fees, and all such other relief available under law;
- d) Awarding that the costs of this action be taxed to Defendant; and
- e) Awarding such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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