

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Carl Lee Eller, Charles Philip Bednarik,
Paul James Krause, Lemuel Joseph Barney,
Joseph Michael DeLamielleure, Leonard
Edward Moore, William Vernell Wood Sr.,
Robert Lewis Lilly, Elvin Lamont Bethea,
John Allen Hannah, Thomas Lee Mack,
Anthony Ronald Yary, David Wilcox,
Leroy Kelly, Jackie Larue Smith, Charles
Robert Taylor, Robert Bruce St. Clair, Gino
John Marchetti, Melvin Lacy Renfro, Daniel
Oliver Hampton, William Lewis Shaw, Donald
Rogers Maynard, Thomas Franklin
McDonald, Larry Chatmon Little, Larry
Rayfield Wright, Kyle John Turley, Obafemi
Devin Ayanbadejo, and Ryan Albert
Collins, individually, and on behalf of all
others similarly situated,

Plaintiffs,

v.

National Football League Players
Association, Tom Brady, Mike Vrabel and
DeMaurice Smith.

Defendants.

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Civil Action No: _____

**CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)**

INTRODUCTION

1. This class action is brought to seek declaratory relief, injunctive relief and damages against the National Football League Players Association (“NFLPA”), its Executive Director DeMaurice Smith (“Smith”), and certain of the active players of the National Football League (“NFL” or “League”) who were named plaintiffs in *Brady v. NFL*, No. 0:11-cv-00639 SRN JGG (D. Minn.) (“*Brady*”). This class action is brought to secure a declaratory judgment pursuant to 28 U.S.C. §§2201-02 concerning the bargaining negotiations between the NFL on the one hand and the NFLPA or the *Brady* Defendants identified below on the other hand that led up to the settlement of the *Brady* action and the signing of the 2011 collective bargaining agreement (“CBA”) between the League and the NFLPA (“2011 CBA”). Specifically, the NFLPA and the individual *Brady* Defendants identified below had no authority to negotiate with the League the terms of pension, retirement, and disability benefits with respect to the class of retired NFL players described herein, something the NFLPA’s counsel have already conceded. This class action also is brought against all Defendants for interfering intentionally with the prospective economic advantage of the putative class described herein and for breaches of fiduciary duties assumed by the NFLPA with respect to NFL retirees.

JURISDICTION AND VENUE

2. These claims arise and are brought under the federal declaratory judgment statute (28 U.S.C. §§2201-02) and common law.

3. This Court has jurisdiction over the claims alleged herein under 28 U.S.C. §§1331, 1332, and 1367. The matter in controversy herein exceeds \$5,000,000.

4. Venue in this action is proper because each of the Defendants can be found, has an agent, or transacts business in the District of Minnesota, and the unlawful activities were or will be carried out in part by one or more of the Defendants within this district.

THE PARTIES

5. Plaintiff Carl Lee Eller (“Eller”) is a member of the Pro Football Hall of Fame and is a former defensive end in the NFL who played for the Minnesota Vikings (1964-78) and for the Seattle Seahawks (1979). He was selected to the Pro Bowl six times (1968-71, 1973-74), was selected as First-Team All Pro five times (1968-71, 1973), was First-Team All Conference seven times (1968-73, 1975), was the *Newspaper Enterprise Association’s* NFL Defensive Player of the Year in 1971, and was selected to the 1970s All Decade Team. Eller is the President of the Retired Players Association (“RPA”), a non-profit organization dedicated to providing powerful national advocacy and collegial support for retired professional football players, their families and the community at large. Eller was inducted into the Pro Football Hall of Fame in 2004.

6. Plaintiff Charles Philip “Chuck” “Concrete Charlie” Bednarik (“Bednarik”) is a member of the Pro Football Hall of Fame and is a former offensive center, linebacker, and punter in the NFL who played for the Philadelphia Eagles from 1949 to 1962. Bednarik was the first player drafted in the 1949 NFL Draft. He is a member of the Eagles’ NFL Championship teams in 1949 and 1960. Bednarik missed only three games in his 14 seasons.

He was named All-Pro ten times, selected to eight pro bowls, was named to the NFL's 75th Anniversary All-Time team and the NFL's 1950s All-Decade team, and was the last of the NFL's "Sixty-Minute Men," players who played both offense and defense on a regular basis. In 1999, he was ranked number 54 on *The Sporting News*' list of the 100 Greatest Football Players. In 2010, Bednarik was ranked number 35 on the NFL Network's *The Top 100: NFL's Greatest Players*. Bednarik's former Eagles number, 60, has been retired by the Eagles in honor of his achievements with the team and is one of only seven numbers retired in the history of the franchise. When the Eagles established their Honor Roll in 1987, Bednarik was one of the first inductees. The Chuck Bednarik Award is awarded annually in Bednarik's honor to the Best Collegiate Defensive Player. Bednarik was inducted into the Pro Football Hall of Fame in 1967 (his first year of eligibility).

7. Plaintiff Paul James Krause ("Krause") is a member of the Pro Football Hall of Fame and is a former safety in the NFL who played for the Washington Redskins (1964-67) and the Minnesota Vikings (1968-79). He holds the NFL record for interceptions (81). He was selected to the NFL Pro Bowl eight times (1964-65, 1969, 1971-75) and was an NFL All-Pro selection eight times (1964-65, 1969, 1970-73, 1975). Krause was inducted into the Pro Football Hall of Fame in 1998.

8. Plaintiff Lemuel Joseph "Lem" Barney ("Barney") is a member of the Pro Football Hall of Fame and is a former cornerback in the NFL who played with the Detroit Lions from 1966 to 1977. He was voted NFL Defensive Rookie of the Year in 1967 and was selected to the NFL's 1960s All Decade Team. He was selected to the NFL's Pro Bowl seven times (1967-69, 1972-73, 1975-76) and was an NFL All Pro selection seven times (1967-70, 1972-73, 1975). In 1999, he was included in the

Sporting News' list of the 100 greatest football players. Barney was inducted into the Pro Football Hall of Fame in 1992.

9. Plaintiff Joseph Michael "Joe" DeLamielleure ("DeLamielleure") is a member of the Pro Football Hall of Fame and is a former offensive guard in the NFL who played for the Buffalo Bills (1973-79, 1985) and the Cleveland Browns (1980-84). He was selected to be included in the Wall of Fame for both teams. He was voted Co-Offensive Lineman of the Year in 1973 and the NFLPA/AFC Offensive Lineman of the Year in 1975. In 1977, he received the Forrest Gregg Award as the NFL Offensive Lineman of the Year. He was selected six times to the Pro Bowl (1975-80) and as All Pro (1975-80). DeLamielleure was inducted into the Pro Football Hall of Fame in 2003.

10. Plaintiff Leonard Edward "Lightning Lenny" Moore ("Moore") is a member of the Pro Football Hall of Fame and is a former halfback and wide receiver in the NFL who played with the Baltimore Colts from 1956 to 1967. In 1956 he was named the NFL Rookie of The Year. Moore helped the Colts win the 1958 and 1959 NFL championships and a trip to the NFL championship game in 1964. Moore scored a touchdown in an NFL-record 18 consecutive appearances starting in 1963 and continuing through the entire 1964 season, ending in 1965. This record stood for 40 years. His uniform number 24 was retired by Baltimore, and in 1969 a sportswriters' poll named him to the NFL's 50th Anniversary Team. In 1999, Moore was ranked number 71 on *The Sporting News*' list of the 100 Greatest Football Players. He is also the only player to have at least 40 receiving touchdowns and 40 rushing touchdowns. Football Outsiders, in their book *Pro Football Prospectus 2007*, named six of his seasons among the top 500

running back seasons of all time, which was tied for the fifth most seasons among the top 500 of any player. In 2008, Moore was inducted into the East-West Shrine Game Hall of Fame class. Moore was inducted into the Pro Football Hall of Fame in 1975.

11. Plaintiff William Vernell “Willie” Wood Sr. (“Wood”) is a member of the Pro Football Hall of Fame and is a former free safety in the NFL who played for the Green Bay Packers from 1960 to 1971. He was selected to the Pro Bowl eight times (1962, 1964-70), was a five time First-Team All-Pro selection (1964-67, 1969), was a three time NFL Champion (1961-62, 1965), and a two time Super Bowl Champion in Super Bowls I and II. Wood is a member of the NFL’s 1960s All-Decade Team. Wood was also the first African American head coach of the modern era in professional football and was the first African American head coach in the Canadian Football League (“CFL”). Wood was inducted into the Pro Football Hall of Fame in 1989.

12. Plaintiff Robert Lewis “Bob” Lilly (“Lilly”) is a member of the Pro Football Hall of Fame and is a former defensive end and defensive tackle in the NFL for the Dallas Cowboys from 1961 to 1974. Lilly was a former first-round draft pick in the 1961 NFL Draft, and the first draft pick in Dallas Cowboys’ franchise history. Lilly went on to be All-Pro seven times, and was selected to play in 11 Pro Bowl games. Lilly was a First-Team All-NFL choice every year from 1964 through 1969, then again in 1971. Lilly played in two Super Bowls with Dallas. The *Sporting News* named him a member of the All-Century NFL Team and “the greatest defensive tackle in NFL history.” He is a member of the NFL’s 1960s All-Decade Team and the NFL’s 1970s All-Decade Team. In 1999, he was ranked number 10 on *The Sporting News*’ list of the 100 Greatest

Football Players, the highest-ranking defensive lineman and the highest-ranking Cowboy. *Sports Illustrated* named him one of the ten most revolutionary defensive players in history. He is the only player to wear #74 in Dallas Cowboys' team history. Lilly played in 196 consecutive regular-season games and was the first to be enshrined in the Dallas Cowboys Ring of Honor. Lilly was inducted into the Pro Football Hall of Fame in 1980 (his first year of eligibility).

13. Plaintiff Elvin Lamont Bethea ("Bethea") is a member of the Pro Football Hall of Fame and is a former defensive end in the NFL who played for the Houston Oilers from 1968 to 1983. He was selected to the Pro Bowl eight times (1969, 1971-75, 1978-79). He was a First Team All AFC Selection in 1969, 1971, 1972 and 1974 and a First Team All Pro selection in 1975. Bethea was inducted into the Pro Football Hall of Fame in 2003.

14. Plaintiff John Allen "Hog" Hannah ("Hannah") is a member of the Pro Football Hall of Fame and is a former offensive guard in the NFL who played for the New England Patriots from 1973 to 1985. He was selected to the Pro Bowl nine times (1976, 1978-85) and an All Pro ten times (1976-85). He was the NFLPA's Offensive Lineman of the Year from 1978-81. Hannah was a member of the NFL's 75th Anniversary Team and was on the League's All Decade Teams for the 1970s and 1980s. In 1999, he was selected as No. 20 in the *Sporting News*' list of the 100 Greatest Football Players. On its August 3, 1981 cover, *Sports Illustrated* called him "The Best Offensive Lineman of All Time." Hannah was inducted into the Pro Football Hall of Fame in 1991.

15. Plaintiff Thomas Lee "Tom" Mack ("Mack") is a member of the Pro Football Hall of Fame and is a former guard in the NFL for the Los Angeles Rams from 1966 to 1978. Mack was selected to 11 Pro Bowls, the first coming after his second season in 1967. He missed only one Pro Bowl appearance the rest of his career (1976). Mack's 11 invitations earned him a third-place tie with Bob Lilly and Ken Houston for the most selections of all time. Mack was selected First-Team All-Pro four times (1969, 1971, 1973, and 1974) and Second-Team All-Pro four times (1968, 1970, 1972, and 1975). In addition he was named All-NFC eight times in 1970-1975, 1977, and 1978 and earned Second-Team All-NFC honors in 1976. Mack was inducted into the Pro Football Hall of Fame in 1999.

16. Plaintiff Anthony Ronald "Ron" Yary ("Yary") is a member of the Pro Football Hall of Fame and is a former offensive tackle in the NFL, playing primarily for the Minnesota Vikings (1968-81) and also for the Los Angeles Rams (1982). Yary was the first overall pick of the 1968 NFL Draft by the Minnesota Vikings becoming the first offensive lineman ever to be selected first overall. During Yary's tenure with the Vikings, the team won 11 division titles, the 1969 NFL championship, and NFC titles in 1973, 1974 and 1976. Yary played in Super Bowls IV, VIII, IX and XI. Yary was named All-Pro six consecutive seasons (1971-76) and second team All-Pro in 1970 and 1977 and was an All-NFC choice from 1970 through 1977. He played in seven consecutive Pro Bowls. In addition to his All-pro honors, Yary was voted the NFC Offensive Lineman of the Year three times (1973-75) by the NFLPA. Yary was voted to the 1970s All-Decade First Team after the 1979 season. Yary missed only two games in

14 years in Minnesota. He was inducted into the Vikings Ring of Honor in 2000. Yary was inducted into the Pro Football Hall of Fame in 2001.

17. Plaintiff David "Dave" Wilcox ("Wilcox") is a member of the Pro Football Hall of Fame. He played linebacker in the NFL for the San Francisco 49ers from 1964 to 1974. Wilcox was selected to play in seven Pro Bowls and was named All-NFL five times during his career. Durable, Wilcox missed only one game during his career due to injury. Four times he was named All-NFL (1967, 1971, 1972, and 1973) by the *Associated Press* and two times All-NFC (1971 and 1972). Wilcox was inducted into the Pro Football Hall of Fame in 2000.

18. Plaintiff Leroy Kelly ("Kelly") is a member of the Pro Football Hall of Fame and is a former running back in the NFL for the Cleveland Browns from 1964 to 1973. Kelly led the NFL in rushing in 1967 and 1968 and also led the League in rushing touchdowns for three consecutive years from 1966-68. Kelly was selected to six Pro Bowls (1966, 1967, 1968, 1969, 1970, and 1971), voted five times All-Pro (1966, 1967, 1968, 1969, and 1971), selected to the 1960s All-Decade Team, and won the 1968 Bert Bell Award. In 1975, Kelly joined the coaching staff of the pro football team, Philadelphia Bell, as the offensive backfield coach. Kelly was inducted into the Pro Football Hall of Fame in 1994.

19. Plaintiff Jackie Larue Smith ("Smith") is a member of the Pro Football Hall of Fame and is a former tight end in the NFL for the St. Louis Cardinals and the Dallas Cowboys from 1963 to 1978. Smith played in 121 straight games starting with his first NFL contest and continuing until a knee injury sidelined him in his ninth

season in 1971. Smith played in five straight Pro Bowls (1966-1970), and was named All-NFL in 1967 and 1969. At the time of his retirement, Smith's 7,918 receiving yards were the most ever by an NFL tight end. Smith was inducted into the Pro Football Hall of Fame in 1994.

20. Plaintiff Charles Robert "Charley" Taylor ("Taylor") is a member of the Pro Football Hall of Fame and is a former wide receiver and running back in the NFL for the Washington Redskins from 1964 to 1977. During his tenure with the Redskins they reached the Super Bowl in 1973 (Super Bowl VII). Taylor was drafted in the first round (third overall) of the 1964 NFL Draft by the Washington Redskins. He won the UPI NFL-NFC Rookie of the Year award as a running back and became the first rookie in 20 years to finish in the NFL's top 10 in both rushing and receiving. His 53 receptions were a record for a running back at that time. In 1975, Taylor became the NFL's all-time receptions leader. Taylor earned First or Second-Team All-NFL honors six times and was selected to play in eight Pro Bowls. Taylor was selected as one of the 70 Greatest Redskins of all time. In 1999, he was ranked number 85 on *The Sporting News*' list of the 100 Greatest Football Players. Taylor was inducted into the Pro Football Hall of Fame in 1984.

21. Plaintiff Robert Bruce "Bob" St. Clair ("St. Clair") is a member of the Pro Football Hall of Fame and is a former offensive tackle in the NFL for the San Francisco 49ers from 1953 to 1963. St. Clair was a five time Pro Bowl selection (1956, 1958, 1959, 1960, and 1961), a nine time All-Pro selection (1953-1956, 1958, and 1960-1963), and a member of the 1950s NFL All-Decade Team. In 2001, as a tribute for

playing a total of 17 seasons and 189 home games at Kezar Stadium, the city of San Francisco renamed the stadium's field in honor of St. Clair. He also had his number retired by the San Francisco 49ers. St. Clair was inducted into the Pro Football Hall of Fame in 1990.

22. Plaintiff Gino John Marchetti ("Marchetti") is a member of the Pro Football Hall of Fame and a former defensive end and offensive tackle in the NFL for the Dallas Texans (1952) and Baltimore Colts (1952-66). Marchetti played 13 seasons with the Colts and helped them win NFL Championships in 1958 and 1959. He was voted "the greatest defensive end in pro football history" by the Pro Football Hall of Fame in 1972. Marchetti was selected to nine consecutive Pro Bowls, was First-Team All-Pro nine times, and a Second-Team selection once. He was called by Sid Gillman, the Los Angeles Rams head coach, "(T)he greatest player in football." He was enshrined in the Bay Area Sports Hall of Fame in 1985 and is also a member of the National Italian-American Sports Hall of Fame. He was named to NFL's 50th Anniversary Team in 1969, the NFL's 75th Anniversary Team in 1994, the All-Madden All-Millennium Team in 2000, and the NFL All-Time Team in 2000. In 1999, he was ranked number 15 on *The Sporting News*' list of the 100 Greatest Football Players. In 2010, Marchetti was voted number 39 of the NFL's 100 Greatest Players. Marchetti was inducted into the Pro Football Hall of Fame in 1972.

23. Plaintiff Melvin Lacy "Mel" Renfro ("Renfro") is a member of the Pro Football Hall of Fame and is a former defensive back in the NFL for the Dallas Cowboys from 1964 to 1977. Renfro was selected to the Pro Bowl in each of his first ten

seasons in the League. Renfro was selected All-Pro five times (1964, 1965, 1969, 1971, and 1973). Renfro also was a significant threat on special teams, returning punts and kickoffs and he led the league in punt and kickoff return yardage in 1964. Renfro played in Super Bowls V, VI, X and XII, retiring after the final one. Renfro was added to the Texas Stadium Ring of Honor in 1981. Renfro was inducted into the Pro Football Hall of Fame in 1996.

24. Plaintiff Daniel Oliver “Dan” “Danimal” Hampton (“Hampton”) is a member of the Pro Football Hall of Fame and is a former defensive tackle in the NFL who played twelve seasons for the Chicago Bears from 1979 to 1990. In 1979 he was voted All-Rookie by the Pro Football Writers Association. The following year he was a Second-Team All-Pro selection and was voted to his first Pro Bowl. He was selected to four Pro Bowls and was a key defensive member of the Bears’ 1985 Super Bowl XX team that beat the New England Patriots. Hampton was First or Second-team All-Pro in 1980, 1982, 1984, 1985, 1986, and 1988. In 1982 Hampton was selected as the NFL defensive player of the year by *Pro Football Weekly*. Hampton was voted the NFLPA NFC Defensive Lineman of the Year in 1984 along with being consensus All-Pro and being selected to his third Pro Bowl. Hampton was named to the All-Madden team six times and to the 10th Anniversary All-Madden team. Hampton was also selected for the NFL All-Decade team of the 1980s. In 1990 Hampton was the recipient of the George S. Halas Courage Award by the Pro Football Writers Association. Hampton was inducted into the Pro Football Hall of Fame in 2002.

25. Plaintiff William Lewis “Billy” Shaw (“Shaw”) was an offensive lineman in the AFL who played for the Buffalo Bills from 1961-69. Shaw is the only Hall of Famer who never played in the NFL. He was an eight-time AFL All-Star selection (1962-69), a seven-time All-AFL selection (1962-66, 1968-69), a two-time AFL Champion, and is a member of the AFL’s All-Time Team. Shaw was inducted to the Pro Football Hall of Fame in 1999.

26. Plaintiff Donald Rogers “Don” Maynard (“Maynard”) is a member of the Pro Football Hall of Fame and is a former wide receiver in the NFL who played with the New York Giants (1958), the New York Jets (1960-72), the St. Louis Cardinals (1973), and the Los Angeles Rams (1973). A four-time AFL All-Star, a five-time All-AFL selection, a member of the AFL’s All-Time team, he is sixth in all-time pro football touchdown receptions, and is a member of the All-time All-AFL Team. In 1968 Maynard was part of a team that won Super Bowl III. Maynard’s jersey was retired by the New York Jets and Maynard was inducted to the New York Jets Ring of Honor in 2010. Maynard was inducted into the Pro Football Hall of Fame in 1987.

27. Plaintiff Thomas Franklin “Tommy” McDonald (“McDonald”) is a member of the Pro Football Hall of Fame and is a former wide receiver in the NFL who played with the Philadelphia Eagles (1957-63), Dallas Cowboys (1964), Los Angeles Rams (1965-66), Atlanta Falcons (1967), and Cleveland Browns (1968). Over his 12-year career, he helped lead the Eagles to a 1960 NFL Championship, was selected to six Pro Bowls, led the league in touchdown receptions twice (1958, 1960), and led the NFL in receiving yards once (1960). McDonald retired after the 1968 season with the second highest total of touchdown receptions in NFL history at the time. McDonald is a member of the Philadelphia Eagles’ Honor Roll. McDonald was inducted into the Pro Football Hall of Fame in 1998.

28. Plaintiff Larry Chatmon Little ("Little") is a member of the Pro Football Hall of Fame and is a former offensive guard in the NFL for the San Diego Chargers (1967-1968) and Miami Dolphins (1969-1980). In 1999, he was ranked number 79 on *The Sporting News*' list of the 100 Greatest Football Players. Little was a five time Pro Bowl selection (1970, 1972, 1973, 1974, 1975), an AFL All-Star selection in 1969, a two time Super Bowl champion (VII, VIII), was selected to the NFL's 1970s All-Decade Team, and is a member of the Miami Dolphins Honor Roll. Little was inducted into the Pro Football Hall of Fame in 1993.

29. Plaintiff Larry Rayfield Wright ("Wright") is a member of the Pro Football Hall of Fame and is a former offensive tackle in the NFL for the Dallas Cowboys from 1967 to 1979. In thirteen seasons, Wright played 166 games, started at right tackle in six NFC Championship games, and played in five Super Bowls - winning two of them (Super Bowl VI and Super Bowl XII). He earned his first of four All-NFL honors in 1971 and was voted that same year to the first of six straight Pro Bowls. Wright was named First or Second-Team All-Pro each season from 1971 through 1976, earned three All-NFC honors and his blocking (and leadership as the team's co-captain for seven years) helped the Cowboys win ten division titles and six conference crowns. Wright was voted the NFLPA NFC Offensive Lineman of the Year in 1972. Wright was also presented with a number of individual awards following the conclusion of his career, including the NFL All-Super Bowl Team (1990), the Dallas Cowboys 1st Anniversary Team (1985), the Cowboys' Ring of Honor (2004), the Texas Sports Hall of Fame

(2005), and was named to the NFL's All-Decade Team of the 1970s. Wright was inducted into the Pro Football Hall of Fame in 2006.

30. Plaintiff Kyle John Turley ("Turley") was an offensive tackle in the NFL who played with the New Orleans Saints from 1998-2002, the St. Louis Rams from 2003-04, and the Kansas City Chiefs from 2006-07. He was a First-Team All Pro selection in 2000.

31. Plaintiff Obafemi Devin "Femi" Ayanbadejo ("Ayanbadejo") was a fullback in the NFL who played for the Minnesota Vikings (1997-98), Baltimore Ravens (1999-2001), Miami Dolphins (2002-03), Arizona Cardinals (2004-06), and Chicago Bears (2007). Ayanbadejo earned a Super Bowl ring with the Baltimore Ravens in Super Bowl XXXV. Ayanbadejo was released by the Chicago Bears in 2007 and joined the California Redwoods of the United Football League in 2009.

32. Plaintiff Ryan Albert Collins ("Collins") was a tight end in the NFL who played for the Baltimore Ravens, Minnesota Vikings, and Cleveland Browns. Collins is a non-vested former NFL football player.

33. The foregoing persons identified as plaintiffs are referred to collectively as "Plaintiffs." Eller, Krause, Barney, DeLamielleure, Bethea, Ayanbadejo, and Collins were also either named plaintiffs in the case of *Eller v. NFL*, No. 11-cv--00748 (D. Minn.) ("*Eller I*") or were sought to be added as named plaintiffs in that case in an Amended Motion for leave to file a Second Amended Complaint that was rendered moot when the case was voluntarily dismissed without prejudice, as described below. Thus, there is a substantial degree of identity between the Plaintiffs here and the actual or

proposed plaintiffs in the *Eller I* case, who will be referred to herein as the “*Eller I* plaintiffs.”

34. Defendant Tom Brady (“Brady”) is a current NFL player and was among the named plaintiffs in the *Brady* action. Defendant Mike Vrabel (“Vrabel”) was a current NFL player at the time the *Brady* action was filed but has since retired. He is now an assistant coach with Ohio State University. The defendants identified in this paragraph are collectively referred to as the “*Brady* Defendants”

35. Defendant NFLPA is a labor union based in Washington, D.C.

36. Defendant DeMaurice Smith has been the Executive Director of the NFLPA since 2008 and was one of the counsel for the active NFL players in the *Brady* action.

CLASS ACTION

37. Plaintiffs are representatives of a class, as defined by Rule 23(b)(1), Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure, and bring this action on behalf of themselves and a class with respect to which Defendants have acted or refused to act on grounds that apply generally to the class.

38. The class is composed of all retired or former professional football players who were employed by any NFL member club but are not now salaried employees of the NFL or any member club or of the NFLPA and who receive or are eligible to receive health, retirement or other benefits from the NFL pursuant to the “Bert Bell/Pete Rozelle NFL Player Retirement Plan” (the “Plan”) or other benefit plans subsidized by the NFL, as described below.

39. The class consists of persons who do not fall within the definition of the Collective Bargaining Unit (“CBU”) contained in either the 2006 or 2011 CBAs between the NFL and the NFLPA. The “Preamble” to each CBA describes the CBU as including:

1. All professional football players employed by a member club of the National Football League;
2. All professional football players who have been previously employed by a member club of the National Football League who are seeking employment with an NFL Club;
3. All rookie players once they are selected in the current year’s NFL College Draft; and
4. All undrafted rookie players once they commence negotiation with an NFL Club concerning employment as a player.

40. As this definition reflects, former NFL players were not part of the CBU described in the 2006 or the 2011 CBAs.

41. The class is so numerous and geographically so widely dispersed that joinder of all members is impracticable. There are questions of law and fact common to the class. Plaintiffs’ claims are typical of the claims of the class that they represent, and the Plaintiffs will fairly and adequately protect the interests of the proposed class.

42. Each person in the class is, has been, and/or will be injured by the conduct complained of herein committed by the *Brady* Defendants, Smith and the NFLPA.

43. Questions of law and fact common to class members predominate over any questions affecting only individual class members. These include the following:

- (a) Whether Plaintiffs and the class are entitled to the declaration of rights that they seek;
- (b) Whether any Defendants tortiously interfered with the prospective economic advantage of Plaintiffs and the class;
- (c) Whether the NFLPA breached any fiduciary duties owed to Plaintiffs and the class;
- (d) Whether Defendants have any affirmative defenses that can be litigated on a classwide basis; and
- (e) Whether Defendants' conduct caused injury and damage to Plaintiffs and members of the class.

44. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

FACTUAL ALLEGATIONS

The SSA And Successive CBAs

45. On February 26, 1993, after the jury verdict in an antitrust case brought against the League, the NFL and players entered into a Stipulation & Settlement Agreement ("SSA"). A month later, the NFLPA advised the NFL that it had received authorization from a majority of current players to serve as their collective bargaining agent. The district court approved the settlement agreement.

46. Also in 1993, the NFL and NFLPA entered into a CBA that mirrored the SSA. The parties amended and extended the CBA in 1996, 1998, and 2002. In 2006, the parties renegotiated the CBA for 2006-12, creating the CBU described above. On May 20, 2008, the NFL opted out of the final two years of the then-current versions of the CBA. As a consequence, the CBA was due to expire as of March 4, 2011. As described below, the 2006 CBA did expire and has been replaced by the 2011 CBA.

**The Plan And Other Benefit Plans For Retired NFL Players
And How They Are Inadequate**

47. The Plan is a merger of two prior plans in 1993. The most recent version was amended and restated on April 1, 2007. The Plan provides for retirement benefits, total and permanent (“T&P”) disability benefits, line of duty disability benefits and death benefits. The Plan is subsidized by NFL member clubs. Pursuant to Paragraph 3.1 of the Plan, the NFL clubs make contributions according to various actuarial assumptions and methods set forth in Appendix A to the Plan. Pursuant to Paragraph 3.2 of the Plan, the NFL clubs are obligated to contribute to the Plan to the extent required by federal law and the operative CBA.

48. As of December 2010, only 3,154 former NFL players were receiving pension benefits under the Plan.

49. In August of 2010, the United States Department of Labor (“DoL”) put the Plan on “endangered” status because the Plan’s funded percentage was only

75%.¹ The DoL's letter to the Plan (available from its website at <http://www.dol.gov/ebsa/pdf/e-notice092210001.pdf>) noted that the Plan needed to devise a "funding improvement plan."

50. The Plan is run by a Retirement Board consisting of three persons selected by the NFLPA, three persons selected by the NFL Management Council and, in an *ex officio* capacity, the NFL Commissioner. The actuary for the Plan is Aon Corporation, executives of which, on information and belief, have ownership interests in the Chicago Bears, one of the NFL's member clubs.

51. Obtaining disability benefits under the Plan has been notoriously difficult. In 2010, only 289 of 464 eligible players who applied for disability payments were awarded any.

52. On June 23, 2007, hearings on the NFL's compensation of retired players were held before the Commercial and Administrative Law Subcommittee of the Judiciary Committee of the United States House of Representatives. Numerous retired players suffering severe disabilities as a result of their NFL playing careers told their

¹ As the DoL explains at its website, <http://www.dol.gov/ebsa/criticalstatusnotices.html> : "[u]nder Federal pension law, if a multiemployer pension plan is determined to be in critical or endangered status, the plan must provide notice of this status to participants, beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation and the Department of Labor. This requirement applies when a plan has funding or liquidity problems, or both, as described in the Federal law. If a plan is in critical status, adjustable benefits may be reduced and no lump sum distributions can be made. Pension plans in critical and endangered status are required to adopt a plan aimed at restoring the financial health of the pension plan."

stories of being denied T&P and other benefits. Representative Linda Sanchez

summarized the evidence as follows:

After announcing this hearing and subsequent research, it has become clear that the NFL disability and pension benefits plans have sparked a significant amount of passionate critics. The various stories relayed by the retirees demonstrate concern not only with how the plan is structured but also about how it is administered.

The fundamental question then becomes whether this disability process is fair for the retired employees of the NFL. The evidence suggests that the vast majority of former players needing benefits do not receive them. What is even more troubling is that through projects such as the NFL films, the NFL continues to profit off those very same players who are denied benefits. Essentially, is the NFL, a multibillion dollar organization, fairly treating the employees who helped build it?

53. Representative John Conyers (“Conyers”) also summarized some of the evidence that had been presented to the subcommittee:

the NFL’s treatment of its retired players with respect to disability and pension benefits is problematic. As many of us know, the average football athlete is not a marquee player but plays in the league for less than 4 years and often retires because of injury. Upon retirement, he receives only \$14,500 in pension benefits, less than half the amount received by an average retired Major League baseball player.

Of 10,000 retired NFL players, it is estimated that less than 300 receive long-term disability payments. Several recent well-publicized cases highlight the resulting problems. For example, Pittsburgh Steelers center Mike Webster [(“Webster”)]. The court recently awarded his estate more than \$1.1 million in disability payments that the NFL’s Retirement Plan administrators claimed he was not entitled to receive.

Or take Brian DeMarco, former offensive lineman for the Jacksonville Jaguars. According to the Denver Post, Mr. DeMarco's back was broken in 17 places and he retired due to severe health problems after the 1999 season. But he has never been able to get NFL disability benefits. His disabilities were so extensive that he can't hold a telephone to his ear. In the last 4 years, Mr. DeMarco and his family have been homeless on three occasions.

I am concerned about the extent to which these issues are attributable to the administration of the NFL Retirement Plan, and I am troubled by the fact that arbitration is not readily available in cases of disability claims. The process for resolving disputes concerning player benefits and submission of disputes to a benefit arbitrator does not usually apply to retirement or disability benefits. Rather, the plan's Retirement Board hears appeals of its own decisions instead of submitting appeals to an arbitrator, and this practice has drawn significant criticism.

54. On September 18, 2007, a hearing on oversight of the NFL retirement system was held before the United States Senate Committee on Commerce Science and Transportation. Similar testimony about denials of benefits was presented by NFL retired players.

55. On April 8, 2008, the Congressional Research Service ("CRS") issued a report on "Former NFL Players: Disabilities, Benefits And Related Issues." It concluded:

The subject of players' injuries, disabilities, and benefits is a complex one, and, accordingly, there are a host of issues surrounding this subject. Although the number and type of benefits have grown over the years, older retirees, particularly those who played prior to 1982, have fewer benefits available to them than their successors have. Yet, this subset of former players might have the greatest financial and medical needs.

56. As the CRS report also explained, there were substantial obstacles in obtaining T&P disability benefits under the Plan:

Overall, from July 1, 1993, through June 26, 2007, 1,052 individuals applied for LOD or T&P disability benefits: 428 applications were approved; 576 were denied; and 48 are pending. The approval rate, which does not include the cases that are pending, is 42%. The following series of statements shows the status of applications at each step of the process.

--1,052 applications submitted for disability benefits.

--358 (34%) applications approved.

--675 (64%) applications denied.

--19 (2%) applications are pending.

--223 (33% of 675) applications denied at the initial stage were appealed.

--69 (31%) approved on appeal.

--132 (60%) denied on appeal.

--22 (10%) appeals are pending.

--32 (24% of 132) applicants whose appeals were denied filed a lawsuit.

--1 (3%) lawsuit resulted in a reversal of the Retirement Board's decision.

57. As the CRS report also noted, as of October 27, 2007, only 154 NFL retired players were receiving T&P disability benefits.

58. There also exists a separate health benefit plan for retired or former NFL players known as the "88 Plan." The 88 Plan was created in August of 2007, apparently partly in response to the congressional hearings cited above. It is designed to assist players who are vested under the Plan and who are determined to have dementia (including Alzheimer's Disease), as this condition is defined in the 88 Plan. The 88 Plan will pay the cost of medical and custodial care for eligible players, including institutional

custodial care, institutional charges, home custodial care provided by an unrelated third party, physician services, durable medical equipment, and prescription medicine. For eligible players who are institutionalized as an in-patient, the maximum annual benefit is currently \$100,000 pursuant to the 2011 CBA (\$130,000 beginning in 2016). For eligible players who are not institutionalized as an in-patient, the maximum annual benefit is \$88,000 (\$116,000 beginning in 2016). 88 Plan benefits may be paid on behalf of an eligible player even if that player is also receiving T&P disability benefits from the Plan, but only if he is in the "Inactive" category. As of December 2010, only 151 NFL players were receiving benefits under the 88 Plan.

59. There also exists an "NFL Player Care Plan" subsidized by the NFL. The NFL Player Care Plan provides a uniform administrative framework for a range of programs that benefit eligible former NFL players. Currently, these benefits are: (a) joint replacement benefits; (b) assisted living benefits; (c) discount prescription drug benefits; (d) Medicare supplement insurance benefits; (e) spine treatment benefits; (f) neurological care benefits; and (g) life insurance benefits. These benefits can be terminated summarily. For example, it has been reported that Bruce Schwager, who played at various NFL training camps and now suffers from dementia, was told by the NFLPA on March 14, 2011. that his bills for treatment at a dementia-care facility in Sugarland, Texas will no longer be paid.

60. There are other miscellaneous plans that provide benefits to former players and are subsidized by the NFL. These include, but are not limited to, an annuity

program (a type of deferred compensation program) and a Joint Replacement Benefit Plan (assisting retired players who need joint replacement surgery).

61. The present retirement system for NFL players fails to provide the agreed upon necessary benefits and services. The system is acknowledged as deficient and flawed both with respect to pensions and administration of benefit programs.

62. The shortfalls and inadequacies in the retirement system are, in part, the result of the NFLPA sacrificing the interests of the rights of retired NFL players to the benefit of active NFL players both within and outside of the context of CBAs with the League.

63. The consequences of this failed system are best illustrated by the NFL's and NFLPA's responses to the issue of brain injuries incurred by retired NFL players as a result of concussions received during the period that they played professional football. The NFL actively tried to conceal the extent of the problem until recently. The NFLPA ignored the extent of the problem until recently. The response of both organizations once they fully acknowledged the issue has been inadequate, as reflected in the House Judiciary Committee inquiry into "Legal Issues Relating To Football Head Injuries" that commenced in 2009.

The Treatment Of Former NFL Players By The NFLPA

64. There is an inherent risk that union representatives bargaining for improved wages will favor active employees at the expense of the rights of, and benefits due to, retirees.

65. During recent years, the NFLPA has consistently favored the interests of active NFL players at the expense of NFL retirees' rights and benefits.

66. Up until his death in 2008, Eugene Upshaw ("Upshaw") was the Executive Director of the NFLPA. His relationship with retired NFL players was not good. As early as August of 2006, sportscaster Bryant Gumbel said of Upshaw:

Before he cleans out his office have [outgoing NFL Commissioner] Paul Tagliabue show you where he keeps Gene Upshaw's leash. By making the docile head of the players union his personal pet, your predecessor has kept the peace without giving players the kind of guarantees other pros take for granted. Try to make sure no one competent ever replaces Upshaw on your watch.

67. In February of 2007, the *Los Angeles Times* reported:

"It's just disgusting," said [Jerry] Kramer, a former Green Bay Packers star who receives a \$358 monthly football pension. "The physical and economic hardships many guys are forced to live with are due to the lack of an adequate pension and disability package."

Old-timers have been especially harsh in their criticism of Gene Upshaw, a former player who is the union's executive director. The NFL Players Assn. repeatedly declined requests in recent months to discuss pension and retiree medical benefit plans.

68. In June of 2007, while the Congressional inquiries into the League's treatment of its former players were at their zenith, Upshaw attacked one of his staunchest critics among the ranks of NFL retirees: DeLamielleure. Upshaw was quoted as saying in a newspaper interview: "[a] guy like DeLamielleure says the things he said

about me, you think I'm going to invite him to dinner? No. I'm going to break his ... damn neck."

69. In July of 2007, Upshaw and NFL Commissioner Roger Goodell ("Goodell") announced the formation of an "alliance" to deal with the problems of NFL retirees. Mike Ditka ("Ditka"), a former NFL player and a former head coach of the Chicago Bears who created the organization known as Gridiron Greats to assist fellow NFL retired players, had this to say about the "alliance":

In response to the "meeting," Mike Ditka, other board members of the Gridiron Greats Assistance Fund, and a variety of long-time advocates for retired player's reacted viscerally.

"I don't believe any of the stakeholders were there. The meeting had no substance. If Gene Upshaw and Roger Goodell wanted the meeting to have substance, members of the Gridiron Greats Assistance Fund board would have been invited to attend. Not one member of our board was asked to attend that meeting," said Mike Ditka, GGAF Board Member. "If they wanted the meetings to have substance, NFL Players who have been long-time advocates of retired players rights such as former Baltimore Colt Bruce Laird, GGAF board members Joe DeLamielleure or Harry Carson would have been there. Most importantly, players and their families who have had to fight an inadequate disability system and bad pensions would have been there such as Brent Boyd, Mike Webster's son Garrett, Mike Mosley, Brian Demarco, Conrad Dobler, and Herb Adderley. I could name countless others. Were any of them there? Judging by the attendees invited to this meeting it was clear that the NFL and the NFLPA are not that interested in conducting meetings with substance that will bring about the major changes that are needed. Where were the owners?"

70. Also in 2007, a class action lawsuit was commenced in federal district court in the Northern District of California, in which it was alleged that the licensing arm of the NFLPA had breached its duty to market the names and likenesses of retired NFL players who had entered into a group licensing agreement with that entity. *Adderley v. National Football League Players, Inc.*, No. 3:07-cv-00943-WHA (N.D. Cal.) (“*Adderley*”). A jury found a breach of fiduciary duty and awarded the plaintiff class \$7.1 million in compensatory damages and \$21 million in punitive damages. The district court denied the defendants’ post-trial motions, saying:

The punitive damages award will not be set aside. The jury could reasonably have found an intentional and calculated breach of a fiduciary duty by defendants, for the reason stated. The amount was not disproportionate to the wrong done or to the compensatory award. Viewed in a light most favorable to the verdict, the evidence was clear and convincing.

71. In April of 2011, a second lawsuit was brought by a class of retired players against the NFLPA and its licensing arm for additional breaches of fiduciary duties. *Grant v. NFLPA*, No. 2:11-cv-00318-RGK-FFM (C.D. Cal. June 6, 2011) (“*Grant*”).

72. Upshaw summed up his views of retired NFL players to a reporter for the *Charlotte Observer* in 2007: “[t]he bottom line is, I don’t work for them [retired NFL players]. They don’t hire me, and they can’t fire me. They can complain about me all day long. They can have their opinion. But the active players have the vote. That’s who pays my salary.”

73. After Upshaw's death in 2008, he was succeeded as Executive Director of the NFLPA by Smith. It was reported in April of 2009 that Smith "said the union has a fiduciary duty to retired players." Smith has also been quoted as saying: "[w]e have a moral obligation to the retired players, we have a fiduciary obligation to the retired players. That obligation has to be both in words and deeds. If you fail in either one, you fail." As an attorney, Smith knew or should have known of the significance of these admissions. As explained below, he has failed in both his words and deeds.

74. While Smith's statements appeared to be a turnaround from the attitude expressed by Upshaw, that has not been the case. In April of 2010, Smith sent a letter to NFL retired players, indicating he had an informal "blacklist" of dissidents prepared by his predecessor:

They will use their friends in the media, they will use former players, and they will find current players to attack the solidarity of this Union, to extort every leverage point...I am blessed because Gene left me a detailed history of those who stood for what was right. He also left me a wealth of information detailing the efforts of those who fought and will fight against our players.

75. By early 2009, the "Retired Players Department" of the NFLPA was being viewed as ineffectual. As one NFL retiree website stated (under the heading "Is the NFLPA Retired Players Department Still Relevant?"):

The current state of the NFLPA Retired Players Department has left many retirees looking for representation elsewhere. In recent years the membership of many chapters of the NFL Retired Players Association has dropped dramatically. Less than 175 of the NFL's 13,000 retirees attended the NFLPA

Retired Players Convention in Puerto Rico in 2008. This has led to many retirees questioning the relevance of the organization. Andre Collins, the director of the retired players department of the NFLPA, did not attend a single session of the three week class action trial regarding retired player licensing. Also absent was NFLPA Retired Players Steering Committee President Jean Fugett.

The NFLPA has stated that every dollar that goes to retirees comes from the pockets of today's active players. This has [led] to what many perceive as an adversarial relationship between NFL retirees and current players. The Retired Players Department at the NFLPA offices has done little to create a relationship between today's and yesterday's players. Many retirees feel that if they had a forum to discuss these issues with current players that it would be a positive for both groups.

Retired Players Steering Committee President Jean Fugett will attend the active players' annual meeting in Hawaii next weekend. Fugett will appear to represent the NFL's 13,000 retirees. In reality, Fugett only represents the less than 175 NFLPA Retired Players members who voted in the Steering Committee election in Puerto Rico.

During his trip to Hawaii, Fugett has said he will not discuss the current lack of communication between active and retired players. Nor will he discuss the possibility of resolving the retired players' class action lawsuit as several steering committee members and chapter presidents have requested. Fugett will not carry the message of the majority of NFL retirees to the active players in Hawaii. Active players should realize that while Fugett speaks in Hawaii he is representing roughly one percent of the NFL retired player population.

76. In 2010, New Orleans Saints quarterback Drew Brees ("Brees"), a member of the NFLPA's Executive Committee, voiced his antipathy for NFL retirees:

There's some guys out there that have made bad business decisions. They took their pensions early because they never went out and got a job. They've had a couple divorces and

they're making payments to this place and that place. And that's why they don't have money. And they're coming to us to basically say, "Please make up for my bad judgment."

77. DeLamielleure responded in a sharply-worded open letter:

You want retired players to be on your team. You gotta be kidding me! On every team that I ever played on, we all had the same game plan. Well, your game plan is a lot different than the one most retired players want to see executed.

Could one of the reasons you want us to join the "Team" be because the NFL Owner's have discontinued their contributions to your Annuity Plan, Second Career Savings Plan, Tuition Assistance Plan, Health Reimbursement Account? Well, if you want us to fight for your benefits, you better start fighting for ours!

If you really wanted the retired players to rally around you Drew, you should have mentioned something about increasing the Pension Plan, or reforming the Disability Plan, which are the top two issues that concern retired players.

"So where were you when the owners recently proposed to increase retired player pension benefits by \$100 Million? The money for that expense would have come from a wage cap on rookies.

It is simply astonishing to me that you expressed your concern about better health insurance for NFL wives, especially in light of the fact that there are thousands of retired players that never received a plug nickel for post-career health insurance and a Health Reimbursement Account like the one you will have when you retire.

Some players have been denied an NFL disability and as a result, their bank accounts have been drained dry due to hospital and doctor bills. Many retired players can't find affordable health insurance because they're self-employed. Many others have the added problem of insurance companies dropping them, capping their annual payments, or outright denying them coverage because of (football related) pre-existing conditions.

Unfortunately, I received some bad advice from the union and was encouraged to take my Pension at age 45. We were given bogus information that told us NFL players were dying at a much younger age than the general population, so I did what I thought was best for my family.

Many retired players had to take their pension money out of necessity. We didn't make the millions that you and other players now make. I should note that the NFLPA finally realized their mistake and stopped allowing retired players to take early pensions and the Social Security Adjustment Option too.

Like a lot of retired players, I'm sick and tired of hearing multi-millionaire players talk about increasing their own benefits, while at the same time giving lip service to retired players.

78. Indeed, soon after the NFLPA renounced its union status in March of 2011 (as described in further detail below), Smith tried to rewrite history, claiming that the NFL had never paid anything to League retirees and that it was not the fault of the NFLPA:

[Reporter Michael Francesca of WFAN]: And your money [NFLPA] is disgraceful and your money is not nearly enough either.

Smith: If that's a disgrace Mike.....teams pay nothing to former player pensions right now, and it's been that way since 19.....it's been that way since history.....I was going to date myself, but it's been that way since the AFL and NFL merged. So I think it's disgraceful that teams don't pay anything to the former players who made this game great.

79. In fact, the NFLPA has been a substantial cause of the insufficient/inadequate retiree benefits, programs and operations. On information and belief, that practice was carried on in the period since March of 2011, as described below.

The Termination of the SSA and CBA, The NFLPA's Decision To Renounce Its Union Status, And The NFL Lockout

80. Negotiations between the NFL and NFLPA for a replacement to the 2006 CBA went on for two years. On February 10, 2011, the NFL filed a charge against the NFLPA with the NLRB, accusing the union of failing to negotiate in good faith.

81. Four days later, federal mediator George Cohen ("Cohen") was brought in and numerous days of mediation ensued in which the parties extended the expiration date of the CBA several times. The mediation was unsuccessful.

82. On March 11, 2011, Smith sent a letter to all NFL Club Presidents and General Managers, informing them that the NFLPA had "renounced its status as collective bargaining agent for all NFL players." As a result, no NFLPA representative "has the authority or authorization to engage in any collective bargaining discussions, grievance processing or any other activities associated with collective bargaining on behalf of players at either the club or the league level." The letter stated that the NFLPA would also no longer be overseeing the activities of player agents.

83. By March 11, 2011, the NFLPA had amended its bylaws to prohibit it or its members from engaging in collective bargaining with the NFL, the NFL's member clubs or their agents. The NFLPA filed a labor organization termination notice

with the DoL. An application was filed with the Internal Revenue Service to reclassify the NFLPA for tax purposes as a professional association rather than a labor organization.

84. As of March 11, 2011, the NFLPA had thereby voluntarily and affirmatively relinquished all protections of federal labor law.

85. On March 11, 2011, the NFL sent a letter to Smith announcing its intention to commence a lockout on March 12. The lockout took effect at the appointed time.

86. On March 17, 2011, Goodell wrote directly to active NFL players, presenting the League's side of the controversy. In that letter, he noted that the League had offered at the federal mediation overseen by Cohen:

- Enhanced retirement benefits for pre-1993 players. More than 2,000 former players would have received an immediate increase in their pensions averaging nearly 60 percent, funded entirely by the owners.

- A new entry-level compensation system that would make more than \$300 million per draft class available for veterans' pay and player benefits.

87. On information and belief, the NFL's last proposal would have amounted to at least \$1.5 billion being allocated to retirees over the ten-year duration of any new CBA: \$50 million annually in the form of a "legacy fund" for NFL players who retired before 1993, and \$100 million annually in savings on rookie contracts.

88. Subsequently on April 4, 2011, Mark Murphy (President and CEO of the Green Bay Packers, an NFL club) and Jerry Richardson (owner of the Carolina

Panthers, another NFL club), both of whom are former players, sent a letter to former NFL players. That letter stated in part:

On March 11, the NFL Players Association - which states that it represents players "past, present and future" - walked away from the bargaining table, announced it was giving up its status as a labor organization, and sued the NFL in Minnesota. As retired players who are members of the owners' bargaining committee, we have a unique perspective because we understand these issues from all sides. More importantly, we understand the challenges former players and their families face.

The union walked away from mediation, cutting off negotiations on an offer that was made by the clubs to avoid a work stoppage and that would have provided important improvements in retired player benefits. We know some former players have struggled financially. This was a real attempt to address those financial concerns. We are committed to making sure that when we reach a new agreement it better addresses the needs of our retirees. It's the fair thing to do. It's the right thing to do and it recognizes and respects your contributions to our game.

It is important to us that you know the facts about what we offered the union. Among the elements of our March 11 proposal that would have improved benefits for former players are the following:

--A new pension supplement for retired players aged 55 or above. This supplement would give more than 2,000 retirees an immediate increase in pension payments averaging almost 60 percent.

--Improvements in the Disability Plans and the 88 Plan to ease the qualifications for disability benefits and increase the value of those benefits to qualifying retirees.

--Expanded career transition programs to assist former players in developing second careers, both in and out of football.

--A new rookie pay system that would re-allocate more than \$300 million per draft class to fund benefits for current and retired players.

These are significant offers that would have a measurable impact on the people who made football great. Sadly, the players' union wasn't listening.

89. As a direct result of the April 4, 2011 letter from the League to all retirees, it was clear that retiree benefits were intended to be both the subject and object of active negotiation between NFL retired players and the League. The League "committed" to assuring that it was open and desirous of reaching a new agreement better addressing the "needs" of retirees. As of April 4, 2011, it was clear that the League was seeking the "voice" of the retirees separately and apart from the NFLPA, which "wasn't listening" with respect to retiree issues.

90. In fact, the League noted that in an attempt by one group representing retirees to speak with the NFLPA, the retiree group was met by union conduct described as "defiant, accusatory and outright disrespectful."

91. As of April 4, 2011, there was a need for new contractual rights for retirees and an opportunity and desire to reach a new agreement on those rights. The League had reached out directly to retirees to do so promptly.

Litigation And Settlement Discussions

92. On March 11, 2011, the *Brady* Defendants filed the *Brady* class action lawsuit against the NFL and its member clubs in connection with some of the events described herein, alleging various antitrust, contract and tort theories. In their complaint, the *Brady* Defendants did not seek to represent a class of former NFL players. They did seek to represent classes of rookies, established active players and free agents.

93. On information and belief, the *Brady* Defendants' lawsuit was controlled by the NFLPA, as a reasonable opportunity for discovery should establish. Some of the named plaintiffs therein, like Brees and Vrabel, were members of the NFLPA's Executive Committee. Outside counsel for the NFLPA and Smith represented the named plaintiffs in *Brady* and participated in settlement talks. On information and belief, the NFLPA subsidized the lawsuit.

94. On March 28, 2011, the *Eller I* complaint was filed by some of the named plaintiffs herein against the NFL and its member clubs. That complaint was brought principally on behalf of a class of retired NFL players. The district court consolidated the *Eller I* and *Brady* cases under the *Brady* civil action number. On July 13, 2011, an Amended Motion was made for leave to file a Second Amended Complaint in *Eller I* that would have added more of the Plaintiffs herein.

95. Counsel for the *Brady* Defendants repeatedly disclaimed any intent to represent the class of retired players defined in the *Eller I* complaint, as described below.

96. The League asserted that the NFLPA's decertification was a sham and that the statutory and non-statutory labor antitrust exemptions protected its conduct in instituting a lockout. On April 6, 2011, the district court held a hearing on the motions to enjoin preliminarily the NFL's lockout filed by both the *Brady* and *Eller I* plaintiffs; counsel for the *Eller I* plaintiffs were among those who argued. On April 25, 2011, the district court issued an order enjoining preliminarily the NFL's continuation of its lockout, *Brady v. NFL*, No. 11-639 (SRN/JGG), 2011 WL 1535240 (D. Minn. April 25, 2011). The district court subsequently denied the request to stay that order pending appeal. *Brady v. NFL*, No. 11-639 (SRN/JGG), 2011 WL 1578580 (D. Minn. April 27, 2011). The United States Court of Appeals for the Eighth Circuit stayed the injunction order on a provisional basis until it could rule on the NFL's formal stay motion. *Brady v. NFL*, 638 F.3d 1004 (8th Cir. 2011). It thereafter issued a formal stay on May 16, 2011. *Brady v. NFL*, 640 F.3d 785 (8th Cir. 2011). The Eighth Circuit in *Brady v. NFL*, No. 11-1898, 2011 WL 2652323 (8th Cir. July 8, 2011) vacated the injunction issued by the district court on the basis of the statutory labor antitrust exemption.

97. On April 11, 2011, the district court ordered mediation to occur before Chief Magistrate Judge Arthur Boylan ("Judge Boylan"). The Order specifically included the *Eller I* Plaintiffs. Mediation at which all parties were present occurred on April 14-15 and 19-20, and May 15-16. At all times in those proceedings, counsel for the *Eller I* plaintiffs alone were acknowledged to represent the interests of retired NFL players.

98. Indeed, in connection with proposals to be submitted to Judge Boylan on May 27, counsel for the *Brady* Defendants wrote an e-mail to counsel for the *Eller I* plaintiffs, on May 19, saying “[w]e would propose that the *Brady* plaintiffs cover the economic system issues: free agency rules and restrictions, rookie rules and restrictions; and the economic split (*i.e.*, salary cap or no salary cap, revenue split with players, etc). Eller would make the proposal on the retired player issues.” This was an explicit concession that the *Eller I* plaintiffs were to be in charge of negotiating issues relating to the claims of retired NFL players.

99. Thereafter, the talks broke up in separate sessions. In the separate sessions, on information and belief, Smith played a leading role on behalf of the *Brady* Defendants and the NFLPA.

100. Counsel for the *Eller I* plaintiffs met with Dennis Curran (“Curran”) of the NFL to discuss retiree issues on two occasions. They made a proposal for increased benefits that went significantly above the level proposed by the NFL at the federal mediation overseen by Cohen and proposed alternatively that 2-1/2% of all League revenues be set aside for the needs of retired NFL players, to be contributed equally by the League and by current NFL players.

101. Among the demands that the *Eller I* plaintiffs made was medical monitoring to diagnose brain injury in retired NFL players who had suffered game-related concussions during their professional careers. These demands are reflected in Exhibit A to this complaint.

102. While the League provided information to counsel for the *Eller I* plaintiffs in connection with these discussions, it made no substantive counteroffer of its own. Curran, however, commented that the proposals by the *Eller I* plaintiffs would be considered by the League and that certain key aspects of those proposals appeared both worthwhile and achievable.

103. Counsel for the *Eller I* plaintiffs also repeatedly told the League that any settlement would have to provide that its interaction with former NFL players would occur through an independent organization devoted to the interests of such players that was separate from the NFLPA.

104. Counsel for the *Eller I* plaintiffs made it clear to all Defendants in the *Brady* action that they alone represented the interests of retired players, as reflected in a letter sent on June 6 to Judge Boylan. As counsel for the *Eller I* plaintiffs told a reporter on June 28: “[i]f our side is not heard and our desire for change is not met, we will not agree to a settlement of this case....We want substantial changes in all phases of the post-career life of retirees and those issues will be addressed.” Eller himself met with Goodell on June 22, 2011, and voiced his concerns; in a press conference thereafter, he said those concerns were not satisfied.

105. Counsel for the *Eller I* plaintiffs were also active in organizing the largest gathering ever of various groups within the NFL retired player community who came together to support a combined effort to resolve retiree issues with the League. They caused to be convened a retiree summit held in Minneapolis, Minnesota on May 15, 2011. Attendees from Fourth and Goal, Gridiron Greats (Ditka’s organization), Retired

Players' Association (Eller's organization), Independent Football Veterans, Dignity After Football, NFL Alumni chapters, and NFLPA's Retired Players Department were all present. A follow-up meeting was held in Chicago on May 25 for the purposes of making a combined presentation to Judge Boylan on retiree issues.

106. Counsel for the *Eller I* plaintiffs also organized a massive press conference on the plight of retirees held at the National Press Club on June 20, 2011. Members of the Football Hall of Fame (Eller, Bethea, DeLamielleure, Krause, Barney), as well as George Visger, Conrad Dobler, Irv Cross, Dave Pear, and several recently retired NFL players were all present. Retired NFL players from every decade since the 1960s were in attendance. A petition of support has been signed by hundreds of persons, including many former NFL players and Hall of Famers.

107. In the period since May 16, it was publicly reported that the NFL and the active player *Brady* Defendants (represented by Smith and other NFLPA staff members) held five negotiating sessions in Chicago, Boston, Long Island, Maryland and Minneapolis. Neither the *Eller I* plaintiffs nor their counsel were allowed to attend these meetings.

108. In June of 2011, it became clear from news reports that the *Brady* Defendants (and through them, the NFLPA) and the NFL were negotiating issues relating to retired NFL players (negotiations that ultimately led to the settlement of the *Brady* action and the creation of the 2011 CBA).

109. A public tweet by Nolan Harrison ("Harrison"), the NFLPA's Senior Director of Retired Players, dated June 22, 2011, indicated that "[a]t each session the

interest of former players have been well represented by hall of famer Cornelius Bennett [and] others.” No one among the *Eller I* plaintiffs authorized the NFLPA or the *Brady* Defendants to assume that role.

110. On July 9, 2011, Judge Boylan ordered that the *Brady* Defendants herein and the NFL appear before him on July 19 to conduct further settlement negotiations. Counsel for the *Eller I* plaintiffs asked Judge Boylan to convey a request to the other parties that the *Eller I* plaintiffs wanted to participate in these discussions. He did so and the request was refused.

111. On July 19, 2011, counsel for the *Eller I* plaintiffs were requested to appear at the offices of outside counsel for the League in New York City and did so.

112. Counsel for the *Eller I* plaintiffs were advised that the *Brady* Defendants herein had made a tactical decision at odds with what they had previously said to the Court, Judge Boylan, the NFL and the *Eller I* plaintiffs. Previously, they had said that the NFLPA would never reconstitute itself as a union and would instead obtain any settlement judicially pursuant to Fed. R.Civ. P. 23.

113. Counsel for the *Eller I* plaintiffs asked if they could negotiate retiree issues directly with the NFL. They were told the League could not do so.

114. Counsel for the *Eller I* plaintiffs were told that the resolution with the *Brady* Defendants would involve the creation of a “legacy fund” for pre-1993 retirees of \$62 million per year over the ten year duration of a new CBA, with half coming from NFL club owners and half coming from within the salary cap, although NFLPA members had not formally ratified the latter commitment.

115. The agreement between the League and the *Brady* Defendants also involved changes to post-career medical options, the NFL's disability plan, the 88 Plan, retired player career transition and degree completion programs, and the NFL Player Care Plan for assisted living. It did not include any medical monitoring of the type that the *Eller I* plaintiffs had requested. See Exhibit B to the complaint.

116. Counsel for *Eller I* plaintiffs were also advised on July 19 that there would be a \$22 million fund for retiree benefits that would be allocated and dispersed at the discretion of NFLPA, once it recertified itself as a union.

117. On July 19, 2011, the League had calculated that the total value of these improvements over the duration of a ten-year CBA was estimated to be \$900 million--far less than the \$1.5 billion on the table at the mediation overseen by Cohen, far less than either of the *Eller I* plaintiffs' proposals, and paltry when set against the NFL's anticipated revenue streams over the next decade. Furthermore, the \$62 million contributed to the "legacy fund" was a fixed sum; there would be no cost-of-living escalators nor any upward adjustments as the NFL's total revenues increased.

118. The statements made to counsel for the *Eller I* plaintiffs on July 19 indicated to them that an agreement had already been reached among the NFL, the NFLPA, the *Brady* Defendants and Smith on the terms of any resolution as to retired NFL players. Upon information and belief and as a reasonable opportunity for discovery should confirm, the plan that had been agreed to was that formal assent to these terms would occur only after the NFLPA recertified itself as a union.

However, no assent given after such recertification could immunize any unlawful aspect of any agreement made prior to recertification. The agreement between the League and the *Brady* Defendants sacrificed the rights of retirees for the benefit of active players.

119. On July 19, counsel for the *Eller I* plaintiffs spoke with various representatives of NFL retiree groups, all of whom opposed the deal and said that the NFLPA did not speak for them and their respective constituencies. This was followed by an open letter to retirees inviting them to express dissatisfaction with the NFLPA negotiating on their behalf.

120. Two days later, on July 21, 2011, it was reported that NFL club owners had approved a “long-term agreement” with NFL players that included the terms affecting retirees described above that had already been agreed to by the NFL, the NFLPA, the *Brady* Defendants and Smith. The League announced a tentative schedule for voluntary workouts at club facilities and the opening of training camps. Thus, even though the NFLPA had yet to recertify as a union, the NFL on July 21 was acting as if it already had a done deal.

121. On July 25, 2011, the 32 player representatives of the NFLPA voted unanimously to approve the ten-year deal already approved by the NFL club owners on July 21, 2011.

122. On August 4, 2011, it was reported that the NFLPA recertified itself as a union.

123. On August 4, 2011, the League and the NFLPA signed the 2011 CBA. The new CBA is virtually identical to the agreement executed by the League, Smith and the *Brady* Defendants (and through them, the NFLPA). The 2011 CBA released any claims that could be asserted in the SSA, the suit that led up to it, or the *Brady* action. It was stated that “[f]or purposes of clarity, this release does not cover any claims of any retired player.”

124. The *Eller I* lawsuit was voluntarily dismissed without prejudice by the *Eller I* plaintiffs on August 23, 2011.

125. Pursuant to the 2011 CBA, within fourteen days after its effective date, it would be determined who would receive payments under the “Legacy Fund” (called “Legacy Benefits” in the 2011 CBA) described above and in what amounts. On August 18, Tom Depaso, the NFLPA’s Assistant General Counsel, indicated that a resolution of these issues had not yet been reached. On August 18, Jim McFarland, a retiree non-voting member of the NFLPA Executive Board (“Board”), objected to the NFLPA’s allocation proposals because (a) the proposal was submitted to the League without first being considered by the Board as a whole, (b) the proposal would give players who retired prior to 1993 and have eight or less credited seasons less than a \$1000 per month increase; (c) players who qualified for the Legacy Fund, but who have not taken their pension pursuant to the Plan, would be faced with the dilemma of taking those benefits early in order to qualify for the Legacy Fund, or of waiting until they reach 65 to maximize their pension benefits, thereby delaying their receipt of the Legacy Fund increases.

126. A blog dated August 29, 2011 indicated that the resolution of these issues may take at least 90 days.

127. The 2011 CBA also sets up a “Joint Contribution Amount” that is \$55 million in the 2012 League Year and increases by 5% in following years. In the 2012 League Year, (a) \$22 million is allocated to healthcare or other benefits for retired players, subject to the complete discretion of the NFLPA, (b) \$11 million is allocated to “medical research” as decided by the League and the NFLPA, and (c) \$22 million is allocated to charities chosen by the League.

COUNT I

Action For Declaratory Relief (Against All Defendants)

128. Plaintiffs repeat and reallege each of the allegations contained in the foregoing paragraphs.

129. There is a case and controversy among Plaintiffs and Defendants that turns on an interpretation of the National Labor Relations Act (“NLRA”).

130. Pursuant to 28 U.S.C. §§2201, Plaintiffs seek a declaration as to the following.

131. They seek a declaration that the 2011 CBA expressly did not release any claims that could be asserted by the *Eller I* plaintiffs or by the Plaintiffs herein.

132. They seek a declaration that the class of retired NFL players as identified herein are not “employees” within the meaning of 29 U.S.C. §§152(3) and 158(a)(5) with respect to the League.

133. They seek a declaration that the subject of retirement benefits for former NFL players is not a mandatory subject of collective bargaining under the NLRA.

134. They seek a declaration, based on the facts alleged herein, that neither the NFLPA nor Smith nor the *Brady* Defendants had any right to represent retired NFL players and were disqualified from doing so because of the inherent conflict of interest between such retirees and active NFL players.

135. They seek a declaration that the right to negotiate with the League the rights and benefits for NFL retirees belonged to the *Eller I* plaintiffs from April 4 to August 22, 2011, and now belongs to the representatives of the proposed class herein and that the NFLPA cannot institute any unfair labor charge against the League for doing so.

136. They seek a declaration that to the extent the 2011 CBA resolves issues relating to NFL retirees, those terms be excised from that agreement and be re-negotiated between Plaintiffs and the League.

137. Pursuant to 28 U.S.C. §2202, Plaintiffs also seek such “[f]urther necessary or proper relief based on a declaratory judgment or decree” against any adverse party whose rights have been determined by such judgment.

COUNT II

Action For Intentional Interference With Prospective Economic Advantage (Against All Defendants)

138. Plaintiffs repeat and reallege each of the allegations contained in the foregoing paragraphs.

139. The *Eller I* plaintiffs had a reasonable expectation of economic advantage based on the statements of, and their discussions with, the League.

140. The *Brady* Defendants consented to and were fully aware of the relationship, discussions and negotiations between the *Eller I* Plaintiffs and the League concerning retiree issues.

141. Prior to June of 2011, counsel for the *Brady* Defendants had disclaimed any intention to interfere with these negotiations and had expressly conceded that the *Eller I* plaintiffs would have the responsibility and authority to present proposals to the League on behalf of retirees in the course of mediation.

142. In reliance on that concession and delegation of authority, the *Eller I* plaintiffs undertook substantial work and expense to evaluate the then current NFL retirement system, identify its flaws and deficiencies and propose comprehensive corrective measures.

143. Commencing on or about June of 2011, the *Brady* Defendants, and through them the NFLPA and Smith, contrary to their express concessions, negotiated the rights of NFL retirees (negotiations that culminated in the settlement of the *Brady* action).

144. By so doing, Defendants wrongfully and without justification interfered with Plaintiffs' and putative class members' reasonable expectation of economic advantage or benefit.

145. The intentional acts alleged herein were done with the intent and purpose of disrupting and precluding the ongoing settlement discussions between the NFL and the *Eller I* plaintiffs who are also Plaintiffs here and succeeded in doing so.

146. In the absence of the wrongful acts of Defendants, it is reasonably probable that Plaintiffs and members of the putative class here would have realized economic advantage or benefit.

147. The conduct summarized in this count has caused economic injury to Plaintiffs and members of the putative class for which they seek compensatory and punitive damages, as well as all other necessary relief.

COUNT III

Action For Breach of Fiduciary Duty (Against The NFLPA)

148. Plaintiffs repeat and reallege each of the allegations contained in the foregoing paragraphs.

149. This count is pled in the alternative to Count I.

150. As noted above, Defendant Smith has declared that the NFLPA owes a fiduciary duty to retired NFL players.

151. The NFLPA, as an association, could not represent the interests of retired NFL players in any negotiations with the NFL because of its paramount loyalty and duty to active players. Additionally, as a Union, the NFLPA has an inherent conflict of interest between current and former NFL players in benefit negotiations with the League in which it has demonstrated an adverse and hostile attitude toward retirees as exemplified by statements made by NFLPA representatives with respect to former NFL players, the ongoing litigation between the NFLPA and former NFL players in *Grant*, the jury verdict in *Adderley*, and the statements of the NFLPA..

152. Nonetheless, the NFLPA arrogated to itself the right and duty to represent the interests of former NFL players in the *Brady* litigation, which led to the settlement of that litigation. In sacrificing the interests and rights of the retirees in favor of active NFL players while negotiating on behalf of retirees, the NFLPA has breached its fiduciary duty as to members of the putative class and harmed them irreparably.

153. The conduct summarized in this count entitles Plaintiffs and members of the putative class to injunctive relief, as well as a declaration that the NFLPA breached its fiduciary duty to Plaintiffs and the members of the putative class. Plaintiffs and members of the putative class also seek compensatory and punitive damages in an amount to be determined, as well as other necessary relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the class pray for judgment with respect to their Complaint as follows:

1. With respect to all counts, certifying the class proposed in this Complaint pursuant to Fed. R. Civ. P. 23(b)(1), Rule 23(b)(2) and 23(b)(3);
2. With respect to Count I, granting the declaratory relief requested;
3. With respect to Counts II and III, awarding Plaintiffs and members of the class compensatory and/or punitive damages, as well as all necessary injunctive and declaratory relief;
4. With respect to all counts, awarding Plaintiffs their costs and disbursements in this action, including reasonable attorneys' fees, to the extent permitted by law;

5. With respect to all counts, granting Plaintiffs and class members such other and further relief as may be appropriate.

DEMAND FOR JURY TRIAL

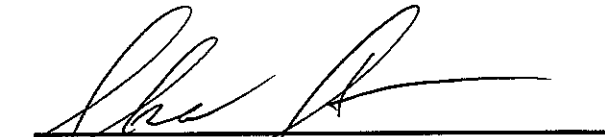
Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all matters so triable.

Dated: September 13, 2011

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