UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DAVID CHRISTIAN, REED LARSON, and WILLIAM BENNETT on behalf of themselves and all others similarly situated, Plaintiffs, v. National Hockey League, Defendant.	Case No. _____ **COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiffs, by and through their attorneys, for this Complaint against Defendant the National Hockey League ("NHL"), named above hereby allege as follows:

INTRODUCTION

1. This case seeks financial compensation, injunctive relief, and medical monitoring, based on the long-term chronic injuries, financial losses, expenses, and intangible losses suffered and to be suffered by Plaintiffs and the Class as a result of the NHL's tortious and fraudulent misconduct.

2. This action arises from the pathological and debilitating effects of brain injuries caused by concussive and sub-concussive impacts suffered by former professional hockey players while in the NHL. For many decades, evidence has linked repetitive mild traumatic brain injuries to long-term neurological problems in many sports, including hockey. The NHL was aware of this evidence and the risks associated with repetitive traumatic brain injuries, but deliberately ignored the information to the detriment of the Plaintiffs and others who participated in hockey in the NHL.

3. NHL hockey is one of the most brutal competitive sports in existence. As the elite league of hockey, the NHL features the biggest, strongest, and fastest players in the world. In NHL hockey, the play of the game itself, with its thundering checks and devastating blows delivered by skating players, swinging sticks, and flying pucks, is a constant source of concussions and sub-concussive head injuries. But this is not the only source of head injuries. Fist fighting has been a core component of NHL hockey since the League's inception in 1917. There are even specific players on NHL member team rosters, often called "enforcers" or "goons," whose sole role on the team is to fist fight and otherwise physically intimidate other players on the ice.

4. By continuing to allow fist fighting as a routine part of the game, the NHL's message to its players and the public is clear: forceful blows to the face and head are not serious injuries in any context.

5. Despite the violent nature of games in the NHL, including the presence of bare knuckle fist fighting as a normal and accepted part of the game, Plaintiffs, for years, remained uninformed regarding the scientific evidence linking brain injuries to long-term neurological problems. This scientific evidence has been mounting for decades. However, Plaintiffs were not informed by the NHL how dangerous repeated brain trauma truly was.

6. In 2002, Dr. Bennet Omalu, a forensic pathologist and neuropathologist in Pittsburgh, Pennsylvania, became the first doctor to identify a brain condition termed "Chronic Traumatic Encephalopathy" or "CTE." Dr. Omalu discovered the condition, marked by dark brown protein staining on the brain, when studying the brain of Mike

Webster, a retired National Football League player and member of the NFL Hall of Fame who died at age 50 after years of severe depression and dementia that had reduced him to a state of homelessness.

7. By 2007, Dr. Omalu had identified CTE in the brains of four deceased former NFL players. He determined the brain damage he found in the players was the same condition found in punch-drunk boxers.

8. By 2009, the first retired NHL player was diagnosed with CTE. Neuropathologists at Boston University diagnosed retired NHL player Reg Fleming as the first hockey player known to have the disease. This discovery was announced in December 2009, six months after Fleming's death.

9. The NHL knew or should have known of this growing body of scientific evidence establishing that hockey players who sustain repetitive concussive events are at significantly greater risk for chronic neuro-cognitive illness and disabilities both during their NHL careers and later in life.

10. Despite having this knowledge, the NHL, for decades, failed to inform or protect its players from repetitive traumatic brain injuries, including concussive and subconcussive head injuries, and the devastating long-term effects of those injuries. Rather than inform its players regarding the risks of head injuries, the NHL openly encouraged severely injurious conduct such as fist fighting as a regular part of the game.

11. In 1997, the NHL created a concussion program (the "Concussion Program") to engage in the research and study of the brain injuries that NHL players were suffering.

12. Through the Concussion Program the NHL instituted basic testing for its players and required team doctors and trainers to maintain records of all players believed to have suffered concussions. These records were used by the NHL to study the brain injuries sustained by its players.

13. From 1997 through 2004 the NHL researched the link between brain injuries sustained by NHL players and the short and long term impairment of the brain. During this time period, however, the NHL took little action to reduce the number and severity of concussions among its players.

14. Through the Concussion Program, the NHL inserted itself into the research and public discourse concerning the short and long term impairment of the brain that results from repetitive concussive and sub-concussive blows.

15. Despite the mountain of evidence connecting hockey to brain injuries, as well as its own Concussion Program research, the NHL did nothing until 2011 when it finally issued a report. This report, however, did nothing more than indicate the number of reported concussions suffered by NHL players from 1997 through 2004, concluding that more research and study was needed on the issue.

16. In essence, the NHL, through silence, has chosen largely to ignore the medical findings of its own studies, other sports and the general practice of medicine regarding brain injuries and hockey.

17. Through its silence, and by allowing blatantly injurious conduct such as fist fighting, the NHL voiced its position that hockey-related concussions were not serious

injuries and should not prevent players from returning to play. The NHL players, including Plaintiffs, relied on this silence to their detriment.

18. The NHL's common policy and practice for all players, for decades, was to minimize brain injury and encourage players to return to play shortly after suffering a concussion. A well known adage among NHL hockey players, past and present, has for years been "it's a long way from your heart." This well-known adage among NHL players meant that if you got hit in your head, you could and should still play because it is a long way from your heart, which is the only thing that can truly harm you if injured.

19. These misperceptions regarding the true nature of head injuries suffered on the ice has resulted in devastating consequences faced by Plaintiffs and other former NHL players in the Class.

20. Plaintiffs' head injuries, and the serious ongoing health consequences resulting from them, were directly caused and exacerbated by the negligence, fraud, and other misconduct of the Defendant. Until very recently, the NHL has actively sought to suppress and obscure the truth about the long-term effect of concussions suffered while practicing and playing hockey for the NHL.

21. To this day, the NHL misinforms its players regarding the serious nature of head injuries, including by allowing fist fighting to remain in the game. By allowing grown men of considerable size and strength to punch each other in the face and head repeatedly, and then return to play almost immediately, the NHL continues to send the explicit message that suffering a blow to the head is not a serious injury.

22. Defendant's efforts to obscure the truth about the cause, treatment, and consequences of hockey-related head injuries has caused players who suffered concussions to be misdiagnosed, not to receive proper treatment, and to continue practicing and playing with these serious injuries.

23. The NHL persists in this conduct to date by, among other things, refusing to ban fighting and vicious body checking and by continuing to employ enforcers and goons, whose sole role on the team is to fist fight and otherwise physically intimidate other players on the ice.

24. As a result of Defendant's misconduct described herein, the Plaintiffs and the Class of retired NHL players, and their spouses and dependents, have suffered substantial injury, including economic loss, and interference with their ability to live a normal life. Defendant is liable for negligence, fraud, and loss of consortium.

PARTIES

25. David Christian is a resident of Chaska, Minnesota. Mr. Christian played right wing for the Winnipeg Jets from 1979-83, for the Washington Capitals from 1983-90, for the Boston Bruins from 1990-91, for the St. Louis Blues from 1991-92, and for the Chicago Blackhawks from 1992-94. Mr. Christian suffered multiple serious head traumas during his NHL career that were improperly diagnosed and treated.

26. Reed Larson is a resident of Edina, Minnesota. Mr. Larson played defense in the NHL for the Detroit Red Wings from February 1977 to March 1987, for the Boston Bruins from 1987-1989, and for the Edmonton Oilers, the New York Islanders, and the

Minnesota North Stars from 1989-1990. Mr. Larson suffered multiple serious head traumas during his NHL career that were improperly diagnosed and treated.

27. William Bennett is a resident of Cranston, Rhode Island. Mr. Bennett played left wing for the Boston Bruins from 1978-79 and for the Hartford Whalers from 1979-80. Mr. Bennett suffered multiple serious head traumas during his NHL career that were improperly diagnosed and treated.

28. Defendant National Hockey League ("NHL") is an unincorporated association with its headquarters and principal place of business located at 1185 Avenue of the Americas, New York, New York 10036. The National Hockey League is engaged in interstate commerce in the business of, among other things, operating the major professional hockey league in the United States and Canada. The National Hockey League is not, and has not, been the employer of the Plaintiffs, who were employed during their respective careers in professional hockey by the independent clubs indicated above. The NHL regularly conducts business in all of the states and Canadian provinces in which its 30 member teams reside.

29. The NHL caused or contributed to the injuries and increased risks alleged herein through its acts and omissions in failing to disclose the true risks of repeated traumatic brain and head impacts in NHL hockey, and failing to take appropriate steps to prevent and mitigate repeated traumatic brain and head impacts in the NHL and the latent neurodegenerative disorders and diseases caused by these impacts. The NHL assumed a duty of care to its players and thus had an obligation not to carry out its duty non-negligently.

JURISDICTION AND VENUE

30. Jurisdiction is based on 28 U.S.C. § 1332(d)(2). At least one Plaintiff is diverse from one defendant. The amount in controversy exceeds $5,000,000.00, exclusive of interest and costs.

31. Defendant is subject to the *in personam* jurisdiction of this Court, and venue is therefore proper herein pursuant to 28 U.S.C. § 1391, because Defendant did (and does) business within the State of Minnesota, and has had continuous and systematic contacts with the State of Minnesota. Upon information and belief, Defendant also advertised in this District, made material omissions and negligent misrepresentations in this District, and acted negligently toward players in this District.

FACTUAL ALLEGATIONS

32. According to the Center for Disease Control and Prevention ("CDC"), "A concussion is a type of traumatic brain injury, or TBI, caused by a bump, blow, or jolt to the head that can change the way your brain normally works." The CDC notes that, "Health care professionals may describe a concussion as a 'mild' brain injury because concussions are usually not life-threatening. Even so, their effects can be serious." Concussions or sub-concussive blows may be referred to medically as "mild traumatic brain injuries" or "MTBI."

33. The CDC advises "Athletes with a concussion should never return to sports or recreation activities the day of the injury and until a health care professional, experienced in evaluating for concussion says they are symptom-free and it's OK to return to play."

34. Concussion symptoms include headache, blurry vision, nausea, dizziness, sensitivity to noise or light, balance problems, and difficulty thinking, concentrating, and remembering new information. With rest, these symptoms can resolve in a few hours or a few weeks, and typically between five to ten days. Even then, further time is necessary for concussion to heal fully, as chemicals in the brain need to return to balance, even after symptoms resolve. Even a minor second impact during this critical time could be extremely dangerous.

35. The seriousness of concussions and the risk to athletes has been well documented and published for well over seventy-five years. Concussions, sub-concussive blows to the head, and premature return-to-sport practices have caused memory loss, headaches, sleeplessness, depression, cognitive difficulties, debilitating confusion, and even early-onset dementia, Alzheimer's disease, Parkinson's disease and ALS.

36. For decades, the NHL has been aware that multiple blows to the head can lead to long-term brain injury.

The Mounting Evidence Concerning the Risks Associated with Concussions in Sports, Including NHL Hockey

37. In 1928, pathologist Harrison Martland published the first case of "Punch Drunk" syndrome in the Journal of the American Medical Association (the "Martland study"). The Martland study also described the clinical spectrum of abnormalities found in "almost 50 percent of fighters [boxers] . . . if they ke[pt] at the game long enough."

38. The Martland study was the first to link sub-concussive blows and "mild concussions" to degenerative brain disease.

39. In 1937, the American Football Coaches Association published a report warning that players who suffer a concussion should be removed from sports demanding personal contact.

40. In 1948, the New York State Legislature created the Medical Advisory Board of the New York Athletic Commission for the specific purpose of creating mandatory rules for professional boxing designed to prevent or minimize the health risks to boxers. After a three year study, the Medical Advisory Board recommended, among other things: (a) an accident survey committee to study ongoing accidents and deaths in boxing rings; (b) two physicians at ring-side for every bout; (c) post-bout medical follow-up exams; (d) a 30-day period of no activity following a knockout and a medical follow up for the boxer, all of which was designed to avoid the development of "punch drunk syndrome," also known at the time as "traumatic encephalopathy"; (e) a physician's prerogative to recommend that a boxer surrender temporarily his boxing license if the physician notes that the boxer suffered significant injury or knockout; and (f) a medical investigation of boxers who suffer knockouts numerous times.

41. The recommendations were codified as rules of the New York State Athletic Commission.

42. In 1952, the Journal of the American Medical Association published a study of encephalopathic changes in professional boxers. That same year, an article published in the *New England Journal of Medicine* discussed a three-strike rule for

concussions in football - recommending that players cease to play football after receiving their third concussion.

43. In 1962, Drs. Serel & Jaros looked at the heightened incidence of chronic encephalopathy in boxers and characterized the disease as a "Parkinsonian" pattern of progressive decline.

44. A 1963 study by Drs. Mawdsley & Ferguson published in *Lancet* found that some boxers sustain chronic neurological damages as a result of repeated head injuries. This damage manifested in the form of dementia and impairment of motor function.

45. A 1967 study by Drs. Hughes & Hendrix examined brain activity impacts from football by utilizing EEG to read brain activity in game conditions, including after head trauma.

46. In 1969, a report by the Royal College of Physicians of London confirmed the danger of chronic brain damage occurring in boxers as a result of their career.

47. Additionally, in 1969 (and then again in the 1973 book entitled Head and Neck Injuries in Football), a paper published in the Journal of Medicine and Science in Sports by a leading medical expert in the treatment of head injuries recommended that any concussive event with transitory loss of consciousness requires the removal of the football player from play and requires monitoring.

48. In 1973, Drs. Corsellis, Bruton, & Freeman-Browne studied the physical neurological impact of boxing. This study outlined the neuropathological characteristics

of "Dementia Pugilistica," including loss of brain cells, cerebral atrophy, and neurofibrillary tangles.

49. In 1973, Neurosurgeon R.C. Schneider first described a disabling and sometimes deadly condition involving the second impact concussion occurring before symptoms of a first concussion resolve. The study revealed that a re-injury to the already-concussed brain triggers swelling that the skull cannot accommodate. This phenomenon was termed "second-impact syndrome" in 1984 by Dr. R.L. Sanders.

50. In 1975, Drs. Gronwall & Wrightson looked at the cumulative effects of concussive injuries in non-athletes and found that those who suffered a second concussion took longer to recover than those who suffered from their first concussion. The authors noted that these results applied to athletes, given the common occurrence of concussions in sports.

51. In 1982, *Canadian Medical Association Journal* published an article titled "Return to athletic competition following concussion." The article concluded:

> The basic recommendation is that return to training and competition should be deferred until all associated symptoms such as headaches have completely resolved. The decision to return must take into account the nature of the sport, the athlete's level of participation and the cumulative effect of previous concussions. Some athletes will have to avoid any further participation in their sport.

52. In 1986, the *Physician and Sports medicine* journal published an article by Dr. Robert Cantu titled "Guidelines for return to contact sports after cerebral concussion." Cantu established a system to grade the severity of concussions and corresponding guidelines for when players should return to play.

53. The forgoing references are by no means exhaustive. Physicians and academics have exhaustively studied and reported the danger of concussions suffered both inside and outside of sports over the past eight decades.

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

a. repetitive head trauma in contact sports has potential dangerous long-term effects on brain function;

b. encephalopathy (dementia pugilistica) is caused in boxers by repeated sub-concussive and concussive blows to the head;

c. acceleration and rapid deceleration of the head that results in brief loss of consciousness in primates also results in a tearing of the axons (brain cells) within the brainstem;

d. with respect to mild head injury in athletes who play contact sports, there is a relationship between neurologic pathology and length of the athlete's career;

e. immediate retrograde memory issues occur following concussions;

f. mild head injury requires recovery time without risk of subjection to further injury;

g. head trauma is linked to dementia;

h. a player who suffers a concussion requires significant rest before being subjected to further contact; and

i. minor head trauma can lead to neuropathological and neurophysiological alterations, including neuronal damage, reduced cerebral blood flow,

altered brainstem evoked potentials and reduced speed of information processing.

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

56. A 2000 study, which surveyed 1,090 former NFL players, found that more than sixty (60) percent had suffered at least one concussion, and twenty-six (26) percent had suffered three (3) 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.

57. It is not plausible that the NHL was unaware of this body of literature. In fact, NHL Commissioner Gary Bettman recently stated, "We have, on our own, a long history, going back to 1997, of taking concussions very seriously." He added, "We spend a lot of time, money and effort working with the players' association on player safety." CNN, *NHL facing 'concussion' lawsuit*, Int'l Ed., Nov. 26, 2013, http://www.cnn.com/2013/11/26/sport/nhl-lawsuit-concussion-10-players/index.html.

The Medical Community Has Focused on Brain Injuries Suffered by Hockey Players

58. Since 2001, there have been four "International Symposia on Concussions in Sport." These conferences took place in Vienna (2001), Prague (2004), and twice in

Zurich (2009 and 2012). Attendees included American doctors who are experts on the brain and concussions.

59. The 2001 Vienna symposium included two reports focusing specifically on hockey. "Procedures After Minor Traumatic Brain Injury MTBI in Ice Hockey to Prevent Neurological Sequelae" noted that since 1986, doctors worldwide had observed "an alarming increase in the rate of MTBI in ice hockey despite improved protective gear." In the NHL the proportion of MTBI had increased from 2% in the 1989-1990 season to 8% in the 1999-2001 seasons. This report recommended that "any confused player with or without amnesia should be taken off the ice and not be permitted to play again for at least 24 hours."

60. The second Vienna symposium report was titled "Concussion Experience: Swedish Elite Ice Hockey League," focused on the seriousness of concussions in ice hockey. The report noted an alarming increase in the number of concussions among players in the 1980s, which the authors of the report attributed to "[t]oday's ice hockey [being] faster and more physical."

61. In 2004, neurological experts met in Prague to discuss recommendations for the improvement of safety and health of athletes who suffer concussive injuries in sports, including ice hockey, based on current research. These experts recommended that a player should not be returned to play while symptomatic, and coined the phrase, "when in doubt, sit them out." This echoed similar medical protocol established at a Vienna conference in 2001.

62. A 2006 publication stated that "[a]ll standard U.S. guidelines, such as those first set by the American Academy of Neurology and the Colorado Medical Society, agree that athletes who lose consciousness should never return to play in the same game."

63. Additionally, an abstract was presented at a 2012 conference titled "Acute Clinical Signs and Outcome of Concussion in National Hockey League Players," which concluded that concussions can produce a spectrum of acute on-ice clinical signs.

64. Various conferences on the subject of sports-related concussions produced detailed protocols on examining a player believed to have suffered a concussion. Members of the NHL Concussion Program attended many of these conferences, including all four of the International Symposia on Concussions in Sport.

65. Recently, the Mayo Clinic sponsored two "Conferences on Concussions in Hockey," one in 2010 and the other in 2013. Recommendations at the first conference led the NHL to penalize targeted hits to the head and change its medical protocols to require a player evaluation.

66. At the 2013 Conference, Dr. Michael Stuart, a director of the Mayo Clinic Sports Medicine Center and chief medical officer for USA Hockey, noted two recent fights in the NHL that resulted in players receiving concussive head injuries. Recommendations made at that 2013 conference focused on eliminating fights, such as those noted by Dr. Michael Stuart, from the NHL by requiring immediate ejections for fighting.

67. As described above, the NHL has known for decades that MTBI can and does lead to long-term brain injury, including, but not limited to, memory loss, dementia, depression, and related symptoms.

68. Rather than take immediate measures to protect its players from these known dangers, the NHL for decades failed to disseminate to then-current and former NHL players relevant health information it possessed regarding the significant risks associated with MTBI.

69. In recent years, the serious, long-term effect of concussions has jumped to the forefront amid reports of a stream of premature deaths involving retired NHL players – many under tragic circumstances. Examples include Wade Belak (suicide); Derek Boogaard (drug overdose); Rick Rypien (suicide); Reg Fleming (heart attack), Bob Probert (heart attack), and Rick Martin (heart attack). These tragic deaths have cast doubt on the cause of other retired player deaths and incidents of volatile behavior among retired NHL players. The presence of CTE in these players (officially found in all but Wade Belak and Rick Rypien, for whom it is unknown whether their brains were analyzed for CTE) appeared irrespective of the players' ages or whether or not they were "enforcers".

The NHL Is the Premier Professional Hockey League in the World

70. The NHL generates in excess of $3.3 billion in gross income per year.

71. The NHL oversees North America's most popular hockey league, acting as an association for its thirty independently-operated clubs. The NHL's average attendance per game in 2012-13 was 17,760. Each team plays 82 games in the NHL's regular

season, in addition to a pre-season schedule for all teams and a post-season schedule for 16 playoff teams.

72. The NHL has, since its inception, has been the primary governor and promoter of professional hockey. It was created and established to act as the governing body of the sport.

73. The NHL generates revenue mostly through marketing sponsorships, licensing merchandise, ticket sales, and selling national and regional broadcasting rights to games. The teams share a percentage of the League's overall revenue.

74. The NHL earns billions of dollars from telecasting deals with, among other partners, NBC and its own NHL Network, and in Canada, CBC, TSN, RDS, and Rogers Communications. The NHL recently entered into a 12-year, $5.2 billion agreement with Rogers Communications for the NHL's broadcast and multimedia rights in Canada.

75. In 2011 the NHL negotiated a 10 year, $2 billion television deal with NBC, worth $6.6 million per team per year for the United States market alone. In Canada, the NHL's expiring deal with CBC is expected to considerably exceed the current multi-year $100,000,000 deal.

76. Over many decades, the NHL's influence has expanded through its use of the media. For example, through NHL Original Productions, www.NHL.com, NHL Network, NHL GameCenter, NHL Center Ice, and video games, the NHL has promoted its brand of hockey via every mass communication medium available, making the NHL the most recognizable hockey league in the world.

The NHL Has Promoted Violence through the Media, and Has Profited From this Violence at the Expense of Its Players

77. For decades, the NHL has developed and promoted a culture of violence within the sport of hockey.

78. Part of the NHL's strategy has been to promote violence by, among other things, glorifying the violent aspects of the game, including, but not limited to, the brutal and ferocious body checks and the vicious fist fights that occur on the ice.

79. The NHL's approach to player safety can correctly be called cavalier, as the NHL supports and promotes a highly calculated, profit-driven philosophy, which is spearheaded by the promotion of the NHL's hyper-aggressive style of play that leads directly to players suffering traumatic brain injuries.

The NHL's Rulebook Expressly Condones Fist Fighting on the Ice

80. The NHL's true view regarding violence and head injuries is seen clearly in its stance on fist fighting in the game. While the NHL has increased penalties for fighting in very recent years, fighting is still allowed and the NHL rulebook makes clear the NHL views fighting as a proper, condoned activity on the ice if done within expansive parameters.

81. There is an entire section in the NHL rulebook dedicated to defining what the NHL views as acceptable fighting. The rule is called Rule 46 – Fighting.

82. Rule 46 makes clear that fighting is allowed in hockey. According to Rule 46.14, any player who engages in a fist fight on the ice will be penalized 5 minutes and allowed to return to the same game.

83. While allowing fighting, other subsections of Rule 46 now indicate that the NHL will punish certain conduct slightly more harshly. For instance Rule 46.2 is titled "Aggressor" and pertains to any "player who continues to throw punches in an attempt to inflict punishment on his opponent who is in a defenseless position or who is an unwilling combatant." Aggressors are assessed a major penalty (a five minute penalty to the team) and a game misconduct (the "Aggressor" is thrown out of the game but can be immediately replaced on the ice). This rule essentially states that a player can fist fight, but has to stop if the other player does not want to fight or if one player "has clearly won the fight but he continues throwing and landing punches in a further attempt to inflict punishment and/or injury on his opponent who is no longer in a position to defend himself."

84. The language of Rule 46.2 clearly acknowledges that any player who fights does so for the intention of inflicting "punishment and/or injury on his opponent[.]" The rule does not penalize two willing combatants, but only those players who fight unwilling persons or persons who have already lost the fight and upon whom the aggressor "*continues* throwing and landing punches in a *further* attempt to inflict punishment and/or injury."

85. The NHL's Rule 46.11 is called "Instigator" and assesses additional penalties against a player who "by his actions or demeanor demonstrates any/some of the following criteria: distance traveled; gloves off first; first punch thrown; menacing attitude or posture; verbal instigation or threats; conduct in retaliation to a prior game (or season) incident; obvious retribution for a previous incident in the game or season.

86. If a player is deemed an "Instigator", the rules require he be assessed a 2 minute minor penalty and a 10 minute misconduct penalty, in addition to the standard 5 minute major penalty. The rule does not require an "Instigator" be determined on every fight. In actuality, "Instigator" penalties are rarely assessed in NHL games.

87. The NHL has also implemented a series of rules that impose harsher punishments upon players who do not fight acceptably in the League's eyes. For instance, if a player is an "Instigator" while wearing a protective face visor, Rule 46.6 states that player to be assessed "an additional unsportsmanlike conduct penalty." This rule plainly states that if a player starts a fight, they have to be prepared to be punched in the face freely in return, and without mitigating the damage with a protective visor.

88. Rule 46.13 bars players from removing their jerseys "prior to participating in an altercation" or who wears a jersey "that has been modified." The purpose for this rule is to address the reality that when NHL players fist fight, they grab each others' jerseys and wrestle until a clean shot to the face can be achieved. If a player does not wear a jersey or wears a tear-away jersey, that player would have an advantage because he could not be grabbed and restrained from delivering fist blows to his opponent's face and head. Rule 46.13's language and inclusion within the "Fighting" rules makes clear it was implemented to address this scenario.

89. Similar to other rules barring unfair equipment advantages in fights, the NHL's Rule 46.15 imposes an additional "match penalty" (the player is kicked out and ordered to the dressing room for the remainder of that game, but can be replaced on the ice after 5 minutes) upon any player who puts tape or other material on his hands and

then cuts an opponent during an altercation. This rule also imposes a Match Penalty upon any player who sucker punches an acceptable player. Here again, the NHL states its endorsement of fighting if done within what it considers to be acceptable bounds.

90. The NHL also has implemented Rule 46.12 – Instigator in Final Five Minutes of Regulation Time (or Anytime in Overtime). This rule imposes an additional game misconduct penalty to anyone deemed to be "the instigator of an altercation in the final five (5) minutes of regulation time or at any time in overtime[.]" This rule was implemented to stop teams from sending "goons" or "enforcers" onto the ice to start fights after they had already determined the game was lost or to otherwise affect the outcome of the game. Here again, the NHL expressly states its belief that fist fighting is a proper part of the game if done within what it considers to be acceptable bounds.

91. In Rule 46.16, the NHL has imposed a game misconduct penalty "at the discretion of the referee" upon any player who joins a fight between two players that is already in progress. With this rule, the NHL makes clear its belief that fist fighting is acceptable if kept between two combatants.

92. In one of its more blatant statements in support of fighting on the ice, the NHL has created Rule 46.9, titled "Fighting Other Than During the Periods of the Game." With this rule, the NHL imposes a game misconduct, monetary fines, and other possible "supplementary discipline." This rule makes clear that the NHL accepts fighting during a game and requires harsher punishment for any fist fighting between players that does *not* occur during a game. In other words, the NHL treats players more leniently for fighting *during* a game than if they were to start a fight in the corridor, in the parking lot,

or on the ice after the end of the game (perhaps out of frustration at having lost the game). This rule expressly states the NHL's position that fist fighting is a normal, acceptable part of the game of NHL hockey.

93. The NHL's Rule 46 contains several other rules that set the NHL's view of acceptable boundaries for fist fighting on the ice. Nowhere does the NHL make any attempt to bar fighting altogether. The end result of allowing fist fighting between grown professional athletes is the plain statement that suffering severe blows to the face and head are not serious injuries. Players, coaches, and fans receive the NHL's message that if enduring a punch to the face by a physically imposing professional athlete is routine acceptable, then *any* blow to the head must be viewed similarly. Any player who hits his head on the cross bar, takes a shoulder to the head, or whose head is driven into the boards would be viewed as cowardly or weak for raising the issue of a head injury while his teammate is at the same time receiving multiple punches to the head within the rules of the game.

94. Other sports do not condone fist fighting as the NHL does, and have essentially eliminated fighting from their games.

95. In college hockey, a player caught fighting is thrown out of the game and the next game. The player's team is assessed with a five minute major penalty. These punishments have essentially eliminated fighting from college hockey.

The National Basketball Association ("NBA") imposes severe penalties upon players who fist fight. Any player who engages in fist fighting at any point in a game is "ejected

immediately" and is subject to a fine and/or suspension by the Commissioner. The NBA further states in its rulebook's "Comments on the Rules" section:

> Violent acts of any nature on the court will not be tolerated. Players involved in altercations will be ejected, fined, and/or suspended.
>
> There is absolutely no justification for fighting in an NBA game. The fact that you may feel provoked by another player is not an acceptable excuse. If a player takes it upon himself to retaliate, he can expect to be subject to appropriate penalties.

These rules have essentially eliminated fist fighting from the NBA.

96. The National Football League ("NFL") prohibits all players from striking any other player with fists. Any player who flagrantly punches another player is ejected from the game and his team is assessed a 15 yard penalty. These punishments have essentially eliminated fist fighting in the NFL.

97. While it is clear that fighting can be eliminated from the sport with appropriate punishments, the NHL has refused to ban fighting. By allowing fighting, the NHL continues to perpetuate its message to players, coaches, and fans that blows to the head should not be considered serious injuries.

The NHL Minimizes the Seriousness of Head Injuries Through the Media

98. The NHL's philosophy regarding head injuries is also exemplified by NHL Original Products—an agent and instrumentality of the NHL devoted to producing promotional films for the NHL.

99. NHL Original Products has created numerous features that focus on the hardest-hits that take place on the ice. These features advance the NHL's culture of violence as entertainment.

100. For instance, the NHL promotes the HBO Documentary, *Broad Street Bullies*, on its Philadelphia Flyers affiliated website. The trailer for the film, viewable on flyers.nhl.com, features clip after clip of fighting and violent head shots, accompanied by voice-over testimonials extolling the virtues of winning through "intimidation" over talent. Some viewers, when clicking on the link "Watch trailer," will first be directed toward a public service announcement featuring a man in a white coat, providing a 15-second comment regarding the dangers of head injuries.

101. A simple search of either "hits" or "fights" on www.nhlfilmsarchives.com reveals numerous highlights and compilations of the violent hits and fights that have taken place in the NHL over the years. Whether affiliated with the NHL or not, nhlfilmsarchive.com exists, and the NHL allows its intellectual property to be used and its violent footage to be featured.

102. In addition, if a person where to visit www.nhl.com during the regular season they would see enforcers and fisticuffs in the main news story rotation on a nightly basis.

103. The NHL Network produces a weekly program segment called "Top 10 Hits of the Week." Those clips are archived for viewing on the nhl.com website. Individual teams also show in-game replays of violent hits, with the marquee "Hit of the Game" above the jumbo television screens.

104. Additionally, the NHL has sponsored video games that include fighting and vicious body checking. Versions of NHL-licensed video games have allowed gamers—primarily children—to engage in boxing-style fights among players and in some

instances, fight or check players so gruesomely that blood pours from the player's head while he lays motionless on the ice.

105. Through its savvy media outlets, the NHL is able to promote the most violent aspects of the NHL and urge players at every level of the game to disregard the results of violent head impacts. The NHL has created a culture in which the "toughest" players are glorified for their ability to dish out and endure severe violence on the ice. In fact, this culture has spawned roster positions on most NHL teams for players whose specific roles as enforcers and goons are to engage in violent and oftentimes reckless behavior on the ice. Glorifying the violent aspects of the sport has also instituted a culture in which NHL players are encouraged to play despite injury, including serious head injury.

106. Within this culture, the NHL purposefully profits from the violence they promote.

107. The NHL's clear position in allowing fist fighting and affirmatively promoting violence as a routine part of the game has perpetuated its position that blows to the head are not serious injuries. Players know that failure to play through such an injury creates the risk of losing playing time, a starting position, demotion to the minors and possibly an abrupt end to a career.

108. This attitude has existed for decades and continues to the present date, with players lauded for their body checking, fighting skills, and "toughness" for playing through concussions.

The NHL Assumed a Duty of Care Regarding Player Safety, a Duty to Disclose the True Dangers of Concussions and Subconcussive Blows to the Head

109. From its inception in 1997, the NHL Concussion Program initiated research and purportedly instituted programs to support player health and safety on and off the ice.

110. On information and belief, since its inception, the NHL received and paid for advice from medical consultants regarding health risks associated with playing hockey, including the health risks associated with concussive and sub-concussive injuries.

111. This ongoing medical advice and knowledge places the NHL in a position of superior knowledge to the players.

112. On top of being in a position of superior knowledge, the NHL had the power to set rules and determine policies in NHL games. As such, the NHL, at all relevant times, was in an influential position and had the sole ability to dictate how the game of hockey would be played and to define the risks to which players would be exposed.

113. The NHL owed a common law duty to Plaintiffs to provide accurate information about the risks associated with concussion, including the risk of playing after experiencing a concussion or sub-concussive blow to the head. This duty arose out of the NHL's voluntary decision to assume it.

114. The NHL consistently and historically assumed the duty of being the guardian of player health and safety. The NHL has admitted that it has "always" assumed the duty to manage player safety. League Deputy Commissioner Bill Daly has

publicly stated, "[The NHL is] completely satisfied with the responsible manner in which the league and the players' association have managed player safety over time, including with respect to head injuries and concussions. . . . This is something that we have always treated as important and will continue to treat as important."

115. The NHL has initiated the assumption of this duty by adopting rules related to injuries and head trauma in players.

116. Since the 1920s, the NHL assumed a duty to make the game safer for players by establishing rules to protect the health and safety of players. Some of the rules adopted over the decades manifested the NHL's assumption of its duty specifically to protect players from injuries, and many relate to head injuries. These rules include:

a. 1915 – NHL predecessor National Hockey Association made fighting a foul;

b. 1923 – NHL made deliberately injuring or disabling an opponent a match foul, resulting in a fine and ejection;

c. 1937 – prohibited the use of pads made of metal or any other material likely to cause injury to a player;

d. 1950 – required that player's elbow and shoulder pads include soft outer covering to protect players being injured from elbowing infractions;

e. 1976 – required fight instigator to receive both a major and game misconduct penalty;

f. 1979 – mandated helmets for all new players;

g. 1992 – added penalties to fight instigator rule;

h. 1992 – added penalties for checking from behind;

i. 1992 – redefined highsticking to include any use of the stick above waist-height;

j. 2005 – added penalties for instigating a fight in the last 5 minutes of regulation play or in overtime; and

k. 2010 – banned blind-side and lateral hits to the head (illegal check to the head).

117. At the time the "helmet" rule was created, approximately 70% of NHL players were wearing helmets as a result of the 1968 death of Minnesota North Stars player Bill Masterson, who died of head trauma suffered during an NHL game at the Met Center in Bloomington, Minnesota. The "helmet" rule, however, grandfathered all then current players from the mandated helmet rule; the last person to play without a helmet retired in 1996.

118. Players and their families looked to the NHL for guidance on issues regarding player heath and safety, including head injuries, and expected the NHL to intervene in matters of player safety, to recognize issues of player safety, and to be truthful on the issue of player safety.

119. The NHL unilaterally assumed a duty to act in the best interests of the health and safety of NHL players, to provide truthful information to NHL players regarding risks to their health, and to take all reasonable steps necessary to ensure the safety of players.

120. The NHL's voluntary actions and authority throughout its history show that the NHL shouldered the duty to make the game of professional hockey safer for the players and to keep the players informed of safety information they needed to know.

121. For decades, the NHL voluntarily instituted programs to support player health and safety on and off the ice.

122. Once it assumed the duty of vanguarding player safety, the NHL was required to fulfill its duty non-negligently. It had the duty to communicate risks directly to players, to keep NHL players informed of neurological risks, to inform NHL players truthfully, and not to mislead NHL players about the risks of permanent neurological damage that can occur from MTBI incurred while playing hockey. The NHL assumed the duty to educate players *directly* regarding the risks associated specifically with hits to the head and their sequelae.

Despite Knowing the Dangers and Risks Associated with Repetitive Head Impacts, the NHL Failed to Act, Even After Forming a Committee to Examine the Issue

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

124. The NHL was aware of or should have been aware of the dangers and risks associated with multiple blows to the head from the nearly century-old data from boxing, which is particularly relevant to professional hockey given the fact the NHL has at all times permitted bare knuckled fist fighting in League games.

125. Additionally, the NHL knew or should have known of the risks of multiple blows to the head from decades-long data from football, which is particularly relevant to professional hockey given the higher speed of skating compared to running.

126. Despite this, the NHL has for decades ignored and actively concealed the risks to players of repetitive sub-concussive and concussive head impacts, which can and do result in players being knocked unconscious or remaining conscious but in a disoriented state.

127. In 1997, the NHL, including NHL Commissioner Gary Bettman, agreed to fund a committee to study the issue of head injuries in the NHL—the "Concussion Program." This program voluntarily undertook the responsibility of studying the effects of concussions and sub-concussive injuries on NHL players.

128. Through the Concussion Program, the NHL studied and researched the post-concussion signs and symptoms experienced by professional ice-hockey players.

129. Through its voluntary creation of the Concussion Program, the NHL confirmed its longstanding assumption of its duty to use reasonable care in the: (a) study of concussions and post-concussion syndrome in NHL players; (b) study of any kind of brain trauma relevant to the sport of hockey; (c) use of information developed; and (d) publication of data and pronouncements from the Concussion Program.

The NHL Failed to Act After The Inception of Its Concussion Program.

130. After creating the Concussion Program in 1997, the NHL engaged in a course of fraudulent and negligent conduct, which included failing to make any statements of substance on the issues of concussions and post-concussion syndrome in NHL players or any kind of brain trauma relevant to the sport of hockey, all the while claiming to need more data. The NHL delayed the publication of its one report, which was finally released on May 17, 2011. The report made no mention of MTBI and

focused primarily on the rate of concussions in the NHL, the symptoms of concussions, and time loss analysis (defined as the period of competitive playing time lost by an NHL player as a result of a concussion).

131. The report generated by the Concussion Program, 14 years after its inception and 7 years after the study was complete, simply concluded that "[the Concussion Program's] results suggest that more should be done to educate all involved with the sport about the potential adverse effects associated with continuing to play while symptomatic, failing to report symptoms to medical staff and failure to recognize or evaluate any suspected concussion."

132. The Concussion Program's report: (a) ignored the accepted and valid scientific research and studies regarding the connection between repetitive traumatic concussive events, sub-concussive events and/or brain injuries, and degenerative brain disease such as CTE; and (b) solidified the NHL's silence on the issue, which implied that truthful and accepted neuroscience on the subject was inconclusive and subject to doubt.

133. Given the NHL's superior position, and the fact that the NHL had a duty to protect its players from known safety risks, the Plaintiffs reasonably relied on the NHL's words and conduct on the issue of concussions, including allowing bare knuckled fist fighting during routine gameplay, as an indication that head injuries were not to be considered serious injuries.

134. Although the NHL attempted to present the Concussion Program as being independent from the NHL, consisting of a combination of "independent" doctors and

researchers, in reality, the Concussion Program was comprised of persons already affiliated with the NHL.

135. To date, the Concussion Program has taken no public position on the long-term effects of concussions. The NHL continues to respond to inquiries on the subject by saying that further research is required.

136. Plaintiffs relied to their detriment on the NHL's stance on issue of head injuries, which ignores the findings of the independent scientists regarding the causal link between multiple head injuries and concussions and cognitive decline.

The NHL Promoted Authorized Game Conditions that Exacerbated the Head Injury Risks Facing Its Players

137. Beginning in 1996, the NHL changed the glass in all of its arenas from the flexible glass historically used to seamless rigid glass – a design that did not allow players to easily absorb hits as they could with more flexible glass systems.

138. The seamless glass system introduced in 1996 removed the metal dividers between the panes of glass, which allowed fans a better view of the game. However, because of the way the glass had to be supported, it lacked the give of the more traditional flexible glass systems.

139. Despite immediate complaints from players that the rigid glass was like hitting a brick wall, the NHL inexcusably dragged its feet in addressing the serious safety issue.

140. As early as 1997, NHL players began to express concerns over the rigid glass, including a number of prominent NHL players speaking out at the 1997 All-Star game.

141. For example, in 1997 former player Brendan Shanahan, and later the NHL's chief player disciplinarian, stated about the rigid glass system: "It is very dangerous. It's like running into a brick wall." That same year, numerous other NHL players, including some of the era's biggest stars, spoke out about the new rigid glass system:

a. Owen Nolan (San Jose): "It's a lot harder. It's like hitting concrete."

b. Darien Hatcher (Dallas): "It's hard. It doesn't move. It seems like guys will get injuries. Being hit into this is not fun."

c. Chris Chelios (Chicago): "I'd just as soon have the [boards] that give… They are a lot safer."

d. John LeClair (Philadelphia): "Chances are you will get an injury there more than with the other glass."

e. Mark Recchi (Montreal): "In [places with the rigid glass], you don't want to get hit there because it hurts so much."

f. Steve Yzerman (Detroit): "Nobody really talks about it, but in the new buildings, the boards are hard as a wall. The boards don't move now."

142. When asked to respond to the outpour of player complaints regarding the dangerous of the rigid glass system, Arthur Pincus, who at the time was NHL's vice president of public relations, responded by saying: "We have heard those feelings and we are looking at a variety of things dealing with injuries. There is only anecdotal evidence about a variety of factors and we are looking into any number of factors."

143. Following the 2000-2001 season the NHL Injury Analysis Panel identified that the use of seamless glass systems was a primary culprit in the increasing number of concussions.

144. In 2002, the NHL attempted to respond to the concerns, initially targeting December 31, 2002 as the date for teams to make the glass system more flexible. The NHL then extended the deadline until the start of the 2003-04 campaign.

145. Upon information and belief, the reason for the delay was the NHL's and the individual NHL teams' reluctance to pay the changeover fee, which was reportedly around $200,000.

146. In 2002, Mike Modano, who at the time was a current NHL player with the Dallas Stars, suffered a concussion when he was hit from behind into the seamless rigid glass. In reaction to his injury, Modano stated: "The glass is a real issue. What's the cost? It shows you how important the players are. It's just a meat market. Move them in and move them out. Get some younger guys whose brains aren't scrambled yet."

147. In 2002, responding to concerns surrounding spectator safety, the NHL mandated that all arenas raise the minimum height of the glass atop the boards to five feet – two feet higher than the previous minimum.

148. In mandating this change related to safety, NHL Commissioner Gary Bettman stated that "[i]t was not something that required a great deal of debate… I directed that it be done."

149. However, these mandates did not seek to remedy or eliminate the dangerous seamless glass systems that were still in place in numerous arenas in 2002.

150. Despite the known concussion-related issues surrounding the seamless glass systems, the NHL continued in its inaction, even in the face of other NHL mandated changes related to arena safety.

151. Finally, beginning in the 2010-2011 season, the NHL agreed to review the seamless glass systems still in place in numerous arenas.

152. Upon information and belief, during the 2010-2011 season the NHL engaged in an extensive board and glass review, which included an in-depth review of the seamless glass systems and their associated dangers.

153. In 2011, following the board and glass review, the NHL mandated that all remaining NHL arenas using seamless glass systems had to replace those glass systems with safer Plexiglas systems by the start of the 2011-2012 season.

154. Despite the players' immediate complaints, and despite the NHL acknowledging the safety-related issues surrounding the seamless glass systems as early as 1997, the NHL inexcusably failed to do anything to address the player safety related issues until 2011.

155. During that 15-year period (while the Concussion Program was operating) the NHL was reluctant to incur the cost of replacement that would have helped reduce the incidence of brain injuries suffered by its players.

156. As shown above, the quality and design of NHL arenas, an aspect of the game the NHL is involved with, has proven to have an effect on player safety.

The NHL's Actions to Protect Its Players Have Been Insufficient and Ineffective

157. In 2010, the NHL made its first significant rule change ostensibly designed to address the incidence of concussions.

158. Prior to the 2010–11 season, body checking another player with the head as the primary point of contact was legal. However, beginning with the 2010–11 season, the NHL introduced Rule 48, which made targeting an opponent's head from the blind side illegal.

159. Rule 48 was modified for the 2011–12 season to encompass all hits to the head, with a degree of discretion allowed on the part of the referees in determining whether the contacted player put himself at risk or made himself "vulnerable."

160. Thus, despite the strengthening of Rule 48, some deliberate contact to the head is still permitted by the NHL – if the player suffering the blow to the head made himself "vulnerable."

161. According to a July 2013 published study led by Dr. Michael Cusimano, a neurosurgeon at Toronto's St. Michael's Hospital, the implementation of Rule 48 resulted in no significant decrease in concussions in the NHL.

162. Cusimano and his colleagues surveyed NHL games from three seasons — one before Rule 48 and two that came after — to measure the rule's effect. The researchers counted the number of concussions and suspected concussions in both the NHL and the Ontario Hockey League, a junior hockey division that served as a control because it banned hits to the head in 2006. The study revealed that in the year Rule 48

went into effect (Year 2 of the study), concussions in the NHL jumped from 44 in Year 1 to 65 in Year 2. The number went up again in Year 3, to 85.

163. According to the study, the most common cause of concussions in the NHL was body checking, with many of the concussion-causing hits not directed at the head.

164. Cusimano opined that Rule 48 did not go far enough to prevent serious injury, suggesting that fighting, which was the penalty most often associated with concussions, should be banned.

165. Along with the Rule 48 modification, the NHL introduced a modified Rule 41 in 2011.

166. Rule 41 was changed to penalize players who fail to avoid or minimize contact with a defenseless opponent along the boards; however, similar to Rule 48, the referee is given discretion not to call a penalty if the contacted player put himself in a "vulnerable" position.

167. A combined reading of Rules 48 and 41 reveals that an NHL player might not be penalized for deliberately hitting a defenseless opponent in the head along the boards.

168. On March 16, 2011, the NHL changed its concussion protocols to require an "off the ice and bench" examination by a doctor, rather than a trainer.

169. Also in 2011, the NHL created a Department of Player Safety to look at rules that can better protect players. The Department focuses on safety issues related to players' equipment and the playing environment and administers supplemental player discipline.

170. Following a number of incidents, on July 23, 2013, the NHL finally changed its concussion protocols to require that a concussed player not return to the same game in which the concussion occurred.

171. In 2013, the NHL adopted a rule requiring all NHL players to wear visors but grandfathered its veteran players.

The NHL's Delay in Taking Action Is Inexcusable and Has Caused Harm to Its Players

172. In 2008, Boston University's Dr. Ann McKee (who performed the Reg Fleming autopsy in 2010) stated that "the easiest way to decrease the incidence of CTE [in contact sport athletes] is to decrease the number of concussions." Dr. McKee further noted that "[t]here is overwhelming evidence that [CTE] is the result of repeated sublethal brain trauma."

173. The NHL knew or should have known of that information, along with the other evidence supporting it, for decades.

174. The NHL knew or should have known that for decades, legions of hockey players, including some of the stars of the game, have suffered repeated, serious blows to the head and continued playing without proper treatment.

175. The NHL knew or should have known that its players were getting bigger and stronger, meaning that their collisions were becoming fiercer and their fights fraught with greater peril.

176. The NHL knew or should have known that the change from flexible to rigid glass would have an adverse impact on its players.

177. The NHL knew or should have known that creating rules to eliminate "clutch and grab" play would speed up the game, further increasing the fierceness of on-ice collisions.

178. In spite of what the NHL knew or should have known, it failed to act in a timely manner.

179. Why the NHL (and its Concussion Program) failed to share accurate information and take appropriate actions is difficult to comprehend since the NHL has known or should have known for decades that multiple blows to the head can lead to long-term brain injury, including memory loss, depression, dementia, and other severe symptoms and illnesses. The NHL knew or should have known its players were retiring and dying due to concussions sub-concussive blows to the head. Instead, the NHL remained silent, and insistent on the need for more data, which misled players, coaches, trainers, and the public. As proof positive of its view regarding the seriousness of head injuries, the NHL to this very day has continued to allow bare knuckled fist fighting as a routine part of the game, sending the clear message to players and fans that being struck viciously and repeatedly in the face head should not be considered a serious injury.

180. For decades, the NHL has refused to address the issues of concussions and sub-concussive events and their long-term effects on its players. The NHL's conduct is willful and wanton and exhibits a reckless disregard for the safety of its players and the public at large. At a minimum, the NHL acted with callous indifference to the duty it voluntarily assumed to the Plaintiffs and players at every level of the game.

181. As a direct result of the fraudulent concealment by the NHL, former players have for many decades been led to believe that the symptoms of memory loss, headaches, confusion, sleeplessness, depression, cognitive difficulty, and the inability to function were not caused by events occurring while they played in the NHL. And as a result of this willful and malicious conduct, these former players have been deprived of medical treatment, incurred expenses, lost employment, suffered humiliation and other damages.

182. Only in the past few years, despite decades of previous research, has the NHL reluctantly adopted ineffective rules to protect its players from unnecessary head injuries. For decades until the present, the NHL has refused to outlaw fighting despite significant medical evidence that to do so would substantially reduce the incidence of concussions in professional hockey and would send the clear message that blows to the head are serious injuries that should be avoided at all costs.

183. Notably, 64.2% of the reported, diagnosed concussions in the Cusimano report were caused by body checking. Only 28% of the reported concussions in the report resulted in a called penalty. A legal body check to another player's body can still result in the checked player's head hitting the ice, boards or glass, resulting in a concussion.

184. On August 21, 2013, 66% of the delegates at the Canadian Medical Association meeting in Calgary voted to "condemn the complacency of the NHL in regards to violence in hockey."

185. The concussive and subconcussive blows suffered by Plaintiffs and the Class in their capacity as NHL players caused twisting, shearing, and stretching of

neuronal cells, and in turn caused the release of Tau protein, which built up in the brain over time, and thus caused changes and damage within their brains on a cellular level. These present, cellular injuries have increased Plaintiffs'' risk of further neurodegenerative disorders and diseases, including but not limited to CTE, dementia, Alzheimer's disease, and similar cognitive-impairing conditions, beyond that level of risk observed in the average person.

CLASS ACTION ALLEGATIONS

186. Plaintiffs are representative of a Class, as defined by Fed. R. Civ. P. 23, and bring this action for declaratory relief, medical monitoring, negligence, negligent misrepresentation and fraud by omission claims on behalf of themselves and a Class with respect to which the NHL has acted or refused to act on grounds that apply generally to the Class.

187. The Class is defined as:

> All living NHL hockey players, their spouses and dependents, and the estates of deceased NHL players, who retired, formally or informally, from playing professional hockey with the NHL or any member club, and who are not seeking active employment as players with any NHL member club

188. Excluded from the Class are Defendant, any of its parents, subsidiaries, or affiliates, any of Defendant's officers, directors, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns, all governmental entities, and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

189. 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 Plaintiffs will fairly and adequately protect the interests of the proposed Class.

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

a. Whether the Defendant's safety-related rulemaking and its statements that it has always acted to promote player safety demonstrate that the NHL assumed the common law duty of care over player safety;

b. Whether the Defendant's superior knowledge of the dangers of concussions and premature return-to-play imposed a duty to disclose the true dangers of concussions and sub-concussive blows to the head;

c. Whether the Defendant's assumed a special relationship with players that imposed a duty to disclose the true dangers of concussion and sub-concussive blows to the head;

d. Whether the Defendant had a duty to exercise care in making statements regarding cognitive health so that the words the NHL used did not become misleading;

e. Whether the Defendant's tortious conduct was negligent and caused members of the Class to be at risks of repeated traumatic brain and head impacts and the excess risk of latent neurodegenerative disorders and diseases, as well as the need for medical monitoring;

f. Whether the Defendant created, fostered, or condoned a culture of accepting and expecting premature return-to-play after concussive or subconcussive blows;

g. Whether the Defendant's tortious conduct was fraudulent and caused members of the Class to be at risks of repeated traumatic brain and head impacts and the excess risk of latent neurodegenerative

disorders and diseases, as well as the need for medical monitoring; and

h. Whether Plaintiffs and the Class are entitled to injunctive medical monitoring relief.

191. Plaintiffs' claims are typical of the claims of the respective Class members.

192. Plaintiffs will fairly and adequately protect the interests of the Class if appointed as class representatives. The interests of the named Plaintiffs and of all other members of the Class are identical and the named Plaintiffs are cognizant of their duties and responsibilities to the Class. Plaintiffs' counsel has substantial experiences in class action, athletic concussion, and personal injury litigation and counsel will adequately represent the Class' interests.

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

194. Defendant has acted and refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

COUNT I
Medical Monitoring

195. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

196. During their NHL careers, Plaintiffs and members of the Class experienced concussion, subconcussive blows, or a combination, that caused the release of Tau protein and thus caused changes within their brains on a cellular level. These present, cellular injuries have increased their risk of CTE, and thus neurodegenerative disorders

and diseases including but not limited to dementia, Alzheimer's disease and similar cognitive-impairing conditions, to such an extent that they require medical monitoring over and above what a normal person requires.

197. CTE involves the slow build-up of Tau protein within the brain tissue and causes many of the symptoms listed above. CTE is also associated with an increased risk of suicide and progressive cognitive decline and dysfunction.

198. Repeated traumatic head impacts suffered by former NHL players have a microscopic and latent effect on the brain. These impacts twist, shear, and stretch neuronal cells such that multiple forms of damage take place, including the release of small amounts of chemicals within the brain, such as the Tau protein. Among other things, the gradual build up of Tau protein – sometimes over decades – causes CTE, which is the same phenomenon as boxer's encephalopathy (or punch drunk syndrome) studied and reported by Harrison Martland in 1928.

199. But for the repetitive head impacts to which Plaintiffs and members of the Class were exposed, the risk to Plaintiffs and members of the Class that such substances would be released into their brains would have been materially lower or zero.

200. Accordingly, the repeated traumatic head impacts suffered by NHL players exposed them to a subtle and repetitive change within the brain on the cellular level including increased levels of the Tau protein which is known to increase the risk of brain injury. As a result, published peer reviewed scientific studies have shown that playing professional head-impact sports is associated with significant risk for permanent brain injury.

201. Once there is a finding of impairment of mental functioning, the prognosis is poor; the vast majority of such patients go on to develop a serious neurological disorder within a decade.

202. The evidence that CTE is caused by repeated sublethal brain trauma is overwhelming.

203. Brain injury and brain disease in NHL retirees is a latent disease that can appear years or decades after the player experiences head trauma in his NHL career.

204. Concussions are the tip of the iceberg, and repetitive subconcussive blows to the head are the cause of significant brain disease in NHL retirees.

205. Members of the Class were exposed to a significant number of sub-concussive blows and concussions as a result of their professional hockey careers. The general public does not experience this type of brain trauma absent extraordinary circumstances.

206. Historically the NHL has treated repeated sub-concussive blows and concussions as "dings" and having one's "bell rung," and fraudulently concealed and negligently misrepresented facts that would assist members of the Class in being able to obtain adequate brain injury diagnosis, management, and treatment of the condition to facilitate recovery and rehabilitation.

207. The NHL has also historically allowed, and allows to this day, bare knuckled fist fighting as a routine part of the game. The NHL has thus continued, at all times and to the present, to send the tacit statement to players, coaches, and fans that blows to the head are not serious injuries. These tacit statements have contributed to the

expectation of players to play immediately after suffering a severe head injury, and before their injury is fully healed.

208. Defendant's fraudulent concealment and negligent misrepresentations as to the risks of chronic sub-concussive blows and concussions has increased the risks for members of the Class to brain injury and its sequelae, including cognitive, mental, and neurological disorders after retirement.

209. Management of concussion requires a gradual multistep process involving baseline testing, and neurocognitive examination.

210. For sports, such as hockey, in which repeated blows to the head are common, proper concussion assessment and management is paramount for preventing and mitigating long term consequences.

211. Medical monitoring for latent brain injury identifies deficits that are amenable to treatment through medical, cognitive, psychological and behavioral counseling, (for the patient and his spouse and family), as well as through pharmaceutical treatment, lifestyle modifications, and other therapeutic interventions.

212. Serial testing of cognitive functioning for early signs or symptoms of neurologic dysfunction, and serial brain imaging for signs of injury or disease, is medically necessary to assure early diagnosis and effective treatment of brain injury.

213. Medical monitoring for latent brain injury is highly specialized and different from the medical care that is normally recommended to other men of a similar age, in the absence of a history of chronic repeated sub-concussive impacts and concussions.

214. Defendant was fully aware of the danger of exposing their players to injury and further injury by allowing them to play with these injuries or to play prior to the time that such injuries could heal. Defendant failed to warn players of these medical risks, and instead attempted to conceal the harmful effects of hockey-related concussions from players. Furthermore, Defendant breached its duties of reasonable and ordinary care to the Plaintiffs and members of the Class by failing to protect their physical and mental health and failing to provide necessary and adequate treatment and safety information.

215. As a proximate result of Defendant's misconduct, Plaintiffs and members of the Class have experienced an increased risk of developing serious latent neurodegenerative disorders and diseases including but not limited to dementia, Alzheimer's disease or similar cognitive-impairing conditions.

216. Well established and specialized medical monitoring procedures exist to provide early diagnosis of brain injury that greatly enhances successful treatment, rehabilitation, and prevention or mitigation of cognitive, psychological, and behavioral deficits.

217. Such procedures include baseline exams, diagnostic exams, behavioral pharmaceutical interventions, serial brain imaging studies and neuropsychological evaluations targeted on identifying the deficits associated with chronic and repeated subconcussive blows and concussions experienced by members of the Class.

218. Medical monitoring for latent brain injury is reasonably necessary to provide for early diagnosis, leading to benefits in treatment, management, rehabilitation, and prevention or mitigation of damage. Medical monitoring will prevent or mitigate the

adverse consequences of the latent neurodegenerative disorders and diseases associated with the repeated head injuries described herein. Furthermore, such monitoring is different than the normal medical treatment prescribed for adult males.

219. Plaintiffs and members of the Class seek the creation and funding of a Court-supervised, NHL-funded medical monitoring regime, which will facilitate early diagnosis and adequate treatment in the event a neurodegenerative disorder or disease is diagnosed.

220. Plaintiffs and the members of the Class have no adequate remedy at law in that monetary damages alone cannot compensate them for the risk of long-term physical and economic losses due to concussions and sub-concussive injuries. Without a Court approved medical monitoring program as described herein, Plaintiffs and the members of the Class will continue to face an unreasonable risk of injury and disability.

221. Plaintiffs and members of the Class also seek all other available and necessary relief in connection with this claim.

COUNT II
Negligence

222. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

223. The NHL has historically and voluntarily assumed an independent tort duty of care regarding player safety. It has created and enforced rules that protect the health and safety of its players, and it has violated Section 323 of the Restatement (Second) of Torts, and the common law.

224. Throughout the history of the NHL, the League has purported to exercise its duty to protect the health and safety of its players by implementing rules, policies and regulations in a purported attempt to best protect its players. The NHL has admitted that it has "always" assumed the duty to care for player safety. League Deputy Commissioner Bill Daly has publicly stated, "[The NHL is] completely satisfied with the responsible manner in which the league and the players' association have managed player safety over time, including with respect to head injuries and concussions. . . . This is something that we have always treated as important and will continue to treat as important."

225. By enacting rules to protect the health and safety of its players, albeit improperly and actionably, the NHL has repeatedly confirmed its duty to take reasonable and prudent actions to protect the health and safety of its players when known and foreseeable risks exist.

226. The NHL breached its duty to its players, including Plaintiffs and members of the Class, to use ordinary care to protect the physical and mental health of players by implementing standardized post-concussion guidelines, by failing to implement mandatory rules that would prevent a player who suffered a mild traumatic brain injury from re-entering a hockey game or practice, and by continuing to allow fist fighting as a routine part of the game.

227. Throughout the many years that the NHL has repeatedly established its duty to protect the health and safety of its players when known and foreseeable risks exist, it has failed to create and implement league-wide guidelines concerning the treatment and monitoring of players who suffer a concussive brain injury during a game.

228. The NHL failed to establish adequate guidelines or policies to protect the neurological health and safety of its players.

229. The NHL's failure to fulfill its assumed duty to protect its players by failing to use reasonable care with respect to the research regarding concussions and sub-concussive blows to the head.

230. The NHL also failed to use reasonable care in responding to independent scientific studies on the risk of concussions and brain disease in sport, and in hockey in particular.

231. The NHL also failed to use reasonable care in protecting Plaintiffs and the Class from the risk of brain disease and the sequelae of concussions and sub-concussive blows to the head.

232. The NHL breached its assumed duty to protect the health and safety of its players by subjecting NHL players to an increased risk of concussive brain injury.

233. If the NHL would have taken the steps to oversee and protect its players, including Plaintiffs and the Class, by developing and implementing reasonable guidelines, policies, and procedures; and educating and training all persons involved with the NHL clubs in the recognition, prevention, and treatment of concussive brain injuries, the NHL players, such as Plaintiffs, would not have suffered from the subject condition or the effects of that condition, would have recovered more rapidly, or would not have suffered long-term neurological damage, and the serious symptoms and disorders resulting from that damage.

234. As a result of the foregoing, Plaintiffs and the Class members were damaged and therefore seek appropriate damages and any other relief authorized by law.

COUNT III
Negligent Misrepresentation

235. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

236. The NHL knew or should have known that repetitive head impacts in the sport of hockey created a risk of harm to its players that was similar or identical to the risk or harm to boxers and football players who receive similar repetitive impacts to the head.

237. Despite its knowledge, the NHL, through the Concussion Program, prior statements, and the actions of its Commissioner and its other agents and employees, made material, negligent misrepresentations to its players and former players regarding the link between concussions and brain injury and resulting cognition-impairing conditions. The NHL failed to take reasonable care as to the truth of its statements.

238. The NHL deliberately delayed implementing changes to the game it knew could reduce players' exposure to the risk of life-altering head injuries. In fact, the NHL continues to market violent activities – fighting and vicious body checking – which are proven to increase the incidence of head trauma for its players, and which convey the false message that head injuries are not serious injuries that should prevent a player from continuing to play the game.

239. Plaintiffs and the Class justifiably relied on the NHL's negligent misrepresentations to their detriment in getting care for their injuries.

240. The Plaintiffs were damaged by the NHL's negligent misrepresentations.

241. In addition to the injuries suffered by Plaintiffs and the Class described herein, Defendant's misleading conduct caused or contributed to the personal injuries of the Plaintiffs and the Class, including neurological deficits and disorders, past and future medical expenses, past and future loss of earnings, and past and future emotional distress.

242. As a result of the injuries of Plaintiffs, they are entitled to damages and all other relief allowed by law.

COUNT IV
Fraud by Omission

243. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

244. The NHL knew that repetitive head impacts in the sport of hockey created an unreasonable risk of harm to NHL players that was similar or identical to the risk of harm to, for example, boxers and football players who receive similar repetitive impacts to the head.

245. The NHL was aware of the published medical literature dating back as early as the 1920s which linked and discussed the serious risk of neurocognitive brain injuries associated with repetitive traumatic impacts to the head similar to those commonly suffered by NHL players.

246. The NHL had a duty to speak the full truth regarding the health risks caused by concussion and sub-concussive blows to the head. This duty arose because: (1) the NHL had superior knowledge of medical information that was not readily available to

players; and (2) the NHL communicated with players, providing partial or ambiguous statements regarding safety and head injuries, and the context of those communications shows that the NHL needed to complete or clarify those statements with all material information.

247. Despite having superior knowledge on this topic, the NHL withheld material information from current and former NHL players regarding the risks of head injuries in NHL games and practices, including but not limited to the risks associated with returning to physical play too soon after sustaining a concussive or sub-concussive blow to the head.

248. From as early as 1997 and through June of 2010, the NHL, through its Concussion Program, concealed and misrepresented information to the Plaintiffs and the public regarding the brain disease risks of repeated head impacts and concussions in NHL play over the time period relevant to this Complaint.

249. During that time period, although the NHL claimed to be extensively studying brain injuries suffered by NHL players, the NHL-funded Concussion Program issued no reports and no rule changes relating to concussions were made.

250. Furthermore, throughout this time, and at all times and continuing to the present, the NHL has allowed bare knuckled fist fighting as a routine part of the game, sending the clear message that blows to the face and head are not serious injuries.

251. The NHL, through its Concussion Program, exhibited silence on the issues of concussions, except for statements that more data and research were needed, which in turn misrepresented to then current and former NHL players and the general public that

there is no demonstrable link between brain injuries suffered in the NHL and later life neurocognitive issues.

252. Plaintiffs reasonably looked to the NHL for guidance on head injuries and concussions, yet the NHL failed to publish a report or take any action regarding its playing rules and medical protocols, which concealed and minimized the perceived risks of repetitive brain impacts.

253. Through the conduct described herein, the NHL concealed material facts and information and delayed revealing material medical information with the intent to deceive and defraud, which caused Plaintiff to become exposed to the harm referenced above.

254. The NHL was aware that Plaintiffs would rely, and did in fact rely, on their silence and mixed messages regarding the seriousness of head injuries, during and after their NHL careers.

255. As a direct and proximate result of Defendant's fraudulent conduct Plaintiffs were injured.

256. As a result of Plaintiffs' injuries, they are entitled to the damages and all other relief allowed by law.

PRAYER FOR RELIEF

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

1. Certifying the Class as defined herein;

2. Appointing Plaintiffs as Class Representatives and their undersigned

counsel as Class Counsel;

3. With respect to Count I, granting medical monitoring to all members of the Class;

4. Counts II through IV, granting compensatory and all other damages allowed by law;

5. With respect to all counts, awarding Plaintiffs their costs and disbursements in this action, including reasonable attorneys' fees, to the extent permitted by law; and

6. With respect to all counts, granting Plaintiffs all other relief allowable at law or equity.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

Dated: April 15, 2014

Respectfully Submitted,

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