

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE NATIONAL HOCKEY PLAYERS'
CONCUSSION INJURY LITIGATION

MDL No. 14-2551 (SRN/JSM)

Greg Adams; Rick Berry; Richard Brodeur;
Shawn Chambers; Todd Elik; Robert
Goring; Mark Hardy; Michael Hartman;
Todd Harvey; Tony Horacek; Garry
Howatt; Dave Hutchinson; Jean Francois
Jomphe; Edward Kennedy; Mike Lalor;
Darren Langdon; Emmanuel Legace; Jamie
Lundmark; Sergio Momesso; Jeff Parker;
Stephen Patrick; Craig Redmond; Terry
Ruskowski; Brian Savage; Jeffrey
Shevalier; Turner Stevenson; German
Titov; Todd Warriner; Vernon Westfall;
on behalf of themselves and all others
similarly situated,

Court File: _____

CLASS ACTION COMPLAINT

Jury Trial Demanded

Plaintiffs,

v.

National Hockey League,

Defendant.

Plaintiffs, by and through their counsel, bring this Complaint¹ against Defendant
National Hockey League and its constituent entities, including, without limitation, NHL

¹ As addressed in the Pretrial Order No. 4, Plaintiffs intend to submit to any future protocol ordered by this Court concerning an alternative to the Short Form Complaint and discovery protocols in this litigation.

Enterprises, Inc., and the National Hockey League Board of Governors (“Board”) (collectively “Defendant,” “NHL,” or “League”) as follows.

SUMMARY OF THE ACTION

NHL’S LONG HISTORY OF DRAGGING ITS FEET TO PROTECT ITS PLAYERS

1. The NHL’s roots date as far back as 1886 when the Canadian Amateur Hockey Association was established. The NHL was officially founded in 1917 after popularity for the sport continued to spread world-wide. The League continued to grow and by 1971 there were 21 teams. The NHL saw its income increase as well over the years. For example, by 2013 the top five teams were valued collectively at \$4.1 billion. Moreover, the NHL and its teams profit from lucrative television deals, including a 12-year, \$5.2 billion multimedia broadcasting deal with Rogers Sports and NBC Sports.

2. Although the NHL continuously grew larger and financially stronger, it kept antiquated rules for decades that failed to protect its players from head-related injuries. For instance, it was not until 1979 that any new player’s contract would require him to wear a helmet. This change, however, was not retroactive and only after Craig MacTavish retired in 1997 did all players wear helmets.

3. Moreover, the NHL did not attempt to make any serious sanctions for fighting until 2005 – when it finally mandated that any player who instigated a fight after the 55 minute mark got a major penalty, a minor penalty, a game misconduct, and a one-game suspension. It was not until three years ago that the NHL finally took real steps towards players’ protection and made checks to the head illegal. This, however, was still

years after the London Hockey Concussion Summit called for a ban on fighting and a total elimination of high hits and head hits in 2009.

4. Defendant actually took more actions that increased the likelihood of head injuries. For instance, in 1997, the NHL began installing seamless glass in arenas. As the Detroit Red Wings Brendan Shanahan noted, “[i]t’s like running into a brick wall.” This glass was not removed from all arenas until two years ago despite the numerous complaints from players and resulting injuries.

5. Defendant persists in this conduct to date by, among other things, continuing to promote violence and bare-knuckle fist fighting with blows to the head and the loss of a helmet during the skirmish. Defendant’s acceptance of and profiting from violence stands in stark contrast to the Olympics and National Collegiate Athletics Association (“NCAA”) hockey, where fighting is not promoted and does not take place. Recently, Mike Milbury, a former 12-year NHLer and current NHL game analyst for NBC Sports, was asked what he thought about the fact that there were fewer enforcers in the game than before: “It’s telling me it’s time to get rid of fighting. It’s telling me it’s over. As much as I liked a good scrap in my day, there are too many issues here involving concussions, too many problems. Teams are going away from it. Let’s grow up and get rid of it.” See Greg Wyshynski, *Mike Milbury says it’s time to ‘grow up’ and ban fighting*, Yahoo! Sports, Oct. 8, 2014, <http://sports.yahoo.com/blogs/nhl-puck-daddy/mike-milbury-says-it-s-time-to--grow-up--and-ban-fighting--video-034233669.html>.

6. Unfortunately, Defendant's negligence and/or reckless delay in taking proactive steps to protect its players have resulted in years of countless sustained head trauma and injuries by NHL players, including by Plaintiffs. Instead, Defendant either took no steps to protect and/or educate its players or took insufficient steps to make players aware of the real risks of playing in the NHL, which would have protected players from unnecessary long term effects of head trauma.

THE NHL'S CAVALIER ATTITUDE FLIES IN THE FACE OF SCIENTIFIC EVIDENCE

7. Every blow to the head is dangerous. Both repeated concussions and sub-concussions cause permanent brain damage. During practice and games, an NHL player can sustain close to one thousand or more hits to the head in one season without any documented concussion. Such repeated blows result in permanently-impaired brain function.

8. For decades, scientific evidence has linked head trauma to long-term neurological problems. Defendant knew or should have known of this growing body of scientific evidence and its compelling conclusion that persons who sustain repetitive concussive events, sub-concussive events and/or other brain injuries are at significantly greater risk for chronic neuro-cognitive illness and disabilities whether during their hockey careers or, especially, later in life.

9. Although the NHL knew or should have known about this scientific evidence concerning concussions, sub-concussive impacts and brain injuries, the NHL never told Plaintiffs about the dangers of repeated brain trauma. This was a failure of its

assumed duty since Plaintiffs were not in the same position as the NHL to have access to the evidence and knowledge to understand the impact their careers had on their risk of long-term injury and illness.

10. Scientists and doctors have published scores of peer-reviewed articles in well-established medical and scientific journals conclusively establishing the link between brain injuries and sub-concussive/concussive blows suffered by, among others, hockey players. These studies date back to at least 85 years ago when pathologist Harrison Martland's seminal study was published in the Journal of the American Medical Association linking sub-concussive blows suffered by boxers to injuries ranging from mild concussions to degenerative brain disease.

11. Assuming a duty as a guardian against head-trauma in players, the NHL decided to conduct its own specific research on brain injury risk to its players. Specifically, it created a concussion program in 1997 (the "Concussion Program"). Defendant, however, failed to discharge and fulfill its assumed duty. In the end, the Concussion Program served as a false assurance that the NHL was providing players with accurate risk analysis.

12. According to the Concussion Program's report, "NHL team physicians ... were mandated by the league to document all concussions sustained during regular season games from 1997-1998 to 2003-2004" using "standardized injury report forms."

13. In 1997, the first year of the Concussion Program, the NHL initiated baseline brain testing for its players and required its team doctors and trainers to maintain

records of all players believed to have suffered concussions. This data was then used to study concussions in the League from 1997 through 2004.

14. During this study period, the NHL voluntarily assumed a duty on behalf of the players to acquire and provide guidance and scientific research on the link between brain injuries sustained its NHL players. Yet the NHL took no action to reduce the number and severity of concussions among its players during that period and Plaintiffs and the Class relied on the NHL's silence to their detriment.

15. By voluntarily inserting itself into this research and public discourse, the NHL confirmed its duty of care toward the players and voluntarily undertook a responsibility: (a) to cease glorifying the fist-fighting and violence that produces violent head trauma and, at the high price of player health, advances the NHL's financial and political interests; and (b) to inform all former players, and then-current players, of the material facts concerning the risks of concussive events, sub-concussive events, and other brain injuries.

16. Having assumed a duty of care toward the players whose skill and dedication permitted the NHL to prosper, expand, and ultimately become the billions-a-year business it is today, and having voluntarily assumed a duty to investigate, study, and truthfully report to the NHL players, including Plaintiffs, the medical risks associated with hockey and brain injuries, the Concussion Program did nothing until 2011—fourteen years after it started—when it finally issued a report. That report, however, discussed only the number of concussions in the NHL for the regular seasons from 1997-2004.

Listing nine specific study limitations, the report, fourteen years in the making, boiled down to a “more study is needed” dodge.

17. 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. Additionally, 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.

18. The 2001 International Symposium on Concussion in Sport held in Vienna (“Vienna conference”) included two reports focusing specifically on hockey. "Procedures After Minor Traumatic Brain Injury (“TBI”) in Ice Hockey to Prevent Neurological Sequelae" noted, inter alia, that since 1986, doctors worldwide had observed "an alarming increase in the rate of TBI in ice hockey despite improved protective gear." In the NHL, the proportion of TBI 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."

19. A second Vienna symposium report was titled, "Concussion Experience: Swedish Elite Ice Hockey League," and focused on the seriousness of concussions in ice hockey. The report noted an alarming increase in the number of concussions and head

injuries among players in the 1980s, which the authors of the report hypothesized was due to "[t]oday's ice hockey [being] faster and more physical."

20. In 2004, the Second International Symposium on Concussion in sport was held in Prague ("Prague conference") to discuss recommendations for the improvement of safety and health of athletes who suffer concussive injuries in sports, including ice hockey, based on then current research. The attending and presenting experts recommended that a player should not be returned to play while symptomatic, and coined the phrase, "when in doubt, sit them out." This reiterated and reconfirmed a similar medical protocol established at the Vienna conference.

21. In North America, researchers have also focused on hockey and brain injuries. A study published in 2006 comparing the eight major contact sports (American football, boxing, ice hockey, judo, karate, tae kwon do, rugby, and soccer), found that ice hockey players have the highest rate of concussions. At the professional level, ice hockey was only second to rugby for the highest rate of concussions. See Beth Tommasone and Tamara Volovich McLeod, Contact Sport Concussion Incidence, 41 J. of Athletic Training 470-42 (Oct-Dec 2006).

22. Recently, Mayo Clinic sponsored two ice hockey summits on concussions, one in 2010 and the other in 2013. Recommendations at the first conference were followed by the NHL as it began taking concussions suffered by its players seriously.

23. At the 2013 summit, Dr. Michael Stuart, a co-director of the Mayo Clinic Sports Medicine Center and Chief Medical Officer for U.S.A. Hockey, highlighted two recent fights in the NHL that resulted in players receiving concussive head injuries.

Recommendations made at that 2013 summit focused on eliminating fighting, such as those noted by Dr. Michael Stuart.

24. As described above, the NHL has known for decades that TBI can and does lead to long-term brain injury, including, but not limited to, memory loss, dementia, depression, CTE, and related symptoms. Rather than take immediate measures to protect its players from these known dangers, the NHL for decades failed to disclose to its players relevant and highly material health information it possessed regarding the significant risks associated with TBI. At the same time, the NHL promoted and encouraged violent blows to the head, including bare knuckled fist fighting and immediately returning to the ice following a head injury to play through an injury, as a routine part of the game.

25. Despite the flood of evidence on head-related injuries, NHL Commissioner Gary Bettman has stated that more study on the issue is necessary even after numerous studies confirming the grave consequences of such injuries were made public. The justification the NHL uses to rationalize its election to minimize – if not ignore – the rigorous scientific studies and the clear medical findings of other sports or the general practice of medicine regarding brain injuries and head hits is questionable at best.

26. Between 1996 and 2011 when the NHL was reportedly looking at the Concussion Program data, many NHL players were forced to prematurely retire due to the lingering effects caused by concussions received in the NHL. Some of them include: 1996 – Brett Lindros and Dean Chynoweth; 1997 – Stanley Cup Champion Nick Kypreos and Dennis Vaske; 1998 – Hall of Famer Pat LaFontaine; 1999 – Stanley Cup Champions

Geoff Courtnall and Jeff Beukeboom; 2001 – Olympian Peter Svoboda; 2002 – Gino “Chief” or “The Enforcer” Odjick; 2003 – Stanley Cup Champion and Hall of Famer Mike Richter; 2004 – Steve Moore, who suffered career-ending injuries when brutally attacked by Todd Bertuzzi, and Hall of Famer and Conn Smythe Trophy Winner Scott Stevens; 2005 – Olympian and Stanley Cup Champion Adam Deadmarsh; 2006 – All Star Keith Primeau; 2007 – Matthew Barnaby and perennial All-Star and Hart Memorial Trophy winner Eric Lindros; and 2011 – Stanley Cup Champion Marc Savard.

THE NHL WRONGFULLY DELAYED AND THEN DOWNPLAYED THE CONCUSSION PROGRAM FINDINGS

27. The NHL’s silence about the dangers of concussions, subconcussive impacts, and head trauma in the decades preceding the Concussion Program, and the NHL’s continued silence about those dangers during the 1997-2011 Concussion Program induced Plaintiffs’ reasonable belief that they were not at any particular risk for post-retirement brain injuries and neurocognitive deficits. Furthermore, the NHL’s seven-year delay in publishing the Concussion Program report further induced players not to perceive any increased risk or think they might need to investigate whether they might have claims against the NHL.

28. Even when the NHL finally disclosed the Concussion Program report, it said nothing about TBI and simply stated that “more study is needed.” Fourteen years in the making, the Concussion Program report did not put Plaintiffs or the Class on notice that they had, or should investigate the factual bases for, any claims against the League.

29. According to the 2011 report, team physicians reported 559 concussions during regular season games. The estimated incidence RATE was 1.8 concussions per 1000 player-hours and an alarming 5.8 concussions per 100 players per season.

30. The 2011 report also found that almost 20% of players returned to play during the same game in which they suffered the concussion and in nearly 10% of the cases the player returned to play after seeing a team physician. It is likely that the same or worse rates occurred each season for decades before the Concussion Program began in 1997.

31. The 2011 report included the following findings that directly relate to how the symptoms and circumstances of concussions contribute to health risks:

- (a) Several symptoms “were found to be significant predictors of time loss (headache, low energy or fatigue, amnesia, and abnormal neurologic examination). These findings are of use to physicians, medical support staff, players, coaches and management, given that they have prognostic utility for assessing concussion severity at the time of injury.”
- (b) “Time loss significantly increased for every subsequent (repeat) concussion sustained during the study period, as well as for each increase in the number of postconcussion symptoms experienced.”
- (c) “In 27% percent of instances of concussion in which the player continued to play without game-time medical evaluation, more than 10 days of time loss resulted It is becoming more apparent that athletes with acute concussion experience functional or cognitive impairment and reduced reaction times. It is possible that continued exertion in the immediate postconcussion period may exacerbate the injury or increase a player’s susceptibility to further injury, which may ultimately increase severity and prolong recovery.”

32. Despite these findings, though, the report quickly sought to downplay their significance, concluding with the assurance intended to be relied upon by the players and

their healthcare providers that, essentially, no cause and effect relationship could be found between concussions and other head hits and the problems Plaintiffs' experience. In fact, the Concussion Program report, after fourteen years and despite an abundance of developing scientific and medical literature about head hits and concussions, found only "potential adverse effects" from "continuing to play while symptomatic, failing to report symptoms to medical staff and failure to recognize or evaluate any suspected concussion."

33. In language again intended to be relied upon by the players and the healthcare providers, the NHL report said that its "findings suggest that more conservative or precautionary measures should be taken in the immediate post-concussion period, particularly when an athlete reports or experiences a post-concussion headache, low energy or fatigue, amnesia, recurrent concussion or many different post-concussion symptoms, or when the athlete has an abnormal neurologic examination" (emphasis added). "Suggest" is a long way from "conclude" or "demonstrate" – in short, another NHL assurance that concussions were just not a big worry for players.

34. Equally important, the report did not conclude that players were at increased risk of brain injuries and neuro-cognitive impairment as a result of head hits while playing. Nor did the report put Plaintiffs on notice that the forgetfulness, mood swings, difficulties concentrating and other signs of what retired players chalked up to "aging" was in fact the result of concussions and other head injuries they suffered while playing.

35. All the report concluded, essentially, was that more education was needed about potential adverse effects. That does not suffice to put retired players on notice that they might possibly have claims against the NHL, particularly when the report did not link concussions and head injuries to the League's own ongoing culture encouragement of violent play and immediate return to play as a sign of player commitment and toughness.

36. Why the NHL (and its Concussion Program) failed to share material information and take appropriate actions can be chalked up at worst to intentional wrongdoing and at best to negligence, since the NHL has known or should have known for decades that multiple blows to the head and immediate return to play 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 and sub-concussive blows to the head. Fist fighting does not just hurt the players involved in the fight. It also creates a code of silence with respect to head injuries. The obvious expectation is that any player who is struck in the head by a fist, elbow, punch, check, or fall to the ice should be tough enough to stay in the game regardless of how hard he is hit.

37. Even today, the League's stock response to concussion questions boils down to: "We need more data, more research, we cannot say anything conclusive." In the face of the concussion data from the lawsuit against the National Football League ("NFL"), which the NFL itself, after similarly long and studied silence, admits shows that one in three retired NFL players will develop brain and neuro-cognitive problems, the

NHL's response is intended to assure NHL players that the head blows they suffered did not and do not lead to long-term injury. For present purposes, though, that response confirms the NHL's unwavering failure to say or do anything that would have put Plaintiffs and the Class on notice that they should investigate claims.

WHILE THE NHL REFUSED TO REACT TO THE MOUNTING EVIDENCE THE NUMBER OF CONCUSSIONS CONTINUED TO GROW IN THE NHL

38. In May of 2011, the NHL contracted several doctors with the Canadian Medical Association to perform a study titled "'A prospective study of concussions among National Hockey League players during regular season games: the NHL-NHLPA Concussion Program" (hereinafter referred to as "NHL-NHLPA Concussion Study") regarding concussions over seven NHL seasons between 1997 and 2004.

39. The NHL-NHLPA Concussion Study used NHL team physician-reported concussions sustained during the study period. The NHL team physicians also documented post-concussion symptoms and the time lost before a player was medically cleared to play.

40. For the NHL-NHLPA Concussion Study, concussions were defined as "any traumatically induced alteration in brain function." The study defined alteration as "characterized or manifested" by an [a]lteration of awareness of consciousness," "[a]ny signs or symptoms consistent with brain injury or post-concussion syndrome," "transient or persistent neurologic signs, or "[s]ymptoms or signs as outlined above after a suspected or diagnosed head injury or concussion that occur[ed] during or after a return to activity."

41. The NHL-NHLPA Concussion Study found that there were 559 “physician-diagnosed, regular-season, in-game concussions among NHL team players” during the study period.

42. The NHL-NHLPA Concussion Study found that the mean number of concussions per year was 80 and that there were 5.8 concussions for every 100 players.

43. Specifically, the NHL-NHLPA Concussion Study found that there were 56 concussions in the 1997-1998 season, 88 concussions in the 1998-1999 season, 66 concussions in the 1999-2000 season, 109 concussions in the 2000-2001 season, 96 concussions in the 2001-2002 season, 72 concussions in the 2002-2003 season, and 72 concussions in the 2003-2004 season.

44. The NHL-NHLPA Concussion Study concluded that additional education should be implemented regarding concussions and the possible long term effects of playing with post-concussion symptoms should be more conservative and precautionary.

45. The Division of Neurosurgery and Injury Prevention Research Office, the Canadian Brain Injury and Violence Research Team at the St. Michael’s Hospital at the University of Toronto, and the Department of Community Health and Epidemiology and Department of Emergency Medicine, Centre for Clinical Research, at Dalhousie University collectively completed a study on concussion entitled “Bodychecking Rules and Concussion in Elite Hockey” (hereinafter referred to as “BRCEH) that was published on July 17, 2013.

46. BRCEH investigated concussions during the 2009-2010, 2010-2011, and 2011-2012 seasons in the NHL and concluded that although the NHL changed Rule 48 to

regulate body checks to the head, the number of concussions among NHL players had not decreased.

47. BRCEH gathered data on penalties, including “match, game misconduct, misconduct, fighting, check to the head, other aggressive, unsportsmanlike conduct and other (e.g. bench minors, delay of game, and other non-aggressive penalties).”

48. BRCEH also collected data on concussions and suspected concussions. Suspected concussions “were those described as concussion-like symptoms by the team or as concussions by multiple sports media sources . . . and were injuries occurring as a result of trauma to the head.”

49. In making determinations about concussions or suspected concussions, NHL film was reviewed by two scorers with a third used in the case of disagreements. The cause for the concussion was categorized “as blindsiding (checking from the player’s blind side with primary contact to the head), other checking to the head, checking to the body, fighting, non-contact or collision with a teammate, hit by a stick or by a puck.” Also, “[a]ny secondary contact of the head or body with the boards or ice was recorded.”

50. BRCEH found that in the 2009-2010 season there were 44 concussions, 24 suspected concussions, and 9 facial fractures. It also found that in the 2010-2011 season, there were 65 concussions, 42 suspected concussions, and 13 facial fractures. In the 2011-2012 season, the study found 84 concussions, 36 suspected concussions, and 6 facial fractures.

51. In looking at concussions sustained, BRCEH found that 28.4% of the concussions resulted from penalized behavior while 36.8% of the suspected concussions

resulted from penalized behavior. Of the penalties, 32.3% of them were for fighting and 11.8% were for checks to the head.

52. BRCEH found that only 4.1% of the concussions were sustained through blindsiding of those sustained through crosschecking.

53. BRCEH concluded that the rates of concussions did not decrease with the changing of Rule 48. The study also concluded that this was not surprising based on the low rate of blindside hits (4.1%).

54. BRCEH complained that its main limitation was a lack of medical records and final player diagnoses, and thus it was forced to use team injury reports and publicly available data. While some concussions were reported by teams, the study also included suspected concussions based on the team's reluctance to report concussions.

THE HEAD TRAUMA SUSTAINED CAUSES LIFE-LONG INJURIES

55. Not only did the NHL fail to tell its players they might be at any increased risks for concussions, the NHL never informed its players that their head injuries would expose them to the devastating sequelae of post-concussion syndrome, CTE, or other neuro-cognitive impairments in later life.

56. Jeffrey G. Caron, Gordon A. Bloom, Karen M. Johnston, and Catherine M. Sabiston of McGill University and the University of Toronto wrote a report titled "Effects of Multiple Concussions on Retired National Hockey League Players" (hereinafter referred to as "Effects of Multiple Concussion Article") which appeared in the Journal of Sport & Exercise Psychology.

57. The Effects of Multiple Concussion Article took an interviewer, who was an athlete with concussion history, and had that athlete interview five former NHL players referred to as Bruce, Gary, James, Paul and Zach (hereinafter referred to as the “test players”) “who had retired due to medically diagnosed concussions suffered during their careers.”

58. All test players said that they still experience concussion symptoms after retirement in their day to day lives. Gary stated “[t]here aren’t too many days that go by where [he doesn’t] have some type of discomfort in terms of headaches or head pressure.” The test players also experienced trouble with memory and reading. Psychologically, the test players immediately felt feelings of isolation with long term effects of stress, confusion, and isolation.

59. An October 2005 study of retired professional football players investigating the association between previous head injury and the likelihood of developing mild cognitive impairment (MCI) and Alzheimer’s, found that retired players with three or more reported concussions had a fivefold prevalence of MCI and a threefold prevalence of significant memory problems, compared to other retirees. See Kevin Guskiweicz, Ph.D, et al., Association Between Recurrent Concussion and Late-Life Cognitive Impairment in Retired Professional Football Players, 57 Neurosurgery 719, 719 (Oct. 2005).

60. A 2009 study performed by the University of Michigan showed that 6.1% of retired NFL players over the age of 50 receive a dementia-related diagnosis compared to the 1.2% national average for men of the same age. See David R. Weir et al, National

Football League Player Care Foundation Study of Retired NFL Players, U. Mich., Institute for Social Res. Sep. 10, 2009, at 1, 32.

61. A 2011 published peer reviewed scientific study showed that 36% of former NFL players, age 65-75, who were studied, suffered from dementia, whereas the prevalence of dementia in the general population for the same age group is 2.2-6.5%. See Daniel G. Amen, M.D., et al., Impact of Playing American Professional Football on Long-Term Brain Function, 23:1 The J. of Neuropsychiatry and Clinical Neurosciences, 98, 103 (Winter 2011).

62. A November 6, 2012 study analyzing neurodegenerative causes of death among a cohort of 3,439 former NFL players that played between 1959 and 1988 confirmed that the neurodegenerative mortality rate of professional football players is three times higher than that of the general United States population. In fact, the rate of Alzheimer's and ALS in professional football players was four times higher. See Everett J. Lehman, MS, et al., Neurodegenerative causes of death among retired National Football League players, 79 Neurology, 1, 2 (Nov. 6, 2012).

63. Finally, a September 12, 2014 actuarial study submitted by the NFL in the lawsuit brought against it by thousands of retired NFL players, estimated that nearly one-third of former NFL players will be diagnosed with either dementia or Alzheimer's. See Thomas Vasquez Ph.D., NFL Concussion Liability Forecast at 20, Analysis Research Planning Corp., Feb. 10, 2014, filed in In re National Football League Players' Concussion Injury Litig., No. 2:12-md-02323-AB (E.D. Pa. Sept. 12, 2014), ECF No. 6167.

JURISDICTION AND VENUE

64. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(11) because there are one hundred or more persons whose individual claims are being brought herein; at least one Plaintiff is a citizen of a different state than Defendant; and the overall amount in controversy exceeds \$5,000,000.00, exclusive of costs, interest and attorneys' fees. The individual claims can be tried jointly in that they involve common questions of fact and law.

65. This Court has personal jurisdiction over the Defendant because it conducts substantial and continuous business in the State of Minnesota.

66. Venue is proper in this district pursuant to 28 U.S.C. §1391(a) and (b) because part of the events or omissions that give rise to the claims occurred within the State of Minnesota and this District, the Defendant conducts a substantial part of its business within this District, and the Judicial Panel on Multi-District Litigation has consolidated and transferred these cases to this Court.

PARTIES

PLAINTIFF GREG ADAMS

67. Plaintiff Greg Adams is a resident and citizen of the State of Arizona. Greg Adams was signed into the NHL as a free agent by the New Jersey Devils on June 25, 1984.

68. Greg Adams played in the NHL for 17 years from 1984 to 2001. Greg Adams played for the New Jersey Devils from 1984 to 1987, the Vancouver Canucks

from 1987 to 1994, the Vancouver Canucks and the Dallas Stars during the 1994-1995 season, the Dallas Stars from 1995 to 1998, the Phoenix Coyotes from 1998 to 2000, and the Florida Panthers from 2000 to 2001.

69. Greg Adams played 1,056 regular season games and 81 playoff games during his NHL career.

70. Greg Adams was involved in 70 recorded on-ice fights during his NHL career.

71. Greg Adams suffered numerous injuries to the upper body, neck, and head during his career. Specifically, Greg Adams suffered at least one known and one unknown concussion during NHL games and suffered additional blows to his head during practices for his NHL teams.

72. Today, Greg Adams suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

73. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Adams is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF RICK BERRY

74. Plaintiff Rick Berry is a resident of the State of Colorado and a citizen of Canada. Rick Berry was drafted into the NHL in the third round (55th pick overall) of the 1997 NHL Entry Draft by the Colorado Avalanche.

75. Rick Berry played in the NHL for three years from 2001 to 2004. Rick Berry played for the Colorado Avalanche from 2000 to 2001, the Colorado Avalanche and the Pittsburgh Penguins during the 2001-2002 season, and the Washington Capitals from 2002 to 2004.

76. Rick Berry played 197 regular season games during his NHL career.

77. Rick Berry was involved in 26 recorded on-ice fights during his NHL career. Rick Berry suffered numerous injuries to the upper body, neck, and head during his career.

78. Specifically, Rick Berry suffered at least two known concussions. Rick Berry suffered a concussion after a preseason fight in a game against Detroit Red Wings and also suffered a concussion from a fight with Brad Brown on the Buffalo Sabres.

79. Today, Rick Berry suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

80. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Berry is at an increased risk of future harm for developing serious, latent

neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF RICHARD BRODEUR

81. Plaintiff Richard Brodeur is a resident and citizen of the Province of British Columbia, Canada. Richard Brodeur was drafted into the NHL in the seventh round (97th pick overall) in the 1972 NHL Amateur Draft by the New York Islanders.

82. Richard Brodeur played in the NHL for nine years from 1979 to 1988. Richard Brodeur played for the New York Islanders from 1979 to 1980, the Vancouver Canucks from 1980 to 1987, and the Vancouver Canucks and the Hartford Whalers during the 1987-1988 season.

83. Richard Brodeur played 385 regular season games and 33 playoff games during his NHL career.

84. Richard Brodeur was involved in a number of on-ice fights during his NHL career. Richard Brodeur suffered numerous injuries to the upper body, neck, and head during his career.

85. Specifically, Richard Brodeur suffered at least five known concussions.

86. Today, Richard Brodeur suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

87. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Brodeur is at an increased risk of future harm for developing serious, latent

neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF SHAWN CHAMBERS

88. Plaintiff Shawn Chambers is a resident and citizen of the State of Michigan. Shawn Chambers was drafted into the NHL in the first round (8th overall) in the 1987 NHL Supplemental Draft by the Minnesota North Stars.

89. Shawn Chambers played in the NHL for 13 years from 1987 to 2000. Shawn Chambers played for the Minnesota North Stars from 1987 to 1991, the Washington Capitals from 1991 to 1992, the Tampa Bay Lightning from 1992 to 1994, the Tampa Bay Lightning and the New Jersey Devils during the 1994-1995 season, the New Jersey Devils from 1995 to 1997, and the Dallas Stars from 1997 to 2000.

90. Shawn Chambers played 625 regular season games and two playoff games during his NHL career.

91. Shawn Chambers was involved in 11 recorded on-ice fights during his NHL career. Shawn Chambers suffered numerous injuries to the upper body, neck, and head during his career.

92. Specifically, Shawn Chambers suffered at least one known concussion. Shawn Chambers suffered a concussion in the first period of a January 1994 game against the Tampa Bay Lightning. He then required stitches after a fight in the second period.

93. Today, Shawn Chambers suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

94. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Chambers is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF TODD ELIK

95. Plaintiff Todd Elik is a citizen of the Province of Saskatchewan, Canada. Todd Elik was signed as a free agent into the NHL by the New York Rangers on February 26, 1988. Todd Elik played for the Los Angeles Kings from 1989 to 1991, the Minnesota North Stars from 1991 to 1992, the Minnesota North Stars and the Edmonton Oilers during the 1992-1993 season, the Edmonton Oilers and the San Jose Sharks during the 1993-1994 season, the San Jose Sharks and the St. Louis Blues during the 1994-1995 season, and the Boston Bruins from 1995 to 1997.

96. Todd Elik played 448 regular season games and 52 playoff games during his NHL career.

97. Todd Elik was involved in one recorded on-ice fight during his NHL career.

98. Todd Elik suffered numerous injuries to the upper body, neck, and head during his career.

99. Specifically, Todd Elik suffered at least two known concussions.

100. Today, Todd Elik suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

101. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Elik is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF ROBERT GORING

102. Plaintiff Robert Goring is a resident of the State of New York and a citizen of Canada. Robert Goring was drafted into the NHL in the fifth round (51st pick overall) in the 1969 NHL Amateur Draft by the Los Angeles Kings.

103. Robert Goring played in the NHL for 16 years from 1969 to 1985. Robert Goring played for the Los Angeles Kings from 1969 to 1980, for the New York Islander from 1980 to 1984, and for the New York Islanders and the Boston Bruins during the 1984-1985 season.

104. Goring played 1,107 regular season games and 134 playoff games during his NHL career.

105. Robert Goring was involved in 13 recorded on-ice fights during his NHL career. Robert Goring suffered numerous injuries to the upper body, neck, and head during his career.

106. Specifically, Robert Goring suffered a number of concussions.

107. Today, Robert Goring suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

108. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Goring is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF MARK HARDY

109. Plaintiff Mark Hardy is a resident and citizen of the State of California. Mark Hardy was drafted into the NHL in the second round (30th pick overall) in the 1979 NHL Entry Draft by the Los Angeles Kings. Mark Hardy played in the NHL for 15 years from 1979 to 1994. Mark Hardy played for the Los Angeles Kings from 1979 to 1987, the Los Angeles Kings and the New York Rangers for the 1987-1988 season, the Minnesota North Stars from 1988 to 1989, the New York Rangers from 1988 to 1992, the New York Rangers and the Los Angeles Kings during the 1992-1993 season, and the Los Angeles Kings from 1993 to 1994.

110. Mark Hardy played 915 regular season games and 67 playoff games during his NHL career.

111. Mark Hardy was involved in 53 recorded on-ice fights during his NHL career.

112. Mark Hardy suffered numerous injuries to the upper body, neck, and head during his career.

113. Specifically, Mark Hardy suffered at least five known concussions. Mark Hardy suffered one concussion through a fight with Tim Kerr, another through an elbow from Chris Nolan, and another from a fight with Brad May. Mark Hardy also suffered

two concussions from taking a slap shot to the face while playing the Montreal Canadiens and Washington Capitals.

114. Today, Mark Hardy suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

115. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Hardy is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF MICHAEL HARTMAN

116. Plaintiff Michael Hartman is a resident and citizen of the State of North Carolina. Michael Hartman was drafted into the NHL in the seventh round (131st pick overall) in the 1986 NHL Entry Draft by the Buffalo Sabres. Michael Hartman played in the NHL for nine years from 1986 to 1995. Michael Hartman played for the Buffalo Sabres from 1986 to 1991, the Winnipeg Jets from 1991 to 1992, the Tampa Bay Lightning and New York Rangers during the 1992-1993 season, and the New York Rangers from 1993 to 1995.

117. Michael Hartman played 397 regular season games and 21 playoff games during his NHL career.

118. Michael Hartman was involved in 139 recorded on-ice fights during his NHL career. Michael Hartman suffered numerous injuries to the upper body, neck, and head during his career.

119. Specifically, Michael Hartman suffered at least one known concussion.

120. Today, Michael Hartman suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

121. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Hartman is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF TODD HARVEY

122. Plaintiff Todd Harvey is a resident of Cambridge, Ontario and citizen of Canada. Todd Harvey was drafted into the NHL in the first round (9th pick overall) in the 1993 NHL Entry Draft by the Dallas Stars. Todd Harvey played in the NHL for 13 years from 1993 to 2006. Todd Harvey played for the Dallas Stars from 1993 to 1998, the Dallas Stars and New York Rangers during the 1997-1998 season, the New York Rangers and San Jose Sharks for the 1998-1999 season, the San Jose Sharks from 1999-2004 and the Edmonton Oilers from 2004 to 2006.

123. Todd Harvey played 671 regular season games and 61 playoff games during his NHL career.

124. Todd Harvey was involved in 55 recorded on-ice fights during his NHL career. Todd Harvey suffered numerous injuries to the upper body, neck, and head during his career.

125. Specifically, Todd Harvey suffered at least eight known concussions.

126. Today, Todd Harvey suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

127. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Harvey is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF TONY HORACEK

128. Plaintiff Tony Horacek is a resident of the State of Pennsylvania and a citizen of Canada. Tony Horacek was drafted into the NHL in the seventh round (147th pick overall) in the 1985 NHL Entry Draft by the Philadelphia Flyers. Tony Horacek played in the NHL for six years from 1989 to 1995. Tony Horacek played for the Philadelphia Flyers from 1989 to 1991, the Philadelphia Flyers and the Chicago Blackhawks during the 1991-1992 season, and the Chicago Blackhawks from 1993 to 1995.

129. Tony Horacek played 154 games during his NHL career.

130. Tony Horacek was involved in 24 recorded on-ice fights during his NHL career. Tony Horacek suffered numerous injuries to the upper body, neck, and head during his career.

131. Specifically, Tony Horacek suffered at least two known concussions.

132. Today, Tony Horacek suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

133. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Horacek is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF GARRY HOWATT

134. Plaintiff Garry Howatt is a resident of the State of Arizona and a citizen of Canada. Garry Howatt was drafted into the NHL in the tenth round (144th pick overall) of the 1972 Amateur Draft by the New York Islanders. Garry Howatt played in the NHL for 12 years from 1972 until 1984. Garry Howatt played for the New York Islanders from 1972 to 1981, the Hartford Whalers from 1981 to 1982, and the New Jersey Devils from 1982 to 1984.

135. Garry Howatt played 720 regular season games and 87 playoff games during his NHL career.

136. Garry Howatt was involved in 203 recorded on-ice fights during his NHL career. Garry Howatt suffered numerous injuries to the upper body, neck, and head during his career.

137. Specifically, Garry Howatt suffered at least one known and unknown concussion.

138. Today, Garry Howatt suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

139. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Howatt is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF DAVE HUTCHINSON

140. Plaintiff Dave Hutchison is a resident and citizen of the Province of Ontario, Canada. Dave Hutchison was drafted into the NHL in the third round (36th pick overall) of the 1972 NHL Amateur Draft by the Los Angeles Kings. Dave Hutchinson played in the NHL for 12 years from 1974 to 1984. Dave Hutchison played for the Los Angeles Kings from 1974 to 1978, the Toronto Maple Leafs from 1978 to 1979, the Toronto Maple Leafs and the Chicago Blackhawks during the 1979-1980 season, the Chicago Blackhawks from 1980 to 1982, the New Jersey Devils from 1982 to 1983, and the Toronto Maple Leafs from 1983 to 1984.

141. Dave Hutchison played 584 regular season games and 48 playoff games during his NHL career.

142. Dave Hutchison was involved in 85 recorded on-ice fights during his NHL career. Dave Hutchison suffered numerous injuries to the upper body, neck, and head during his career.

143. Specifically, Dave Hutchison suffered at least 15 known concussions.

144. Today, Dave Hutchinson suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

145. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Hutchinson is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF JEAN FRANCOIS JOMPHE

146. Plaintiff Jean Francois Jomphe is a resident of the State of Nevada and a citizen of Canada. Jean Francois Jomphe was signed as a free agent into the NHL by the Mighty Ducks of Anaheim in 1993. Jean Francois Jomphe played in the NHL for four years from 1995 to 1999. Jean Francois Jomphe played for the Mighty Ducks of Anaheim from 1995 to 1998, the Phoenix Coyotes and the Montreal Canadiens during the 1998-1999 season.

147. Jean Francois Jomphe played 111 regular season and playoff games during his NHL career.

148. Jean Francois Jomphe was involved in four recorded on-ice fights during his NHL career. Jean Francois Jomphe suffered numerous injuries to the upper body, neck, and head during his career.

149. Specifically, Jean Francois Jomphe suffered at least six known concussions.

150. Today, Jean Francois Jomphe suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

151. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Jomphe is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF EDWARD KENNEDY

152. Plaintiff Edward Kennedy is a resident and citizen of the Province of Alberta, Canada. Edward Kennedy was drafted into the NHL in the second round (39th pick overall) of the 1981 NHL Entry Draft by the Los Angeles Kings. Edward Kennedy played in the NHL for 13 years from 1982 to 1995. Edward Kennedy played for the Los Angeles Kings from 1982 to 1989, the New York Rangers during the 1988-1989 season, the Buffalo Sabres from 1989 to 1991, the Winnipeg Jets from 1991 to 1994, and the Edmonton Oilers from 1994 to 1995.

153. Edward Kennedy played 717 regular season games and 36 playoff games during his NHL career.

154. Edward Kennedy was involved in 84 recorded on-ice fights during his NHL career. Edward Kennedy suffered numerous injuries to the upper body, neck, and head during his career.

155. Specifically, Edward Kennedy suffered at least four known concussions.

156. Today, Edward Kennedy suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

157. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Kennedy is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF MIKE LALOR

158. Plaintiff Mike Lalor is a resident and citizen of the State of Massachusetts. Mike Lalor was signed as a free agent into the NHL by the Montreal Canadiens in September 1983. Mike Lalor played in the NHL for 12 years from 1985 to 1997. Mike Lalor played for the Montreal Canadiens from 1985 to 1988, for the Montreal Canadiens and the St. Louis Blues during the 1988-1989 season, the St. Louis Blues from 1989 to 1990, the Washington Capitals from 1990 to 1991, the Washington Capitals and the Winnipeg Jets during the 1991-1992 season, the Winnipeg Jets from 1992 to 1993, the San Jose Sharks and the Dallas Stars during the 1993-1994 season, and the Dallas Stars from 1994 to 1997.

159. Mike Lalor played 687 regular season games and 92 playoff games during his NHL career.

160. Mike Lalor was involved in 41 recorded on-ice fights during his NHL career. Mike Lalor suffered numerous injuries to the upper body, neck, and head during his career.

161. Specifically, Mike Lalor suffered at least one known concussion.

162. Today, Mike Lalor suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

163. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Lalor is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF DARREN LANGDON

164. Plaintiff Darren Langdon is a resident and citizen of the Province of Newfoundland and Labrador, Canada. Darren Langdon was signed as a free agent into the NHL by the New York Rangers on August 16, 1993. Darren Langdon played in the NHL for 12 years from 1994 to 2006. Darren Langdon played for the New York Rangers from 1994 to 2000, the Carolina Hurricanes from 2000 to 2002, the Carolina Hurricanes and the Vancouver Canucks during the 2002-2003 season, the Montreal Canadiens from 2003 to 2004, and the New Jersey Devils from 2005 to 2006.

165. Darren Langdon played 521 regular season games and 25 playoff games during his NHL career.

166. Darren Langdon was involved in 128 recorded on-ice fights during his NHL career. Darren Langdon suffered numerous injuries to the upper body, neck, and head during his career.

167. Specifically, Darren Langdon suffered at least 10 known concussions.

168. Today, Darren Langdon suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

169. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Langdon is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF EMMANUEL LEGACE

170. Plaintiff Emmanuel Legace is a resident of the State of Minnesota and a citizen of Canada. Emmanuel Legace was drafted into the NHL in the eighth round (188th pick overall) in the 1993 NHL Entry Draft by the Hartford Whalers. Emmanuel Legace played in the NHL for 12 years from 1998 to 2010. Emmanuel Legace played for the Los Angeles Kings from 1998 to 1999, for the Detroit Red Wings from 1999 to 2006, for the St. Louis Blues from 2006 to 2009, and the Carolina Hurricanes from 2009 to 2010.

171. Emmanuel Legace played 365 regular season games and 11 playoff games during his NHL career. Emmanuel Legace suffered numerous injuries to the upper body, neck, and head during his career.

172. Specifically, Emmanuel Legace suffered at least four known concussions.

173. Today, Emmanuel Legace suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

174. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Legace is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF JAMIE LUNDMARK

175. Plaintiff Jamie Lundmark is a resident of the State of Pennsylvania and a citizen of Canada. Jamie Lundmark was drafted into the NHL in the first round (9th pick overall) in the 1999 NHL Entry Draft by the New York Rangers. Jamie Lundmark played in the NHL for eight years from 2002 to 2010. Jamie Lundmark played for the New York Rangers from 2002 to 2004, for the New York Rangers, the Phoenix Coyotes, and the Calgary Flames during the 2005-2006 season, for the Calgary Flames and the Los Angeles Kings during the 2006-2007 season, for the Calgary Flames from 2008 to 2009, and for the Calgary Flames and the Toronto Maple Leafs during the 2009-2010 season.

176. Jamie Lundmark played 295 regular season games and six playoff games during his NHL career. Jamie Lundmark was involved in eight recorded on-ice fights during his NHL career. Jamie Lundmark suffered numerous injuries to the upper body, neck, and head during his career.

177. Specifically, Jamie Lundmark suffered at least four known concussions.

178. Today, Jamie Lundmark suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

179. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Lundmark is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF SERGIO MOMESSO

180. Plaintiff Sergio Momesso is a resident of the Province of Quebec and a citizen of Canada. Sergio Momesso was drafted into the NHL in the second round (27th pick overall) in the 1983 NHL Entry Draft by the Montreal Canadiens. Sergio Momesso played in the NHL for 14 years from 1983 to 1997. Sergio Momesso played for the Montreal Canadiens from 1983 to 1988, the St. Louis Blues from 1988 to 1990, the St. Louis Blues and Vancouver Canucks during the 1990-1991 season, the Vancouver Canucks from 1991 to 1995, the Toronto Maple Leafs and the New York Rangers during the 1995-1996 season, and the New York Rangers and the St. Louis Blues during the 1996-1997 season.

181. Sergio Momesso played 710 regular season games and 119 playoff games during his NHL career.

182. Sergio Momesso was involved in 62 recorded on-ice fights during his NHL career. Sergio Momesso suffered numerous injuries to the upper body, neck, and head during his career.

183. Specifically, Sergio Momesso suffered at least ten known concussions.

184. Today, Sergio Momesso suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

185. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Momesso is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF JEFF PARKER

186. Plaintiff Jeff Parker is a resident of the State of Minnesota. Jeffrey Parker was drafted into the NHL in the sixth round (111th pick overall) in the 1982 NHL Entry Draft by the Buffalo Sabres. Jeff Parker played in the NHL for five years from 1986 to 1991. Jeff Parker played for the Buffalo Sabres from 1986 to 1990 and the Hartford Whalers from 1990 to 1991.

187. Jeff Parker played 141 regular season games and five playoff games during his NHL career.

188. Jeff Parker was involved in eight recorded on-ice fights during his NHL career. Jeff Parker suffered numerous injuries to the upper body, neck, and head during his career.

189. Specifically, Jeff Parker suffered at least one known concussions.

190. Today, Jeff Parker suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

191. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Parker is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF STEPHEN PATRICK

192. Plaintiff Stephen Patrick is a resident and citizen of the Province of Manitoba, Canada. Stephen Patrick was drafted into the NHL in the first round (20th pick overall) in the 1980 NHL Entry Draft by the Buffalo Sabres. Stephen Patrick played in the NHL for six years from 1980 to 1986. Stephen Patrick played for the Buffalo Sabres from 1980 to 1984, for the New York Rangers from 1984 to 1985, and for the New York Rangers and the Quebec Nordiques during the 1985-1986 season.

193. Stephen Patrick played 250 regular season games and 12 playoff games during his NHL career. Stephen Patrick was involved in 13 recorded on-ice fights during his NHL career. Stephen Patrick suffered numerous injuries to the upper body, neck, and head during his career.

194. Specifically, Stephen Patrick suffered at least three known concussions.

195. Today, Stephen Patrick suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

196. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Patrick is at an increased risk of future harm for developing serious, latent

neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF CRAIG REDMOND

197. Plaintiff Craig Redmond is a resident and citizen of the Province of British Columbia, Canada. Craig Redmond was drafted into the NHL in the first round (6th pick overall) in the 1984 NHL Entry Draft by the Los Angeles Kings. Craig Redmond played in the NHL for five years from 1984 to 1989. Craig Redmond played for the Los Angeles Kings from 1984 to 1988 and the Edmonton Oilers from 1988 to 1989. Craig Redmond attempted to return to the NHL and played for the Edmonton Oilers in the 1994-1995 season.

198. Craig Redmond played 191 regular season games and three playoff games during his NHL career.

199. Craig Redmond was involved in one recorded on-ice fight during his NHL career. Craig Redmond suffered numerous injuries to the upper body, neck, and head during his career. For instance, Craig Redmond was hit from behind in a 1986 pre-season game. Although this hit caused him to suffer a concussion, Assistant Coach Mike Murphy told Craig Redmond that he should still play the next day. Craig Redmond was also punched from behind in his first regular NHL game. He could not finish that game but was back on the ice the next day.

200. Specifically, Craig Redmond suffered at least five known concussions.

201. Today, Craig Redmond suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

202. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Redmond is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF TERRY RUSKOWSKI

203. Plaintiff Terry Ruskowski is a resident of the State of Texas and a citizen of Canada. Terry Ruskowski was drafted into the NHL in the fourth round (70th pick overall) in the 1974 Amateur Draft by the Chicago Blackhawks. Terry Ruskowski played in the NHL for 10 years from 1979 to 1989. Terry Ruskowski played for the Chicago Blackhawks from 1979 to 1982, the Chicago Blackhawks and the Los Angeles Kings during the 1982-1983 season, the Los Angeles King from 1983 to 1985, the Pittsburgh Penguins from 1985 to 1987, and the Minnesota North Stars from 1987 to 1989.

204. Terry Ruskowski played 630 regular season games and 21 playoff games during his NHL career.

205. Terry Ruskowski was involved in 101 recorded on-ice fights during his NHL career. Terry Ruskowski suffered numerous injuries to the upper body, neck, and head during his career.

206. Specifically, Terry Ruskowski suffered at least seven known concussions. Terry Ruskowski sustained three concussions while with the Chicago Blackhawks during

on-ice fights, one concussion while with the Los Angeles Kings from mid-ice check, two concussions while playing for the Pittsburgh Penguins, and one concussion while playing for the Minnesota North Stars. Terry Ruskowski did come out of games when concussed, but did not miss the next game regardless of lingering concussions symptoms.

207. Today, Ruskowski suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

208. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Ruskowski is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF BRIAN SAVAGE

209. Plaintiff Brian Savage is a resident of the State of Arizona and a citizen of Canada. Brian Savage was drafted into the NHL in the eighth round (171st pick overall) of the 1991 NHL Entry Draft by the Montreal Canadiens. Brian Savage played in the NHL for 13 years from 1993 to 2006. Brian Savage played for the Montreal Canadiens from 1993 to 2001, for the Montreal Canadiens and the Phoenix Coyotes during the 2001-2002 season, for the Phoenix Coyotes from 2002 to 2003, for the Phoenix Coyotes and the St. Louis Blues during the 2003-2004 season, and the Philadelphia Flyers from 2005 to 2006.

210. Brian Savage played 674 regular season games and 39 playoff games during his NHL career.

211. Brian Savage was involved in three recorded on-ice fights during his NHL career. Brian Savage suffered numerous injuries to the upper body, neck, and head during his career.

212. Specifically, Brian Savage suffered at least one known concussion.

213. Today, Brian Savage suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

214. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Savage is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF JEFFREY SHEVALIER

215. Plaintiff Jeffrey Shevalier is a resident of the State of Arizona and a citizen of Canada and the United States. Jeffrey Shevalier was drafted into the NHL in the fifth round (111th pick overall) in the 1992 NHL Entry Draft by the Los Angeles Kings. Jeffrey Shevalier played in the NHL for six years from 1994 to 2000. Jeffrey Shevalier played for the Los Angeles Kings from 1994 to 1997 and the Tampa Bay Lightning from 1999 to 2000.

216. Jeffrey Shevalier played in 32 regular season games during his NHL career. Jeffrey Shevalier suffered numerous injuries to the upper body, neck, and head during his career.

217. Specifically, Jeffrey Shevalier suffered at least 12 known concussions.

218. Today, Jeffrey Shevalier suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

219. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Shevalier is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF TURNER STEVENSON

220. Plaintiff Turner Stevenson is a resident of the State of Washington and a citizen of Canada. Turner Stevenson was drafted into the NHL in the first round (12th pick overall) in the 1990 NHL Entry Draft by the Montreal Canadiens. Turner Stevenson played in the NHL for 12 years from 1994 until 2006. Turner Stevenson played for the Montreal Canadiens from 1992 to 2000, the New Jersey Devils from 2000 to 2004, and the Philadelphia Flyers from 2005 to 2006.

221. Turner Stevenson played 644 regular season games and 67 playoff games during his NHL career.

222. Turner Stevenson was involved in 89 recorded on-ice fights during his NHL career. Turner Stevenson suffered numerous injuries to the upper body, neck, and head during his career.

223. Specifically, Turner Stevenson suffered at least five known concussions.

224. Today, Turner Stevenson suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

225. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Stevenson is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF GERMAN TITOV

226. Plaintiff German Titov is a resident and citizen of the Province of Alberta, Canada. German Titov was drafted into the NHL in the tenth round (252nd pick overall) in the 1993 NHL Entry Draft by the Calgary Flames. German Titov played in the NHL for nine years from 1993 until 2002. German Titov played for the Calgary Flames from 1993 to 1998, the Pittsburgh Penguins from 1998 to 1999, the Pittsburgh Penguins and the Edmonton Oilers during the 1999-2000 season, and the Anaheim Mighty Ducks from 2000 to 2002.

227. German Titov played 624 regular season games and 34 playoff games during his NHL career. German Titov suffered numerous injuries to the upper body, neck, and head during his career.

228. Specifically, German Titov suffered at least two known concussions.

229. Today, German Titov suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

230. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Titov is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF TODD WARRINER

231. Plaintiff Todd Warriner is a resident and citizen of the Province of Ontario, Canada. Todd Warriner was drafted into the NHL in the first round (4th pick overall) in the 1992 NHL Entry Draft by the Quebec Nordiques. Todd Warriner played in the NHL for nine years from 1994 until 2003. Todd Warriner played for the Toronto Maple Leafs from 1994 to 1999, the Toronto Maple Leafs and the Tampa Bay Lightning during the 1999-2000 season, the Tampa Bay Lightning from 2000 to 2001, the Phoenix Coyotes and the Vancouver Canucks during the 2001-2002 season, and the Vancouver Canucks, the Philadelphia Flyers, and the Nashville Predators during the 2002-2003 season.

232. Todd Warriner played 453 regular season games and 21 playoff games during his NHL career.

233. Todd Warriner was involved in one recorded on-ice fight during his NHL career. Todd Warriner suffered numerous injuries to the upper body, neck, and head during his career.

234. Specifically, Todd Warriner suffered at least two known and five unknown concussions.

235. Today, Todd Warriner suffers from post-concussion symptoms including, but not limited to, headaches, memory loss, and sleep problems as a result of his time in the NHL.

236. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Warriner is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

PLAINTIFF VERNON WESTFALL

237. Plaintiff Vernon ("Ed") Westfall is a resident of the State of New York and a citizen of Canada. Ed Westfall was drafted into the NHL in the 1972 NHL Expansion Draft by the New York Islanders. Ed Westfall played in the NHL for 18 years from 1961 to 1979. Ed Westfall played for the Boston Bruins from 1961 to 1972 and the New York Islanders from 1972 to 1979.

238. Ed Westfall was involved in 12 recorded on-ice fights during his NHL career. Ed Westfall suffered numerous injuries to the upper body, neck, and head during his career.

239. Specifically, Ed Westfall suffered at least five known concussions. Ed Westfall received over 200 stitches to his head from pucks and punches during his career. Specifically, he received 80 stitches over his left eye after getting hit in the head by a hockey stick. He also received a severe injury to his right eye that took him out of the league for two weeks.

240. Today, Ed Westfall suffers from recurring headaches, sleep disorders, and right eye blurring as a result of his time in the NHL.

241. Moreover, due to the injuries he suffered while playing in the NHL, Mr. Westfall is at an increased risk of future harm for developing serious, latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

Breach and Causation Allegations Applicable to Plaintiffs and the Class

242. At no time during their NHL careers did any NHL personnel advise Plaintiffs or the Class, generally or specifically, of the negative long-term effects of sustaining concussions and sub-concussive blows to the head, including the risks of repeat concussions and sub-concussive blows.

243. Plaintiffs and the Class had no familiarity with or reason to access any medical literature concerning concussions, mild traumatic brain injuries or other sub-concussive impacts.

244. Never having been advised about the negative, long-term effects of sustaining concussions, and with no knowledge of the medical literature concerning concussions, mild traumatic brain injuries or other sub-concussive impacts, Plaintiffs and the Class were never on notice that they needed to try to find, and understand, such information.

245. Plaintiffs and the Class looked to the NHL, the controlling organization, which prospered because of the skill and dedication of Plaintiffs and other players, for information about health and safety.

246. With the NHL silent about the risks and dangers, and serious short- and long-term effects of concussions and sub-concussive impacts, and silent about the need for proper treatment, evaluation and conservative return-to-play protocols, Plaintiffs and the Class reasonably believed that going right back to games and practices was safe despite having suffered such blows to the head.

247. In light of the NHL's power over the game and players, the NHL's fortunes being directly dependent on the players whose ability filled arenas and generated TV revenues, and the NHL's superior ability to gather and understand information about concussions and sub-concussive impacts, Plaintiffs reasonably relied on the NHL's silence about concussions in continuing to believe concussions were nothing more than temporary "dings" or commonplace "getting your bell rung" episodes.

248. Plaintiffs reasonably relied upon the NHL's silence concerning concussions, subconcussive impacts and other head injuries to conclude that it was safe to continue playing after such injuries, even if their symptoms had not resolved.

249. Plaintiffs and the Class did not know and had no reason to know, that continuing to practice and play after concussions and other head hits substantially increased the risks of the occurrence and severity of the serious neurological symptoms and illnesses.

250. Plaintiffs and the Class reasonably relied on the League for information about safety and health. Among other things, the League negotiated the television contracts that generated much of the NHL's revenues, and that depended, in turn, on the skill and dedication of the players, including Plaintiffs.

251. With the NHL's fortunes, and the jobs and salaries of the NHL executives dependent on the players on the ice, Plaintiffs and the Class reasonably relied on the NHL to inform them about the substantially increased health risks to which the players unwittingly subjected themselves.

252. A hit to the head, no matter how violent, was, in League parlance, simply "a ding" or "getting your bell rung." Despite the many concussions players experienced, the NHL gave no warnings to the players on whom the NHL depended for its success. Nor did the NHL ever implement procedures requiring players to sit out, and obtain proper evaluations, treatments, clearances and advice before returning to action.

253. In light of the relationship between the League and its players, Plaintiffs and the Class reasonably understood the NHL's silence on the question of concussions as meaning that continuing to play after a concussion or violent head hit, whether in the same game/practice or the next game/practice, was safe.

254. Had the NHL given Plaintiffs and the Class information about the increased danger to which they subjected themselves by continuing to play after concussions and head hits, or at least told them that such information existed, Plaintiffs and the Class would have ensured that they received appropriate medical treatment and made sure they had recovered before returning to practices and games.

DEFENDANT

255. Defendant NHL, which maintains its offices at 1185 Avenue of the Americas, New York, New York, 10036, is an unincorporated association consisting of separately-owned professional hockey teams that operate out of many different cities and states within the United States and Canada. The NHL is engaged in interstate commerce in the business of, among other things, promoting, operating, organizing, and regulating the major professional hockey league in the United States.

256. As an unincorporated association of member teams, the NHL is a resident of each state in which its member teams reside.

I. THE STATUTE OF LIMITATIONS IS TOLLED

A. NHL'S Duty to Plaintiffs and the Class Underscores Propriety of Equitable Tolling

257. The NHL undertook a duty of care to Plaintiffs. The NHL's fortunes depended entirely on the skill, dedication and courage of the League's players, such as Plaintiffs. Filling arenas with fans, generating licensing revenue through consumer products bearing player names and likenesses, driving the ever-increasing League revenues from TV contracts the League negotiated, the players and their popularity were the NHL's primary asset.

258. The NHL had vastly greater resources than Plaintiffs to obtain, analyze and disseminate information about the dangers of concussions and head hits.

259. Knowing that the League's fortunes depended on their ability to play, Plaintiffs reasonably relied on the NHL to inform them about safety and health information.

260. Plaintiffs reasonably relied on what NHL effectively said – “concussions are just ‘dings,’ or ‘a little bell ringing’ and ‘it’s okay to go right back out on the ice after sustaining one.’”

261. Plaintiffs reasonably acted on what the NHL omitted – that concussions and subconcussive hits are a big deal, and you should not go back to play or practice until you have been properly evaluated, treated and cleared to play because the risks of permanent damage are enormous – in returning to play immediately after taking brutal hits to the head, even after getting knocked out cold and being revived with smelling salts.

262. As a result of the NHL's special relationship with, assumed duty of care toward, voluntary undertaking of the Concussion Program, and superior knowledge about the causes, frequency, severity and proper treatment of concussions, mild traumatic brain injuries (“TBI”), and other sub-concussive injuries and head trauma, Plaintiffs reposed trust and confidence in the NHL.

263. In light of the NHL's duty of care toward the Plaintiffs, the NHL's silence about the dangers of concussions, TBI and other head injuries suffices to toll any limitations or repose periods.

264. Beyond mere silence, the League affirmatively concealed facts required to put Plaintiffs on notice of his claims.

265. To that end, during the seven years, 1997-2004, during which the Concussion Program was underway, the NHL never told its players they might be at any increased risks for concussions. Nor did the NHL tell its players that their head injuries would expose them to the devastating sequelae of post-concussion syndrome, CTE, or other neuro-cognitive impairments in later life.

266. Defendant's active and purposeful concealment of the severe risks of brain injuries exposed players to unnecessary dangers they could have avoided had Defendant provided them with truthful and accurate information and taken appropriate action to prevent needless and avoidable harm. Many of the players, including Plaintiffs, sustained repetitive brain injuries while in the NHL and now suffer from latent or manifest neuro-degenerative disorders and diseases, all of which, in whole or in part, were caused by Defendant's acts, omissions, or both.

267. Defendant caused or contributed to the injuries and increased risks to Plaintiffs through its acts and omissions by, among other things: (a) historically ignoring the true risks of concussive events, sub-concussive events and/or brain injuries suffered by NHL hockey players; (b) failing to disclose the true risks of repetitive brain injuries to NHL players; (c) refusing meaningfully to address the issue of brain injuries despite a growing body of medical opinion establishing such a linkage and their own study of the issue; and (d) refusing to cease their patent glorification of, and profiting from, fist-fighting and violence in the League, notwithstanding the uniqueness of such conduct to the NHL compared to other hockey leagues, and the focusing on fighting almost more than winning the game.

268. Plaintiffs reasonably relied on the NHL to inform them about the risks of concussions, TBI, and other sub-concussive injuries and head trauma. With no material information ever forthcoming, Plaintiffs had no reason to dig for information they reasonably believed the NHL would share if it existed.

Plaintiffs' Special Susceptibility to Reliance on NHL for Information

269. Plaintiffs' reliance on the NHL for information about concussions and other head injuries was not just reasonable but foreseeable to the NHL.

270. Hockey players, no differently from anyone else, grow up believing that medical personnel, such as League medical directors, supervisors, doctors and trainers, put the patient-players' interests first and foremost. Many players were cleared to play immediately after getting knocked out – such as Rangers goalie Gilles Gratton. In a 1976-77 season game against the Bruins, he recalls having been propped up, administered smelling salts and being told “you're good to go” without even a rest on the bench, as shown in the picture below – players believed they were, in fact, “good to go” and not doing any lasting harm to themselves:



271. Given the go-ahead by NHL-approved doctors and trainers at rinks home and away, players went right back onto the ice after hard head hits, figuring that of course the NHL-sanctioned say-so had to be true.

272. The NHL collects and keeps data on every player, from birthdate to educational background to playing history to contract history to injury and retirement data.

273. In 1999-2000, only 20% of NHL players had played college hockey. In 2013-14, 31% of the NHL's players had played college hockey. Both percentages, small as they are, do not represent four-year degree earners, simply NHLers who played some college hockey.

274. Dedicated so completely to hockey, the vast majority of NHL players naturally relied on the League, with its cadre of highly educated managerial, legal and medical personnel, to disclose important medical risks.

275. The NHL had access to the boxing, football and other concussion studies described herein. With the NHL's resources and highly-educated managerial, legal and medical staff, it was uniquely positioned to inform NHL players of the increased risks those NFL and other concussion studies clearly demonstrate.

276. But the NHL never told its players that these other studies demonstrate an increased risk for NHL players, or had any implications for NHL players.

277. Knowing that the NHL had far greater information, and was much more advantageously positioned to obtain information, about the causes, prevention and treatment of concussions and other head injuries, Plaintiffs reasonably relied on the NHL to inform them fully and promptly about material information.

278. In refusing for decades to properly diagnose and treat concussions suffered by its players, the NHL misled Plaintiffs into believing that returning quickly to play, often in the same game or practice in which they were concussed or otherwise "had your bell rung," was safe, posing neither short-term nor long-term dangers of brain injury and neuro-cognitive impairment.

279. From the time they are mites, at the lowest rung of organized hockey, through the tiers of youth hockey, the progressions from high school and junior hockey to the minor professional leagues and, finally, to the NHL, players are taught to trust their coaches and team personnel and League personnel who administer and run the games.

280. Based on a history of having been taught, and having deeply absorbed the principle, that League personnel and team coaches, doctors and trainers know what is best and their word could be trusted, Plaintiffs and the Class highly susceptible to relying, and reasonably did rely, on what the NHL did not say: that a concussion, or any head impact, was extremely serious, should be avoided, and required very careful evaluation and treatment before a player should return to playing, whether in the same game or in the same season.

281. Apart from the hockey culture that deeply inculcates in players a trust and confidence in their leagues and team personnel, the NHL understands the inherent coerciveness that made Plaintiffs particularly susceptible to rely on the NHL's silence about the concussion and head injury risks the players were taking.

282. The League knows that the minor and junior leagues are full of talented players desperately eager to reach the NHL.

283. The League also knows full well that, upon reaching the NHL, the Holy Grail for any serious hockey player, a player wants to remain there.

284. Not informing these players, highly competitive people to begin with, that they risk serious and possibly permanent and disabling brain injuries or cognitive problems if they suffer concussion or continue to play after suffering a head hit, the League knew, or surely should have known, the players would understand that silence as affirmation that they not only could, but should, play in a violent manner and continue to play after a head injury and that doing so posed no danger to their health.

285. At no time, including during the seven year Concussion Program and in the following seven year silence before publishing the Program's report, did the NHL warn players that the data suggested at a minimum that greater attention to concussions and head injuries was necessary, that it was possible that playing in the same game, or soon after, a head injury was potentially dangerous, or any other such warning.

286. The League also knew that effects of concussions, sub-concussive impacts and other head injuries are frequently latent, developing and manifesting themselves only after a player's NHL career has ended.

287. The League regularly collects game injury reports, becoming the repository of substantial concussion and other head injury information.

288. The League's Office of Player Safety also obtains detailed information about player brain and head injuries, often considering the severity of an injury in meting out punishments. For example, in February 2012, the League's Vice President for Player Safety, Brendan Shanahan, had this to say after reviewing a head hit from Ottawa Senator Kyle Turris on Boston Bruin Joe Corvo: "After reviewing the video extensively as we heard Turris's explanation of how the play developed, we concluded that the head was not targeted intentionally or even recklessly and that the circumstances surrounding the hit contributed significantly to the amount of head contact that resulted."

289. Shanahan admitted that whether an injury occurs plays a role in the meting out of discipline.

290. With the League playing a central role in collecting concussion and head injury information, and in monitoring head hits, Plaintiffs and the Class had further

reason to believe that the League's silence about the extent and severity of potential concussion and head injury risks meant that continuing to play was safe, exposing him to no particular long-term danger.

291. With the League involving itself in head injury data and discipline, the Plaintiffs and the Class reasonably believed that the League's silence meant safety – continuing to play was naturally not conceived of as a threat to health.

292. Reasonably relying on the League for information, and knowing the League was monitoring and keeping data for head hits, Plaintiffs and the Class reasonably believed that the League would disclose to them any information material to their health, especially their neuro-cognitive well-being.

293. In reasonably reposing trust and confidence in the NHL, with its superior information and its direct involvement in monitoring and evaluating head hits, Plaintiffs reasonably relied on the NHL's silence concerning the short and long-term dangers of concussions.

294. Nothing the League said, or did, put Plaintiffs or the Class on notice that the League was sitting on information that could serve as the basis for their claims or that Plaintiffs and the Class had any need to try to find and interpret such information.

295. Because the League assumed a duty of care to Plaintiffs and the Class, assuming duties of protection and disclosure while knowing Plaintiffs and the Class trusted and relied on the League to provide any important information to them, and because the results of brain and head injuries are often slow to develop and easily

mistaken for deficits accompanying simple aging, Plaintiffs and the Class were not on notice that they should investigate possible claims.

296. Even players who received medical treatment in retirement for post-concussion syndrome or related maladies did not know that the League contemporaneously had information about concussions material to player decisions to continue playing.

297. In the course of its business, with numerous financial, reputational and legal reasons not to disclose what it long knew – that NHL players were at serious risk from the concussions and other head injuries they sustained while playing – the NHL remained silent about material key facts about the causes and effects of head injuries, preventing Plaintiffs and the Class from discovering a link between their NHL playing days and their brain and cognitive maladies today.

298. Defendant was under, but breached, a continuing duty to disclose the true character, quality, and nature of the after-effects of concussive events, sub-concussive events and/or brain injuries. Because Defendant concealed the true character, quality and nature of these injuries, it is estopped from relying on any statute of limitations defense.

299. The applicable statute of limitations is tolled because Defendant's fraudulent concealment of the dangers and adverse effects of head injuries prevented Plaintiffs and the Class from learning of or properly appreciating the hazards to their health.

GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS

I. THE NHL'S KNOWLEDGE AND FAILURE TO WARN

300. The robust body of medical and scientific studies and literature has, for many decades, firmly established that repetitive and violent jarring of the head or impact to the head can cause TBI with a heightened risk of long term, chronic neurocognitive sequelae.

301. There is no way that Defendant, along with the expert medical personnel in its employ, did not know during Plaintiffs' careers that TBI generally occurs when the head either accelerates rapidly and then is stopped, or is rotated rapidly.

A. Head Injuries, Concussions, and Neurological Damage

302. The medical community generally recognizes four types of sports-related brain injuries: (a) concussion and sub-concussive events; (b) post-concussive syndrome; (c) second-impact syndrome; and (d) long-term brain damage.

303. Concussion, the first type of injury, is a term used interchangeably with "TBI." This injury consists of trauma to the head and a resulting transient loss of normal brain function. Loss of normal brain function can include dozens of symptoms, including dizziness, confusion, headache, blurred vision, memory loss, nausea, and unconsciousness.

304. The American Association of Neurological Surgeons ("AANS") has defined a concussion as "a clinical syndrome characterized by an immediate and transient alteration in brain function, including an alteration of mental status and level of

consciousness, resulting from mechanical force or trauma.” The AANS defines traumatic brain injury (“TBI”) as:

a blow or jolt to the head, or a penetrating head injury that disrupts the normal function of the brain. TBI can result when the head suddenly and violently hits an object, or when an object pierces the skull and enters brain tissue. Symptoms of a TBI can be mild, moderate or severe, depending on the extent of damage to the brain. Mild cases may result in a brief change of mental state or consciousness, while severe cases may result in extended periods of unconsciousness, coma or even death.

305. Medical evidence has shown that symptoms of a concussion can reappear hours or days after the injury, indicating that the injured party has not healed from the initial blow.

306. According to neurologists, once a person suffers a concussion, the person is up to four (4) times more likely to sustain a second one and each successive concussion increases the seriousness of health risks and the likelihood of future concussions. Additionally, after suffering even a single concussion, a lesser blow may cause the injury, and the injured person requires more time to recover.

307. Post-concussion syndrome, which may last days to years after someone suffers a concussion, generally involves depression, irritation, poor concentration, memory loss, mood swings, headaches, impaired speech and/or balance, dizziness, seizures, blurred vision, or general malaise.

308. As with concussions/TBI, only rest of both the brain and cognitive functioning can resolve these symptoms.

309. Second-impact syndrome occurs when an athlete still healing from a prior concussion experiences a second, force-related event to the brain. Second-impact syndrome can lead to coma, permanent brain-function loss, or death.

310. Long-term effects of brain damage caused by repeated TBI include Alzheimer's disease, dementia, and chronic traumatic encephalopathy ("CTE"), among other serious disorders.

311. CTE, a catastrophic disease first associated with boxers long ago, results when a toxic protein, Tau, accumulates in the brain, kills brain cells, and leads to symptoms such as cognitive dysfunction, memory loss, sleeplessness, depression, diminished impulse control, episodes of anger, and dementia, among others. Until recently, CTE could only be confirmed through an autopsy. Tau proteins are released whenever concussion occurs.

312. CTE is found in athletes (and others) with a history of repetitive concussions. Conclusive studies have shown this condition to be prevalent in retired professional hockey players who have a history of head injury.

313. Clinical and neuropathological studies by some of the nation's foremost experts have demonstrated that multiple concussions sustained during an NHL player's career can cause severe cognitive problems.

314. This head trauma triggers progressive degeneration of brain tissue. Degeneration of the brain can begin months, years, or even decades after the last concussion or the end of active athletic involvement, and has been diagnosed in many NHL hockey players. The brain degeneration is associated with memory loss, confusion,

impaired judgment, paranoia, impulse-control problems, aggression, depression, and eventually progressive dementia.

315. In January 2010, the Boston University School of Medicine Center for the Study of Traumatic Encephalopathy (“BUSM”) and the Veterans Affairs Boston Healthcare System, in collaboration with the Sports Legacy Institute, neuropathologists confirmed for the first time that a former hockey player, New York Ranger Reggie Fleming, had been diagnosed with CTE.

316. Subsequently, Rick Martin, best known for being part of the Buffalo Sabres’ “French Connection,” was posthumously diagnosed with CTE. Martin was the first documented case of a hockey player not known to be a fighter or enforcer to have developed CTE. Martin is believed to have developed the disease from severe blows to his head while not wearing a helmet.

317. Within months of Martin’s death, four former hockey enforcers suffered sudden and unexpected deaths: Derek Boogaard from a combination of painkillers and alcohol; Rick Rypien of an apparent suicide; Wade Belak of an apparent suicide and who, like Rypien, had reportedly suffered from depression; and Bob Probert, best known as one-half of the “Bruise Brothers” with then-Red Wing teammate Joey Kocur, of sudden cardiac arrest. All four players had histories of fighting, blows to the head and concussions, which led to more concerns about CTE and hockey. BUSM doctors subsequently confirmed that Boogaard and Probert had CTE.

318. For almost a century, while unnecessary violence, including brutal fist-fighting, has permeated NHL games, the NHL has been on notice that multiple blows to

the head can lead to long-term brain injury, including, but not limited to, memory loss, dementia, depression, and CTE and its related symptoms. There have been legions of studies throughout the eras proving these negative health consequences. Yet, the NHL said nothing to its players about any of it.

85 year History of Medical Studies Related to Sports and Concussion

319. 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.”

320. The Martland study was the first to link sub-concussive blows and “mild concussions” to degenerative brain disease.

321. 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.

322. 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.

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

324. 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.

325. 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.

326. 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.

327. 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.

328. 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.

329. 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.

330. 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.

331. 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.

332. 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.

333. 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.

334. In 1986, the *Physician and Sportsmedicine* journal published an article by Dr. Robert Cantu, a widely-respected authority on brain injuries from the American College of Sports Medicine, titled “Guidelines for return to contact sports after cerebral concussion.” Dr. Cantu established a system to grade the severity of concussions based on clear and obvious symptoms and corresponding guidelines for when players should return to play. After publishing his article in 1986, Dr. Cantu added to the concussion grading scale in 2001, emphasizing the importance of post-traumatic amnesia in grading the severity of a concussion. The Cantu guidelines for return to play are widely accepted and recognized in the medical community as being the most useful guidelines. It is not plausible that the NHL and its medical personnel were unaware of these widely accepted guidelines.

335. The foregoing 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.

336. 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 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.

337. In 1998, a Canadian news article documented how frequent concussions are for NHL players:

Concussions have become an epidemic in the NHL over the past several years, striking everyone from marquee players to fourth-line checkers. The rash of concussions has led the NHL to try to improve

prevention and diagnosis of concussions and has awakened many players and coaches.

According to statistics provided by the NHL, 60 players had concussions last season during the regular season and the playoffs. As of early February this season, 56 players already had received concussions.

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

339. A 2000 study, which surveyed 1,090 former NFL players, found that more than 60% had suffered at least one concussion, and 26% had suffered three or more, during their careers. Those who had sustained concussions reported more problems with memory, concentration, speech impediments, headaches, and other neurological problems than those who had not been concussed.

340. In the last decade, numerous published peer reviewed scientific studies have demonstrated that playing professional sports is associated with significant risk for numerous negative long term effects, including depression, cognitive disorders and brain injuries such as dementia, Alzheimer's and CTE. Notably, there have been multiple studies published regarding the negative long term effects of head impacts on current and former football players.

341. For example, a 2007 study of NFL retirees found that of the retirees that had sustained one or two previous concussions, 11.5% reported that the injuries have had

a permanent effect on their thinking and memory skills as they have aged. Moreover, 11.1% of all respondents reported having a prior or current diagnosis of clinical depression²

342. Professional athletes also experienced earlier onset of disease and dementia more frequently than the general American male population in the same age range. Once there is a finding of impairment of mental functioning, the prognosis is poor; the vast majority of such patients develop Alzheimer's disease within a decade. Notably, early detection of dementia and Alzheimer's can lead to a physician prescribing Vitamin E, the drug Namenda XR (memantine HCL), or a combination of the two, which recent studies demonstrate improves a person's ability to perform activities of daily living.

343. For example, as discussed at the 2001 Vienna International Symposia on Concussions in Sport, since 1986, doctors worldwide have observed an "alarming" increase in the rate of TBI found in ice hockey players—with the rate of TBI increasing from 2% in the 1989-1990 season to 8% in the 1999-2001 season. Put simply, overwhelming evidence shows that CTE is caused by repeated sublethal brain trauma of the sort Plaintiffs suffered.

344. On September 16, 2014, the Icahn School of Medicine at Mount Sinai (NY) published the results of its neuroimaging case study regarding diagnosing CTE in living subjects. Through an experimental radiolabeled compound called [18F]-T807, designed

² See Kevin M. Guskiewicz, et al., *Recurrent Concussion and Risk of Depression in Retired Professional Football Players*, MED. & SCI. IN SPORTS & EXERCISE, 903, 905 (2007).

to latch onto the Tau protein in the brain, and using a positron emission tomography (PET) scanner, researchers were able to effectively diagnose CTE in a living subject. See E.M. Mitsis, et al., Tauopathy PET and Amyloid PET in the Diagnosis of Chronic Traumatic Encephalopathies: studies of a retired NFL player and of a man with FTD and a severe head injury, *Translational Psychiatry* (Sept. 16, 2014). Prior to this research, it was thought that CTE could only be diagnosed post-mortem.

345. Most recently, on September 30, 2014, it was reported that after studying brains of 79 deceased NFL players, one of the nation's largest brain banks confirmed that 76 of those players suffered from CTE. According to the results, 78.9% of football players, and 96.2% of former NFL players suffered from the disease. See Josh Katzowitz, *PBS Frontline: 76 of 79 NFL Player Brains Studied Show Signs of CTE*, *CBS Sports* (Sept. 30, 2014).

346. According to reports, NHL players are five times more likely to suffer a concussion than NFL players, which is devastating, given that the NFL has admitted that nearly one in three NFL players will contract debilitating brain disease. These numbers are also not surprising since NFL players play on average 4 pre-season games and a 16 game-season, and engage in only 11-15 minutes of actual playing time per game, while NHL players on average play 6 pre-season games and an 82-game season, and, except for fourth-liners and spare defensemen, play an average of 18-25 minutes per game.

347. Some of the most accomplished experts on brain injuries have stated that sub-concussive impacts are more detrimental than concussive impacts.

348. Sub-concussive impacts are repetitive sub-concussive blows to the head that are the building blocks of CTE.

349. Sub-concussive impacts can be more dangerous because when sustained, they leave the brain as vulnerable to long-term damage as a diagnosed concussion; however, because they are not diagnosed as a concussion, the player continues to play and add damage to the affected portion of the brain. Additionally, repeated sub-concussive blows lead to CTE.

350. As one author observed: “Dr. Robert Cantu, the prominent neurosurgeon out of Boston and undisputed concussion expert, has stated that a lineman in the NFL, on one 80 yard drive, can sustain up to 18 sub-concussive blows. 18! 15,000 in a ten year NFL career!”

351. After reviewing the findings of Dr. Cantu and other scholars, one author noted: “It is the continuous small blows to the brain that are creating the damning evidence found in the brains of former football players.”

352. NHL players sustain thousands of these sub-concussive impacts every year. The NHL was or should have been aware of the neurological effects of sub-concussive impacts, yet did not warn its players or protect them.

353. 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>.

354. To be sure, NHL Deputy Commissioner William Daly has disingenuously claimed that the NHL has taken a leadership role in teaching others about the dangers of concussions, notwithstanding its continued glorification of violence in its own league. For example, the NHL states that education has been a vital component of its mission since 1997, and that its “[e]ducational efforts are directed towards all relevant parties in our game, including most importantly our Players, but also relevant Club personnel, including Club medical staff, Club owners and executives, team General Managers and Coaches, and on-ice game Officials.”

355. In connection with this education mission, Deputy Commissioner Daly, said:

Our recent educational initiatives have focused on articulating and identifying many of the common visible signs and symptoms of a concussion so that Players will recognize when they, or a teammate, may be at risk. . . . ***It is our strong belief that the Players’ health and safety will be enhanced if all relevant personnel clearly understand the latest science regarding concussions. . . .***

356. The NHL also boasts that it has “assisted in the development of concussion educational programs for youth and junior age hockey players.” As a self-anointed leader in concussion education, the NHL has repeatedly portrayed itself as knowledgeable about current research in concussions and head trauma.

NHL's Knowledge of the Devastating Effects of Head Trauma Documented by Violent Incidents

357. Although all NHL players face imminent risk of head trauma, the NHL's infamous incidents of violent head impacts and the negative repercussions of such impacts on its players demonstrate the NHL's actual knowledge of decades-old, League-wide problems.

358. For example, in 1947, New York Rangers player William Ezinicki (known as "Wild Bill") of the Toronto Maple Leafs delivered a crushing check to Edgar Laprade of the New York Rangers that left Laprade sprawled unconscious on the ice with head trauma. Laprade was taken off the ice and his teammates thought he was dead. Laprade wound up in the hospital with a concussion and needed five stitches to close a cut to his head. In 1988, a Canadian media outlet ran a story regarding NHL player Edgar Laprade's hospitalization due to head trauma. The bodycheck enraged Frank Boucher, the New York Rangers' head coach and general manager, who urged the NHL: "How much longer is Ezinicki going to get away with elbowing, high sticking and deliberate injuries to opponents? Believe curb must be put on this player immediately." Then NHL president Clarence Campbell dismissed Boucher's concerns and appeal for further punishment and concluded that Ezinicki's contact with Laprade was legal.

359. Gordie Howe is one of the greatest NHL players in the history of the game, playing in the NHL from 1946 until 1980. Many of Howe's accolades may never be surpassed, even by fellow NHL Hall of Fame inductees. Early in his playing career, Howe sustained what would be the worst injury of his career, fracturing his skull after an

attempt to check Toronto Maple Leafs captain Ted Kennedy into the boards went awry during the 1950 playoffs. The fracture was so severe that Howe had to be immediately taken to a hospital for emergency surgery, drilling a hole into his head in order to relieve pressure on his brain. As a result of this head trauma, Howe developed a permanent facial tic and was nicknamed “Blinky” by his teammates. The next season, he returned to record 86 points, winning the scoring title by 20 points. Famed for his mixture of skill and toughness, his Hall of Fame biography even notes that “He threw his weight around and he never backed away from a fight.” A news outlet recently reported that Howe is battling dementia, and his family “guarantees” that concussions are the cause.

360. In 1968, NHL player Bill Masterton of the Minnesota North Stars suffered a severe internal brain injury during Minnesota’s game against the Oakland Seals. As Masterton carried the puck up the ice at full speed, opposing player Ron Harris collided into him. Masterton was knocked backwards hitting his helmetless head on the ice and fell into unconsciousness. Masterton’s brain was damaged so severely that he never regained consciousness and died two days after the incident.

361. In 1988, the Philadelphia Inquirer ran a story titled Hazardous Despite a Player’s Death, Helmets Were Long Ignored. The article recounted Masterton’s death in 1968 and criticized the NHL’s cavalier attitude toward player safety:

On Jan. 17, 1968, the NHL Players Association (NHLPA) issued a statement urging the league to adopt mandatory helmet legislation.

Chicago’s Stan Mikita, the league's MVP that year, and others began wearing helmets immediately after the death. Blackhawks superstar Bobby Hull admitted that vanity alone had kept him from using a helmet and said that he would consider using one.

The NHL, though, remained unmoved.

Clarence Campbell, the imperious commissioner who refused to lend league sanction to a benefit game for Masterton's family, went so far as to suggest that the death was just one of those things.

“It was a routine accident that could have happened in any hockey game . . . a normal hazard of the occupation,” Campbell said in defense of NHL policy. “(Helmets) are optional now, and we think that is the best method of dealing with it.”

* * *

Callous as it sounded, Campbell's attitude on helmets was merely reflective of a firmly held belief among league owners that his use was bad for the game.

362. In 1977, opposing player Dave Farrish of the New York Rangers hooked NHL player Rick Martin of the Buffalo Sabres around the neck from behind and kicked Martin's feet out from under him, causing Martin to hit his head on the ice. As a result of Farrish's conduct, Martin hit his head on the ice, was knocked unconscious, and went into convulsions. A 1978 news article about the incident comments that Martin's head trauma could have been mitigated had Martin been wearing a helmet, but quotes then NHL president Zeigler with a countervailing remark, ““The league's position has been and is right now that the wearing of a helmet is up to the individual.””

363. In 1996, a Canadian media outlet ran an article titled *Comfort, safety clash in NHL helmet debate*, noting a “rash of concussions this season.” That same year, a Canadian media outlet ran an article titled *Concussions just a fact of hockey life*.

364. In 1997, Dennis Vaske of the New York Islanders retired due to the effects of three concussions (although he did attempt a comeback in 1998-99 with the Boston

Bruins). The first concussion he suffered was in the 1995-96 NHL season when he was hit from behind by Eric Lacroix of the Los Angeles Kings. After that incident, Vaske recounted, “[r]iding in that ambulance, I thought my head was going to explode.”

365. In 1998, the Canadian press ran an article regarding NHL player Nick Kypreos. Kypreos played in the NHL from 1989 until 1997. Kypreos was in a total of 81 fights in NHL games. Kypreos was a Stanley Cup champion. The 1998 article discusses how, on one occasion, Kypreos suffered a concussion during a game. Instead of going to the hospital, Kypreos recounted that he attempted to participate in a subsequent practice. The article notes that there was “no protocol to follow” for NHL players who suffered concussions.

366. In recounting a fight during a 1997-98 pre-season game with Ryan VandenBussche which gave Kypreos a career-ending concussion, Kypreos is quoted as saying:

I lost my helmet and hit my head on the ice. . . . It’s like a dream you can’t remember. Within one hour everything started to come back into focus. I was being asked how I was feeling and if I could go back on the ice to finish the game.

367. Pat LaFontaine played in the NHL from 1983 until 1998, suffering from six documented concussions. In 1990, LaFontaine was knocked unconscious by a hit from an opposing player, James Patrick. In 1996, LaFontaine was again knocked unconscious by a hard hit to the head, this time from opposing player Francois Leroux. He attempted to recover and continue his career, but that attempt proved short lived, as he collided with a

teammate and sustained a career-ending concussion in 1998. LaFontaine recounted his head trauma:

A neurologist at the Mayo Clinic asked me, “Did it feel like someone came along and ripped all the motivation and personality out of you?” That was exactly what happened to me . . . I remember being scared because for the first month after my fifth concussion, I was very depressed at times. I wouldn't want to come out of my room. My wife was really scared because the littlest things would set me off.

368. During this era, countless other NHL players were suffering life threatening, career-ending concussions. For example, Dean Chynoweth played in the NHL from 1988 until 1998. Chynoweth reportedly suffered 13 concussions during his ten-year career, and was forced into retirement at the age of 28 due to concussion-related health concerns. Chynoweth was in a total of 38 fights in his NHL career.

369. Gino Odjick played in the NHL from 1990 until 2002. Odjick, a prominent enforcer, was known as the “Algonquin Assassin” and was in a total of 154 fights in NHL games. In the last two years of his career, Odjick sometimes became so forgetful that he could not find the hockey rink, even though “[i]t was just one turn to the right, one turn to the left to get to the rink, but I got lost just going there.” Odjick’s career came to a sudden end when he was hit in the back of the head by a puck. Odjick subsequently suffered from persistent dizziness and headaches and retired from the NHL. Odjick has since struggled with depression and other mental health issues, and has stated that he has spent 32 months in hospitals since his retirement due to his concussions.

370. Steve Moore and Mark Moore were brothers who were drafted into the NHL. Mark Moore never played an NHL game due to a minor league concussion he

suffered. Steve Moore had played 69 games in the NHL before his career was suddenly cut short in 2004 by opposing player Todd Bertuzzi, who struck Moore from behind and, in the attack, landed on top of him, resulting in a fractured neck and concussion, as depicted below:



371. In response to the attack, the NHL suspended Bertuzzi for the remainder of the season, a mere 20 games. Bertuzzi is currently an unrestricted free agent of the NHL and has played in over 1,000 games. Steve Moore's recurring concussion symptoms kept him from ever returning to the NHL.

372. Keith Primeau played in the NHL from 1990 until 2006. Primeau suffered four documented concussions in the NHL, where he was in a total of 81 fights. In the 2003-04 season, Primeau missed 21 NHL games due to concussions. In 2006, Primeau suffered a career-ending concussion at the hands of Alex Perezhogin, who hit Primeau in the head. Because of lingering concussion symptoms, Primeau retired from the NHL and has agreed to have his brain donated for use in Boston University's research effort into the causes of CTE in athletes.

373. In 2004, before this incident with Primeau, Perezhogin swung his stick at the face of an opposing player in a minor league hockey game. The opposing player was knocked unconscious and started convulsing on the ice. The player required twenty stitches in his face, lost teeth, and suffered a concussion. Perezhogin was criminally prosecuted by the local authorities and was sentenced to one year probation, though he was still called up to the NHL a year later.

374. In 2010, NHL player Marc Savard was carried off the ice after a collision with opposing player Matt Cooke:



375. Savard suffered a Grade 2 concussion from the hit; on-ice officials did not penalize Cooke for the hit. In response to Cooke's collision with Savard and in explaining why Cooke was not suspended, NHL Commissioner Gary Bettman stated: "I was very unhappy and upset with that hit'. . . . 'I was more upset there was nothing [in the NHL's rules] to do to punish it.'" Cooke's hit on Savard was characterized as "[a]very surgical hit to the head.'" After suffering head trauma from his interaction with Cooke, Savard was later hit by other opposing players. Savard has described the daily

struggles with the lasting effects of head injuries: “I’m still hoping that something happens that I’ll feel a lot better. But if I feel like this, I still couldn’t play.”

376. Paul Kariya played in the NHL from 1994 until 2010, was an NHL all-star, and achieved numerous accolades during his tenure, including the Lady Byng Trophy for the NHL’s most gentlemanly player. Kariya likewise had an illustrious amateur career, receiving the award for the top collegiate hockey player in 1993 and winning Olympic medals, including the gold medal in 2002 at the Salt Lake City Winter Olympics.

377. Kariya ended his NHL career due to the negative effects of head trauma he received. In 1996, an opposing player hit Kariya during an NHL game, concussing Kariya. The player was not penalized during the game but was subsequently suspended by the NHL. Kariya missed two games because of the concussion. In 2003, Kariya collided with an opposing player during an NHL game, where he laid on the ice motionless and had to be helped to the locker room. Kariya later returned to play in that same game. In one infamous instance, Kariya suffered a blindside hit to the face while celebrating a goal from opposing player Gary Suter, leaving Kariya unable to play for the rest of the season and the 1998 Olympics.



378. The NHL suspended Suter for a total of four games. Suter had also been accused of intentionally trying to injure Wayne Gretzky during a Canada Cup game where he slammed Gretzky into the boards, eliminating him from the Championship Round. The NHL inducted Suter into its “Hall of Fame” in 2011.

379. Kariya has suffered from headaches and short term memory loss as a result of his repeated head trauma. Since retirement, Kariya has been an outspoken critic of the NHL, stating in interviews:

The thing that I worry about is that you’ll get a guy who is playing with a concussion, and he gets hit, and he dies at centre ice

There’s too much of a lack of respect players have for one another If the league wants to stop that kind of conduct, it will have to punish players Ten-game suspensions . . . and more, have to be brought back to help wake up players.

There probably isn’t a player in the league who hasn’t had a concussion.

380. Eric and Brett Lindros were brothers who played in the NHL. Eric Lindros was the NHL MVP in 1995 and a 2002 Olympic gold medal winner. Eric Lindros also suffered eight concussions from 1998 through 2005, which eventually led to his retirement in 2007. Eric Lindros’ former team, the Philadelphia Flyers, downplayed the seriousness of his concussion condition and questioned whether he took too long to rehabilitate from the concussions.

381. Brett Lindros retired two years after playing in the NHL at the age of 20. Brett Lindros had sustained numerous concussions by the age of 20 and is quoted as stating:

What was scary for me was each time it took longer to resolve -- my last concussion before my 20th birthday took eight or nine weeks. . . . Sometimes I had memory loss on the bench.

382. After retirement, Eric Lindros was also vocal about his views on the concussion problems. In fact, Eric Lindros started a call to action in the ice hockey community through his association with the Ontario Brain Injury Association. A Canadian news source quoted Eric Lindros as stating as follows:

It's time to understand that we have a problem . . . We just don't want anyone to go through this again. . . . You cannot fix a brain, that's something I had to learn. It's not like a shoulder or a knee. . . . Hockey is an old sport. It's the old-school boys and an old way of thinking. We have to change that thinking a little bit. I bought into it, I wanted to be a tough guy. But it didn't do me any good. That's what came home to me obviously . . . my brother can't play hockey any more . . . Hopefully, other kids won't have to go through this frustration and a shortened dream of playing in the league. . . . The lack of response from the hockey community has frustrated me.

383. From the infamous hits, like the one to William "Wild Bill" Ezinicki that left him sprawling, unconscious, on the ice in 1947, and Todd Bertuzzi's vicious hit on Steve Moore in 2004 that ended a career, to all the concussive and subconcussive blows in between and beyond, the NHL's failure to inform players of the actual increased risks to long-term brain health remained constant.

384. At the end of 2012, in the NHL Board of Governors meeting, Commissioner Gary Bettman addressed the successive deaths, decades of concussion evidence, and dangers of fighting in the NHL, callously stating "I think it's unfortunate if people *use tragedies to jump to conclusions that probably at this stage aren't supported* I think people need to take a deep breath and *not overreact.*" He further implied that

economics were a key factor in the NHL's decision-making, confessing that, "fans tell us that they like the level of physicality in our game, and for some people it's an issue, but it's not as big an issue in terms of fans and the people in the game to the extent that other people suggest it is."

II. THE NHL HAS PROMOTED UNNECESSARY BRUTALITY AND VIOLENCE TO BECOME A DOMINANT ELEMENT OF THE GAME AS PLAYED IN THE LEAGUE

A. NHL Hockey Has Created and Fostered an Unnecessarily Violent Sport

385. From the time of its formation in 1917, the NHL quickly found its roots in brutality and violence among its players. For example, in 1923, notoriously violent Montreal Canadians player Sprague Cleghorn used his hockey stick to strike Ottawa Senators player Lionel Hitchman over the head. Cleghorn was criminally charged and found guilty of assault for his misconduct during the game.

386. In 1927, Boston Bruins player Billy Coutu instigated a bench-clearing brawl during the Stanley Cup finals. Coutu punched referee Jerry LaFlamme, and attacked referee Billy Bell. The NHL banned Coutu for life after the incident and fined him \$100, or over \$1,300 in 2014 dollar value. The NHL lifted the ban five years later.

387. On November 23, 1929, after an on-ice fight between Boston Bruin's Eddie Shore and Montreal Maroons' Dave Trottier, it is was reported that the Maroons spent the rest of the night trying to get even with Shore. The game had to be stopped in the third period in order to clean up all the blood from the ice. Shore ended up in the hospital with

a broken nose, lost four teeth, two black eyes, a gashed cheekbone, cuts over both eyes, and a concussion.

388. In 1955, Boston Bruins player Hal Laycoe hit Montreal Canadians player Maurice Richard over the head with his hockey stick, resulting in him bleeding profusely on the ice. In retaliation, Richard struck Laycoe on the shoulder with his stick, punched another Bruins player in the face, and punched a referee. The Boston police attempted to arrest Richard in the locker room but were supposedly kept away by Richard's teammates.

389. As the NHL continued to thrive in subsequent eras, so did routine and brutal violence. This continued growth can be best exemplified through the "enforcers" or "goons" of the 1970s, 1980s, and 1990s – players known for using intimidating force to protect marquee teammates and respond aggressively to physical or foul play. Oftentimes, these players were put and kept on NHL teams precisely for their physicality, not their pure hockey skills. And, even skill players who had never had a single fight in his high school, college, or minor league hockey careers, were forced to become "goons" or "enforcers" in order to keep his jobs.

390. One of the best examples of NHL "goons" was the Philadelphia Flyers' "Broad Street Bullies." Although the Flyers franchise did not exist until 1967, in just a few years NHL teams would see their home attendance double when they were playing the Flyers.

391. As the violence in the NHL continued, it appeared that outside observers became concerned about the vicious acts promoted and glorified by the NHL. For

example, in 1974, the Ontario Cabinet appointed Canadian lawyer William McMurtry, to issue a report on violence in minor hockey. As part of his research, McMurtry interviewed numerous NHL players. His official report was stark and concluded:

In talking to numerous players in the NHL and WHA, they all feel that most advertising and selling of the game is over-emphasizing the fighting and brawling at the expense of educating the crowds about the skill and finesse. This past season the advertising for the NBC Game of the Week, showed a film clip of a hockey fight. Can you conceive of any other sport promoting itself in this fashion?

392. In 1975, Bobby Hull, considered among the greatest NHL players of all time, staged a one-game strike in protest of the NHL's commoditization of violence, stating "[t]he game is no pleasure any more. It's an ordeal." Hull further stated:

It's time we took some action . . . because, if something isn't done soon, it will ruin the game for all of us. I've never seen so much stuff like this. I never thought it could be so bad It's becoming a disaster. . . . The idiot owners, the incompetent coaches, the inept players are dragging the game into the mud. They're destroying it with their senseless violence . . .

393. Moreover, law enforcement authorities began to criminally charge NHL players for their on-ice conduct, even while the NHL remained silent.

394. In 1988, Minnesota North Stars player Dino Ciccarelli was criminally prosecuted when during a game against the Toronto Maple Leafs after Ciccarelli attacked Maple Leafs player Luke Richardson with his stick. Ciccarelli was subsequently sentenced to one day in jail and fined \$1,000.

395. In 2000, Canadian authorities charged and convicted NHL player Marty McSorley of assault with a weapon, after he attacked opposing Vancouver Canucks forward Donald Brashear with his stick, with three seconds left in the game. Brashear

fell on his head, lost consciousness, and suffered a concussion. McSorley was sentenced to 18 months' probation. The NHL only suspended McSorley for a year.

396. Vancouver Canucks player Todd Bertuzzi pleaded guilty to assault charges following the March 8, 2004 incident, described above, in which he threw a right hook to the back of Colorado Avalanche player Steve Moore, after Moore supposedly refused to turn and face him. In September of 2014, after ten years of litigation during which Bertuzzi claimed that the Canucks coach told players during the second intermission of the game that Moore needed to "pay the price" for his hit against another Canucks player five days earlier, it was announced that Bertuzzi and Moore had reached a private settlement regarding the matter.

397. In 2011, Mario Lemieux, then owner of the Pittsburgh Penguins and one of the most respected hockey players of all time, spoke out against the growing violence in the NHL. Specifically, in response to the NHL's failure to discipline players following a fight-filled game between the Pittsburgh Penguins and New York Islanders, Lemieux posted the following in a letter on the Pittsburgh Penguins website:

Hockey is a tough, physical game, and it always should be. But what happened Friday night on Long Island wasn't hockey. It was a travesty. It was painful to watch the game I love turn into a sideshow like that. The NHL had a chance to send a clear and strong message that those kinds of actions are unacceptable and embarrassing to the sport. It failed. We, as a league, must do a better job of protecting the integrity of the game and the safety of our players. We must make it clear that those kinds of actions will not be tolerated and will be met with meaningful disciplinary action. If the events relating to Friday night reflect the state of the league, I need to re-think whether I want to be a part of it."

III. THE NHL CAPITALIZED ON VIOLENCE WHILE DOWNPLAYING RISKS

398. The NHL has expressly and regularly acknowledged that it has capitalized on extreme violence, including fighting.

399. In the 1974 McMurry Report, discussed above, then NHL President Clarence Campbell expressly acknowledged that the NHL's business is to increase support at the box office through whatever means necessary:

[I]t is the business of conducting the sport in a manner that will induce or be conducive to the support of it at the box office Show business, we are in the entertainment business and that can never be ignored. We must put on a spectacle that will attract people.

400. According to the McMurry Report, McMurry and Campbell had the following conversation regarding the type of pressure facing players to fight:

McMurtry: And right now it is extremely difficult for the player who is being provoked and being pushed to turn his back and appear to be running....

* * *

McMurtry: To have the sanction there of being embarrassed and ridiculed and to be discussed among your peers and your coach and many millions of fans, that is not one of the most difficult decisions in the world for a person, to turn his back and not fight?

Campbell: I didn't say it wasn't difficult. I said it is an alternative.

McMurtry: Then if you will agree it is a very difficult alternative, it is apparently what you call the free alternative.

Campbell: All right.

McMurtry: There is incredible pressure and duress on that player not to turn his back—is that not true?

Campbell: I don't think it is as great as you say, but it is real.

McMurtry: There is a real pressure and duress on that player to stand his ground and to fight?

Campbell: I think so, yes, yes.

401. In 1988, *The Miami Herald* quoted then NHL President John Ziegler ("Ziegler") as stating, "Violence will always be with us in hockey Anytime you get a situation of high anxiety and frustration in any walk of life, you get violence."

402. In a 1989 interview with *The Wall Street Journal*, Ziegler went on to explain why he would not put an end to fighting in the NHL:

If you did that, you wouldn't be commissioner for long The view of the 21 people who own the teams, and employ me, is that fighting is an acceptable outlet for the emotions that build up during play. Until they agree otherwise, it's here to stay *The main question about fighting is, "Does the customer accept it?" The answer, at present, seems to be yes.*

403. In a 2007 press conference, current NHL Commissioner Gary Bettman explained that "[W]e're not looking to have a debate on whether fighting is good or bad or should be part of the game." and continued "[f]ighting has always had a role in the game"

404. In 2011, Commissioner Bettman highlighted fan support as a reason why fighting and other extreme violence persists in NHL hockey: "Our fans tell us that they like the level of physicality in our game, and for some people it's an issue but it's not as big an issue in terms of fans and people in the game to the extent that other people suggest it is."

405. In 2013, Commissioner Bettman called fighting in NHL hockey a “thermostat” that helps cool things down when tensions run high.

406. The NHL regularly continues to feature violent hits and fights in commercials for the game, and other advertising, and features such violence prominently on its website. For example, in 2012, the NHL gave “feature billing on the league’s website” to a video of an infamous brawl in Madison Square Garden involving six experienced fighters fighting at once. According to an article from the Canadian Press the NHL gave “no fines or suspensions” to those involved.

407. For instance, the NHL promotes the HBO Documentary, *Broad Street Bullies*, on its Philadelphia Flyers affiliated website. The trailer for the film, viewable on www.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.

408. The NHL’s philosophy regarding brutality and violence is also exemplified by NHL Original Products—an agent and instrumentality of the NHL devoted to producing promotional films for the NHL. NHL Original Products has created numerous features that focus on the hardest-hits that take place on the ice, further advancing the NHL’s culture of violence as entertainment.

409. 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.

410. Individual teams also show in-game replays of violent hits, with the marquee “Hit of the Game” above the jumbo television screens.

411. NHL Films, an agent and instrumentality of the NHL devoted to producing promotional films, has created numerous highlight features that focus solely on the hardest hits that take place on the ice. These featured videos are marketed and sold to advance the NHL's culture of violence as entertainment.

412. In addition, NHL-sponsored video games include fighting and vicious body checking. Video game players can even add virtual enforcers to their team rosters. For example, the NHL licensed EA Sports to produce NHL 14, released on September 10, 2013 and which featured a completely re-vamped fighting system called the "Enforcer Engine." Those new features included: (a) enforcers coming to the aid of downed superstars and initiating fights; (b) "physics-based punch targeting" that make blows more realistic; and (c) real-time facial damage such that bruising and black eyes remain throughout the game.

413. NHL 14 producer Sean Ramjagsingh told the Canadian Press in an interview: "it was all about capturing the big hits, real fights and unbelievable speed and skill of hockey." Ramjagsingh said: "When I look back at NHL 13, I feel like we fell short a little bit on the aggression piece of it."

414. Most recently, the NHL's view on violence in hockey took center stage during the U.S. House of Representatives Committee on Energy and Commerce on concussions in sports. Specifically, during the hearing on March 13, 2014, NHL Deputy Commissioner Daly testified that "fighting remains a small part of our game," stating:

[O]ur fans—who continue to attend our games in new record numbers almost every year (at least 20 million in attendance in

every full season since the turn of the century)—want [the game] to be physical.

415. Within this culture, the NHL purposefully profits from the brutality and violence it promotes. This attitude has existed for decades and continues to the present day, with players lauded for their body checking, fighting skills, and “toughness” for playing through concussions. The NHL generates approximately \$3,300,000,000 in gross income per year and oversees America’s most popular hockey league, acting as a trade association for the benefit of the 30 independently-operated teams. The NHL’s average attendance per game in 2012-13 was 17,760, 97% of capacity. It has been reported that the League’s revenue will increase to \$4,000,000,000 for the 2014-2015 season.

Despite Its Knowledge the NHL Downplayed the Risks of Head Trauma

416. At all relevant times, the NHL’s unique historical vantage point at the apex of the sport of hockey, paired with its unmatched resources as the most well-funded organization devoted to the business of the game, has afforded it unparalleled access to data relating the effect of head impacts on its players and made it an institutional repository of accumulated knowledge about head injuries to players. As set forth above, the NHL has trumpeted its role in educating players on these issues and taking care of their safety.

417. From its inception, the NHL unilaterally assumed the role of protecting players and informing players of safety concerns. From the beginning, the NHL held itself out and acted as the guardian of the players’ best interests on health and safety issues.

418. However, the NHL has made, and continues to make, many statements inaccurately downplaying the risks of head trauma and fighting, and denying the need for reform to decrease those risks. Not only has the NHL concealed facts about concussions, but it has also downplayed the head and brain injury risks of the violent aspects of the game, including fist fighting.

419. For example, in response to proposed legislation in 1980 to curb violence in professional sports (The Sports Violence Act of 1980), then-NHL president Zeigler was quoted by a Canadian media outlet as stating at a subcommittee hearing that “under the present laws in the United States and in the provinces of Canada, people charged with refereeing the sports seem to have done a responsible job.” Ziegler was also quoted as stating that the NHL “didn’t need the federal Government to interfere.”

420. And in a 2007 press conference, Commissioner Bettman acknowledged that the topic of fighting is “something we need to look at” but callously underscored that “[f]ighting has always had a role in the game” and “we’re not looking to have a debate on whether fighting is good or bad or should be part of the game.” The comments were in response to a series of fighting incidents, including one on March 21, 2007, when Colton Orr of the New York Rangers fought with Todd Fedoruk of the Philadelphia Flyers and ended up knocking Fedoruk unconscious.

421. Indeed, as late as 2011, Commissioner Bettman said of fighting: “*Maybe it is [dangerous] and maybe it’s not. You don’t know that for a fact* and it’s something we continue to monitor.” Bettman said it is premature to draw a connection between fighting in hockey and CTE. The remarks were made in response to questions about the deaths of

three former NHL players in 2011 who were prominent fighters, and a *New York Times* article discussing the link between fighting and CTE. Bettman said he thought “in this whole area there is probably entirely too much speculation and rumors.” He then defended the inclusion of fighting in hockey for profit’s sake, saying “[o]ur fans tell us that they like the level of physicality in our game.” He further explained “people need to take a deep breath and not overreact” and not “over-conclude when the data isn’t there yet.”

IV. WHILE PROMOTING A CULTURE OF VIOLENCE BY WHICH IT PROFITS AND DOWNPLAYING RISKS, THE NHL VOLUNTARILY UNDERTOOK A DUTY OF CARE TO ITS PLAYERS

422. For decades, the NHL undertook and repeatedly confirmed a duty of care to its players, rooted in the NHL’s knowledge that the NHL had vastly superior managerial, medical, legal and other resources to gather, analyze and understand concussion and head injury data than the players did.

423. The NHL’s duty of care to the players was also rooted in the NHL’s vastly superior ability to gather, analyze and understand the correlation between, for example, the speed of playing surfaces, board and glass configurations, turnbuckle locations, playing rules and enforcement of rules, distances between lines, distances between goal lines and end boards, size and player position, on the one hand, and, on the other hand, the frequency, severity and duration of concussions and other head injuries.

424. With its pronouncements about player safety in general, and concussions and head injuries in particular, the NHL confirmed to the players the NHL was undertaking to protect them, to take all reasonable steps to maximize their safety.

425. As a result, the players, medically untrained and often not exposed to post high school education, reasonably relied on what the NHL said and did not say to players about concussions and other head injuries.

426. The NHL always knew that the players lacked the injury data that the NHL receives from every team after every game.

427. The NHL always knew that the players lacked specialized medical, statistical and other training—which the League did have—necessary to analyze and understand correlations between concussion and head injury causal factors and the frequency, severity and duration of resulting concussions and head injuries.

428. The NHL knew that players, by upbringing, by training in organized hockey from mites to major juniors, from high school to college, from minor professional leagues to the NHL, trusted and relied on League personnel, and League-approved medical personnel, trainers and coaches, to provide them with information important to their health and well-being.

429. The team-first, individual-last culture of hockey players, not only well-documented but extremely well-known, constantly discussed in the media, rendered Plaintiffs especially susceptible to trusting and uncritical reliance on the NHL's statements and silences about concussions, TBI and other head injuries.

430. In a number of ways the NHL communicated to the players that they were not at risk of long-term brain and neuro-cognitive injury from concussions and other head injuries. These include, for example:

- (a) promoting fighting, especially staged fights, of the sort engaged in by Derek Boogaard, Wade Belak, Rick Rypien, and Bob Probert—all now dead, all of whom had degenerative brain disease;
- (b) having players continue their careers even after inflicting career-ending concussive damage to competitors, such as the one Vancouver's Todd Bertuzzi did to Colorado's Steve Moore on March 8, 2004;
- (c) calibrating player discipline for head hits to the existence and severity of resulting injury, as the NHL's former Vice President for Player Safety, Brendan Shanahan admitted doing;
- (d) returning players to play in games in which they had been concussed, even knocked cold, as Gilles Gratton did in a game against the Boston Bruins in the 1976-1977;
- (e) returning players to play after concussive and other head injuries without any medical evaluation or subsequent waiting period;
- (f) by never warning the players that they might be developing CTE and should be checked for symptoms to ensure that they understood that continued playing might expose them to irreversible brain damage and neuro-cognitive impairment;
- (g) by never warning the players that studies of football players and boxers, and others, of the sort described herein, were applicable to NHL players;
- (h) by avoiding any proper study of concussions and other head injuries and developing rules and protocols for disclosing risks and minimizing their occurrence.

431. The NHL assumed the duty to make the game of professional hockey safer for the players and to keep the players informed of safety information, particularly about concussions and head injuries, that players needed to know. The NHL has admitted that

it has “always” assumed the duty to care for player safety. Deputy Commissioner 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.”

432. Likewise, David Poile, General Manager of the Nashville Predators has commented “It’s the game of hockey, it’s going to be physical. As the caretakers we’re going to do everything possible to make it as safe as possible, but there are still going to be injuries.”

433. The NHL has far greater ability than individual players, and uses that ability, to collect and analyze concussion and head injury data—cause, effect, type, severity, location, and other specific factors—treatment options and related information.

434. The NHL has long recognized its much greater ability to collect, analyze and disseminate the results of concussion and head injury data for purposes of player protection. As NHL Executive Vice President Colin Campbell said, discussing concussions: “It’s something that we’re concerned about, always have been concerned about.”

435. The NHL has long recognized its power to reduce concussions and head injuries through its power to fine and suspend players. “The league has told players they will be subject to fines and suspension for hits deemed dangerous during post-game video reviews.”

436. Receiving injury reports from NHL member teams and communicating with NHL member teams, seeing press reports and team press releases about injuries, the NHL knew or should have known the reported rate of concussions in the NHL for every year of that Plaintiffs and the Class played in the league.

437. However, with its personnel frequenting NHL team locker rooms, its numerous meetings with players both in and outside of the season, in disciplinary and informational settings, its ready access to team personnel, including team doctors and trainers, and its supervision and control of the NHL disciplinary program through the NHL Office of Player Safety, staffed by NHL personnel, including, most recently, Brendan Shanahan and Stephane Quintal, the NHL knew, or should have known, that, as stated by Dr. Karen Johnston, director of the Concussion Clinic at Toronto Rehabilitation Institute and who has “treated a number of NHL players with concussions: ‘No matter what the numbers [of] concussions are in the newspaper, they’re much larger than what’s reported....Concussions are vastly underreported.’”

438. For decades, the NHL’s players and their families reasonably relied on, and looked to, Defendant, which had publicly undertaken to promote player health and safety, for guidance on these issues and to intervene in matters of player safety, to recognize issues of player safety, and to be truthful on the issue of player safety.

439. 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. Such ongoing medical advice and knowledge placed the NHL in a position of superior knowledge to the players.

440. Combined with Defendant's heavy influence over the game, Defendant at all relevant times was in a position to influence and dictate how the game would be played and to define the risks to which players would be exposed.

441. As a result, Defendant assumed a duty of care to the Plaintiffs and the Class, to avoid conduct detrimental to the health and safety of NHL players, to provide truthful and complete information to NHL players regarding risks to their health, and to take all reasonable steps necessary to ensure the safety of players.

442. Despite their voluntarily assumed duty of care and power to govern player conduct on and off the ice, the NHL for decades ignored, turned a blind eye to, 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 having "their bell rung" so that they are in a conscious but disoriented state.

V. INSTEAD OF PROTECTING ITS PLAYERS, THE NHL SAT ON THE BENCH FOR ANOTHER 14 YEARS WHILE THE EVIDENCE KEPT MOUNTING

A. The Concussion Program Report Produced Nothing Until 2011

443. During the seven years of the Concussion Program report's 1997-2004 data gathering, and the seven years after that before the report was finally published in May of 2011, the NHL never disclaimed, directly or indirectly, the duty of care it had historically and continuously adopted toward its players.

444. The NHL's seven year silence from 1997-2004 about concussions and the Concussion Program's data, and the NHL's seven year delay, until 2011, in publishing the Program's results—which boiled down to "we need more information"—further

justified the Plaintiffs' reliance on the NHL. If the League had any information that players were at risk of developing brain deficits and neuro-cognitive impairments, the existence of the study confirmed for players that the League would tell them if any information was important.

445. Plaintiffs and the Class relied on the NHL for information about concussions, other head injuries, and the short and long term risks of both, including information about when returning to play was safe and when it was not.

446. Delaying for some seven years the publication of a report from the Concussion Program that did not mention TBI and was designed to ignore accepted and valid neuroscience regarding the connection between repetitive traumatic concussive events, sub-concussive events and/or brain injuries, and degenerative brain disease such as CTE, only confirmed and reinforced a climate of silence by which the NHL implied, and Plaintiffs reasonably relied on the implication, that truthful and accepted neuroscience on the subject was inconclusive and subject to doubt.

447. The NHL's supreme status in the hockey world of hockey imbued its silence on the issue with a unique authoritativeness and as a highly reliable source of information to players. Plaintiffs and the Class therefore reasonably relied on the NHL's silence on this vital health issue as an indication that concussions were either not dangerous or were less dangerous than they in fact are.

448. 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.

449. Putting aside the fact that NHL players were not informed of any of the findings from the 2011, the report still did nothing to educate players on the devastating impact of repeated head trauma, and, notwithstanding bodies of medical literature, that more study was still needed.

Between 1997 and 2011, the Concussions Just Kept Coming.

450. Between the time the NHL began its Concussion Program in 1997 and published its report in 2011, the NHL experienced increasingly devastating and highly publicized, career-ending concussions in its players.

451. Both before and after the beginning of the NHL's Concussion Program in 1997, the NHL knew that fighting and concussions in the NHL were serious risks that could result in life altering consequences. However, at least through 2011 and beyond, the NHL continued to withhold and suppress important and relevant information from its players, and the health and careers of the NHL's best players continued to be destroyed.

452. Furthermore, while members of the NHL Concussion Study attended four conferences, the International Symposia on Concussions in Sport between 2001 and 2012, where the dangers of head and brain trauma in hockey and other sports were discussed and experts made recommendations to help reduce the risk of head and brain trauma, the NHL did not disclose to its players what it learned at the conferences and did not follow the medical expert advice.

453. After the Concussion Program began in 1997, the NHL continued to engage 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.

454. The 2011 report generated by the Concussion Program, 14 years after its inception and seven years after the study was complete, simply concluded that the Concussion Study'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."

455. While the 2011 report included certain basic safety information that should have been disclosed much earlier to players and others, there was much left out of the report. The Concussion Program 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.

456. Notably, the 2011 report did not take a position on the long-term effects of concussions, and did not provide any specific recommendations as to return to play guidelines. Nor did the report include any analysis of the causes of concussions, such as fighting and equipment.

VI. NHL PLAYERS STILL FACE A RISK OF HEAD TRAUMA AND DEVASTATING LONG-TERM EFFECTS

A. The NHL Has Insufficiently and Ineffectively Protected Its Players

457. 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. Previously, trainers performed these examinations on the bench or on the ice in the arena. The NHL changed its concussion protocols to require an examination off the ice and bench, in a location referred to as a “quiet room,” by a doctor – but this examining doctor need not be a neurosurgeon. Under the guidance, an affected player could return to the ice if he was symptom free, returned to his brain baseline and passed the SCAT2 test. This was so, despite the fact that the general medical standard for return from concussion had been set as early as 2001, and by the Prague convention in 2004, as “when in doubt, sit them out” – a mandate to prevent a concussed player from returning to a game.

458. 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.

459. 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.

460. To date, the NHL does not require a neurosurgeon to be available at its games.

461. Many experts agree that the number of NHL concussions is still significantly under-reported.

The NHL Still Promotes Fighting and Violence

462. The NHL's continuing callous indifference to the risks of concussions is exemplified in its reaction to the Max Pacioretty incident.

463. In March 2011, Max Pacioretty was hospitalized with a severe concussion and fractured vertebra after the Montreal forward was slammed into a stanchion holding the glass at the Bell Centre in Montreal on a vicious hit by Zdeno Chara of the Boston Bruins, the League's biggest player.

464. Pacioretty's team, the Montreal Canadiens, criticized the NHL's decision not to suspend Chara, calling the decision "a hard blow" and expressing "frustration, disappointment and shock" over the issue. The NHL team stressed the "urgency" of addressing head injuries and player safety in hockey:

Our organization believes that the players' safety in hockey has become a major concern, and that this situation has reached a point of urgency. At risk are some of the greatest professional athletes in the world, our fan base and the health of our sport at all levels. Players' safety in hockey must become the ultimate priority and the situation must be addressed immediately.

465. The NHL was defiant and dismissive of the deep concern shared by the Canadian government, NHL's sponsors, NHL players, and an NHL franchise. Commissioner Bettman, testifying at a Congressional hearing later that week and discussing it afterward, boasted that the NHL was "extraordinarily comfortable" with its decision not to suspend the offending player, taking the incongruous position that further

discipline would not deter future vicious hits: “It was a horrific injury, we’re sorry that it happened in our fast-paced physical game, but I don’t think whether or not supplemental discipline was imposed would change what happened.”

466. In response to calls in congress to legislate stricter protections for players after the horrific injury to Max Pacioretty in 2011, Commissioner Bettman flatly said there is no need to “over-legislate” head hits. While Bettman acknowledged that concussions were on the rise, he inaccurately tried to explain this away as the result of “accident events” and “not from head hits.” In fact, a recent study showed that only 4.9% of concussions during this time period were the result of unintentional contact.

467. The concussive and subconcussive blows suffered by Plaintiffs caused twisting, shearing, and stretching of neuronal cells, and in turn caused the release of Tau protein, which accumulates 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

468. Plaintiffs bring their actions on their own behalf and on behalf of the following **Class**:

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, who suffered concussion or repeated, subconcussive blows while playing on an NHL active roster.

469. Plaintiffs bring their actions on behalf of the following **Medical**

Monitoring Subclass:

All members of the Class who are not currently experiencing symptoms associated with Alzheimer's Disease, Parkinson's Disease, ALS, post-concussion syndrome, neurological deficit, cognitive impairment, dementia, or CTE.

470. Plaintiffs bring their actions on their own behalf and on behalf of the following **Impairment Subclass:**

All members of the Class who experienced or are experiencing symptoms associated with Alzheimer's Disease, Parkinson's Disease, ALS, post-concussion syndrome, neurological deficit, cognitive impairment, dementia, or CTE.

471. This action is properly maintainable as a class action under Rule 23 of the Federal Rules of Civil Procedure.

472. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, there are thousands of members of the proposed Class throughout the United States, Canada, and elsewhere around the world.

473. There are questions of law and fact which are common to the Class. The common questions, which are each separate issues that should be certified for classwide resolution pursuant to Fed. R. Civ. P. 23(c)(4), include, *inter alia*, the following:

- (a) whether the NHL owed a duty of care to the Class;
- (b) whether the NHL's duty of care to the class included the duty to warn and protect the Class of the risks and consequences of head trauma;

- (c) whether the NHL breached its duty to warn and protect the Class of the risks and consequences of head trauma;
- (d) whether concussion and subconcussive blows commonly experienced in NHL hockey cause the signature injuries claimed herein;
- (e) whether the release of Tau protein into the brain after head trauma constitutes a present injury;
- (f) whether the NHL should be required to pay for medical monitoring of the Class; and
- (g) whether the NFL should be required to pay for the increased health care costs, and loss of earnings, and lost enjoyment of life costs of the Class.

474. Plaintiffs' claims are typical of the claims of the other members of the Class and Plaintiffs do not have any interests adverse to the Class. Each of the Plaintiffs suffered one or more concussions while playing in the NHL, did not receive proper treatment, and currently suffers from the negative effects of those concussions at a cellular level.

475. Plaintiffs are adequate representatives of the Class, have retained competent counsel experienced in litigation of this nature and will fairly and adequately protect the interests of the Class.

476. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

477. Plaintiffs anticipate that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

478. The NHL acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

479. In addition, certification of specific issues such as Defendant's liability is appropriate.

BASES FOR RELIEF

COUNT I

Action for Declaratory Relief – Liability

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

481. There is an active case and controversy among Plaintiffs and the Class on the one hand, and the NHL on the other.

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

- a. That the NHL knew or reasonably should have known, at all material times, that the repeated, traumatic and unnecessary head impacts that the Plaintiffs and members of the Class endured while playing hockey in the NHL were likely to expose them to substantially-increased risks of neurodegenerative disorders and diseases, including but not limited to CTE, Alzheimer's disease and similar cognitive-impairing conditions;
- b. That based on the NHL's conduct, inter alia, voluntary undertaking to study the issue of MTBI, the NHL had a duty to advise Plaintiffs and members of the Class of the heightened risk;

- c. That the NHL willfully and intentionally concealed material information from, and mislead Plaintiffs concerning that risk; and
- d. That the NHL recklessly endangered Plaintiffs and members of the Class.

483. Plaintiffs are currently suffering from debilitating negative effects of head trauma suffered while playing in the NHL and have experienced an increased risk of developing serious latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer's disease or similar cognitive-impairing conditions. As such, a declaratory judgment is warranted to prevent future harm to Plaintiffs and the Class.

COUNT II

Medical Monitoring

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

485. During their respective NHL playing careers, Plaintiffs and members of the Class experienced head injuries, concussions, subconcussive blows, and/or a combination thereof with greater frequency and severity than the general population of men of a similar age.

486. These repeated traumatic head impact injuries, including sub-concussive blows and concussions, experienced by Plaintiffs and members of the Class during their respective NHL careers are known and proven to be hazardous because they caused present, cellular injuries that, in turn, increase the latent risk of neurodegenerative disorders and diseases, including but not limited to, dementia, Alzheimer's disease, CTE

and similar cognitive-impairing conditions. Each concussive blow results in the release of Tau protein, which constitutes a cellular injury.

487. Plaintiffs and 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.

488. Defendant was fully aware of, yet concealed and misrepresented the dangers of exposing players, including Plaintiffs and members of the Class, to repeated traumatic head impacts and increased risks of latent but long-term, debilitating chronic illness, including developing neurodegenerative disorders and diseases. To that end, 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.

489. Defendant's fraudulent concealment, omissions of material fact, and negligent misrepresentations as to the risks of chronic sub-concussive blows and concussions have caused Plaintiffs and the Class's present injuries, which have increased the risks for members of the Class to brain injury and its sequelae, including cognitive, mental, and neurological disorders after retirement.

490. Absent Defendant's negligence, fraud, breach of duties, and/or misrepresentations, the head impacts to which Plaintiffs and members of the Class were exposed, and the resulting risk to Plaintiffs and members of the Class—that harmful substances, including the Tau protein, would be released into their brains—would have been materially lower or zero.

491. 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.

492. Monitoring procedures exist that comport with contemporary scientific principles and make possible early detection of the cognitive impairments and conditions that Plaintiffs and members of the Class are at increased risks of developing. Such monitoring, which includes, but is not limited to, baseline exams, diagnostic exams, and behavioral and pharmaceutical interventions, will prevent or mitigate the injuries, and enable treatment of the adverse consequences of the latent neurodegenerative disorders and diseases associated with the repeated traumatic head impacts described herein.

493. Such 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.

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

495. Defendant was fully aware of the danger of exposing their players to injury and further risk of injury by encouraging 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 adequate information.

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

497. As a direct result of the NHL's actions, Plaintiffs and the Class are in need of the costly medical monitoring procedures described herein. Specifically, the monitoring procedures are reasonably necessary according to contemporary scientific principles, to enable Plaintiffs and members of the Class to obtain early detection and diagnosis of the cognitive impairments and conditions that they are at increased risks of developing as a result of Defendant's tortious conduct described herein.

498. Plaintiffs and members of the Class seek the creation and funding of a Court-supervised, NHL-funded medical monitoring regime, which will provide for facilitating prevention, early diagnosis, adequate treatment, management and rehabilitation in the event a neurodegenerative disorder or disease is diagnosed.

499. Plaintiffs and the members of the Class have no adequate remedy at law in that monetary damages alone cannot compensate them for their injuries and the risks 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, disability and harm.

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

COUNT III

Negligence

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

502. The NHL has historically and voluntarily assumed an independent tort duty of reasonable care regarding player safety and head trauma. The NHL has admitted that it has “always” assumed the duty to manage player safety, particularly with regard to head injuries and concussions. It was thus obligated to discharge this duty non-negligently.

503. Defendant also had a duty of reasonable care 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.

504. As part of this duty of reasonable care, the NHL was required to keep NHL players informed of neurological risks of head injuries suffered while playing hockey in the NHL, and not to omit material information about the risks of negative long term effects or permanent neurological damage that can occur from head injuries incurred while playing hockey.

505. The NHL breached that duty of reasonable care to its players by:

- (a) creating, fostering, and promoting a culture of extreme violence, including head hits and violence from fighting, where head trauma to Plaintiffs was a natural and common corollary;

- (b) by failing to inform Plaintiffs about the scientific research on the negative health effects of head trauma and about anecdotal evidence from the negative health effects of head trauma from its own NHL players;
- (c) failing to warn players of the potential negative effects of head injuries suffered while playing in the NHL, including but not limited to, that they might be developing CTE and should be checked for symptoms to ensure that they understood that continued playing might expose them to irreversible brain damage and neuro-cognitive impairment;
- (d) failing to adequately address the continuing health risks associated with concussive events, sub-concussive events and/or brain injuries that the NHL players sustained;
- (e) failing to make any statements of substance about concussions, MTBI and/or other head injuries;
- (f) turning a blind eye to the risks to players of repetitive sub-concussive and concussive head impacts, and
- (g) by avoiding any proper study of concussions and other head injuries.

506. As a result of the NHL's breach of its duty of reasonable care, Plaintiffs have suffered/are suffering injury, including but not limited to long-term neurological damage, and the serious symptoms and disorders resulting from that damage.

507. The NHL's failure to exercise reasonable care in the execution of its duties proximately caused the injuries suffered by Plaintiffs,

508. As a direct and proximate result of the NHL's negligence, the NHL is liable to Plaintiffs for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

COUNT IV

Negligent Misrepresentation by Omission

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

510. A special relationship exists between the NHL and the Plaintiffs sufficient to impose a duty on the NHL to disclose accurate information to the Plaintiffs. This duty arose because: (1) the NHL had superior special knowledge of material medical information that players did not have access to, and was not readily available to players; and (2) the NHL communicated with players and the public, completely omitting material information about the true risks of head trauma, or 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.

511. Despite its knowledge of such material facts, and generally speaking about concussions and head injuries, the NHL negligently omitted to disclose material information to its players regarding the link between head injuries suffered while playing in the NHL and the resulting negative effects and cognition-impairing conditions.

512. The NHL actively omitted true information at a time when they knew, or should have known, because of their superior position of knowledge, that Plaintiffs faced serious health problems if they returned to a game too soon after sustaining a concussion.

513. Plaintiffs justifiably relied on the NHL's negligent misrepresentations by omission to their detriment, relying on what the NHL said and failed to say to players about concussions and other head injuries.

514. Plaintiffs' reliance on the NHL's negligent misrepresentations by omission was reasonable, given the NHL's superior and unique vantage point on these issues.

515. Had Plaintiffs been aware of such information, they would have ensured that they received appropriate medical treatment and ensured that they were completely healthy and their brains had completely healed before returning to play.

516. The NHL failed to act with reasonable care by negligently omitting to disclose material information to its players and former players regarding the link between concussions and brain injury and resulting negative effects and cognition-impairing conditions.

517. As a direct and proximate result of the NHL's negligent misrepresentation by omission, Plaintiffs have suffered and continue to suffer serious injuries, including, but not limited to, long-term neurological damage, and the serious symptoms and disorders resulting from that damage.

518. As a result of the NHL's misconduct, the NHL is liable to Plaintiffs for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

COUNT V

Fraudulent Concealment

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

520. The NHL knowingly and fraudulently concealed from Plaintiffs material information regarding the risks of head injuries suffered while playing in the NHL, including but not limited to the link between concussions and brain injury and resulting negative effects and cognition-impairing conditions, and the risks that they might be

developing CTE and should be checked for symptoms to ensure that they understood that continued playing might expose them to irreversible brain damage and neuro-cognitive impairment.

521. The NHL knew, intended to induce and expected that Plaintiffs would reasonably rely on their silence and fraudulent concealment of the risks and long term effects of head injuries suffered while playing in the NHL.

522. Plaintiffs reasonably relied on that silence during and after their careers, to their detriment.

523. The NHL's actions and/or omissions were committed willfully, maliciously, with intent to injure and damage the Plaintiffs, and with reckless disregard of the players' health and safety, in order to keep players in the dark about the dangers of concussions, MTBI and other head injuries.

524. Had Plaintiffs been aware of such information they would have ensured that they received appropriate medical treatment and ensured that they were completely healthy and their brains had completely healed before returning to play.

525. As a direct and proximate result of the NHL's fraudulent concealment, Plaintiffs have suffered and continue to suffer serious injuries, including but not limited to long-term neurological damage, and the serious symptoms and disorders resulting from that damage.

526. As a result of the NHL's misconduct as alleged herein, the NHL is liable to Plaintiffs for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

COUNT VI

Fraud by Omission / Failure to Warn

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

528. The NHL had a duty to promptly disclose and 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 special knowledge of material medical information that players did not have access to, and was not readily available to players; and (2) the NHL communicated with players and the public, completely omitting material information about the true risks of head trauma, or 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.

529. The NHL breached that duty by fraudulently failing to disclose material information to Plaintiffs regarding the risks of head injuries suffered while playing in the NHL, including, but not limited to, the link between concussions and brain injury and resulting negative effects and cognition-impairing conditions, and the risks that they might be developing CTE and should be checked for symptoms to ensure that they understood that continued playing might expose them to irreversible brain damage and neuro-cognitive impairment.

530. Specifically, the NHL concealed material facts and information with the intent to evade the truth, which caused Plaintiffs to become exposed to the harm referenced above.

531. Plaintiffs justifiably relied on the NHL's fraudulent omissions to their detriment.

532. Given the NHL's superior and special knowledge and resources, Plaintiffs reasonably relied upon the NHL for guidance on head injuries and concussions, and reasonably relied upon the NHL's fraudulent omissions of material fact, which concealed and minimized the perceived risks of repetitive brain impacts that players suffered while playing in the NHL.

533. Had Plaintiffs been aware of such information they would have ensured that they received appropriate medical treatment and ensured that they were completely healthy and their brains had completely healed before returning to play.

534. As a direct and proximate result of the NHL's fraud by omission and failure to warn, Plaintiffs have suffered and continue to suffer serious injuries, including but not limited to long-term neurological damage, and the serious symptoms and disorders resulting from that damage.

535. As a result of the NHL's misconduct, the NHL is liable to Plaintiffs for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

PRAYER FOR RELIEF

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

1. Certifying the Class and Subclasses as defined herein;
2. With respect to Count I, granting the declaratory relief requested pursuant to 28 U.S.C. § 2201 against Defendant;

3. With respect to Count II, granting medical monitoring to all members of the Medical Monitoring Subclass;
4. Counts III through VI, 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: February 9, 2015

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