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November 19, 2014

VIA ECF

The Honorable William H. Alsup, District Judge
U.S. District Court for the Northern District of California
San Francisco Courthouse, Courtroom 8, 19th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *Dent v. Nat'l Football League*, Case No. C-14-2324-WHA/JCS

Dear Judge Alsup:

The National Football League Players Association ("NFLPA"), a non-party to this lawsuit, submits this letter in response to the Court's request that the NFLPA address two specific questions that may aid the Court in its analysis of the issues raised in the pending motion and opposition under Rule 12(b). The NFLPA does not believe that the specific claims asserted in *Dent* were or could have been grievable under any applicable Collective Bargaining Agreement ("CBA"). The Court's specific questions are addressed in turn.

1. The Court's first question to the NFLPA is as follows: "If a retiree goes to the union and says, 'I want to grieve the type of injuries that are alleged in the Complaint,' would the union be obligated to pursue that grievance; or is it true, alternatively, that as a retiree, the retiree is not part of the collective bargaining unit and has no rights to grieve anything? That's one question." Hr'g Tr. 54:14-20. The answer to this question is that a retired professional football player is not—solely by virtue of his status as a retired player—precluded from grieving claims under the CBA, *so long as* the retired player has a cognizable claim under the CBA (which is addressed below). The current CBA defines the bargaining unit in a manner that excludes retired football players, and this is equally true of prior CBAs. But the current CBA and former CBAs have included various provisions negotiated on behalf of current and future players that continue to benefit those players after they retire

from the NFL. Examples of these provisions include various player benefits that are payable to a player only after a player is no longer under contract to an NFL Club or has formally retired. *See, e.g.*, 2011 CBA Article 30 (Termination Pay), Article 53 (Retirement Plan), Article 60 (Severance Pay), Article 61 (NFL Disability Plan), Article 62 (Long Term Care Insurance Plan), and Article 64 (Former Player Life Improvement Plan). The CBAs have stated over time that "[a] player need not be under contract to a Club at the time a grievance relating to him arises or at the time such grievance is initiated or processed." *E.g.*, 2011 CBA, Art. 43, § 2; *see also* 1993 CBA, Art. IX, § 2 (same). Thus, while not continuing to remain a member of the bargaining unit represented by the NFLPA, a player who has retired from the NFL may initiate and prosecute a grievance under the CBA if the retired player has a cognizable claim to grieve (which is discussed below) and the grievance satisfies the required limitations period, which generally has been short but subject to a tolling principle set out in the CBA. 2011 CBA, Art. 43, § 2 (50 days from date of discovery).

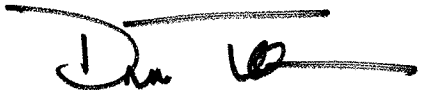
2. The Court posed the second question to the NFLPA as follows: "And the second general question is: If it were to be grieved, would the collective bargaining agreement cover the types of claims that are being asserted?" Hr'g Tr. 54: 21-23. The NFLPA does not believe that any provisions of the current CBA or any provision of any former CBA would cover the specific claims asserted by the putative *Dent* class, and therefore the NFLPA does not believe that the specific claims asserted by the *Dent* class were or could have been grieveable. As the plaintiffs correctly point out, "No CBA provision addresses the NFL's responsibilities *vis-à-vis* the illicit provision of the Medications. Not one of the hundreds of NFL-selected pages of CBAs going back to 1968 mention[s] the Medications or protocols for their provision." Pl.'s Opp. at 17.

We note that Article 39, Section 1(c) of the 2011 CBA provides that "all Club physicians and medical personnel shall comply with all federal, state, and local requirements, including all ethical rules and standards established by any applicable government and/or other authority that regulates or governs the medical profession in the Club's city." 2011

CBA, Art. 39, § 1(c). This CBA provision was first agreed to shortly before the 2011-2012 NFL season and thus would not apply to players who retired before that season. The meaning of this provision under the 2011 CBA (the only CBA in which this provision appears) has not yet been adjudicated. The NFLPA thus reserves its right to contend that the provision imposes enforceable duties on Club physicians and medical personnel. Given that the *Dent* claims are filed against the NFL and not Club physicians or medical personnel, the NFLPA believes the specific claims asserted in *Dent* by the post-2011 retirees are not grievable under the 2011 CBA.

We thank the Court for the opportunity to state the NFLPA's position on these matters.

Respectfully submitted,



Andrew S. Tulumello

cc: All parties, via ECF
Andrew G. Slutkin, via overnight mail