

DC-15-08119

NO. \_\_\_\_\_

Gay Smith

**THE FAN EXPO, LLC,**

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**IN THE DISTRICT COURT**

*Plaintiff,*

**V.**

\_\_\_\_\_ **JUDICIAL DISTRICT**

**NATIONAL FOOTBALL LEAGUE,**

*Defendant.*

**OF DALLAS COUNTY, TEXAS**

**PLAINTIFF’S ORIGINAL PETITION  
AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES The Fan Expo, LLC, Plaintiff herein (“The Fan Expo”), and files this *Plaintiff’s Original Petition and Request for Disclosure* against the National Football League, Defendant herein (“NFL”), and in support thereof, shows the court the following:

**I. Discovery Control Plan**

1. Pursuant to Rule 190.3 of the Texas Rules of Civil Procedure, Plaintiff requests a Level III discovery control plan.

**II. Parties & Service**

2. Plaintiff The Fan Expo is a Texas limited liability company.

3. Defendant NFL is an unincorporated 501(c)(6) association with two members in \_\_\_\_\_ the State of Texas and a principal place of business at 345 Park Avenue, New York, New York 10154. Defendant NFL may be served with process on its registered agent, CT Corporation System, 350 N. St. Paul Street, Ste. 2900, Dallas, TX 75201.

### **III. Jurisdiction & Venue**

4. The subject matter in controversy is within the jurisdictional limits of this Court. Plaintiff seeks monetary relief over \$1,000,000.

5. This Court has subject matter jurisdiction because Plaintiff seeks an amount of damages within the jurisdictional limits of this Court.

6. Venue in Dallas County is proper pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) because a substantial portion of the acts or omissions giving rise to this lawsuit occurred in Dallas County, Texas.

7. All parties to this matter are subject to the personal jurisdiction of the court by either specific or general personal jurisdiction, and their joinder in this case does not offend traditional notions of fair play and substantial justice. This case results from their activities in the State of Texas or targeting the State of Texas.

### **IV. Request for Disclosure**

8. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff requests Defendant to disclose, within fifty (50) days of service of this request, the information and material described in Rule 194.2 of the Texas Rules of Civil Procedure. Plaintiff specifically requests the responding party to produce responsive documents at the undersigned law offices within fifty (50) days of service of this request.

### **V. Facts**

#### **A. Summary.**

9. This case is about the NFL's blatant and premeditated sabotage of an event designed to bring together the very people who are the backbone of the NFL—the players and the fans. Under an assumed name, The Fan Expo created The National Fantasy Football

Convention (“NFFC”), an organization formed to facilitate fan and player interaction at an unprecedented scale prior to the start of the 2015 NFL season. The three-day event was slated to be held at a convention facility in Las Vegas that is a part of the Venetian Resort. However, just weeks before the inaugural event, the NFL placed a series of intimidating phone calls to players, their families, their agents, and the NFL Players Association (“NFLPA”), threatening that the players would be fined and potentially suspended from the NFL if they participated in the event. Through these actions, the NFL tortiously interfered with the NFFC’s contracts with NFL players and NFL media personnel, as well as with the fans and participants who had planned and paid for tickets, travel, and hotel accommodations in order to attend the event. As a direct result of the malicious and groundless threats made by the NFL, numerous players and media personnel withdrew their participation from the convention, and it became impossible for the NFFC to execute the July 2015 event. The NFL’s actions reek of hypocrisy, given the NFL’s position on other, similar events, their approval of partnerships between NFL franchises and casinos, and their own promotional usage of NFL players and their likenesses for the benefit of their own events. Accordingly, by these actions, the NFFC seeks to recover its substantial damages suffered as a result of the NFL’s deliberate interference.

**B. Introduction.**

10. For decades, NFL fans have watched football in person and on television. However, the rise of fantasy football—where fans can draft their own team and compete against their family and friends—has increased NFL ticket sales and game viewing to a far greater level. Until the NFFC was formed, there was not an organized, national event for fantasy football fans to connect directly with the NFL players.

11. In early 2015, Tony Romo partnered with a Dallas entrepreneur and a team of

fantasy football experts to form the NFFC. In March 2015, the NFFC announced that its inaugural event would take place on July 10-12, 2015. The family-friendly event was to be held at a convention facility in Las Vegas that is a part of the Venetian Resort. Upon information and belief, the facility is owned by the Las Vegas Sands Corporation. The convention facility is not licensed for gambling and is not part of a casino.

12. The NFFC experience was designed to give NFL fans the chance to meet current and former NFL stars, as well as media personalities and football experts, live and in person through keynotes, panel discussions, question-and-answer sessions, autograph opportunities, photo ops, games, exhibits, and drafts.

13. The expansive list of players committed to appear at the event included superstars such as Tony Romo, Odell Beckham, Jr., Rob Gronkowski, Dez Bryant, Julio Jones, Le'Veon Bell, Jeremy Maclin, Jamaal Charles, DeMarco Murray, Alshon Jeffery, Eddie Lacy, Randall Cobb, and Antonio Brown. In total, nearly one hundred players were scheduled to appear throughout the event.

**C. At first, the NFL supported the NFFC.**

14. When Tony Romo first announced the event, fans and media alike were supportive and excited about the NFFC. NFL players enthusiastically accepted offers to appear at this groundbreaking event.

15. Moreover, the NFL was expressly supportive. As the event gained momentum, the NFFC needed a fantasy football expert to serve as an event co-host. The NFFC contacted Michael Fabiano ("Fabiano"), the Senior Fantasy Analyst for NFL.com and the NFL Network. Fabiano indicated that he would have to seek approval from the NFL to serve as the host of an event. Fabiano sought and obtained express approval directly from the NFL, and subsequently

executed a contract to appear as the host of the NFFC event.

16. After approving Fabiano's involvement, the NFL itself became involved in the NFFC event when Dylan Milner ("Milner"), Senior Producer for *NFL Fantasy Live* on the NFL Network and NFL Digital media properties, contacted the NFFC and specifically requested that the NFL participate in the event. Milner indicated that producers and writers would like to attend the event. Additionally, through Milner, the NFL requested that *NFL Fantasy Live* personnel speak on panels at the NFFC.

17. Meanwhile, excitement continued to build regarding the NFFC. The NFFC went to great lengths and expense to market the event, including partnering with NFL players to conduct a multi-faceted social media marketing campaign that touted the event to millions of fantasy football fans. The NFFC participated in television interviews, appeared on radio programs, and conducted massive email and social media campaigns—all for the purpose of making the July 10 event a success. In total, the NFFC spent hundreds of thousands of dollars to promote and prepare for the execution of the event.

18. As the marketing campaign continued, attendees purchased tickets to the event and booked travel to attend. National companies also showed support for the event by purchasing sponsorship packages for the NFFC.

**D. Shockingly, the NFL began a campaign of threats and intimidation.**

19. In early June, the NFL had an abrupt change of heart due, likely to the success experienced by the NFFC. On June 3, 2015, less than five weeks before the event was to take place, the NFL began to threaten and harass players who had committed to appear at the event. Specifically, the NFL threatened player fines and suspensions if the players abided by the terms of their appearance contracts with the NFFC. By waiting until the last minute to take this

position, the NFL ensured they could inflict the maximum negative impact on the NFFC.

20. On or about Wednesday, June 3, 2015, Brook Gardiner (“Gardiner”), Senior Labor Relations Counsel at National Football League, placed a phone call to representatives with the Dallas Cowboys. Gardiner represented that NFL players would be fined or suspended if they attended the NFFC event in Las Vegas.

21. The Dallas Cowboys representatives then immediately called Andy Alberth (“Alberth”), Executive Director of the NFFC, to inform him about the call from the NFL. Alberth, believing there must be some sort of mistake or misunderstanding, quickly placed a call to Gardiner later the same day. Alberth informed Gardiner of the facts regarding the NFFC event—that the event was not taking place at a casino, that no gambling would take place at the event, and that children were allowed and encouraged to attend the event. Alberth ensured it was clear that there was absolutely no tie to any gaming facilities, and he informed Gardiner that he could provide any additional information Gardiner needed.

22. However, the NFL had already made up its mind to quash the NFFC. Even after being assured that NFFC was not in any way associated with gambling or gambling facilities, the NFL continued its threats. The NFL even reached out to the National Football League Players Association (“NFLPA”) to assist in its plan.

23. That same day—Wednesday, June 3, 2015—the NFLPA called James Barry (“Barry”) of Relativity Sports, indicating that the players represented by Relativity Sports would be suspended or fined if they appeared at the NFFC. Barry represented approximately twenty players who were in the process of signing contracts to appear at the NFFC event. After receiving the call from the NFLPA, he told the NFFC he absolutely could not send the signed contracts.

24. On Thursday, June 4, 2015, the NFFC received a call from Uche Anyanwu (“Anyanwu”), a sports marketing agent at Fritz Martin. Anyanwu had received a call from the mother of Odell Beckham, Jr., who said the NFL called her and warned her that if her son appeared at the NFFC he would be suspended or fined. Of the players that were represented by Uche Anyanwu, several players—including Jarvis Landry, Markus Wheaton, Giovani Bernard, Debante Davis, Richard Sherman, and Bobby Wagner—all had written contracts with NFFC, and all subsequently backed out of the NFFC’s July 2015 event. Others represented by Uche Anyanwu also backed out of the event, including Odell Beckham, Jr., LaGarette Blount, and Ricardo Lockette, all of whom had verbally agreed to attend the event, but had not yet executed a written contract with the NFFC.

25. That same day, The NFLPA also called Bari Wolfman of KCB Sports Marketing and made the same threats, informing her that her clients would be suspended or fined if they attended the NFFC.

26. Adie Von Gontard, a sports marketing agent at BYA Sports Group, received a call from Golden Tate (“Tate”), who plays for the Detroit Lions. Tate had received a call from his sports agent who indicated that Mr. Tate risked suspension from the NFL if he appeared at the NFFC.

27. Not only did the NFL go after the players, it went after its own dedicated personnel. On Thursday, June 4, 2015, the NFFC received an emotional call from Fabiano, informing the NFFC that, despite the prior express approval from the NFL to serve as a host of the event, the NFL had reversed positions, forcing him to back out of the event or risk losing his job.

**E. The NFL next misrepresented its gambling policy.**

28. After bullying the NFL players into withdrawing from the NFFC event, the NFL tried to justify its behavior and acted like it had an “ace in the hole.” In a statement to FOX Sports, a representative of the NFL stated, “Players and NFL personnel may not participate in promotional activities or other appearances at or in connection with events that are held at or sponsored by casinos.”

29. The NFL reiterated this position directly to Tony Romo’s marketing agent. On June 5, 2015, Gardiner (NFL Senior Labor Relations Counsel) represented to Tony Romo’s marketing agent, R.J. Gonser of Creative Artists Agency (“CAA”), that attendance at the NFFC would put a player in direct violation of the NFL Gambling Policy. Specifically, he said that a player could not make an appearance at any hotel if the hotel contained a casino.

30. On June 8, 2015, in an email, Gardiner explained to Joe Nahra, an attorney for CAA Sports LLC that “the League’s issue with the NFFC is not its association with fantasy football, it is solely the fact that it is/was scheduled to be held at The Sands Expo.”

31. The problem with the NFL’s position is that the players’ participation at the NFFC would *not* be a violation of the NFL’s Gambling Policy. At best, the policy is ambiguous. In relevant part, the NFL Gambling Policy states that the league prohibits:

“Participating in promotional activities or other appearances at or in connection with events (e.g., golf tournaments, trading card shows) that are held at or sponsored by casinos or other gambling-related establishments.”

32. Any ambiguity should be construed against the NFL, in part, because of the prior positions the NFL has taken in direct contravention with the position it has taken with the NFFC.

33. Moreover, the convention facility is not a casino. The facility does not even have a gaming license, much less the facilities that would be necessary for gambling activities. The



facility is a convention center—nothing more.

**F. The NFL caused the cancellation of the inaugural NFFC.**

34. As of June 1, 2015, the NFFC had signed contracts with approximately sixty (60) players and had established prospective business relationships with thirty-five (35) additional NFL players. The NFL was fully aware that NFFC had both the signed contracts as well as the prospective business relationships, and that the NFFC was preparing to execute its inaugural event.

35. The NFL knew that gambling would not take place at the NFFC and that the event was not being hosted in a casino. Instead, the NFL sought to cause the NFFC to cancel its event and lose its revenue, including sponsorships and ticket sales, as well as all expenses invested into promotion and execution of the event.

36. By Thursday, June 4, 2015, the NFFC, acting through one of its owners, Tony Romo, promptly requested that the NFL retract its false and misleading statements because this would impair the NFFC's event. The NFL refused.

37. In so refusing, the NFL knew that the NFFC could not proceed with the event. The NFL knew the NFFC would be forced to refund ticket sales and sponsorship sales, but that the NFFC would still be contractually bound to other contracts associated with the execution of the event. The NFL also knew that the NFFC had actual and prospective contracts with NFL players and personnel, and thus knew that its interference would, and in fact did, interfere with contracts and prospective business relationships.

38. As a direct and proximate result of the NFL's false statements and refusal to retract the false statements, players and personnel pulled out of the event. Because the event could not be executed without the players themselves, and because the NFFC would face

extreme liability to sponsors and attendees for hosing an event without the players, on June 6, 2015, the NFFC was forced to announce that it would be impossible for the July 10, 2015 NFFC event to proceed.

**G. The convention facility is neither a casino nor a “gambling-related establishment.”**

39. The NFL knew that NFFC would take place at a convention facility that is not a casino. The convention facility does not have gaming, and it does not have slot machines. In fact, gambling is expressly prohibited at the facility. In fact, it does not even have the licenses that would be necessary for gambling.

40. Gardiner and the NFL already knew, based on Gardiner’s June 3, 2015 call with Alberth, that the NFFC was *not* taking place at a casino or a gambling-related establishment, that it was *not* involving gambling, and that it was *not* sponsored by a casino. Yet, the NFL continued to strong-arm the NFL players into canceling their contracts with the NFFC.

**H. Perhaps most appalling, history shows the NFL’s hypocrisy and selective enforcement of its policy against casinos and gambling.**

41. The NFL’s fabricated pretense for causing the cancellation of the event does not stop there. Not only does the NFL’s behavior lack validity under the terms of the Gambling Policy, the NFL’s actions are completely inconsistent with its prior course of dealing. In fact, the reality is that when the NFL gets a piece of the pie, the NFL flagrantly and systematically violates its own supposed policy against casinos and gambling. Countless examples show the NFL’s true attitude toward betting.

42. In 2014, the New Orleans Saints held their official training camp at The Greenbriar Resort. The resort, which has its own on-site 103,000-square-foot casino, is referred to as “Monte Carlo Meets *Gone With the Wind*.”

43. In 2015, fifteen NFL teams signed a deal with FanDuel, a fantasy football gaming website. During Sunday NFL football, FanDuel's most popular game results in a \$500,000 prize to the winner of an NFL fan pool.

44. On May 26, 2015, the Detroit Lions announced an official partnership with the MGM Grand Detroit. The MGM Grand Detroit is a casino-hotel with slot machines, gaming tables, and poker rooms. In fact, the MGM plans to build an "MGM Grand Detroit Tunnel Club" on site at Ford Field.

45. On October 28, 2014, on their official NFL website, the reigning Super Bowl Champions, The New England Patriots, proudly posted a video of their free safety, Devin McCourty, hosting a casino night.

46. NFL player Rob Gronkowski is hosting a party cruise from Miami to the Bahamas on February 19-22, 2016. The four-day party takes place on Norwegian Cruise Line, where Gronkowski's fans and attendees can take full advantage of Norwegian's famed "Casinos at Sea."

47. Not only that, but Carnival Cruise Line has been a proud sponsor of the NFL for years. The NFL's New Orleans Saints have accepted sponsorship dollars from the cruise line, promoted its sweepstakes, and promoted the cruise line during halftime performances—which is clearly a strong partnership directly with a cruise line that is known specifically for its gambling.

48. Most hypocritical is the fact that the NFL itself allowed another fantasy football event to proceed in Las Vegas on July 17, 2015. The event's "advisory board" consists of current NFL player Brandon Marshall.

49. Given the NFL's close ties to gambling, to now argue that the NFFC's July 2015 event was a violation of the gambling policy is utterly disingenuous. Instead, the NFL,

recognizing the commercial opportunities available to the NFFC, likely decided to kill Tony Romo's effort so that it could replace it with one of its own. In doing business with the NFL, "the house always wins."

## **VI. Causes of Action**

### **A. Tortious Interference with Contract.**

50. Plaintiff repeats and re-alleges the allegations set forth in all preceding paragraphs of this Petition as if fully set forth herein.

51. A claim for tortious interference with an existing contract contains the following elements: (1) the plaintiff had a valid contract, (2) the defendant willfully and intentionally interfered with the contract, (3) the interference proximately caused the plaintiff's injury, and (4) the plaintiff incurred actual damage or loss.

52. The Plaintiff had valid contracts with approximately sixty (60) current NFL players to make an appearance at the inaugural NFFC. The NFL willfully and intentionally interfered with these contracts by representing, both to the NFLPA and directly to the players scheduled to make an appearance at the event, that: (a) the event was being held at a casino or a gambling-related establishment; (b) the event was sponsored by a casino or a gambling-related establishment; (c) the event violated the NFL's gambling policy; (d) NFL players making an appearance at the event would be fined; and (e) NFL players making an appearance at the event would be suspended.

### **B. Tortious Interference with Prospective Business Relationships.**

53. Plaintiff repeats and re-alleges the allegations set forth in all preceding paragraphs of this Petition as if fully set forth herein.

54. A claim for tortious interference with a prospective business relationship includes

the following elements: (1) a reasonable probability that the parties would have entered into a business relationship; (2) an intentional, malicious intervention or an independently tortious or unlawful act performed by the defendant with a conscious desire to prevent the relationship from occurring or with knowledge that the interference was certain or substantially likely to occur as a result of its conduct; (3) a lack of privilege or justification for the defendant's actions; and (4) actual harm or damages suffered by the plaintiff as a result of the defendant's interference, i.e., the defendant's actions prevented the relationship from occurring.

55. Plaintiff was set to enter into agreements with approximately thirty-five (35) current NFL players for their participation at the event. The NFL intentionally and maliciously interfered with these prospective agreements by defaming and disparaging the Plaintiff and by threatening to fine and suspend any player who made an appearance at the event. The NFL lacked privilege or justification for its actions. The NFL actions prevented the agreements from being executed, which ultimately resulted in cancellation of the event itself.

#### **VI. Actual Damages**

56. The NFL's interference proximately caused Plaintiff's damages, including lost ticket sales, sponsorship sales, lost profits, and harm to its goodwill and its business reputation.

#### **VII. Exemplary Damages**

57. Plaintiff is entitled to an award of exemplary damages because the NFL acted with either malice or gross negligence when it caused the Plaintiff's damages.

#### **VIII. Jury Demand**

58. Plaintiff respectfully asserts the right to a trial by jury under Texas Constitution article 1, § 15, and makes this demand for a jury trial at least thirty (30) days before the date this case is set for trial, in accordance with Texas Rule of Civil Procedure 216.

#### **IV. Prayer**

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that:

- a. Defendant be cited to appear and answer;
- b. That the Court empanel a jury to determine any issue of fact and that upon final hearing of this cause, Plaintiff have judgment against Defendant for:
  - i. Actual and consequential damages to be determined by a jury;
  - ii. Judgment against Defendant for exemplary damages as determined at trial on the merits;
  - iii. Pre-judgment and post-judgment interest at the highest rates provided for by agreement of the parties or allowed by law;
  - iv. Court costs; and
  - v. Such other and further relief, at law or in equity or by statute, to which Plaintiff may be justly entitled.

Respectfully Submitted,

**THE PETTIT LAW FIRM**

By: /s/ Julie Pettit

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