

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

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GENOS “D.J.” WILLIAMS and RYAN MCBEAN,	:	
	:	
Petitioners,	:	12 Civ. 650 (CMA) (MJW)
	:	
v.	:	
	:	
NATIONAL FOOTBALL LEAGUE,	:	
	:	
Respondent.	:	
	:	
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AMENDED PETITION TO VACATE ARBITRATION AWARDS

Petitioners Genos “D.J.” Williams and Ryan McBean (collectively, “Players”), by their undersigned counsel, for their Amended Petition to Vacate Arbitration Awards against Respondent National Football League (“NFL”), allege as follows:

I.

PRELIMINARY STATEMENT

1. This action seeks to vacate arbitration awards the NFL separately issued on February 6, 2012, against Mr. Williams and Mr. McBean respectively (“Arbitration Awards”). The Players are professional football players for the Denver Broncos Football Club (“Broncos”). The Arbitration Awards, issued by Harold Henderson, the NFL’s Executive Vice President for Player Development and Senior Advisor to NFL Commissioner Roger Goodell, threaten to suspend the Players for six games each, without pay, in the 2012 season.

2. The Players respectfully request the Court to vacate the Arbitration Awards pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1-16, and the Labor Management

Relations Act (“LMRA”), 29 U.S.C. § 185, in light of: (1) Mr. Henderson’s having exceeded his powers; (2) Mr. Henderson’s misconduct; (3) public policy; (4) Mr. Henderson’s manifest disregard of the law; and (5) Mr. Henderson’s partiality. In sum, the Arbitration Awards do not draw their essence from the collectively bargained policies and procedures.

3. The Players also respectfully request the Court to preliminarily enjoin the NFL from effectuating the threatened suspensions pending resolution of the instant action.

II.

THE PARTIES

4. Mr. Williams is a linebacker for the Broncos, an eight-year veteran of the NFL, and a citizen of Lone Tree, Colorado.

5. Mr. McBean is a defensive end for the Broncos, a five-year veteran of the NFL, and a citizen of Arapahoe County, Colorado.

6. The NFL is an unincorporated association of 32 member clubs, including the Broncos, a Colorado corporation, headquartered in New York, New York.

III.

FACTUAL ALLEGATIONS

The NFL Steroid Policy

7. The NFL Policy on Anabolic Steroids and Related Substances (“Steroid Policy”), administered by the NFL, was ostensibly designed to protect the integrity of the game of football and to protect the health and safety of its players. The NFL holds players to a strict liability standard and regularly suspends players even when they do not test positive for anabolic steroids or knowingly ingest a substance banned by the Steroid Policy.

8. At the time a urine specimen is collected, the NFL Specimen Collection Procedures require the player to: (a) “completely remove his shirt and other garments above the waistline”; (b) “rinse his hands”; (c) lower his pants and underwear below his knees”; and (d) “not have any clothing above his knees.”

9. The specimen collector is required to “monitor the furnishing of the specimen by direct frontal observation[.]”

10. The NFL Specimen Collection Procedures also require the specimen collector, “[u]nder observation of the player,” to “close and lock the lids on the vials and ensure they are properly sealed.” Then, the specimen collector is required to “seal both vials with the specimen ID seals.” The NFL Specimen Collection Procedures also require “[b]oth the collector and the player” to “initial and date the vial specimen seals on the side of the vial.”

11. The Steroid Policy demands the specimen collector and the testing laboratory to follow a strict chain of custody regimen to protect against tampering or alteration of the collected specimen. Specifically, the NFL Specimen Collection Procedures require: (1) the player to sign a Custody and Control Form certifying that the specimen was collected and sealed in accordance with the NFL Specimen Collection Procedures; (2) the specimen to “remain in a secure location” in the “custody and control” of the specimen collection “the entire time after the collection until it is handed over to a FedEx employee”; (3) the specimen collector to “**never** leave specimens unattended any time prior to shipping” (emphasis in original); (4) the specimen to be kept “in a cool environment prior to shipping”; and (5) the specimen to “be shipped via FedEx Standard Overnight to the appropriate lab.”

12. The Court of Arbitration for Sport (“CAS”), the preeminent arbitral body in the

world of sports,¹ and held out by the NFL as the standard-bearer in assessing the validity and fairness of drug testing procedures, has repeatedly affirmed that in “[t]he fight against doping... the rule-makers and the rule-appliers must begin by being strict with themselves.” *USA Shooting & Q./Union Internationale de Tir (UIT)*, at p. 1 (May 23, 1995) (reinstating a skeet shooter’s World Cup Gold Medal where shooter took banned substance inadvertently and strict liability was not the established policy); *see also Devyatovski and Tsikhan/IOC*, at p. 75 (June 10, 2010) (“If an athlete is to be sanctioned solely on the basis of the provable presence of a prohibited substance in his body, it is his or her fundamental right to know that the... Testing Authority, including the... laboratory working with it, has strictly observed the mandatory safeguards”) (setting aside IOC decision to strip two athletes of Olympic medals based on allegedly testing positive for a banned substance where the interruption of the automated testing procedure was not recorded).

Major League Baseball (“MLB”) also has adopted a strict liability policy, including for the drug testers. On February 24, 2012, an arbitrator vacated a 50-game suspension for an alleged violation of MLB’s Joint Drug Prevention and Treatment Program (“MLB Steroid Policy”) by reigning National League Most Valuable Player Ryan Braun. In Mr. Braun’s case, the specimen collector failed to immediately deliver Mr. Braun’s urine specimen to FedEx as required by the MLB Steroid Policy. The specimen collector instead stored the sealed specimen in his refrigerator for two days. The arbitrator determined that the suspension could not stand in light

¹ CAS, created in 1984 and based in Lausanne, Switzerland, “is an institution independent of any sports organization which provides for services in order to facilitate the settlement of sports-related disputes through arbitration or mediation by means of procedural rules adapted to the specific needs of the sports world.... CAS has nearly 300 arbitrators from 87 countries, chosen for their specialist knowledge of arbitration and sports law. Around 300 cases are registered by... CAS every year.” In addition, CAS sets up tribunals at each Olympic Games to provide expedited review of disputes. *See* Court of Arbitration for Sport Home Page, <http://www.tas-cas.org>.

of MLB's failure to strictly comply with the MLB Steroid Policy protocols.²

Administration of the Steroid Policy

13. The NFL contracts with The National Center for Drug Free Sport, Inc. ("Drug Free Sport") to administer the Steroid Policy. The NFL and Drug Free Sport are responsible for hiring competent and capable organizations and people to collect specimens according to and in compliance with the NFL's Specimen Collection Procedures.

14. Drug Free Sport hired Stadium Medical, Inc. ("Stadium Medical") to collect and analyze urine specimens for Broncos' players pursuant to the Steroid Policy and the NFL's Policy and Program for Substances of Abuse ("Drug Policy").

Mr. Williams' August 9, 2011 Urine Specimen

15. On August 9, 2011, Mr. Williams provided a urine specimen ("Williams Urine Specimen") to an NFL-certified specimen collector ("Specimen Collector") employed by Stadium Medical at the Broncos' facility in Denver, Colorado.

16. By letter dated October 6, 2011, Dr. John A. Lombardo, the Independent Administrator of the Steroid Policy, advised Mr. Williams that the Williams Urine Specimen, as tested under the Steroid Policy, was determined not to be a human specimen. Dr. Lombardo also advised Mr. Williams that such finding constituted a violation of the Steroid Policy.

17. The Specimen Collector attested to the NFL Specimen Collection Procedures having been followed, including his frontal view of Mr. Williams providing the urine specimen.

18. Mr. Williams had never previously failed a test under either the Steroid Policy or Drug Policy in his eight-year NFL career.

19. By letter dated November 11, 2011, Adolpho Birch, the NFL's Vice President of

² See Ken Belson and Michael S. Schmidt, *Star Player First to Win Appeal On a Drug Test*, N.Y. Times, Feb. 24, 2012, available at 2012 WLNR 3982890.

Law and Labor Policy, advised Mr. Williams that he is to be: (a) suspended for six regular-season games; (b) advanced to the next stage of the Steroid Policy; and (c) required to forfeit 6/17 of any applicable signing bonus.

20. There are several material violations by the NFL and its agents of the Specimen Collection Procedures, failures to abide by the specimen safeguarding procedures and gaps in the chain of custody, all of which make it impossible to determine who was in possession of the Williams Urine Specimen, where the Williams Urine Specimen was stored at material times, whose sample was determined not to be a human specimen, and whether and by whom the specimen was tampered with or otherwise altered.

12:18 to 3:08 p.m. on August 9, 2011

21. The NFL documents do not show the time Mr. Williams provided a urine specimen. The NFL Documents state that Mr. Williams provided a urine specimen at some time between 12:18 p.m. and 3:08 p.m. on August 9, 2011. The NFL offered no evidence at the arbitration hearing as to what time the Specimen Collector collected a urine specimen from Mr. Williams. That alone raises suspicion about the testing procedures used to collect Mr. Williams' specimen. The process takes a matter of minutes.

22. The Steroid Policy and NFL Specimen Collection Procedures require the Specimen Collector to seal all urine specimens in the player's presence.

23. Mr. Williams did not see anyone seal his urine specimen. The NFL offered no evidence at the arbitration hearing to contradict Mr. Williams' testimony that Mr. Williams' urine specimen was not sealed in Mr. Williams' presence.

24. The Steroid Policy and NFL Specimen Collection Procedures require all players to initial and date a collected urine specimen seal on the side of the specimen vials.

25. The Specimen Collector did not request Mr. Williams to initial or date the urine specimen seals on the side of the specimen vials and Mr. Williams did not initial and date the urine specimen seals on the side of the vials. The NFL offered no evidence at the arbitration hearing to contradict Mr. Williams' testimony regarding these facts.

26. The Steroid Policy mandates a strict procedure by which the location of the collected specimen and the person in possession of the collected specimen must be memorialized in official records.

27. For example, the NFL Specimen Collection Procedures require the Specimen Collector to keep a player's urine specimen "in his custody and control the entire time after the collection until it is handed to a FedEx employee." Moreover, a "collector must **never** leave specimens unattended at any time prior to shipping." (Emphasis in original.)

28. The NFL documents evidence only that the Specimen Collector removed the Williams Urine Specimen from the testing area at 3:08 p.m.

29. In violation of the Steroid Policy and NFL Specimen Collection Procedures, there is no evidence of where the Williams Urine Specimen was kept from the time of its collection until 3:08 p.m. The NFL offered no evidence at the arbitration hearing concerning where the Williams Urine Specimen was kept during that time.

30. A gap perhaps as long as two hours and 50 minutes thus exists for which the Williams Urine Specimen is unaccounted.

31. In violation of the Steroid Policy and NFL Specimen Collection Procedures, there is no evidence – and the NFL offered no evidence – that the specimen was sealed in a timely fashion, who handled it or the manner in which it was safeguarded, if any, during this time period.

3:08 p.m. on August 9, 2011 to 11:00 a.m. on August 10, 2011

32. Following the Specimen Collector's apparent removal of the Williams Urine Specimen from the testing area at 3:08 p.m. on August 9, 2011, no one has been identified as having had custody and control of the Williams Urine Specimen until 11:00 a.m. on August 10, 2011, if not later.

33. The NFL offered no evidence at the arbitration hearing that the Williams Urine Specimen remained in the custody and control of any authorized person until it was handed over to a FedEx employee, in violation of the NFL Specimen Collection Procedures.

34. The FedEx shipping label does not indicate what time FedEx received the package for delivery on August 9, 2011. NFL documents only show that the Williams Urine Specimen was shipped by FedEx standard overnight on August 9, 2011, at some unknown time, to Sports Medicine Research & Testing Laboratory ("Sports Medicine") in Utah for analysis.

11:00 a.m. to 11:23 a.m. on August 10, 2011

35. The FedEx shipping label relied on by the NFL at the arbitration hearing includes an illegible and unidentified signature indicating that the Williams Urine Specimen arrived at Sports Medicine at 11:00 a.m. on August 10, 2011.

36. However, the FedEx Proof-of-Delivery sheet, also relied on by the NFL, states that the package did not arrive at Sports Medicine until 11:12 a.m. and was signed for by "C. Campbell."

37. The signature of the person who allegedly signed for the FedEx package at 11:00 a.m. and the signature of "C. Campbell," who allegedly signed for the FedEx package at 11:12 a.m., are not the same.

38. In addition, the Confidential Laboratory Document Package provided by the NFL

reflects that the Urine Specimen was received by someone named “Stolk,” and not C. Campbell, and thereafter placed in the “refrigerator” at 11:23 a.m.

39. In sum, in violation of the Steroid Policy, there is no chain of custody to prove who received the package, who signed for the package, what time the package was received and where the package was safeguarded, if at all, until it was allegedly placed in the “refrigerator” at 11:23 a.m.

11:23 a.m. to 3:23 p.m. on August 10, 2011

40. NFL documents offered at the arbitration hearing only indicate that the Williams Urine Specimen was placed in a “refrigerator” at Sports Medicine’s laboratory at 11:23 a.m. and “received” by an unidentified person at Sports Medicine at “15:23” on August 10, 2011.

41. In violation of the Steroid Policy, the NFL offered no evidence at the arbitration hearing evidencing from where or from whom the Williams Urine Specimen was “received,” who did the receiving, or where the receiving occurred, at 15:23 on August 10, 2011.

Mr. McBean’s August 16, 2011 Urine Specimen

42. On August 16, 2011, Mr. McBean provided a urine specimen (“McBean Urine Specimen”) to the same Specimen Collector who collected Mr. Williams’ urine specimen at the Broncos’ facility in Denver, Colorado.

43. By letter dated October 6, 2011, Dr. John A. Lombardo, the Independent Administrator of the Steroid Policy, advised Mr. McBean that the McBean Urine Specimen was determined not to be a human specimen. Dr. Lombardo also advised Mr. McBean that such finding constituted a violation of the Steroid Policy.

44. Mr. McBean had never previously failed a test under either the Steroid Policy or Drug Policy in his five-year NFL career.

45. By letter dated November 11, 2011, Mr. Birch advised Mr. McBean that he is to be: (a) suspended for six regular-season games; (b) advanced to the next stage of the Steroid Policy; and (c) required to forfeit 6/17 of any applicable signing bonus.

46. There are several departures from the NFL Specimen Collection Procedures which make it impossible to rely on the integrity of the McBean Urine Specimen:

47. The NFL Specimen Collection Procedures require the Specimen Collector to seal all vials in the player's presence and the player to sign a Custody and Control Form certifying that the specimen was collected in accordance with the NFL Specimen Collection Procedures.

48. Mr. McBean did not sign a Custody and Control Form for the Steroid Policy test and did not witness the Specimen Collector seal two of four vials used to collect Mr. McBean's urine specimen.

49. Instead, Mr. McBean relied on the Specimen Collector's representations and assurances that he would complete the process on Mr. McBean's behalf.

50. Documents relied on by the NFL at Mr. McBean's arbitration hearing are duplicative and facially contradictory. Mr. McBean's laboratory package contains a document allegedly prepared on November 4, 2011, which claims that Mr. McBean's urine specimen was received by Sports Medicine on August 10, 2011, in a package bearing FedEx label # 8742 0570 9832. However, Mr. McBean's laboratory package also contains a document allegedly prepared on November 7, 2011, which claims that Mr. McBean's urine specimen was received by Sports Medicine on August 17, 2011, in a package with FedEx label # 8747 7459 5260.

51. Sports Medicine could not possibly have received Mr. McBean's Urine Specimen on August 10, 2011, as Mr. McBean's urine specimen was not collected until August 16, 2011.

52. Mr. Henderson admitted that there is “[n]o clear explanation for the discrepancy” concerning Mr. McBean’s urine specimen.

The NFL and Drug Free Sport’s Termination of the Specimen Collector

53. Drug Free Sport and Stadium Medical conducted an investigation of the actions of the Specimen Collector relating to, *inter alia*, the collection procedures and safeguarding of the Williams Urine Specimen and McBean Urine Specimen. Based upon that investigation, the NFL, Drug Free Sport and Stadium Medical terminated the Specimen Collector on October 11, 2011.

54. The NFL, Drug Free Sport and Stadium Medical terminated the Specimen Collector because the Specimen Collector failed to fulfill his duties and obligations as a specimen collector in material manners, including with regard to collecting, handling and safeguarding the Williams Urine Specimen and McBean Urine Specimen.

55. The NFL, unmindful of the fundamental tenet of drug testing in sports that the NFL and its agents are required to follow the policy and procedures of the Steroid Policy, suspended the Players for six games despite the NFL’s and its Specimen Collector’s repeated and material violations of the Steroid Policy and its procedures, as well as violations of universally accepted specimen safeguarding and chain of custody standards.

The Appeals Process

56. Mr. McBean appealed the NFL’s suspension by letter dated November 14, 2011.

57. Mr. Williams appealed the NFL’s suspension by letter dated November 15, 2011.

58. On November 29 and December 7, 2011, a hearing was held on Mr. McBean’s appeal before Mr. Henderson pursuant to the Steroid Policy. The record on Mr. McBean’s appeal closed on December 9, 2011.

59. On December 13, 2011, a hearing was held on Mr. Williams' appeal before Mr. Henderson pursuant to the Steroid Policy. The record on Mr. Williams' appeal closed on December 13, 2011.

Mr. Henderson Exceeded His Powers by Ignoring the Steroid Policy's Legal Standard

60. The Steroid Policy provides:

The [NFL] shall have the initial burden to establish a *prima facie* violation of the [Steroid] Policy, and the specimen collectors, Independent Administrator, Consulting Toxicologist and testing laboratories will be presumed to have collected and analyzed the player's specimen in accordance with the [Steroid] Policy. The player may, however, rebut that presumption by establishing that a departure from the [Steroid] Policy's stated protocols occurred during the processing of his specimen. In such case, the [NFL] shall have the burden of establishing that the departure did not materially affect the validity of the positive test or other violation.

61. The NFL opened Mr. Williams' and Mr. McBean's hearings by introducing into evidence laboratory documents related to the Williams Urine Specimen and McBean Urine Specimen which, on their face, made it impossible for the NFL to satisfy its initial burden. The documents clearly do not contain a viable chain of custody and fail to include the elements mandated by the Steroid Policy to make a *prima facie* showing that the urine specimens were properly collected, safeguarded and tested.

62. The procedures used to collect, supposedly safeguard and process the Williams Urine Specimen and McBean Urine Specimen are replete with violations of the Steroid Policy and NFL Specimen Collection Procedures. The NFL offered no evidence – and, indeed, did not even attempt to offer evidence – that the Williams Urine Specimen is Mr. Williams', that the McBean Urine Specimen is Mr. McBean's, and/or that the Williams Urine Specimen and McBean Urine Specimen were neither altered nor otherwise the subject of tampering.

63. Moreover, the NFL did not produce any evidence to contradict that both Mr. Williams and Mr. McBean followed the procedures imposed upon them by the Steroid Policy with regard to their role in providing urine samples to the Specimen Collector.

64. The Specimen Collector attested to the fact that he observed Mr. Williams provide his urine specimen in accordance with the Steroid Policy procedures.

65. Despite the NFL's documents clearly evidencing material and repeated violations of the Steroid Policy by the Specimen Collector and other NFL agents, including admissions that the Specimen Collector was terminated for such violations, Mr. Henderson improperly placed the burden on Mr. Williams and Mr. McBean to prove their innocence under the Steroid Policy.

Mr. Henderson's Improper Post-Hearing Conduct

66. The Steroid Policy required Mr. Henderson to "render a written decision with respect to the disciplinary action within five (5) calendar days" following the close of the evidentiary record.

67. On or about December 16, 2011, Jeff Pash, the NFL's General Counsel and Executive Vice President, engaged in *ex parte* communications with Mr. Henderson about the Players' cases and, *inter alia*, instructed Mr. Henderson to delay rendering the Arbitration Awards.

68. By motion dated January 16, 2012, Mr. Williams requested Mr. Henderson to dismiss the NFL's case against him for failure to render a decision within five days as required by the Steroid Policy.

69. Mr. Henderson denied Mr. Williams' request by e-mail dated January 19, 2012.

70. By motion dated January 16, 2012, Mr. McBean requested Mr. Henderson to dismiss the NFL's case against him for failure to render a decision within five days as required

by the Steroid Policy.

71. Mr. Henderson denied Mr. McBean's request by e-mail dated January 19, 2012.

The Arbitration Awards

72. By decision dated February 6, 2012, Mr. Henderson affirmed the NFL's suspension of Mr. Williams, despite acknowledging "troubling" gaps in the chain of custody and "an environment of haste, rushing, confusion and short cuts around the [urine specimen] collection process."

73. By separate decision dated February 6, 2012, Mr. Henderson affirmed the NFL's suspension of Mr. McBean, despite acknowledging testimony that was "troubling and arguably calls into question the integrity of the validation process."

IV.

CLAIMS

COUNT I

**(Vacatur of the Arbitration Awards)
(Arbitrator Exceeded His Powers)**

74. The Players repeat and reallege the allegations set for in Paragraphs 1 through 73 as if fully set forth herein.

75. Pursuant to the FAA, 9 U.S.C. § 10(a)(4), the Court is empowered to vacate an arbitration award "where the arbitrator[] exceeded [his] powers."

76. An arbitration award can also be vacated under the LMRA where the arbitrator "has exceeded the powers delegated to him by the parties." *International Broth. of Elec. Workers, Local Union 1823 v. WGN of Colorado, Inc.*, 615 F.Supp. 64, 66 (D.Colo. 1985). Such an award fails to draw its essence from the collective bargaining agreement and is unenforceable as a matter of law. *Local No. 7 United Food and Commercial Workers Int'l Union v. King Soopers, Inc.*, 222 F.3d 1223, 1227 (10th Cir. 2000).

77. Mr. Henderson exceeded his powers by failing to follow the procedures and evidentiary standards the Steroid Policy requires and by failing to hold the NFL to its initial burden of proof required in order for the NFL to make out a *prima facie* violation of the Steroid Policy. Mr. Henderson then exceeded his powers by failing to hold the NFL to its burden of establishing that the violations and departures from the Steroid Policy requirements for collecting, handling and safeguarding the urine specimens did not affect the validity of the test results.

78. Mr. Henderson also exceeded his powers by unilaterally – or at the NFL’s direction – and without authority establishing a time frame for rendering his Awards which violated the express terms of the Steroid Policy.

79. Mr. Henderson also exceeded his powers by engaging in *ex parte* communications about the Williams and McBean arbitrations with the NFL’s second highest ranking executive.

COUNT II
(Vacatur of the Arbitration Awards)
(Arbitrator’s Misconduct)

80. The Players repeat and reallege the allegations set for in Paragraphs 1 through 79 as if fully set forth herein.

81. Pursuant to the FAA, 9 U.S.C. § 10(a)(3), the Court is empowered to vacate an arbitration award “where the arbitrator[] w[as] guilty of misconduct... by which the rights of any party have been prejudiced.”

82. An arbitration award can also be vacated under the LMRA where procedural irregularities result in fundamental unfairness, *International Broth. of Elec. Workers, Local Union 1823*, 615 F.Supp. at 66, and the arbitrator engages in *ex parte* communications which prejudice a party, *Kennecott Utah Copper Corp. v. Becker*, 186 F.3d 1261, 1271 (10th Cir.

1999).

83. Mr. Henderson engaged in misconduct by failing to issue a decision within five calendar days as required by the Steroid Policy, by engaging in *ex parte* communications about the Players' cases with the NFL's second highest ranking executive, and by taking direction regarding the Arbitration Awards from the NFL's second highest ranking executive.

84. The Players are prejudiced by Mr. Henderson's misconduct. Mr. Henderson's delay compromised the Players' right to an immediate adjudication. As a result, the Players were forced to live for months, rather than days, with the threat of a suspension hanging over their heads.

85. The Players were further compromised because, by his delay, Mr. Henderson effectively jeopardized the Players' 2012 season rather than giving them the option of being suspended during the 2011 season. For the Players, the Broncos are likely to improve upon their 2011 AFC West Championship during the 2012 season, during head coach John Fox' second year and quarterback Peyton Manning joining the Broncos, but the Players' absence significantly affects the club's chances of winning.

86. The Players were further prejudiced because their salaries will be higher in the 2012 season than in the 2011 season. By suspending the Players, without pay, in 2012 instead of 2011, the cumulative amount of salary to be withheld from the Players is greater. Mr. McBean, as a free agent, is prejudiced because the NFL's suspension effectively prevents Mr. McBean from offering his services to all NFL Clubs and obtaining a multi-year contract worth many millions of dollars.

87. The Players were further prejudiced because *ex parte* communications compromised the integrity of the process.

88. Additionally, the NFL was riding the wave of publicity flowing from quarterback Tim Tebow's rise to stardom. By pushing the possible suspensions beyond the 2011 season, the NFL commercially benefited by keeping the Broncos as competitive as possible during the 2011 playoff run, for the NFL's pecuniary benefit and at the Players' expense.

COUNT III
(Vacatur of the Arbitration Awards)
(Arbitrator's Violation of Public Policy)

89. The Players repeat and reallege the allegations set for in Paragraphs 1 through 88 as if fully set forth herein.

90. The Court is empowered to vacate an arbitration decision for violations of public policy. *Sheldon v. Vermonty*, 269 F.3d 1202, 1206 (10th Cir. 2001) (applying public policy analysis under FAA); *Kennecott Utah Copper Corp. v. Becker*, 195 F.3d 1201, 1205 (10th Cir. 1999) (applying public policy analysis to review of arbitration decision issued pursuant to collective bargaining agreement).

91. The Arbitration Awards violate public policy by contradicting the established laws of the international sports community. CAS standards require that where an athlete is being held to a strict liability drug testing standard, the drug testers must also be held to a strict liability standard.

92. Mr. Henderson issued the Arbitration Awards despite clear and admitted breaches by the NFL and its agents in carrying out their duties pursuant to the Steroid Policy and NFL Specimen Collection Procedures.

COUNT IV
(Vacatur of the Arbitration Awards)
(Manifest Disregard of the Law)

93. The Players repeat and reallege the allegations set for in Paragraphs 1 through 92 as if fully set forth herein.

94. The Court is empowered to vacate an arbitration decision based on the arbitrator's manifest disregard of the law. *See Sheldon*, 269 F.3d at 1206 (applying manifest disregard of the law standard under FAA); *Chevron Mining Inc. v. United Mine Workers of America Local 1307*, 648 F.3d 1151, 1154 (10th Cir. 2011) (applying manifest disregard of the law analysis to review of arbitration decision issued pursuant to collective bargaining agreement).

95. The Arbitration Awards should be vacated as a result of Mr. Henderson's manifest disregard of the law.

96. Mr. Henderson improperly ignored fatal issues concerning the collection process, safeguarding of the urine specimens and chain of custody.

97. The material gaps in the NFL's procedures, as Mr. Henderson knew, make it impossible as a matter of law to sustain the NFL's ruling that the Players violated the Steroid Policy.

COUNT V
(Vacatur of the Arbitration Awards)
(Arbitrator's Partiality)

98. The Players repeat and reallege the allegations set for in Paragraphs 1 through 97 as if fully set forth herein.

99. Pursuant to the FAA, 9 U.S.C. § 10(a)(2), the Court is empowered to vacate an arbitration award "where there was evident partiality or corruption in the arbitrator[]."

100. An arbitration award can also be vacated under the LMRA where the arbitrator

engages in *ex parte* communications which prejudice a party. *Kennecott Utah Copper Corp.*, 186 F.3d at 1271.

101. The Arbitration Awards should be vacated because Mr. Henderson engaged in *ex parte* communications with and took direction about the decision-making process from the NFL's second highest ranking executive, following the hearing, resulting in Mr. Henderson's flagrant violation of the Steroid Policy time requirements for rendering a decision and flagrant violations of the basic tenets of fairness and propriety.

COUNT VI
(Injunctive Relief)

102. The Players repeat and reallege the allegations set for in Paragraphs 1 through 101 as if fully set forth herein.

103. The Players have demonstrated a reasonable probability of success on the merits based on the allegations set forth herein.

104. The Players will suffer real, immediate and irreparable injury in the absence of the injunctive relief sought.

105. The Players lack a plain, speedy and adequate remedy at law. The NFL's threatened sanctions will cause the Players substantial irreparable injury that cannot be remedied with monetary compensation.

106. The NFL's decision to bar the Players from participating in six NFL games, attending team and individual meetings, training at the Broncos' practice facility, spending any time at the Broncos' practice facility, communicating with teammates or members of the coaching staff, attending team functions, and collecting their salaries will cause the Players not only to lose their weekly wages but also to miss one of the most competitive seasons of their short professional careers.

107. The NFL's suspensions also threaten the Players' chances to participate in the playoffs, since their absence from the team threatens the Broncos' season, their chances to qualify for the playoffs and to win the Super Bowl.

108. Suspension under the Steroid Policy will preclude the Players from being included on the NFL Pro Bowl team, an all-star football team and prestigious honor.

109. There is no opportunity to "make-up" this lost time. The Players will simply never have the ability to participate in these lost games and practices again.

110. The City of Denver, its surrounding cities and towns, and the entire State of Colorado stand to lose substantial revenue if the Players are not able to assist the Broncos in their run for the playoffs and a Super Bowl title.

111. The future losses Mr. Williams and Mr. McBean will suffer cannot be appropriately calculated for purposes of a preliminary injunction because of the snowball effect the NFL's suspension will have on Mr. Williams' and Mr. McBean's reputation, earning potential and standing in the NFL.

112. A preliminary injunction would serve the public interest and public policy.

113. The balance of equities tips in favor of the Players rather than the NFL.

114. The Players have suffered and will continue to suffer from the NFL's proposed suspensions. Their reputations are forever tainted and their careers may be irreparably injured.

115. The relief sought herein would cause minimal hardship to the NFL because the NFL receives no benefit from the suspensions. Moreover, even if the NFL were to prevail on the merits, it could then move forward and institute the suspension upon resolution of this case.

116. The relief sought herein only seeks to maintain the *status quo*, and provide the Players with the opportunity to defend their good names and carry on with their livelihood and

passion.

V.

REQUEST FOR RELIEF

117. The Players respectfully requests that this Court enter an order in the Players' favor, granting the following relief:

- a. vacatur of the Arbitration Awards;
- b. injunctive relief; and
- c. granting such other and further relief as this Court deems just and equitable.

Dated: March 21, 2012
New York, New York

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