

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Kevin Williams and Pat Williams,

Court File No. _____

Plaintiffs,

v.

SUMMONS

The National Football League, John
Lombardo, M.D., Brian Finkle, and Adolpho
Birch,


Defendants.

THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon plaintiffs' attorney, Pat Williams, Briggs and Morgan, 2200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402, an answer to the Verified Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated: 12/3, 2008

BRIGGS AND MORGAN, P.A.

By: 
Patrick S. Williams (#196502)
Scott Knudson (# 141987)
Kent Schoen (# 387981)

2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 977-8400

**ATTORNEYS FOR PLAINTIFFS KEVIN
WILLIAMS AND PAT WILLIAMS**

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Kevin Williams and Pat Williams,
Plaintiffs,

Court File No.

VERIFIED COMPLAINT

v.

National Football League, John Lombardo,
M.D., Brian Finkle, and Aldopho Birch,
Defendants

Kevin Williams and Pat Williams ("Players"), by their attorneys, Crowell & Moring LLP and Briggs and Morgan, P.A., as and for their Verified Complaint in the above-referenced action, state and allege as follows:

NATURE OF THE ACTION

1. This is an action seeking damages for the harm suffered as a result of the negligence, breach of fiduciary duty, fraud, constructive fraud, constructive fraud, negligent misrepresentation, and vicarious liability perpetrated on them by the National Football League ("NFL"). Plaintiffs seek injunctive relief, compensatory, and punitive damages.

THE PARTIES

2. Defendant NFL an unincorporated association headquartered in New York, New York.

3. Plaintiff Kevin Williams is a 6-year veteran of the NFL, a husband and a father of 2 children, and a pillar of his community of Minneapolis, Minnesota, where he resides.

4. Plaintiff Pat Williams is a 12-year veteran of the NFL, a husband and a father of 3 children, and a pillar of his community of Monroe, Louisiana, where he resides in the off-season, as well as of Minneapolis, Minnesota, where he resides during the NFL season.

5. Defendant John Lombardo, M.D. is designated as the Independent Administrator of the NFL Policy on Anabolic Steroids and Related Substances (Program). Dr. Lombardo assumed a position of trust with all parties involved with the Program, creating fiduciary duties and obligations. In fact, Dr. Lombardo answers to, and is controlled by, the NFL and, as alleged below, as a matter of course provides information about the Program to the NFL while excluding the National Football League Players Association ("NFLPA") from receipt of such information, even when the information relates to the health and safety of the players and the integrity of the Program.

6. Defendant Brian Finkle is the Consulting Forensic Toxicologist to the Program and, upon information and belief, is a resident of the State of Utah. Mr. Finkle assumed a position of trust with all parties involved with the Program, creating fiduciary duties and obligations.

7. Defendant Adolpho Birch is Vice President of Law and Labor Policy at the NFL, is a resident, upon information and belief, of the State of New York, and works, literally, within several yards of Jeff Pash, the Hearing Officer who rendered the suspension of the Plaintiffs and within the same proximity to Roger Goodell, the Commissioner of the NFL. Mr. Birch owed to all parties to the Program a level of fair dealing, creating certain fiduciary duties and obligations.

FACTUAL BACKGROUND

8. The National Football League Policy and Procedure on Anabolic Steroids and Related Substances (the "Program") was designed to protect the integrity of the game of football and to protect the health and safety of its players.

9. The NFL and individual Defendants have wantonly ignored the two basic tenets of the Program and, as a result, the Plaintiffs have suffered irreparable injury to their reputations and livelihood, and are threatened with continuing and future injury if the Defendants are not enjoined from taking the threatened actions described below.

10. The NFL, on December 2, 2008, suspended at least two of its players, Plaintiffs Kevin Williams and Pat Williams, despite its acknowledgment that neither Player testified

positive for anabolic steroids, knowingly ingested any substance banned by the Program, or ever tested positive for anabolic steroids during their long and productive years in the NFL despite frequent and random drug testing. The NFL rationalized the decision by stating that it is enforcing a strict liability standard imposed by the terms of the Program.

11. The NFL suspended innocent Plaintiffs for four games, compromising their reputations, their place in the community, the compensation they have spent years building towards the opportunity for their Team to be successful during the 2008 NFL season, based upon a series of circumstances that included an unexplained and irrational cover-up by top NFL executives that was certain to entrap and otherwise compromise NFL players, as well as to jeopardize the players' health and welfare.

12. Actions by top NFL officials included as follows:

a. As early as 2006, the "Independent Administrator" in charge of the Program, Defendant John Lombardo, learned that (a) several NFL players were using a product called StarCaps as a weight-loss aid; (b) StarCaps advertised as having only "natural ingredients"; (c) StarCaps in fact contained a controlled substance, Bumetanide; and (d) detection of Bumetanide in a player being tested under the Program would yield a positive result for a banned substance, thereby subjecting the Player to suspension.

b. By sometime in late 2006, the NFL had confirmed that (a) StarCaps contained Bumetanide; (b) Bumetanide presented a potentially "acute" medical threat to any person unwittingly ingesting the substance; and (c) the issue was sufficiently dangerous that the NFL encouraged a more thorough scientific

review of the situation, which confirmed the presence of Bumetanide in StarCaps and resulted in a top NFL lawyer, Defendant Adolpho Birch, undertaking the responsibility to warn the Food & Drug Administration (“FDA”) of the presence of Bumetanide in StarCaps while overtly discouraging a scientist involved in the scientific review from making the disclosure.

- c. Notwithstanding the above, the NFL did not (a) warn NFL players, Teams, the National Football League Players Association or anyone else associated with the NFL, with the possible exception of other top ranking NFL executives, and perhaps Commissioner Goodell (although Mr. Birch has refused to disclose whether he did or did not inform Commissioner Goodell) of the presence of Bumetanide in StarCaps; or (b) alert the FDA of the presence of Bumetanide in StarCaps despite Mr. Birch undertaking the responsibility to do so.
- d. More concerned about the commercial aspect of the NFL than the health and safety of the players and the integrity of the Program, the NFL, in December 2006, barred NFL personnel from endorsing products manufactured by Balanced Health Products, the manufacturer of StarCaps, but did not warn players – or anyone else – that StarCaps contained Bumetanide nor did the NFL release a specific advisory, as it does from time to time, warning players not to use StarCaps.

e. Upon information and belief, although the December 2006 memorandum about Balanced Health Products may have been forwarded to the NFLPA, it was not distributed to the Teams, or at least Team trainers, and was not directly distributed to any NFL players.

13. The NFL, as with all sports organizations, has been increasingly scrutinized by, among others, public officials regarding the use of banned substances, and most especially anabolic steroids. The failure to warn players of the content of StarCaps can only rationally be explained in this context. The instant suspensions provide the NFL with a politically palatable solution to convincing public officials that the League is seriously policing the use of steroids.

14. The NFL, in a very public way, has now shown public officials that the NFL will not make any exceptions for violations of the Program. This political message was accomplished at the expense of exposing Plaintiffs, among others, as being “violators” of the Program. But the “violators” were not users of anabolic steroids, and thus the NFL has been able to deliver its political message without providing any evidence to public officials who are warning the NFL of greater outside regulation and scrutiny that football players in fact “cheat” to enhance performance.

15. Neither Plaintiff has ever taken anabolic steroids. Neither Plaintiff has ever masked or otherwise diluted a urine sample taken as part of the administration of the Program in order to disguise the use of any substance. Neither Plaintiff has ever violated the Program.

16. Neither Plaintiff would have used StarCaps had the NFL disclosed to players that the product contained a banned substance or that its label and advertising was erroneous.

17. Both Plaintiffs suffer from medical conditions that could have been exacerbated by the ingestion of Bumetanide.

18. Each Plaintiff made good faith efforts to abide by the Program's rules and regulations and each Plaintiff knew or had reason to know that the NFL outlets for information, including its Supplement "hotline" line, were essentially useless.

19. NFL officials have stated that, without Bumetanide, the use of StarCaps would not violate the Program.

NEED FOR EXIGENT INJUNCTIVE RELIEF

20. The Program's random testing disclosed that, on July 26, 2008, both Plaintiffs had in their system a banned substance, Bumetanide. The testing also revealed that neither Plaintiff had any trace of an anabolic steroid or showed any sign of diluting their urine samples or masking any other substance.

21. Over four months later, the NFL has now upheld a suspension barring each Plaintiff from participating in four NFL games, from practicing, or from collecting their salaries. Moreover, suspension under the Program precludes inclusion on the NFL Pro Bowl team and each Plaintiff's contract contains bonus clauses triggered by being selected to the Pro Bowl team.

22. The NFL actions, moreover, severely compromise the Plaintiffs' reputations and standing in the community. Despite the fact that the administration of the Program is supposed to remain confidential, the NFL proposed the four-game suspension in late September and early October, and, within hours of that recommendation, news of the NFL's proposed action was broadcast throughout the world on sports channels such as NFL Network and ESPN.

23. Now, with only four regular season games remaining and in the middle of a battle to make the playoffs for the first time since the 2004 season, the NFL, notwithstanding its own complicity in the current situation, has threatened the success of the Minnesota Vikings Football Team, the financial success of the City of Minneapolis as well as surrounding cities and towns, and the general enjoyment of Vikings' fans throughout this region and the country.

COUNT I
(Injunctive Relief)

24. Paragraphs 1 through 23 are incorporated herein and made a part of this claim.

25. The Players have demonstrated a likelihood of ultimate success on the merits based on the allegations set forth herein.

26. The Players will suffer irreparable injury if the injunctive relief sought is withheld.

27. The sanctions that will be imposed on the Players by the NFL's December 2, 2008 decision, which is to take effect immediately, will cause the Players substantial irreparable injury that cannot be remedied with monetary compensation. The NFL's decision to bar the Players from participating in four NFL games, from practicing, attending team and individual meetings, training at the Minnesota Vikings' practice facility, spending anytime at the Minnesota Vikings' practice facility, communicating with teammates or members of the coaching staff, attending team functions, attending Minnesota Vikings' games as a spectator and from collecting their salaries will cause the Players to not only lose their weekly wages but to also miss one of the most competitive seasons of their short professional careers. This will impact the Player's sports records and impact their eventual ability to be inducted into the Professional Football Hall of Fame.

28. Suspension under the Program will preclude the Players from being included in the NFL Pro Bowl team, an all-star football team that is a prestigious honor. The opportunity to "make-up" the time lost is not an option. The Players will simply never have the ability to participate in these loss games and practices again.

29. The Players' contracts also contain bonus clauses that will necessarily be affected by punishment wielded by the Defendants. The monetary losses due to compromising of the acceleration and bonus clauses cannot be appropriately calculated for purposes of a preliminary injunction because of the snowball effect the NFL's suspension will have on the reputations,

earning potential, and NFL standing of the Players. The games, including the Pro Bowl, forgone can never be recovered.

30. The NFL's actions severely compromise the Plaintiffs' reputations and standing in their community, among their fellow athletes, and in the public.

31. Despite the fact that the administration of the Program is supposed to remain confidential, the NFL proposed the four-game suspension in late September and early October, and, within hours of that recommendation, news of the NFL's proposed action was broadcast throughout the country. Moreover, the NFL's own press release, as well as the hundreds of spin-off reports by the mass media, makes clear that the Players were suspended for violating the NFL's "anti-doping policy" without any substantive provision to assure that it is clear and undisputed that the Players did not use steroids or otherwise try to ingest banned substances. The Player's reputations are irreparably being smeared.

32. The Players' playoff season is also in jeopardy, since the suspensions will threaten the success of the Minnesota Vikings Football Team's chances to qualify for the 2008 playoffs.

33. The financial success of the City of Minneapolis as well as surrounding cities and towns, and the general enjoyment of Vikings' fans throughout the country is at jeopardy.

34. The balance of the equities tips in favor of the Players rather than the Defendants.

35. The Players are the only parties who have and will continue to suffer from the NFL's proposed suspension. Their reputations are forever tainted and their career paths may be irreparably altered.

36. The relief herein sought would cause minimal hardship to the NFL because it receives no benefit from the suspension. Moreover, even if the NFL were to prevail on the merits in this action, which they will not, they can always move forward and institute the suspension at the resolution of this case. The relief sought herein only seeks to maintain the *status quo*, and provide the Players with the opportunity to defend their good names and expose the bad acts of the NFL.

COUNT II
(Breach of Fiduciary Duty)

37. Paragraphs 1 through 36 are incorporated herein and made a part of this claim.

38. Individual Defendants, as professionals with a heightened knowledge and expertise, and a relationship of trust with Plaintiffs who relied on the Doctors' and the lawyer's and the NFL's expertise in establishing, maintaining and administering the Program, have a fiduciary duty to Plaintiffs, which encompasses a duty to act honestly, openly, fairly, and in the best interests of the Plaintiffs.

39. By failing to disclose the fact that StarCaps contains Bumetanide, needlessly exposing the Plaintiffs to the harsh sanctions of the Program and potential acute physical suffering, and continuing to withhold the true information about the ingredients in StarCaps, Defendants intentionally, knowingly, and in bad faith breached their fiduciary duties to the Plaintiffs.

40. In committing their breach of fiduciary duty as alleged herein, Defendants acted with reckless disregard for the truth, in conscious disregard for the Plaintiff's interests, and with malice and oppression so as to justify an award of punitive damages.

41. As a result of the bad faith breach of their fiduciary duties, the Plaintiffs will suffer compensatory damages in excess of \$10,000,000.

42. As a result of the bad faith breach of their fiduciary duties, the Plaintiffs have suffered and will suffer continuing damage to their reputation and ability to make a living.

COUNT III
(Aiding and Abetting Breach of Fiduciary Duty)

43. Paragraphs 1 through 42 are incorporated herein and made a part of this claim.

44. Lombardo, Finkle and Birch owed a fiduciary duty to the Players as alleged above. By failing to inform the Plaintiffs of the known risks associated with StarCaps, failing to

exercise proper management and control over medical information released to the Plaintiffs, and deliberately misleading the Players as to the NFL's goal to protect the Player's health, Lombardo, Finkle and Birch breached their fiduciary duties to the Players.

45. By knowingly endorsing the misrepresentations and omissions of Lombardo, Finkle and Birch and knowingly failing to protect against potential harm to the Players, the NFL actively participated in, assisted in, and also had actual knowledge of the other Defendants' breaches of their fiduciary duties to the Players.

46. By knowingly failing to protect against these misdeeds, the NFL actively participated in, assisted in, and also had actual knowledge of the breaches of fiduciary duties to the Plaintiffs by Lombardo, Finkle and Birch.

47. As a result of the other Defendants' bad faith breaches of their fiduciary duties as alleged herein, and the NFL's acts and omissions in aiding and abetting these breaches, the Plaintiffs have suffered compensatory damages in an exact amount to be determined at trial.

48. In aiding and abetting the other Defendants' breaches of their fiduciary duties to the Plaintiffs as alleged herein, the NFL acted in reckless disregard for the truth, in conscious disregard for the Plaintiffs' rights, and with malice and oppression so as to justify an award of punitive damages.

COUNT IV
(Violation of Public Policy)
(Against the NFL)

49. Paragraphs 1 through 48 are incorporated herein and made a part of this claim.

50. Defendant NFL's recent decision to punish the Players for violations of the Program, where the Players were only in violation of the Program as a direct result of the Defendants' breach of their fiduciary duties to the Players, has the effect of sanctioning Defendants' breach of fiduciary duty. Defendant NFL's sanction of the breach of fiduciary duty owed by the individual Defendants to Players is in direct violation of the public policy of Minnesota.

51. In fact, Defendant NFL's sanction of the Defendants' breach of fiduciary duty operates to grant the individual Defendants and to create an opportunity for fiduciaries to operate in a duty-free zone. Such sanctioning by the NFL is in direct contravention of the longstanding public policy of Minnesota.

52. As a result, the Players have suffered compensatory damages in excess of \$10,000,000, in an exact amount to be determined at trial and reputation damage in an amount to be determined at trial.

COUNT V
(Fraud)

53. Paragraphs 1 through 52 are incorporated herein and made a part of this claim.

54. In making public statements during the period of 2006-2007 to players, agents, teams in the NFL – and the general public – the NFL stated that the goal of the NFL's Program was to “protect the health and well being of the NFL players.” These false statements were knowingly and intentionally made to actually cause harm to NFL players – including Plaintiffs.

55. When making these false misrepresentations, the Defendants knowingly and intentionally pursued and attempted to solidify a public appearance of non-tolerance for use of anabolic steroids. This unstated goal to set an example of unwitting NFL players for public appearance purposes resulted in a draconian and inflexible enforcement of the Program. The Defendants had actual and certain knowledge that NFL players were in fact using StarCaps and that that use could result in a violation of the Program – or serious physical harm. The Defendants omitted to make that crucial knowledge available to the Players.

56. The resulting inflexible enforcement of the Program caused the Players' harm.

57. The NFL and other defendants knowingly omitted relevant and necessary health information from the Players in order to continue the appearance of a “strict liability policy” irrespective of actual steroid use.

58. The Players reasonably relied upon the statements referenced herein in determining take StarCaps.

59. The Players reasonably relied on these misrepresentations and omissions when they reviewed and assessed the information available to them to make the decision to take StarCaps.

60. The Players have suffered compensatory damages in excess of \$10,000,000, in an exact amount to be determined at trial and reputation damage in an amount to be determined at trial.

61. In committing their fraud as alleged, Defendants acted in reckless disregard for the truth, in conscious disregard for Player's rights, and with malice and oppression so as to justify an award of punitive damages.

COUNT VI
(Constructive Fraud)

62. Paragraphs 1 through 61 are incorporated herein and made a part of this claim.

63. As a result of their duties and responsibilities to Plaintiffs, among others, the individual Defendants had a duty to convey to the Plaintiffs the information about the hidden contents of the product StarCaps.

64. The individual Defendants knowingly failed to reveal the true contents of StarCaps, and, notwithstanding, continued to make the false statement that the Program was designed and being administered to protect the health and safety of all NFL Players.

65. Specifically, the Defendants had a duty to disclose the information it learned about the secret inclusion of Bumetanide in StarCaps to both Plaintiffs because the NFL had superior knowledge of the inclusion of that banned substance in a product that the NFL was aware many of the players were taking.

66. All NFL players, including the Plaintiffs, relied upon the representation of the NFL and its executives, including the individual Defendants, about the Program and its administration. by making material misrepresentation of an existing fact with knowledge of the falsity of their statements and material omissions, with intent to deceive the Players which will

result in irreparable damages if the Players' justifiable reliance on Defendants is allowed to form the basis for the extreme and harsh punishment being pursued by the NFL..

67. By upholding the punishment against the Plaintiffs, despite breach of its own duties and obligations, and despite the NFL being in possession of material information that could have prevented the Plaintiffs from ingesting a substance that not only resulted in Plaintiffs non-compliance with the Program, but put their health and welfare in danger, the NFL has sanctioned the breach of duties by the individual Defendants, violated its own duties and obligations, and acted in a manner inconsistent with public policy of the State of Minnesota.

68. The Defendants' failure to disclose the fact that StarCaps contains Bumetanide for two years after it became aware of the information materially affected the Plaintiff's actions. Disclosure would have prevented the Plaintiff's from taking StarCaps altogether.

COUNT VII
(Negligent Misrepresentation)

69. Paragraphs 1 through 69 are incorporated herein and made a part of this claim.

70. The NFL was in a unique position in its relationship with the Plaintiffs. The NFL had material information that could have helped the Plaintiffs to comply with the terms of the contract all parties had agreed to. The NFL had knowledge and independent scientific confirmation of the material information for nearly two years without disclosing it to the football community or to the American public.

71. In its Memorandum dated December 2006, the NFL advised players that they were prohibited from endorsing products manufactured by Balanced Health Products, the manufacturer of StarCaps.

72. The NFL continued to advise players of banned substances and alert players when products joined the banned substances list as it had done in the past during the two years between the time the NFL learned that StarCaps contains Bumetanide and the present.

73. The NFL never advised the Plaintiffs or anyone in the football community who might have alerted the Plaintiffs, that StarCaps contains Bumetanide and that taking the product could result in non-compliance with the Program.

74. The NFL was aware that the Plaintiffs needed the secret information about the true ingredients of StarCaps in order to both maintain compliance with the Program, and to avoid serious health risks. The NFL was aware that Plaintiffs would not and did not have access to the information that Starcaps contains Bumetanide through any other source.

75. Had the NFL disclosed the fact that StarCaps contains a banned substance that could result in non-compliance with the Program at any time during the past two years, or had the Plaintiffs become aware of that information independently, the Plaintiffs would have stopped taking StarCaps immediately.

76. The Players reasonably relied on the information disclosed by Balanced Health Products, the manufacturer of StarCaps, about the ingredients in StarCaps.

77. The Players reasonably relied on the NFL to share and disseminate information that would have a material impact on the Players' ability to comply with the Program.

COUNT VIII

(Negligence)

78. Paragraphs 1 through 77 are incorporated herein and made a part of this claim.

79. Defendants had duties and obligations to Plaintiffs.

80. Defendants breached their duties and obligations to Plaintiffs.

81. As a proximate cause of Defendants' breach, Plaintiffs suffered damages as alleged herein.

COUNT IV

(For Gross Negligence)

82. Paragraphs 1 through 81 are incorporated herein and made a part of this claim.

83. By the Defendants' failure and/or refusal to release critical medical information to the Players regarding StarCaps, despite knowledge of that StarCaps could result in an unwitting violation of the Program and could cause potential physical harm to the Players, Defendants acted with reckless and deliberate disregard of Players' rights as members of the NFL.

84. Defendants' gross negligence caused the Players to suffer compensatory damages in an exact amount to be determined at trial.

COUNT X
(Vicarious Liability Upon the Doctrine of Respondeat Superior)
(Against the NFL and Birch)

85. Paragraphs 1 through 84 are incorporated herein and made a part of this claim.

86. At all times relevant to this litigation, Defendants Dr. Lombardo, Birch and Finkle were agents or employees of the NFL acting within the scope of their employment by Defendant NFL and in the furtherance of Defendants' business. As Defendants Lombardo, Birch and Finkle's employer or nominal employer, Defendant NFL is responsible for the doctors' actions and responsibilities within the scope of their employment.

87. As a result of Defendants Lombardo, Birch and Finkle's torts within the scope of their employment with Defendants NFL and Mr. Birch as alleged above, Plaintiffs have suffered and will continue to suffer compensatory damages in excess of \$10,000,000.


PRAYER FOR RELIEF

WHEREFORE, the Players respectfully pray the Court to grant them judgment for the following relief:

1. Compensatory damages;
2. Punitive damages;
3. Injunctive relief; and
4. Such other relief as the Court deems just and proper.

Dated: December 3, 2008

BRIGGS AND MORGAN, P.A.

By:  _____

Patrick S. Williams (#196502)

Scott G. Knudson (#141987)

Kent T. Schoen (#0387981)

2200 IDS Center

80 South Eighth Street

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**ATTORNEYS FOR PLAINTIFFS KEVIN
WILLIAMS AND PAT WILLIAMS**

FORM 104. CERTIFICATE OF REPRESENTATION AND PARTIES

State of Minnesota

District Court

COUNTY HENNEPIN	JUDICIAL DISTRICT FOURTH	CASE NO. 04-_____
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CERTIFICATE OF REPRESENTATION AND PARTIES

(ONLY THE INITIAL FILING LAWYER/PARTY NEEDS TO COMPLETE THIS FORM)

Date Case Filed: Complaint filed on December 3, 2008.

Kevin Williams and Pat Williams, Plaintiffs

v.

The National Football League, John Lombardo, M.D., Brian Finkle, and Adolpho Birch, Defendants.

This certificate must be filed pursuant to Rule 104 of the General Rules of Practice for the District Courts, which states: "A party filing a civil case shall, at the time of filing, notify the court administrator in writing of the name, address, and telephone number of all counsel and unrepresented parties, if known (see form 104 appended to these rules). If that information is not then known to the filing party, it shall be provided to the court administrator in writing by the filing party within seven days of learning it. Any party impleading additional parties shall provide the same information to the court administrator. The court administrator shall, upon receipt of the completed certificate, notify all parties or their lawyers, if represented by counsel, of the date of filing the action and the file number assigned."

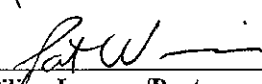
LIST ALL LAWYERS/PRO SE PARTIES INVOLVED IN THIS CASE.

Lawyer for Plaintiff(s)	Lawyer for Defendant(s)
<p>Parties: Kevin Williams and Pat Williams</p> <p>Attorneys: Patrick S. Williams (MN #196502) Scott G. Knudson (MN #141987) Kent T. Schoen (MN #387981)</p> <p>Address: Briggs and Morgan, P.A. 2200 IDS Center 80 South Eighth Street Minneapolis, Minnesota 55402 Phone: 612-977-8400 Facsimile: 612-977-8650</p>	<p>Parties: The National Football League, John Lombardo, M.D., Brian Finkle, and Adolpho Birch</p> <p>Attorneys:</p> <p>Address:</p>

Date

12/3/08

Filing Lawyer/Party



STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Kevin Williams and Pat Williams,
Plaintiffs,

Court File No. _____

v.

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

The National Football League, John
Lombardo, M.D., Brian Finkle, and Adolpho
Birch,
Defendant.

TO: The National Football League and its attorneys.

Pursuant to Rule 65.01 of the Minnesota Rules of Civil Procedure, Plaintiffs Kevin Williams and Pat Williams move this Court to issue a Temporary Restraining Order against Defendant the National Football League ("NFL"), restraining the NFL from suspending Plaintiffs on the grounds set forth in the December 2, 2008 appeals decision. Plaintiffs have filed concurrently with this Motion a verified complaint for injunction and other relief and a Memorandum of Law.

Defendants have not yet been served with a Summons and Complaint, Motion for Temporary Restraining Order, and supporting documents, but all efforts are being made with the filing of this Motion to give notice to counsel or the NFL.

Immediate and irreparable injury loss and damage has resulted and will continue to result to Plaintiffs if the NFL is provided with notice or before the NFL can be heard in opposition. As detailed in the accompanying Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order, the balance of hardships and likelihood of irreparable harm heavily favors Plaintiffs. In addition, Plaintiffs have a substantial likelihood of prevailing on the merits of this

action and the public interest favors enjoining Defendant. Unless this motion is granted, Plaintiffs will suffer immediate and irreparable harm.

Plaintiffs therefore request this Court to issue a temporary restraining order against Defendant the National Football League, restraining the NFL from suspending Plaintiffs on the grounds set forth in the December 2, 2008 appeals decision.

Dated: December 3, 2008

BRIGGS AND MORGAN, P.A.

By: Scott G. Knudson

Patrick S. Williams (#196502)

Scott G. Knudson (# 141987)

Kent T. Schoen (# 387981)

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80 South Eighth Street

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**ATTORNEYS FOR PLAINTIFFS KEVIN
WILLIAMS AND PAT WILLIAMS**

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Kevin Williams and Pat Williams,
Plaintiffs,

Court File No.

v.

National Football League, John Lombardo,
M.D., Brian Finkle and Adolpho Birch
Defendants.

**MEMORANDUM OF LAW IN SUPPORT
OF TEMPORARY RESTRAINING
ORDER**

PRELIMINARY STATEMENT

On December 2, 2008, Plaintiffs, Kevin Williams and Pat Williams, professional football players for the Minnesota Vikings ("Players") were suspended from participation in the last four games of the season. Additional factual information is found in the Complaint the Plaintiffs' have filed with their motion for a temporary restraining order.

RELIEF REQUESTED

The Players face immediate and irreparable injury which may be avoided by an order restraining the NFL from suspending the Players on the grounds set forth in the December 2, 2008 appeals decision; and such further relief as the Court concludes is fair and just. The relief sought herein has not been previously requested.

STATEMENT OF FACTS

The National Football League Policy and Procedure on Anabolic Steroids and Related Substances (the "Program") was designed to protect the integrity of the game of football and to protect the health and safety of its players. (Compl. ¶ 1.) The NFL and individual Defendants have wantonly ignored the two basic tenets of the Program and, as a result, the Plaintiffs have

suffered irreparable injury to their reputations and livelihood, and are threatened with continuing and future injury if the Defendants are not enjoined from taking the threatened actions described below. (Compl. ¶ 2.)

The National Football League (“NFL”) on December 2, 2008, suspended at least two of its players, Plaintiffs Kevin Williams and Pat Williams, despite its acknowledgment that neither Player testified positive for anabolic steroids, knowingly ingested any substance banned by the Program, or ever tested positive for anabolic steroids during their long and productive years in the NFL despite frequent and random drug testing. The NFL rationalized the decision by stating that it is enforcing a strict liability standard imposed by the terms of the Program. (Compl. ¶ 3.) The NFL suspended innocent Plaintiffs for four games, compromising their reputations, their place in the community, the compensation they have spent years building towards the opportunity for their Team to be successful during the 2008 NFL season, based upon a series of circumstances that included an unexplained and irrational cover-up by top NFL executives that was certain to entrap and otherwise compromise NFL players, as well as to jeopardize the players’ health and welfare. (Compl. ¶ 4.)

Actions by top NFL officials included as follows:

- As early as 2006, the “Independent Administrator” in charge of the Program, Defendant John Lombardo, learned that (a) several NFL players were using a product called StarCaps as a weight-loss aid; (b) StarCaps advertised as having only “natural ingredients”; (c) StarCaps in fact contained a controlled substance, Bumetanide; and (d) detection of Bumetanide in a player being tested under the Program would yield a positive result for a banned substance, thereby subjecting the Player to suspension.

- By sometime in late 2006, the NFL had confirmed that (a) StarCaps contained Bumetanide; (b) Bumetanide presented a potentially “acute” medical threat to any person unwittingly ingesting the substance; and (c) the issue was sufficiently dangerous that the NFL encouraged a more thorough scientific review of the situation, which confirmed the presence of Bumetanide in StarCaps and resulted in a top NFL lawyer, Defendant Adolpho Birch, undertaking the responsibility to warn the Food & Drug Administration (“FDA”) of the presence of Bumetanide in StarCaps while overtly discouraging a scientist involved in the scientific review from making the disclosure.
- Notwithstanding the above, the NFL did not (a) warn NFL players, Teams, the National Football League Players Association or anyone else associated with the NFL, with the possible exception of other top ranking NFL executives, and perhaps Commissioner Goodell (although Mr. Birch has refused to disclose whether he did or did not inform Commissioner Goodell) of the presence of Bumetanide in StarCaps; or (b) alert the FDA of the presence of Bumetanide in StarCaps despite Mr. Birch undertaking the responsibility to do so.
- More concerned about the commercial aspect of the NFL than the health and safety of the players and the integrity of the Program, the NFL, in December 2006, barred NFL personnel from endorsing products manufactured by Balanced Health Products, the manufacturer of StarCaps, but did not warn players – or anyone else – that StarCaps contained Bumetanide nor did the NFL release a specific advisory, as it does from time to time, warning players not to use StarCaps.

- Upon information and belief, although the December 2006 memorandum about Balanced Health Products may have been forwarded to the NFLPA, it was not distributed to the Teams, or at least Team trainers, and was not directly distributed to any NFL players. (Compl. ¶ 5.)

The NFL, as with all sports organizations, has been increasingly scrutinized by, among others, public officials regarding the use of banned substances, and most especially anabolic steroids. The failure to warn players of the content of StarCaps can only rationally be explained in this context. The instant suspensions provide the NFL with a politically palatable solution to convincing public officials that the League is seriously policing the use of steroids. (Compl. ¶ 6.)

The NFL, in a very public way, has now shown public officials that the NFL will not make any exceptions for violations of the Program. This political message was accomplished at the expense of exposing Plaintiffs, among others, as being “violators” of the Program. But the “violators” were not users of anabolic steroids, and thus the NFL has been able to deliver its political message without providing any evidence to public officials who are warning the NFL of greater outside regulation and scrutiny that football players in fact “cheat” to enhance performance. (Compl. ¶ 7.) Neither Plaintiff has ever taken anabolic steroids. Neither Plaintiff has ever masked or otherwise diluted a urine sample taken as part of the administration of the Program in order to disguise the use of any substance. Neither Plaintiff has ever violated the Program. (Compl. ¶ 8.) Neither Plaintiff would have used StarCaps had the NFL disclosed to players that the product contained a banned substance or that its label and advertising was erroneous. (Compl. ¶ 9.) Both Plaintiffs suffer from medical conditions that could have been exacerbated by the ingestion of Bumetanide. (Compl. ¶ 10.) Each Plaintiff made good faith

efforts to abide by the Program's rules and regulations and each Plaintiff knew or had reason to know that the NFL outlets for information, including its Supplement "hotline" line, were essentially useless. (Compl. ¶ 11.)

NFL officials have stated that, without Bumetanide, the use of StarCaps would not violate the Program. (Compl. ¶ 12.)

NEED FOR EXIGENT INJUNCTIVE RELIEF

The Program's random testing disclosed that, on July 26, 2008, both Plaintiffs had in their system a banned substance, Bumetanide. The testing also revealed that neither Plaintiff had any trace of an anabolic steroid or showed any sign of diluting their urine samples or masking any other substance. (Compl. ¶ 13.) Over four months later, the NFL has now upheld a suspension barring each Plaintiff from participating in four NFL games, from practicing, or from collecting their salaries. Moreover, suspension under the Program precludes inclusion on the NFL Pro Bowl team and each Plaintiff's contract contains bonus clauses triggered by being selected to the Pro Bowl team. (Compl. ¶ 14.) The NFL actions, moreover, severely compromise the Plaintiffs' reputations and standing in the community. Despite the fact that the administration of the Program is supposed to remain confidential, the NFL proposed the four-game suspension in late September and early October, and, within hours of that recommendation, news of the NFL's proposed action was broadcast throughout the world on sports channels such as NFL Network and ESPN. (Compl. ¶ 15.)

Now, with only four regular season games remaining and in the middle of a battle to make the playoffs for the first time since the 2004 season, the NFL, notwithstanding its own complicity in the current situation, has threatened the success of the Minnesota Vikings Football Team, the financial success of the City of Minneapolis as well as surrounding cities and towns,

and the general enjoyment of Vikings' fans throughout this region and the country. (Compl. ¶ 16.)

ARGUMENT

THE PLAYERS ARE ENTITLED TO A TEMPORARY RETRAINING ORDER RESTRAINING THE NFL FROM ENFORCING ITS DECISION AGAINST THEM

The Players have and will continue to be irreparably harmed by the NFL's attempts to enforce its decision to suspend them. The Players have shown a likelihood of success on the merits of this action, and the hardship of not obtaining this temporary retraining order weighs so heavily in their favor that justice can only be done with the issuance of the restraint on the NFL.

TEMPORARY RESTRAINING ORDER STANDARD

Temporary injunctive relief is warranted when the defendant's misconduct will cause irreparable injury to the plaintiff during the course of litigation or when the defendant is doing or threatening to do some act in clear violation of the plaintiff's rights which will tend to make any ultimate judgment in favor of the plaintiff ineffectual. See *Cramond v. AFL-CIO*, 126 N.W.2d 252, 256 (Minn. 1964); *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 451 (Minn. App. 2001). The court applies the same factors in deciding a motion for a temporary restraining order ("TRO") as for a temporary injunction. See *M.G.M. Liquor Warehouse International, Inc. v. Forsland*, 371 N.W.2d 75, 77 (Minn. App. 1985). The elements for granting a TRO and temporary injunction are:

1. The nature of the relationship between the parties before the dispute giving rise to the request for relief;
2. The harm to be suffered by the moving party if the preliminary injunction is denied as compared to that inflicted on the non-moving party if the injunction issues pending trial;
3. The likelihood of success on the merits;
4. The public interest; and
5. Administrative burdens in enforcing a temporary decree.

Dahlberg Bros., Inc. v. Ford Motor Co., 137 N.W.2d 314, 321-22 (Minn. 1965); see also *Webb Publishing Co. v. Fosshage*, 426 N.W.2d 445, 448 (Minn. App. 1988). In this case, each factor compels the issuance of a TRO against Lebsack and Focus Karate.

The injury suffered typically must be of such a nature that money damages alone would not provide adequate relief. *Morse v. City of Waterville*, 458 N.W.2d 728, 729-30 (Minn.App. 1990), review denied (Minn. 1990) (“[T]he temporary loss of income, ultimately to be recovered, does not usually constitute irreparable injury. *Miller*, 317 N.W.2d at 713 (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974)) (other quotations omitted)”); see *Haley v. Forcelle*, 669 N.W.2d 48, 56 (Minn.App. 2003). Notwithstanding, it is well recognized that economic injuries alleged by professional athletes, such as NFL players, may be impossible to quantify in monetary terms and therefore should justify irreparable harm because of the unique nature of the profession and difficulties in quantifying adverse impacts on player’s earnings. *Jackson, et. al. v. National Football League*, 802 F.Supp. 226, 231-32 (D.Minn. 1992).

THE PLAYERS HAVE AND WILL SUFFER IRREPARABLE HARM UNLESS THE NFL IS RESTRAINED FROM SUSPENDING THEM

The sanctions that will be imposed on the Players by the NFL’s December 2nd decision, which is to take effect immediately, will cause the Players substantial irreparable injury that cannot be remedied with monetary compensation. The NFL’s decision to bar the Players from participating in four NFL games, from practicing, or from collecting their salaries will cause the Players to not only lose their weekly wages but to also miss one of the most competitive seasons of the year. This will impact the Player’s sports records and impact their eventual ability to be inducted into the Hall of Fame. *Jackson v. National Football League*, 802 F.Supp. 226, 231 (D.C.Minn. 1992) (football players were granted a TRO against the NFL based on the irreparable harm that the players would not be able to develop their professional potential where the NFL’s

restricted the football players' ability to trade teams and be traded in and among the league). "The existence of irreparable injury is underscored by the undisputed brevity and precariousness of the players' careers in professional sports, particularly in the NFL." *Id. See, e.g., Linseman v. World Hockey Ass'n*, 439 F.Supp. 1315, 1319 (D.Conn. 1977) (granting injunctive relief, finding that money could not adequately compensate player for the loss of his ability to play professional hockey for a season and noting, "the career of a professional athlete is more limited than that of persons engaged in almost any other occupation. Consequently the loss of even one year of playing time is very detrimental."); *Allied Marketing Group, Inc. v. CDL Marketing, Inc.*, 878 F.2d 806, 810 n. 1 (5th Cir. 1989) (plaintiffs demonstrate irreparable harm when economic rights are involved and the nature of those rights makes the value of damages difficult to measure in dollars); *Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 386 (7th Cir. 1984) (*internal citations omitted*) (finding granting of TRO is justified where money damages are extremely difficult to calculate for irreparable harm suffered); *Bowman v. National Football League*, 402 F.Supp. 754, 756 (D.Minn. 1975) (recognizing players suffered irreparable harm when the NFL's boycott of former World Football League players prevented them from playing).

Moreover, suspension under the Program will preclude the Players from being included in the NFL Pro Bowl team, an all-star football team that is a prestigious honor. The opportunity to "make-up" the time loss is not an option. The Players will simply never have the ability to participate in these loss games and practices again.

The Players' contracts also contain acceleration and bonus clauses that will necessarily be affected by punishment wielded by the NFL. The monetary losses due to compromising of the acceleration and bonus clauses cannot be appropriately calculated for purposes of a preliminary injunction because of the snowball effect the NFL's suspension will have on the reputations,

earning potential, and NFL standing of the Players. The games, including the Pro Bowl, foregone can never be recovered.

The NFL actions severely compromise the Plaintiffs' reputations and standing in their community, amongst their fellow athletes, and to the public. Despite the fact that the administration of the Program is supposed to remain confidential, the NFL proposed the four-game suspension in late September and early October, and, within hours of that recommendation, news of the NFL's proposed action was broadcast throughout the country. Moreover, the NFL's own press release,¹ as well as the hundreds of spin off reports by the mass media, makes clear that the Players were suspended for violating the NFL's "anti-doping policy." However, and it is undisputed, the Players did not use steroids or otherwise try to ingest banned substances. Yet, the Player's reputations are being smeared.

Now, in the middle of a historical fight to make the playoffs, the NFL, notwithstanding its own complicity in the current situation, has threatened the success of the Minnesota Vikings Football Team, the financial success of the City of Minneapolis as well as surrounding cities and towns, and the general enjoyment of Vikings fans throughout the country.

Further, the irreparable harm described has the circular effect of damaging the Players because their financial and professional success relies so heavily on their public persona – and that very public persona affects the Players' ultimate financial and professional success.

Therefore, this temporary restraining order is appropriate given the circumstances.

¹ The NFL's press release was released just hours after the Players' counsel was informed of the decision late Tuesday night – the final day to ensure that the Player would not receive pay for this week. The Players found out about their suspension on ESPN.

THE PLAYERS HAVE DEMONSTRATED A CLEAR AND SUBSTANTIAL LIKELIHOOD THAT THEY WILL SUCCEED ON THE MERITS

The Players have made a showing in their complaint that they are entitled to damages for the harm suffered as a result of the legal breaches perpetrated on them by the NFL. For years, Defendants have actively and interestedly sought to keep the true nature of the ingredients of StarCaps from the Players as well as from the American public. In the interim, Defendants have brazenly administered and enforced the strict requirements of the Program with full knowledge that NFL players continued to take StarCaps, putting their careers and their health in jeopardy. These actions of the Defendants have been entirely inconsistent with the stated objective of the Program of helping NFL players maintain their health and safety. The Defendants' actions have put them entirely at odds with the interests of the Players, and with the second stated objective of the Program, protecting the integrity of the game of football and of the NFL. Defendants' actions belie their true motivations, political self interest. Based on the foregoing, the Players have a demonstrable likelihood of success on the merits and for that reason should be granted the immediate injunctive relief they seek.

BALANCE OF THE HARDSHIPS WEIGHS IN PLAYERS' FAVOR

The Players are the only parties who have and will continue to suffer from the NFL's proposed suspension. Their reputations are forever tainted, their careers in serious jeopardy, indeed their lives have been ruined – and the NFL's corresponding harm is nothing.

The relief herein sought would cause no to minimal hardship to the NFL because it receives no benefit from the suspension. Moreover, even if the NFL were to prevail on the merits in this action, which it will not, they can always move forward and institute the suspension at the resolution of this case. The relief sought herein only seeks to maintain the

status quo, and provide the Players with the opportunity to defend their good names and expose the bad acts of the NFL.

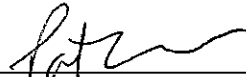
In *Haywood v. National Basketball Association*, 401 U.S. 1204 (1971), a professional athlete sought and was granted a TRO to enjoin the NBA from preventing him from playing even though he was in violation of an NBA rule at the time. In granting the TRO, the court noted that injunctive relief was needed to allow the athlete to compete because otherwise he would “suffer irreparable injury in that a substantial part of his playing career will have been dissipated, his physical condition, skills and coordination will deteriorate from lack of high-level competition, his public acceptance as a super star will diminish to the detriment of his career, his self-esteem and his pride will have been injured and a great injustice will be perpetrated on him. *Id.* at 1205. While playoffs were imminent in *Haywood*, the court held that the balance of the equity tipped in the athlete’s favor because preventing him from participating in playoffs would “preserve the interest and integrity of the playoff system.” *Id.* at 1206. The court further held that any harm suffered by the National Basketball Association as a result of the athlete’s participation in the playoffs in the event that the National Basketball Association eventually prevailed could be remedied by equitable relief in the district court. *Id.*

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant an order pursuant to Rule 65 temporarily restraining the NFL from suspending the Players from further games in the NFL season and settling this matter on for a hearing on a motion for a temporary injunction as soon as feasible and such further relief as the Court concludes is fair and just. The relief sought herein has not been previously requested.

Dated: December 3, 2008

BRIGGS AND MORGAN, P.A.

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STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Kevin Williams and Pat Williams,
Plaintiffs,

Court File No. _____

v.

The National Football League, John
Lombardo, M.D., Brian Finkle, and Adolpho
Birch,

PROPOSED ORDER

Defendants.

This matter is before the Court on Plaintiffs' Motion for a Temporary Restraining Order.

Based on all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiffs' Motion is **GRANTED**; and
2. Defendant the National Football League is **ENJOINED** from suspending the Plaintiffs on the grounds set forth in the December 2, 2008 appeals decision.

Dated: December ____, 2008

By: _____

Judge of District Court