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March 30, 2016

VIA ELECTRONIC DELIVERY

Brad S. Karp, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019

Re: National Football League

Dear Mr. Karp:

I write in response to your letter of March 28, 2016 on behalf of your client the National Football League (“NFL”) regarding our story “N.F.L.’s Flawed Concussion Research and Ties to the Tobacco Industry” (the “Article,” published online on March 24, 2016).

As you know, The Times has a policy of correcting factual errors as promptly as possible. I have reviewed your letter with our editors and reporters, and nowhere does your letter identify any factual error that we have made in our reporting on the ties between the NFL and the tobacco industry. The crux of the letter is the NFL’s complaint that the connections identified by the Article between the NFL and the tobacco industry were not “meaningful.” Obviously, that is an opinion, not a fact. (The letter explicitly acknowledges as much in its discussion of how a “fair-minded” person would evaluate meaningfulness.) We laid out the connections in the Article, as well as the NFL’s response, and our readers are free to come to their own conclusion as to whether the ties are “meaningful.” We think they are. Your letter, in summing up the “grand total” of reported connections, inexplicably misses an essential one – the influential role that Preston R. Tisch played in the NFL as co-owner of the Giants and in the tobacco industry as a co-owner of Lorillard. Whatever the reason for that, the letter does not challenge the fact that all of the reported connections existed.

Likewise, the letter questions whether we overplayed the role of Dorothy Mitchell, the lawyer who was praised for her work by the tobacco industry and then worked at the NFL with the concussion committee, and whether we should have said more about the letter sent by Lorillard's general counsel to the NFL commissioner at Mr. Tisch's request. Again, no factual error is cited, and in both instances, we included the NFL's unambiguous rejoinders – that Ms. Mitchell “did not have any responsibility” for the concussion research and that the Lorillard letter was “not taken seriously” by the league.

Since the Article appeared, the NFL (as you know) has launched a massive P.R. and advertising campaign to attack the Article's discussion of the tobacco ties. But the tobacco-NFL connection has been widely discussed for years. *See, e.g.*, M. Fainaru-Wada and S. Fainuru, *League of Denial* (2013), at 279-81; “Concussions and Cigarettes,” *Slate* (July 26, 2011); “Is Big Football The Next Big Tobacco?,” *andrewsullivan.com* (March 28, 2012); “Bennet Omalu, Concussions, and the NFL: How One Doctor Changed Football Forever,” *GQ* (September 14, 2009); “Is Big Football the Next Big Tobacco?,” *U.S. News & World Report* (October 2, 2013); “Is the NFL Like the Tobacco Industry?,” *Bloomberg.com* (August 31, 2015).¹ Even retired NFL players have joined in that discussion, as the Article reports. That the NFL would now see fit to try to silence the public debate with legal threats (“we demand that the story immediately be retracted”) is a disservice to its fans and, more generally, to the American people.

As for the Article's reporting on the concussion studies, the letter confirms the overarching point that the Article made: The league's research was deeply flawed and incomplete. The letter bizarrely quibbles not over whether the research was valid (we all agree that it was not) or whether the NFL defended the research for years (we all agree that it did) but whether the NFL has continued to “stand by” the research. If the NFL has previously acknowledged the undercounting of diagnosed concussions, your letter fails to identify any such public declaration. The *Times* article from June 1, 2010 cited in your letter contains no statement from the NFL acknowledging the failure of the concussion committee to include all diagnosed concussions.

Little needs to be said about the letter's second criticism of the reporting on the data. The criticism is premised on a falsehood: that the Article alleged that the NFL “intentionally concealed concussion data.” It said nothing of the sort.

Finally, we were disappointed to see the letter's patently unfair discussion of the ABC tobacco industry libel litigation and the role of our reporter Walt Bogdanich, who worked on the tobacco story for ABC. You certainly know that (a) Mr. Bogdanich, a named defendant, refused to sign the apology that ABC gave to the tobacco industry plaintiffs; (b) ABC entered into the settlement as an expedient corporate step to facilitate the Disney-ABC merger; and (c) – most importantly – the later Justice Department RICO

¹ http://www.slate.com/articles/sports/sports_nut/2011/07/concussions_and_cigarettes.html; <http://dish.andrewsullivan.com/threads/is-football-the-next-big-tobacco/>; <http://www.gq.com/story/nfl-players-brain-dementia-study-memory-concussions>; <http://www.usnews.com/opinion/blogs/pat-garofalo/2013/10/02/league-of-denial-claims-the-nfl-buried-damaging-concussion-research>; <http://www.bloomberg.com/politics/articles/2015-08-31/is-the-nfl-like-the-tobacco-industry->.

case showed that the story done by Mr. Bogdanich and ABC was true. While your earlier letter to The Times called the tobacco industry "perhaps most odious industry in America history," you somehow fail to mention in either letter that it was your firm that represented Philip Morris in that RICO case.

Sincerely,

A handwritten signature in black ink, appearing to read "D E McCraw". The signature is written in a cursive style with a horizontal line extending to the right.

David E. McCraw