IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND SOUTHERN DIVISION

BARRETT GREEN	*	
Plaintiff	*	
	*	Civil No.: 8:13-cv-01961-PJM
v.	*	
PRO FOOTBALL, INC. d/b/a THE WASHINGTON REDSKINS, *et al.*	*	
Defendants	*	

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MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT PRO-FOOTBALL, INC'S MOTION TO DISMISS OR, IN THE ALERNATIVE, MOTION FOR SUMMARY JUDGMENT

Defendant Pro-Football, Inc. d/b/a The Washington Redskins (hereinafter the "Redskins"), by its attorneys, FERGUSON, SCHETELICH & BALLEW, P.A., Robert L. Ferguson, Jr., and Craig F. Ballew, submits this Memorandum of Law in Support of its Motion to Dismiss Or, In The Alternative, Motion For Summary Judgment ("Motion") and requests that this Court dismiss all claims asserted against this Defendant with prejudice.

I. INTRODUCTION

On December 5, 2004, Plaintiff Barrett Green (hereinafter "Plaintiff Green"), a New York Giants linebacker, was injured by a block delivered by Defendant Robert Royal (hereinafter "Royal"), a Redskins tight end. Although Plaintiff Green believed at the time that Royal intentionally injured him, Plaintiff Green waited nearly 8 ½ years before filing his complaint alleging, among other things, that Royal, Defendant Gregg Williams (hereinafter "Williams"), and other unnamed Redskins employees perpetrated a "bounty" program, which

awarded cash prizes for intentionally injuring opposing players. Plaintiff Green claims that the Redskins are vicariously liable for Royal's alleged battery of Plaintiff Green, for his negligence, and that the Redskins were negligent in their supervision of Royal and Williams.

Even if Plaintiff Green's claims were true – which they are not[1] – his claims must be dismissed as a matter of law. The statute of limitations has run on each of Plaintiff Green's claims. In addition, Plaintiff Green's claims are preempted by the collective bargaining agreement to which Plaintiff Green, Royal, and the Redskins were parties at the time of Plaintiff Green's injury.

II. STANDARD OF REVIEW

"To survive a motion to dismiss, the Complaint must 'state[ ] a plausible claim for relief' that 'permit[s] the court to infer more than the mere possibility of misconduct' based upon 'its judicial experience and common sense.'" *Coleman v. Maryland Court of Appeals*, 626 F.3d 187, 190 (4th Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Factual allegations must be sufficient to establish a right to relief above the speculative level. *Id.*

Rule 12(d) gives the court discretion to accept and consider matters outside the pleadings and treat the motion to dismiss as one for summary judgment. *Laughlin v. Metropolitan Washington Airports*, 149 F.3d 253, 260-61 (4th Cir. 1998). Pursuant to Federal Rule of Civil Procedure 56(c), a court must grant summary judgment when "no genuine dispute of material fact exists, and the moving party is entitled to judgment as a matter of law." *Asher v. United Airlines*, 70 F. Supp. 614, 616 (D. Md. 1999) (citing *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 250 (1986)). To defeat a motion for summary judgment, the non-moving party "must

[1] The Redskins understand that the legal standard of analysis for a motion to dismiss compels the Court to remain within the four corners of the Complaint and accept all well-plead factual averments as though they are true. Nevertheless, the Redskins are compelled to state that Plaintiff Green's claims are utterly baseless. The only purported "fact" cited in support of his claim that Redskins coaches and players implemented a bounty program is a newspaper article citing unnamed sources who made similar allegations.

present evidence of specific facts from which the finder of fact could reasonably find for him or her." *Id.* at 617 (citing *Anderson*, 477 U.S. at 252), *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A party cannot create a genuine dispute of material fact through general allegations of facts in dispute, amounting to no more than a mere scintilla of evidence, mere speculation, or a compilation of inferences. *Johnson v. Quinones*, 145 F.3d 164, 166 (4th Cir. 1998).

III. STATEMENT OF FACTS

Plaintiff Green's complained-of injury in this matter occurred on December 5, 2004 in a National Football League (hereinafter "NFL") game. *Complaint (hereinafter "C.")* ¶¶ *2, 3, 6*. In his Complaint, Plaintiff Green brings causes of action for (I) Battery against Defendant Royal, (II) Vicarious Liability against Defendant Redskins, which stems from the Battery allegation in Count I, (III) Negligence against Defendant Royal, (IV) Negligence against Defendant Redskins, (V) Negligence against Defendant Gregg Williams (hereinafter "Williams"), and (VI) Negligent Supervision against Defendant Redskins. Plaintiff Green was a linebacker, which is a defensive position, for the New York Giants (hereinafter "Giants"). *C.* ¶¶ *2, 16*. Plaintiff Green alleges that he sustained a "career-ending knee injury" during a game against the Redskins on December 5, 2004. *C.* ¶ *6*. Plaintiff Green played against the Redskins despite being listed as "questionable" for his pre-existing knee injury. *C.* ¶ *14*.

During the game on December 5, 2004, Mr. Royal, a tight end for the Redskins, lined up as a receiver. *C.* ¶ *15*. Defendant Williams was the Assistant Head Coach – Defense at the time and his job responsibilities included "all aspects of the Redskins defense, including training and supervision of defensive football players." *C.* ¶ *28*. Once the ball was snapped, Mr. Royal made a block on Plaintiff Green, which the game officials declared to be a violation of NFL's rules of

play. *C.* ¶ *22*. The Complaint states that Defendant Royal "intentionally lowered his helmet and dove into a defenseless linebacker's knees at full speed." *C.* ¶ *20*. After the hit, Plaintiff Green alleges that he "immediately felt immense pain in his left knee, and was unable to stand up or support himself on his knee." *C.* ¶ *24*.

Plaintiff Green "was suspicious at the time of the injury that Defendant Royal may have purposely targeted him." *C.* ¶ *35*. After the game, on December 7, 2004, Plaintiff Green is quoted saying:

> It wasn't an accident, he shot at my legs; *it was intentional*. Hopefully the league will take notice of it and do something about it, because they seem to do something when defensive guys do something.

C. ¶ *36* (emphasis added). Plaintiff Green relied on representations of third parties that an investigation had or would be made on his behalf. *C.* ¶ *38*. Plaintiff Green now brings this lawsuit for the injury that he allegedly sustained approximately 8 ½ years ago, which he believed at the time was intentionally inflicted.

IV. ARGUMENT

A. Plaintiff's Claims For Battery, Vicarious Liability, Negligence, and Negligent Supervision Are All Time Barred

The statute of limitations for all claims that Plaintiff Green has alleged in this lawsuit is three (3) years. A claim for battery and/or vicarious liability for battery must be brought within three (3) years. *Ford v. Douglas*, 144 Md. App. 620, 622 (2002). A claim based in negligence must also be brought within three (3) years. MD. CODE ANN., Cts. & Jud. Proc. § 5-101; *Hanscome v. Perry*, 75 Md. App. 605, 612-13 (1988) (stating that a claim for negligence carries a three-year statute of limitations); *Mason v. Bd. of Educ. of Baltimore Cnty*, 143 Md. App. 507, 509, 515 (2002) (stating that a claim for negligent supervision carries a three-year statute of limitations).

"In Maryland, the general rule is that the running of limitations against a cause of action begins upon the occurrence of the alleged wrong, unless there is a legislative or judicial exception which applies." *Poole v. Coakley & Williams Const., Inc.*, 423 Md. 91, 131 (2011). On December 5, 2004, Plaintiff Green possessed all of the information he needed to allege his claims against Defendants. Plaintiff Green knew he was hit by a block delivered by Defendant Royal (*C.* ¶ *22*), an employee of Defendant Redskins (*C.* ¶ *3*), that he was injured because he immediately felt "immense pain in his left knee" (*C.* ¶ *24*), and Plaintiff Green believed that Defendant Royal "intentionally lowered his helmet" in delivering this block (*C.* ¶¶ *20*, *36*). Thus, as of December 5, 2004, Plaintiff Green believed that he had causes of action available in the form of battery and negligence against Defendant Royal, and causes of action based on vicarious liability for battery and negligence against Defendant Redskins as Defendant Royal's employer. Whether there may have been another layer of motivation for Defendant Royal's conduct is irrelevant once Plaintiff Green was on notice of the basic and essential elements of his cause of action. *Pettit v. Erie Ins. Exchange*, 117 Md. App. 212, 224 (1997) (holding that pleading intent to make an offensive contact is sufficient to state a claim for battery, regardless of the underlying motivation of the actor).

Plaintiff Green's claims against the Redskins for vicarious liability, negligence, and negligent supervision are predicated upon Royal's alleged battery. Battery is defined as "the intentional, unpermitted touching of the body of another that is harmful or offensive to the person who was touched." *Doe v. Archdiocese of Washington*, 114 Md. App. 169, 180 (1997) (citing *Ghassemieh v. Schafer*, 52 Md. App. 31, 43 (1982)). In a battery case, "compensible *[sic]* harm occurs at the time of the battery, regardless of whether the victim is aware that the act is wrong or the full extent of the harm." *Doe*, 114 Md. App. at 186. Moreover, ***"[o]nce on***

notice of one cause of action, a potential plaintiff is charged with responsibility for investigating, within the limitations period, all potential claims and all potential defendants with regard to the injury. . . . '[K]nowledge of the identity of a particular defendant is not a necessary element to trigger the running of the statute of limitations.'" *Id.* at 188-89 (citing *Conaway v. State*, 90 Md. App. 234, 253 (1992)) (emphasis added). Plaintiff Green believed Mr. Royal intentionally injured him on December 5, 2004, and was therefore on notice of his potential claims against Royal and the Redskins as of that date.

In *Doe*, an altar boy (the plaintiff) was sexually abused between the ages of 11 and 17 by at least two priests. *Doe*, 114 Md. App. at 173. The Archdiocese knew that one of the priests was a pedophile prior to the abuse. *Id.* Roughly 17 years later, and roughly 16 years after reaching the age of majority, the plaintiff filed suit against the priests for a number of claims, including battery, and asserted several claims against the Archdiocese, including negligence and negligent supervision. *Id*. at 174.

The court in *Doe* granted a motion to dismiss the case as time-barred because "Maryland uses the discovery rule . . . to determine the accrual of a cause of action for purposes of the statute of limitations." *Id.* In other words, once the plaintiff knows of the injury, the clock begins to run. Further, "a [person] cannot fail to investigate when the propriety of the investigation is naturally suggested by circumstances known to him; and if he neglects to make such inquiry, he . . . must suffer from his neglect." *Id*. at 177 (quoting *Poffenberger v. Risser*, 290 Md. 631, 637 (1981)) (alterations in original).

The court, citing a line of cases strictly applying the discovery rule in battery cases, rejected the plaintiff's argument that the statute of limitations should be tolled because he did not discover the nature and extent of his injury until after the limitations period. ***"[C]ompensible***

[sic]harm occurs at the time of the battery, regardless of whether the victim is aware that the act is wrong or of the full extent of the harm." *Id.* at 186 (emphasis added). The court rejected the plaintiff's analogy of his battery claim to a latent disease, noting that "[w]hile we sympathize with the plight of people who have been sexually abused as children, and whose perceptions may have been skewed by such a reprehensible breach of trust committed by persons in positions of authority, the notice that one has been wronged by the intentional tort of battery is so qualitatively different from the inherently unknowable latent disease, that the analogy is simply not useful." *Id.* at 184.

With respect to the plaintiff's claims against the Archdiocese, the priests' employer, the court held that "[Plaintiff] had inquiry notice of his potential claims against the Archdiocese, as the priests' employer. Therefore, for the same reasons that the claims against the priests are untimely, his claims against the Archdiocese must fail." *Id.* at 190.

In the case *sub judice*, Plaintiff Green alleges that Royal "intentionally lowered his helmet" when he blocked Plaintiff Green, and the team received a 15 yard penalty as a result of the play. *C.* ¶¶ *20, 22*. Plaintiff Green alleges that he "immediately felt immense pain in his left knee, and was unable to stand up or support himself on his knee." *C.* ¶ *24.* Plaintiff Green "was suspicious at the time of the injury that Defendant Royal may have purposely targeted him," and publicly claimed to his coaches and reporters in the days after the game that he believed Royal intentionally injured him. *C.* ¶¶ *35, 36*.

The general rule and the discovery rule coincide in this case, and Plaintiff Green's causes of action accrued immediately when he was hit. As of December 5, 2004, Plaintiff Green believed Royal had intentionally injured him and therefore was on notice of his potential claim for battery. As in *Doe*, Plaintiff Green was on inquiry notice of his potential claims against

Royal and the Redskins as Royal's employer. As in *Doe*, notice of the potential claim against the employee (Royal) necessarily gave rise to Plaintiff Green's notice of his related potential claims against the employer (the Redskins). Plaintiff Green's allegation that he only later discovered Royal's motivation for the alleged intentional act does not alter the calculus. *Id.* at 186; *Pettit*, 117 Md. App. at 224. As a result, Plaintiff Green's claims against the Redskins for vicarious liability from the battery, negligence, and negligent supervision are barred by the statute of limitations and should be dismissed.

B. The Fraudulent Concealment Doctrine Has No Applicability to the Facts Alleged

In a transparent effort to avoid the fact that his lawsuit is five and one-half (5 ½) years too late, Plaintiff Green claims that the Defendants engaged in "collective and individual efforts at concealment[.]" *C. ¶ 40*. Yet Plaintiff Green offers no facts whatsoever in support of this baseless allegation. Plaintiff Green's half-hearted effort to allege fraudulent concealment is plainly insufficient.

To invoke the doctrine of fraudulent concealment in order to toll the applicable statute of limitations, a plaintiff "must properly plead fraud with particularity."[2] *Doe*, 114 Md. App. at 187 (citing *Bennett Heating & Air Conditioning, Inc. v. Nations Bank of Md.*, 342 Md. 169, 190 (1996); *Antigua Condominium Ass'n v. Melba Investors Atl., Inc.*, 307 Md. 700, 735; *Tucker v. Woolery*, 99 Md. App. 295, 304 *cert. dismissed*, 336 Md. 280 (1994)). "Thus, '[g]eneral or conclusory allegations of fraud are insufficient. A plaintiff must allege facts which indicate fraud or from which fraud is necessarily implied.'" *Id.* (quoting *Antigua Condominium*, 307 Md.

[2] Fraud requires a showing 1) that the defendant made a false representation to the plaintiff, with knowledge of its falsity or reckless indifference as to its trust; or 2) the defendant owed a duty to the plaintiff to disclose a material fact, and failed to disclose that fact; 3) the defendant intended to defraud or deceive the plaintiff; 4) that the plaintiff relied on the misrepresentation and had the right to rely on it; and 5) that the plaintiff suffered compensable injury resulting from the misrepresentation. *Sass v. Andrew*, 152 Md. App. 406, 429 (2003) (quotations omitted); *Rhee v. Highland Dev. Corp.*, 182 Md. App. 516, 524 (2008) (quotations omitted).

at 735, 517 A.2d 75). "Moreover, the complaint relying on the fraudulent concealment doctrine must also contain specific allegations of how the fraud kept the plaintiff in ignorance of a cause of action, how the fraud was discovered, and why there was a delay in discovering the fraud, despite the plaintiff's diligence." *Id.* (citing *Villarreal v. Glacken*, 63 Md. App. 114, 131 (1985); *Associated Realty Co. v. Kimmelman*, 19 Md. App. 368 (1973)).

Plaintiff Green's allegations clearly do not satisfy this standard. Plaintiff Green claims that he decided not to pursue his potential claims in a timely manner in reliance upon (i) unspecified representations Royal "made to the press . . . that the injury was unintentional" (*C.* ¶ *39*) and (ii) his own unfounded belief that his head coach or some other unnamed person had investigated his claims and determined "that it was not possible that the injury was intentional" (*C.* ¶¶ *37-38*).

Critically, Plaintiff Green does not allege that the Redskins or any other defendant made any material misrepresentations or omissions to Plaintiff Green himself. Plaintiff Green alleges that Royal made statements to the press, but does not specify what Royal allegedly said, to whom, or when he said it. *See C.* ¶ *39*. Nor does Plaintiff Green allege any reasonable basis for his alleged reliance on Royal's public statements or his head coach's belief that the injury was not intentional. *C.* ¶ *37*. Plaintiff Green does not allege that he or his representatives contacted the Redskins, the NFL, or the NFL Players Association to investigate his injury. In short, Plaintiff Green offers no basis whatsoever to extend the statute of limitations based upon a theory of fraudulent concealment.

V. PLAINTIFF'S CLAIMS ARE PREEMPTED BY SECTION 301 OF THELABOR MANAGEMENT RELATIONS ACT ("LMRA")

It is well settled that Section 301 of the LMRA completely preempts all state law claims – including tort claims – that are substantially dependent on an interpretation of the terms of, or

arise under, a collective bargaining agreement. 29 U.S.C. §185(a) (codifying Section 301); *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 213, 220 (1985); *United Steelworkers of Am. v. Rawson*, 495 U.S. 362, 368 (1990). Plaintiff Green's claims are completely preempted by Section 301 and must be dismissed as a matter of law.

A. Plaintiff Green's Employment In The NFL Was Defined By A Collective Bargaining Agreement

The parties to this action are covered by the Collective Bargaining Agreement between the NFL Management Council and the NFL Players' Association dated as of January 8, 2002 (the "CBA").[3] The CBA, painstakingly negotiated by professional football players through their union, set forth the parties' understanding and agreement on, among many other things, what rules applied to participation in NFL games and how player safety would be protected. *See, e.g.*, Ex. 1, Art. XIII, §1. The CBA is a labor agreement that details and comprehensively governs the relationship among the NFL, its member clubs, and the players. The terms and conditions of Plaintiff Green's employment as a professional football player were defined by the CBA.

The CBA "represents the complete understanding of the parties on all subjects covered herein." *See* Ex. 1, Art. III § 1. Further, the CBA contains the exclusive grievance procedures providing that all disputes involving "the interpretation of, application of, or compliance with, any provision of this Agreement, the NFL Player Contract, or any applicable provision of the NFL Constitution and Bylaws pertaining to terms and conditions of employment of NFL players, will be resolved exclusively in accordance with agreed-to arbitration procedures." Ex. 1, Art. IX, §1.

[3] See Affidavit of Eric Schaffer, Exhibit 1. (hereinafter, "Ex.1")

B. The Collective Bargaining Agreement Which Covered Plaintiff Green is Governed By Section 301 of The LMRA

Like all collective bargaining agreements affecting interstate commerce, the CBA is governed by Section 301 of the LMRA. Section 301 ensures that disputes between parties to a labor agreement are resolved under a uniform body of federal labor law and adjudicated in accordance with the parties' agreed-to grievance procedures. The "preemptive force of section 301 is so powerful" because Congress intended doctrines of federal labor law to prevail over inconsistent local rules. *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 23 (1983).

In discussing the standard to be applied in determining the existence of a federal labor law issue, the Supreme Court has held that:

> If the policies that animate Section 301 are to be given their proper range . . . the preemptive effect of Section 301 must extend beyond suits alleging contract violations. . . . Thus, *questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort.* Any other result would elevate form over substance and allow parties to evade the requirements of Section 301 by relabeling their contract claims as claims for tortuous breach of contract.

Allis-Chalmers, 471 U.S. at 211 (Emphasis added).

Moreover, "a central tenet of federal labor-contract law under section 301 [is] that it is the arbitrator, not the court, who has the responsibility to interpret the labor contract in the first instance." *Allis-Chalmers*, 471 U.S. at 220. Section 301 preemption thus "preserves the central role of arbitration in our system of industrial self-government." *Id.* at 219. Thus, Section 301 provides for preemption of all state-law claims -- whether based in negligence or fraud -- whose resolution is substantially dependent upon or inextricably intertwined with the terms of a

collective bargaining agreement, or that arise under a collective bargaining agreement. *Id.* at 213, 220.

C. Plaintiff Green's Claims Require Interpretation of the Collective Bargaining Agreement

Plaintiff Green's claims are grounded upon the assertion that the Redskins owed him several duties:

1) The duty to "ensure that players and coaches participated in the game of football in a manner that was within the rules as set forth by the NFL." *C.* ¶¶ *74 & 96*;
2) The duty to "ensure the safety of all NFL Players." *C.* ¶¶ *75 & 96*; and
3) The duty to "ensure [Redskins] players and coaches participated in NFL games in a safe and reasonable manner so as not to expose opposing players to the risk of injury." *C.* ¶¶ *75 & 97*.

Determining whether the Redskins in fact owed such duties to Plaintiff Green, assessing the scope of any such duties, and deciding whether the Redskins acted reasonably in discharging any duties would substantially depend upon an interpretation of the health and safety provisions in the CBA.

The CBA establishes standards related to player safety. Under the CBA, a joint committee has been set up for the purpose of "discussing the player safety and welfare aspects of playing equipment, playing surfaces, stadium facilities, playing rules, player-coach relationships, and any other relevant subjects. . . . The joint committee may discuss and examine any subject related to player safety and welfare it desires and any member of the Committee may present for discussion any such subject. *See* Exhibit 1 at Article XIII. Thus, the Redskins' duties related to player safety arise under the CBA.

That this purported obligation arises under the CBA is confirmed by the fact that the duty does not exist independent of the CBA: The Redskins do not owe duties to promulgate rules regarding player health and safety to the general public or "every person in society." *See Rawson*, 495 U.S. at 371 (holding a state law right only arises outside of a CBA where defendant is "accused of acting in a way that might violate the duty of reasonable care owed to every person in society").

Plaintiff's claims against the Redskins also arise out of the Redskins' alleged failure to properly monitor and discipline its employees, Williams and Royal. The Redskins' duties related to the discipline of its players and regulation of conduct on and off the field is governed by Article VIII of the Collective Bargaining Agreement. *Ex. 1*, Article VIII. This too confirms that Plaintiff's claims against the Redskins necessarily involve the interpretation of the collective bargaining agreement between the NFLPA and the NFL Management Council.

D. Plaintiff Green Cannot Avoid the Impact of Section 301 by Simply Ignoring The Collective Bargaining Agreement

Plaintiff's failure to reference the existence of the Collective Bargaining Agreement reflects the intent to artfully avoid a discussion of the impact of that Agreement on this suit. The law is clear, however, that a Plaintiff cannot circumvent federal labor policy and the collective bargaining agreement through artful or creative pleading. *Oglesby v. RCA Corp.*, 752 F.2d 272, 275 (7th Cir. 1985), *cert. denied* 105 S.Ct. 433 (1984); *Olguin v. Inspiration Consul Copper Co.*, 740 F.2d 1468, 1472 (9th Cir. 1984); *see also Allis-Chalmers*, 471 U.S. at 220; *Dixon v. Westinghouse Electric Corp.*, 615 F. Supp. 538, 544 (D. Md. 1985), *aff'd.*, 787 F.2d 943 (1986). When such efforts are made, the Court must analyze the Plaintiff's claims and determine whether the Complaint in fact arises under the collective bargaining agreement. The rationale for such an analysis is manifest. A court ". . . need not blind itself to the real gravamen of a claim because

plaintiff tenders a blindfold in the form of artificial characterizations in its Complaint." *In re: Wiring Device Antitrust Litigation*, 498 F. Supp. 79, 82 (E.D.N.Y. 1980).

It is clear that, despite the labels assigned by Plaintiff Green, all allegations raised in his Complaint are matters arising under the Collective Bargaining Agreement. As such, these claims fall under Section 301 and "artful pleading" will not allow him to avoid the requirements of that section. *Oglesby*, 752 F.2d at 275; *Olguin*, 740 F.2d at 1472.

E. The Failure Of The Plaintiff To Exhaust The Mandatory Grievance And Arbitration Provisions Of The Collective Bargaining Agreement Precludes The Maintenance Of This Suit

It has long been held that an employee seeking to remedy an alleged breach of a collective bargaining agreement must exhaust any exclusive grievance and arbitration procedures established by that agreement prior to filing suit against his employer. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 563, 96 S. Ct. 1048, 1055-56 (1976); *Republic Steel Corporation v. Maddox*, 379 U.S. 650, 652, 85 S. Ct. 614, 616 (1965); *Adkins v. Times-World Corporation*, 771 F.2d 829, 832 (4th Cir. 1985); *National Post Office Mail Handlers v. U.S. Postal Service*, 594 F.2d 988, 991 (4th Cir. 1979); *Chesapeake & Ohio Ry. Co. v. Ford*, 590 F.2d 557, 558 (4th Cir. 1979); *Ali v Giant Food*, 595 F. Supp. 2d 618, 625 (D. Md. 2009); *Wright v Safeway, Inc.*, 804 F. Supp. 752, 754 (D. Md. 1992); *Dixon*, 615 F. Supp. at 544, *aff'd*. 787 F.2d 943 (1986); *Everett v. CFE Air Cargo*, 119 LRRM 2286 (D. Md. 1984); *Mabane v. Metal Masters Food Service Equip. Co.*, 541 F. Supp. 981, 989 (D. Md. 1982); *Fox v. Mitchell Transport, Inc.*, 506 F. Supp. 1346, 1350 (D. Md. 1981).

An employee's failure to exhaust the mandatory grievance and arbitration procedures will result in the dismissal of the employee's Section 301 complaint for breach of collective bargaining agreement, regardless of the guise in which it is brought. *Republic Steel Corporation*

v. Maddox, 379 U.S. at 659; *Chesapeake & O. RY. Co.*, 590 F. 2d at 559; *Dixon*, 538 F. Supp. at 544; *Everett*, 119 LRRM at 2287; *Mabane*, 541 F. Supp. at 990.

To the extent that Plaintiff Green has a claim addressing injuries incurred during his NFL career, that claim may only proceed pursuant to the grievance procedures set forth in the CBA. *Allis-Chalmers*, 471 U.S. at 220-21 (noting tort claims should have been dismissed for failure to make use of the grievance procedure established in the collective bargaining agreement . . . or dismissed as pre-empted by § 301); *Chesapeake and Ohio Ry. Co.*, 590 F.2d at 558-59 (arbitration was exclusive remedy for disputes arising under the collective bargaining agreement); *Smith v. Verizon Washington*, 2011 WL 5547996 (D. Md. 2011) (termination claim asserting violation of the collective bargaining agreement is preempted); *Fusco v. GE Government Services, Inc.*, 897 F.Supp. 926, 927 (D. Md. 1995) (claim for severance based on collective bargaining agreement preempted).

The facts surrounding Plaintiff's failure to exhaust the grievance and arbitration procedures under the terms of the Collective Bargaining Agreement are not in dispute. The Complaint does not allege that any grievances were filed by the Plaintiff as a result of the matters complained of in the Complaint. Applicable case law establishes that Plaintiff's failure to exhaust his contractual remedies precludes him from maintaining this action.

The Fourth Circuit and Maryland's federal courts have approved the use of summary judgment in Section 301 actions where, as in the case at bar, there is no substantial controversy as to any material fact. *Walden v. Local 71, International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America*, 468 F.2d 196, 197 (4th Cir. 1972); *Dixon*, 615 F. Supp. at 544; *Everett*, 119 LRRM at 2288; *Mabane*, 541 F. Supp. at 990; *Fox*, 506 F. Supp. at 1351.

VI. CONCLUSION

WHEREFORE, for the reasons set forth above, Defendant Pro-Football, Inc. d/b/a The Washington Redskins respectfully request that this Court enter an Order dismissing all claims against it with prejudice, and that the Court provide any further relief as it may deem appropriate.

FERGUSON, SCHETELICH, & BALLEW, P.A.

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